

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
BOARD OF TRUSTEES**

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

OAH Docket Number: 4-3600-20809-2

AFFIDAVIT OF THOMAS F. ANDREW

Allen Johnson, et al., Petitioners

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

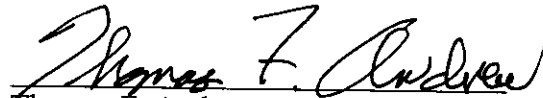
Thomas F. Andrew being first duly sworn on oath deposes and states:

1. That I am the attorney representing Dean Cooke, David Hanson, Jeffrey N. Johnson, Matthew Ketola, Richard Mattson, Darrell Youngblom and Lee Youngblom (hereinafter Movants) in the above-entitled action.

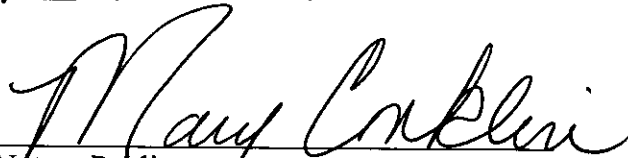
2. At the pretrial hearing in this matter Judge Bruce H. Johnson asked Jon K. Murphy, the attorney representing the PERA staff, to research legislative history relating to the PERA definition of salary. Pursuant to this request Mr. Murphy provided to Affiant a letter dated October 16, 2009 and documents that constitute legislative history regarding the PERA definition of salary. Among the documents provided was a report from Lawrence A. Martin, Executive Director of the Minnesota Legislative Commission on Pensions and Retirement dated August 12, 1994 (pages 1 and 2) and the Salary Study Advisory Committee Report to Representative Jefferson and Senator Terwilliger dated February 22, 1995 including a chart that compared how other states than Minnesota define salary in regards to 55 specific items of compensation. A copy of these documents is attached to this Affidavit and marked Exhibit 1.

3. Attached and marked Exhibit 2 is a two page document from the Public Employees Retirement Association of Minnesota website that defines salary and refers individuals for additional examples of salary that is PERA-eligible and salary that is not PERA-eligible to Chapter 5 of the PERA Employer Manual and excerpts from Chapter 5 of the PERA Employer Manual covering eligibility in earnings pages A-16 to A-23.

Further you Affiant Sayeth not.


Thomas F. Andrew

Subscribed and sworn to before this
27th day of November, 2009.


Notary Public





STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

LORI SWANSON
ATTORNEY GENERAL

October 16, 2009

Elizabeth A. Storaasli
Attorney at Law
Suite 200
202 W. Superior Street
Duluth, MN 55802-1960

✓ Thomas F. Andrew
Attorney at Law
Suite 300
302 W. Superior Street
Duluth, MN 55802-5125

Re: **Legislative History Relating to PERA's Definition of Salary**
OAH Dkt. No. 4-3600-20809-2

Dear Ms. Storaasli and Mr. Andrew:

At the pre-trial hearing in this matter, Judge Johnson asked that PERA research legislative history relating to the PERA definition of salary. I interpret his directions as meaning that I should search the documents and files within PERA's control that relate to the legislative history of "salary," rather than a broad expansive research at the Capitol.

Please be advised that the PERA definition of salary has not changed since 1994. In 1993, Minn. Laws ch. 307, art. 4, secs. 1-15 rewrote the salary definition contained in subdivision 10. An additional rewrite was done in 1994 under Minn. Laws 1994, ch. 528, art. 2, secs. 1-4.

PERA has retained limited documentation of those legislative sessions since they are far beyond PERA's retention schedules. Some documents do remain, the most relevant being the February 22, 1995 report of the Legislative Salary Study Advisory Committee. I have enclosed a copy of this report for your review, together with the August 12, 1994 memorandum from Lawrence A. Martin, Executive Director, Legislative Commission on Pensions and Retirement, which explains the 1994 law changes.

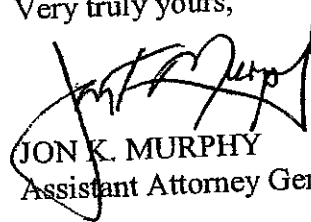
EXHIBIT 1



Elizabeth Storaasli
Thomas Andrew
October 16, 2009
Page 2

I suspect that little discussion took place in 1993 and 1994 regarding the proposed changes to the definition of salary. I have, however, sent a memorandum to Executive Director Larry Martin asking for any records the Commission might have regarding the 1993 and 1994 changes. A copy of my letter to Mr. Martin is enclosed. It is my understanding that Mr. Martin has been on an extended vacation in Scotland and recently returned to work. When he responds to my request, I will advise you accordingly.

