

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of the PERA Salary
Determinations Affecting Retired and Active
Employees of the City of Duluth

AFFIDAVIT OF BRYAN BROWN

OAH DOCKET NO. 4-3600-2080902

Allen Johnson, et al., Petitioners

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

Bryan Brown, being first duly sworn, on oath deposes and says:

1. I am a retired employee of the City of Duluth. I am a party in my own appeal that is part of this consolidated proceeding. This Affidavit supports my appeal to the PERA Board. I served as an Assistant City Attorney between 1975 and 2000. I served as the Duluth City Attorney between 2000 and 2008, and retired on July 16, 2008. In addition to my legal work, I worked as an Administrator in the Personnel Department where I worked with employee benefits.

2. To the best of my knowledge, since the 1980's the City of Duluth has not offered or provided any "health insurance" or "medical insurance" product as a payment protection to its employees and retirees. It furnished a promise to pay medical bills. The City protected itself with a re-insurance product called "stop loss insurance" which would indemnify the City if the aggregate employee and retiree medical costs that the City had promised to pay to indemnify employees and retirees exceeded 110 percent of the projected medical care amounts for a year. At some time the City also began to purchase individual "stop loss" which paid the City if an individual's medical costs exceeded a stated amount. However, these coverages protected the City, not the individual employee or retiree that the City had promised to indemnify. Therefore, the City did not purchase

or provide an “insurance product” for any individual. It simply promised to pay, under certain conditions, the medical bills of employees and retirees. In 2007 or 2008, after public discussion about a change in accounting standards, the City began to convert to at least a partially funded system whereby the City would create a dedicated fund of such a size that the earnings of the fund would be sufficient to pay the medical costs of the plan participants which the City had promised to pay. I don’t know to what extent this new funding system became operable, since I left its employ in 2008, or to what extent the City may want to rely on re-insurance to protect itself.

3. Since the early 1980's until at least 2008, the City of Duluth operated a “pay-as-you-go” self-funded medical reimbursement plan for active and retired employees. The City contracts with an administrator such as Blue Cross Blue Shield or Medica to manage paying medical bills submitted to it by medical providers who have furnished services to employees and retirees. However, there is no insurance product purchased, provided, or offered by the City to indemnify an employee or retiree for his or her costs of medical care services. At some times the City had budgeted money reserves for payment of medical claims from care providers, but these reserves were not dedicated and were available for and used for other purposes as well. I don’t know the accounting or mechanics of the fund transfers that actually paid the medical bills for the employees, but I believe that at times funds from sources such as the undesignated (rainy day) fund had to be used to pay the medical bills. At times, the City may have exhausted any current reserves for paying claims. Unlike the City’s funding plan, insurance products set aside current revenues in order to pay anticipated future claims and obligations. The City’s method of operation has been to promise employees and retirees that it will use future revenues to pay anticipated future claims and obligations. In other words, the City plan was to promise to pay an employee’s medical bills out of

revenues available at the time the medical bill is presented by the health care provider to the City for payment. Those of us in City management that worked with the health care funding plan referred to this system as “self funding.” We made a point of using this terminology with the unions and other groups that participated in the plan in order to stress that the City was not furnishing insurance. We were not licensed to furnish insurance and we believed we may not have complied with regulations applied to insurance companies. The City had contracts with organizations such as the Airport Authority, the Spirit Mountain Authority, the Housing and Redevelopment Authority, the Duluth Transit Authority, AFSCME Council 96, Local 66, to allow them to participate in our self-funded pool in exchange for contributing money to it.

4. The City management tried to avoid having anyone conclude that these contractual arrangements with the unions, the employees, and what we called “the sub-groups” constituted the furnishing of insurance, which we were not licensed to do. To the best of my knowledge, the City has never been subject, as an insurance provider, to laws governing insurance products, or subject to the Insurance Commissioner or other regulatory authority governing insurance providers. The health care benefit provided by the City up to the time I left its employ is not an insurance product. All I ever received from the City was a promise that it would pay certain of my health care expenses out of money it had at the time the bill was presented. I have been told that in a contested matter involving the fire union in 2008, the State decided that the City was subject to regulation as a self-insurer. I don’t know if this was ever appealed or changed. However, I am not aware that the City’s program has ever been determined to be an insurance product as opposed to a self-funding, pay-as-you-go, plan. Since I started employment with the City in 1975, the City has always provided single medical hospitalization coverage to full-time employees at no charge to the employee.