Very truly yours,



JON K. MURPHY
Assistant Attorney General

(651) 296-6956 (Voice)
(651) 297-4139 (Fax)

Enclosures

cc: Mary Vanek, Executive Director, PERA

AG: #2526974-v1



TO: Senator Phil Riveness
Representative Bob Johnson

FROM: Lawrence A. Martin, Executive Director *LAM*

RE: Issues Related to Minnesota Public Pension Plan Covered Salary

DATE: August 12, 1994

Introduction

This memorandum is intended to assist you, as representatives of the Legislative Commission on Pensions and Retirement on the Covered Salary Review Advisory Committee established by Laws 1994, Chapter 528, Article 1, Section 13, Subdivision 2, in considering the current statutory and related definitions of covered salary and in attempting to fashion any needed revisions and refinements in those definitions.

Background On The Function Of Public Pension Plan Covered Salary Definitions

a. Function In Defined Contribution Pension Plans

Minnesota has a small number of defined contribution pension plans. Defined contribution pension plans are plans where the contribution levels are set and the eventual retirement benefit payable is a function primarily of the assets accumulated on behalf of the plan member. These plans are non-formula plans, meaning that the retirement benefit is not calculated based on a predetermined mathematical formula. The Minnesota public pension plans involved are the State Unclassified Employees Retirement Program (Minnesota Statutes, Chapter 352D), the Public Employees Defined Contribution Retirement Plan (Minnesota Statutes, Chapter 353D), the State University System-State Community College System Individual Retirement Account Plan (Minnesota Statutes, Chapter 354B), the State University System-State Community College System Supplemental Retirement Plan (Minnesota Statutes, Chapter 354B), and the Hennepin County Supplemental Retirement Plan (Minnesota Statutes, Sections 383B.46 to 383B.52).

In a defined contribution plan, the definition of covered salary will typically affect the amount of member and employer contributions to the pension plan. Generally, contributions are set as a percentage of covered salary, so an expansive definition of covered salary will produce a larger contribution to and a larger potential eventual benefit distribution from the defined contribution pension plan.

b. Function In Defined Benefit Pension Plans

Most Minnesota public pension plans are defined benefit pension plans. Defined benefit pension plans are plans where the eventual retirement benefit is predetermined or predeterminable typically through the use of a formula and the required funding to support the specified benefit is determined through periodic actuarial valuations. Most statewide and major Minnesota public pension plans, the local police and paid firefighter relief associations and consolidation accounts, and most volunteer firefighter relief associations are defined benefit plans.

In a defined benefit plan, the definition of covered salary typically is a key element in the retirement benefit formula. For all plans other than volunteer firefighter relief associations, a covered salary figure or an average covered salary figure is the base to which a specified percentage or fractional per year of service benefit accrual rate amount is applied in calculating the member's eventual retirement benefit. The definition of covered salary also functions to determine annual member and employer contribution amounts, as contribution rates are reset, typically using the same definition of covered salary as applies to the benefit calculation process.

In a defined benefit plan using a final covered salary figure or a final average covered salary figure, the covered salary figure is intended to indicate the retiring member's pre-retirement

standard of living, so that the pension plan replaces the appropriate portion of that standard of living based on the person's length of service credit. Thus, the definition of covered salary should reflect the regular types of compensation that the member received over the person's working career and that set the person's standard of living.

Comparison Of Minnesota Public Pension Plan Definitions Of Covered Salary

Attached is a compilation of the various statutory provisions that defined covered salary for contribution and retirement benefit determination purposes in Minnesota public pension plans.

The compilation augments a simplified grid comparison of covered salary definitions for the Public Employees Retirement Association (PERA), the Minnesota State Retirement System (MSRS), the Teachers Retirement Association (TRA), the first class city teacher retirement fund associations, and the Minneapolis Employees Retirement Fund (MERF) prepared by Mr. David Bergstrom, Executive Director of the MSRS. That grid comparison was provided to you on August 4, 1994. A copy of the grid comparison is attached.

Policy Issues Related To Covered Salary Definitions

There are several policy issues that should be addressed when reviewing the current definitions of covered salary and in determining whether any changes are appropriate. The following sets forth and briefly discusses five policy issues related to this topic identified by the Commission staff:

a. Adequacy Of Covered Salary Definition As Measure Of Standard Of Living.

For Minnesota defined benefit pension plans, the definition of covered salary is the measure of a plan member's standard of living to be used in determining the appropriate replacement amount. Several decades ago, when employees received only one form of compensation as remuneration for their services, there was less question about the adequacy of using "salary" to measure a person's standard of living. Now, with the advent of numerous employment related compensation items, this may no longer be the case. For instance, for police officers, their recurring compensation package can include a base salary, shift differential, uniform allowances, education incentive payments, court appearance amounts, dog handler compensation, tactical or special squad compensation, and overtime. There also may be additional compensation items like lump sum annual bonus or merit payments, tuition payments, and employer-paid flexible benefit account balances. Any definition or redefinition of covered salary should attempt to reasonably capture those items on which a public employee's regular standard of living is based. Among the teacher plans, there has been recent complaints concerning the adequacy of the covered salary figure. Over the past several sessions, proposed legislation has been introduced to attempt to reflect early or mid-career extracurricular teaching compensation in the highest five successive years average salary figure. Also, over the past several sessions, proposed legislation has been introduced to add an alternative highest five successive years average salary figure in the Teachers Retirement Association (TRA) based on the average salary of all comparable TRA members, to adjust for lower salaries for some rural teachers.

Similarly, the definition of covered salary should accurately reflect real compensation, so not to overstate a person's standard of living. Recently, former Governor Rudy Perpich was in the news regarding pension credit in the Public Employees Retirement Association (PERA) for a period of service as a Hibbing School Board member, when his salary was in dispute. Apparently, there was an arrangement in Hibbing during the early and mid-1950's for school board members to rotate salaried board positions among the various members and to pair salaried and non-salaried board members in order to share the salary of one salaried position. PERA, historically, has also covered city attorneys and other professionals retained by local government units who bear a close resemblance to independent contractors and may be credited with covered salary amounts based on a gross retained fee that does not closely relate to the individual's actual personal compensation.

b. Protection From Manipulation In Covered Salary.

Many Minnesota defined benefit public pension plans utilize a highest five successive years average covered salary figure for benefit calculation purposes in order to lessen the potential for manipulation from career-end compensation amounts that would occur if a shorter period of service credit was used. However, manipulation apparently occurs. It has been reported

February 22, 1995

Representative Richard H. Jefferson, Chair
Legislative Commission on Pensions & Retirement
557 State Office Building
St. Paul, MN 55155


Senator Roy W. Terwilliger, Secretary
Legislative Commission on Pensions & Retirement
115 State Office Building
St. Paul, MN 55155

Dear Representative Jefferson & Senator Terwilliger:

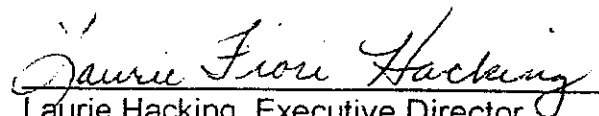
Re: Letter of Transmittal for Salary Study Advisory Committee Report

Enclosed is the report of the Salary Study Advisory Committee as required by Laws 1994, Chapter 538, Article 1, Section 12, Subdivision 2.


Sincerely,



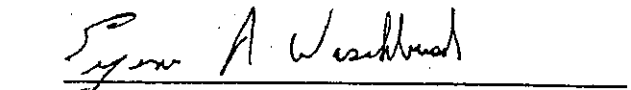
Phil Riveness
Senator, District 40




Laurie Hacking, Executive Director
Public Employees Retirement
Association




Bob Johnson
Representative, District 4A



Gene Waschbusch, Executive Director
St. Paul Teachers Retirement
Association



Lawrence A. Martin, Executive Director
Legislative Commission on Pensions &
Retirement



David Bergstrom, Executive Director
Minnesota State Retirement System

SALARY STUDY ADVISORY COMMITTEE REPORT

A Report to the Minnesota Legislature
Mandated by Laws 1994, Chapter 538, Article 1, Section 13, Subdivision 2

Senator Phil Riveness
Representative Bob Johnson
Lawrence Martin, LCPR
Laurie Hacking, PERA
Gene Waschbusch, St. Paul TRA
David Bergstrom, MSRS

SALARY STUDY ADVISORY COMMITTEE REPORT
LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT
February 1995

Laws of Minnesota, Chapter 528, Article 1, Section 13, Subdivision 2, established a salary study advisory committee. The committee's goal was to review the definition of salary "in an effort to treat public employees in a fair and equitable manner and to protect the financial integrity of the public pension plans."