5. I have kept many old paycheck stubs and a typical one is attached. To the best of my knowledge, the paystubs of Duluth City employees have always shown their deferred compensation wages to be included in the gross compensation of employees on the paystubs. Any deduction for deferred compensation shows on the deduction side of the paystub. Based upon the paycheck stubs, I believe that the deferred compensation wages have always been included in gross pay and subject to social security at the time received.

6. For much of my employment with the City of Duluth I was a single person and had no need or eligibility for family medical coverage. From about 1983 until I was married on 10-8-05, I was never eligible for family coverage benefits, never signed up for family coverage, and never received any funds from the City to contribute to such coverage. Accordingly, I was never eligible to direct any of my deferred compensation funds to any family health benefit.

7. I was never part of a collective bargaining unit, and never subject to a labor contract. The City Council approved wages and benefits for non-contract employees like me by Council resolution which set wages and created benefits that were consistent with the benefits in the collective bargaining agreements. During the period 2000-2008, at times my benefits consisted of parts of the benefits package received by one of our bargaining units and parts of the benefits package received by another of our bargaining units.

8. I never requested to be given deferred compensation as part of my wages, but the City chose to make it a part of my compensation. I did elect a deferred compensation provider, and payments were made on my behalf. I never chose to add additional voluntary amounts to my deferred compensation. One reason I did not ask for the cash instead of deferred compensation was that I knew the deferred compensation was available to me for current withdrawal, subject to

penalties and taxability. I also knew it was available to take out as a loan.


9. At the time I retired my annuity was calculated and audited by PERA. They advised me the amount was \$4,332.32 per month. In 2008, after the actions taken by the City of Duluth and PERA, I was notified that my annuity previously calculated and audited by PERA was being reduced by \$50.50 per month to \$4,238.27. The present value of the loss of \$50.50 per month for my life expectancy is close to \$10,000.

10. The office of State Auditor audited City of Duluth payroll every year, and, I believe based on information told to me, specifically in 2001 found the City's program to be in compliance.

11. PERA notified me in writing at time of retirement that my account had been "audited." My PERA annuity should not be decreased, and I should not have to pay back to PERA any amounts which were legally paid to me by the City as part of my compensation.

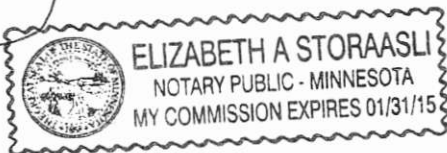
12. I have received different calculations from PERA as to the correct adjusted amount of my annuity and payback amount. I don't know whether the numbers furnished to PERA by the City of Duluth are correct.

FURTHER YOUR AFFIANT SAYS NOT.


Bryan Brown

Subscribed and sworn to before me this
7th day of February, 2010.


Notary Public



EMPLOYEE NAME		EMPLOYEE IDENTIFICATION NO.		APPT.		PAYROLL NO.	
BRYAN BROWN		*****-**-****		*		BMCTY	
PAY PERIOD ENDING	CHECK DATE	CHECK NUMBER	AGENCY	ORGN.	PAY LOCATION	FED. EXEMPT STATUS	STATE EXEMPT STATUS
05/04/04	05/10/04	0000006135891	00000820686	010	1104	011104	
GROSS PAY	YTD GROSS	TOTAL DEDUCTIONS	NET PAY	GROSS EARNINGS			
01	01	70864.05	1504.89	DEDUCTIONS AND TAXES			
5	5		2228.33				
DESCRIPTION	RATE	HOURS	AMOUNT	DESCRIPTION	DEDUCTION AMOUNT	YTD AMOUNT	
DEF WAGES	94416	75:00	103.84	FEDERAL TAX			
REGULAR PAY			3631.38	MINN ST TAX			
				FICA EMPLOYE			
				EMPL MDICARE			
				DEF COMP			
				PERA PENSION	190.50	3614.14	
					103.84	1972.96	
LEAVE CATG	ACCURAL	10.06	0.00				
SICK LEAVE	CURREN	7.30	0.00				
VAC LEAVE	BALANCE		1042.12				