Members of the salary study advisory committee are:

Senator Phil Riveness, Chair
Legislative Commission on Pensions and Retirement
Representative Robert Johnson, Vice-chair
Legislative Commission on Pensions and Retirement
Lawrence Martin, Executive Director
Legislative Commission on Pensions and Retirement
Laurie Hacking, Executive Director
Public Employees Retirement Association
Gene Waschbusch, Executive Secretary
St. Paul Teachers Retirement Association
David Bergstrom, Executive Director
Minnesota State Retirement System

The committee focused on only the public pension funds that continue to enroll new members. The local police and fire funds and the Minneapolis Employees Retirement Fund were not the focus of the discussion, and the committee recommendations do not include the closed funds.

The definition of salary for retirement purposes is important for two reasons. First, the salary paid to the plan participants is an important element in the funding of the plan. Employee and employer contribution rates are set as a percentage of the overall covered payroll--or total of all salaries for plan participants--to establish what contributions are necessary to fund plan benefits. These contributions are then invested, with an assumption that interest will be earned at a specified rate. Secondly, we use an average of the highest five consecutive years' salaries on which to base a retirement benefit.

The advisory committee was to review the appropriateness of the current definitions of salary. Consideration was to be given on what, if any, changes in the definition may be

needed to prevent future manipulation of salary, especially in what would normally be a participant's high five average years.

FINDINGS

The committee met twice, on August 17, 1994, and again on November 29, 1994.

At the August 17 meeting, the attached EXHIBIT A was discussed. It compares what is considered salary by the Public Employees Retirement Association (PERA), Minnesota State Retirement System (MSRS), Teachers Retirement Association (TRA), St. Paul Teachers Retirement Association (St.PTRA), Duluth Teachers Retirement Association (DTRA), Minneapolis Teachers Retirement Association (MTRA), and Minneapolis Employees Retirement Fund (MERF). The comparison shows that in the most part, the definition of salary for the various plans is quite similar.

All plans include the following in their definition of salary, if applicable:

- Base Salary
- Overtime/Compensatory Time
- Extra Curricular Pay
- Back Pay
- Used Vacation
- Used Sick Leave
- Performance Bonus Pay
- Holiday Pay
- Longevity Pay or Stability Pay--compensation paid for long service

The following items are not considered salary by any of the retirement funds:

- Severance Pay
- Retirement Bonus
- Employer Paid Fringe Benefits (Flexible Spending Accounts, Cafeteria Plans)
- Wellness Payments
- Payments in Lieu of Employer Paid Insurance
- Payments to School Administrators for Special Service on Weekends or Holidays

The committee identified several salary issues that were treated differently by certain funds.

- 1) Employer matching contributions to the Deferred Compensation Program (MSRS).

Committee Recommendation: Should not be included as salary. Generally, employer contributions are not considered salary, and stopping deductions on

employer paid deferred compensation amounts would be consistent with this philosophy.

- 2) Amounts donated to employees to pay for medical procedures through a vacation donation program (MSRS).

Committee Recommendation: Should not be included as salary. Represents the cash-out of unused vacation that is generally not eligible salary otherwise. Also, withholding deductions on amounts contributed for the benefit of making funds available for emergency medical procedures reduces the amount of the contribution and has no impact on the pension fund or the party donating the vacation.

- 3) Fees paid to employees in lieu of salary (PERA, MSRS, TRA, and St.PTRA).

Committee Recommendation: Delete reference to fees from MSRS law. Language on fees for MSRS is no longer necessary since no covered employees are paid directly by fees. St. Paul TRA and Teachers Retirement Association salary definition no longer includes fees and no covered employees are paid directly by fees.

Fees paid to court reporters under PERA are already specifically excluded. Other fees included in the definition of salary include fees charged by a city for the services of a building inspector or tax assessor. The fees are paid to the governmental agency, and not directly to the individual providing the service. Therefore, these fees simply represent another source of revenue for the governmental subdivision. Language on fees must remain in law to cover independent contractors.

- 4) Salaries paid to employees receiving compensation under a federal grant program (PERA).

Committee Recommendation: No change. Employees usually participating in programs funded through grants are often already public employees and the grant money is only a portion of the budget for the special program. Grants that cover the majority of a budget for a special program will generally have language written into the grant that the funds are not to be used for funding a pension plan for the employees. In those cases, grant funds are not considered salary.

- 5) Auto allowance (St.PTRA).

Committee Recommendation: Should not be considered salary, but no action is necessary. Deductions on auto allowances were eliminated effective July 1, 1994, under the provisions of Chapter 542.

The committee reviewed what is included under the definition of salary in other states. The attached chart (Exhibit B) shows that each state has a unique definition of salary. The information confirmed that the Minnesota public pension plans use a fairly consistent definition of salary which is very similar to the definition in other states. The fact that Minnesota uses a high five average salary rather than a high three or one-year average salary reduces the opportunity for salary manipulation.

In compliance with Laws of Minnesota 1994, Chapter 528, Article 1, Section 13, Subdivision 2, the committee offers this report, and requests passage of the attached law which will put into law the committee's recommendations.

1 uniform provisions must accompany the proposed administrative
2 legislation.

3 Subd. 2. [SALARY STUDY ADVISORY COMMITTEE.] In an effort
4 to treat public employees in a fair and equitable manner and to
5 protect the financial integrity of the public pension plans, the
6 legislative commission on pensions and retirement shall
7 establish an advisory committee to study the definitions of
8 salary in chapters 353, 354, and 354A to determine the high-five
9 average consecutive years of salary component for the formula
10 used to calculate retirement annuities and disability benefits.

11 The advisory committee must be composed of at least three
12 executive directors and executive secretaries of the seven
13 public pension plans, and the chair, vice-chair, and executive
14 director of the pension commission.

15 The advisory committee shall report its findings and
16 recommendations to the pension commission by February 15, 1995.

17 Sec. 14. [FISCAL YEAR 1995 ACTUARIAL VALUATIONS.]

18 For the fiscal year 1995 actuarial valuation period, the
19 legislative commission on pensions and retirement may authorize
20 an alternative set of salary increase assumptions or other
21 assumptions defined under Minnesota Statutes, section 356.215.

22 The actuary retained by the legislative commission on pensions
23 and retirement shall make recommendations for change based on an
24 experience study completed in fiscal year 1994 or 1995.

25 Sec. 15. [REPEALER.]

26 Minnesota Statutes 1992, sections 352.15, subdivision 2;
27 and 352D.09, subdivision 6, are repealed.

28 Sec. 16. [EFFECTIVE DATE.]

29 Sections 1, 2, and 5 to 16 are effective the day following
30 final enactment. Sections 3 and 4 are effective January 1, 1995.

31 ARTICLE 2

32 PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

33 Section 1. Minnesota Statutes 1993 Supplement, section
34 353.01, subdivision 10, is amended to read:

35 Subd. 10. [SALARY.] (a) "Salary" means the-periodic-
36 (1) periodic compensation of a public employee, before

1 deductions for deferred compensation, supplemental retirement
2 plans, or other voluntary salary reduction programs, and also
3 means "wages" and includes net income from fees; and
4 (2) for a public employee who has prior service covered by
5 a local police or firefighters relief association that has
6 consolidated with the public employees retirement association
7 and who has elected coverage under the public employees police
8 and fire fund benefit plan under section 353A.08 following the
9 consolidation, "salary" means the rate of salary upon which
10 member contributions to the special fund of the relief
11 association were made prior to the effective date of the
12 consolidation as specified by law and by bylaw provisions
13 governing the relief association on the date of the initiation
14 of the consolidation procedure and the actual periodic
15 compensation of the public employee after the effective date of
16 consolidation.

17 (b) Salary does not mean:

18 (1) fees paid to district court reporters, unused annual or
19 sick leave payments, in lump-sum or periodic payments, severance
20 payments, reimbursement of expenses, lump-sum settlements not
21 attached to a specific earnings period, or workers' compensation
22 payments;

23 Salary does not mean (2) employer-paid amounts used by an
24 employee toward the cost of insurance coverage, employer-paid
25 fringe benefits, flexible spending accounts, cafeteria plans,
26 health care expense accounts, day care expenses, or any payments
27 in lieu of any employer-paid group insurance coverage, including
28 the difference between single and family rates that may be paid
29 to a member with single coverage and certain amounts determined
30 by the executive director to be ineligible;

31 (3) the amount equal to that which the employing
32 governmental subdivision would otherwise pay toward single or
33 family insurance coverage for a covered employee when, through a
34 contract or agreement with some but not all employees, the
35 employer:

36 (i) discontinues, or for new hires does not provide,

1 payment toward the cost of the employee's selected insurance
2 coverages under a group plan offered by the employer;
3 (ii) makes the employee solely responsible for all
4 contributions toward the cost of the employee's selected
5 insurance coverages under a group plan offered by the employer,
6 including any amount the employer makes toward other employees'
7 selected insurance coverages under a group plan offered by the
8 employer; and

9 (iii) provides increased salary rates for employees who do
10 not have any employer-paid group insurance coverages; and

11 fc) (4) except as provided in sections section 353.86 or
12 353.87, compensation of any kind paid to volunteer ambulance
13 service personnel or volunteer firefighters, as defined in
14 subdivisions 35 and 367-is-not-salary.

15 ~~(d) For a public employee who has prior service covered by~~
16 ~~a local police or firefighters relief association that has~~
17 ~~consolidated with the public employees retirement association~~
18 ~~and who has elected coverage under the public employees police~~
19 ~~and fire fund benefit plan under section 353A.08 following the~~
20 ~~consolidation, "salary" means the rate of salary upon which~~
21 ~~member contributions to the special fund of the relief~~
22 ~~association were made prior to the effective date of the~~
23 ~~consolidation as specified by law and by bylaw provisions~~
24 ~~governing the relief association on the date of the initiation~~
25 ~~of the consolidation procedure and the actual periodical~~
26 ~~compensation of the public employee after the effective date of~~
27 ~~the consolidation.~~

28 Sec. 2. Minnesota Statutes, 1993 Supplement, section
29 353.01, subdivision 12a, is amended to read:

30 Subd. 12a. [TEMPORARY POSITION.] (1) "Temporary position"
31 means an employment position predetermined by the employer at
32 the time of hiring to be a period of six months or less in which
33 a person is a public employee under subdivision 27, but not or an
34 employment position occupied by a person hired by the employer
35 for a predetermined period of six months or less.

36 (2) "Temporary position" does not mean an employment

Eligible Earnings

Generally, PERA-eligible earnings are considered gross salary and are paid to employees for labor performed or services rendered. PERA contributions are to be made from total (gross) salary before deducting deferred compensation as defined by Section 457 of the IRS Code, supplemental retirement plans, or other voluntary reductions in salary.

Gross salary includes regular wages, overtime earnings, compensatory time, pay for used vacation and used sick leave, holidays, retroactive wage settlements, and merit increases. Gross salary may also include bonuses. A bonus by PERA's definition is money provided in addition to what is normally received, given in consideration of superior achievement. Any other form of bonus paid by an employer to a member would require a special determination by PERA.

Salary subject to PERA Withholding is:

- Earnings, wages, and overtime
- Used vacation and used sick leave pay
- Holiday pay
- Merit increases and/or bonuses
- Retroactive or back pay
- Compensatory pay
- Longevity, stability or bonus pay which represent a periodic payment available to a group of employees which is based on length of service and/or in consideration of high achievement or for exceptional service
- Per diems paid in addition to expenses
- Salary paid in addition to workers' compensation payments
- Employee - paid flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or an amount that reduces the employee's salary
- Employee suggestion awards
- Salary paid to district court reporters
- Federal and state grants, unless grant by-laws specifically prohibit the use of grant money (funds) for pension contributions
- Fees paid to employees (excluding court reporters) in addition to salary.

Note: When reporting salary earned outside the regular payroll period, (such as, retroactive pay or an annual bonus payment,) submit a separate deduction report for this non-routine salary and show the period over which the pay is earned, such as January 1, 199X through December 31, 199X. Refer to page 11 of Section 8, of your Reporting Manual for Payroll and Personnel Officers for an example on how to report this salary.

Salary Not Subject to PERA Withholding

By law, some forms of compensation are not subject to PERA deductions and must not be reported. PERA withholding cannot be made on:

- fees paid to district court reporters
- unused sick leave
- unused vacation or annual payments
- lump-sum settlements not attached to a specific earnings period
- severance pay
- employer-paid flexible spending accounts
- retirement incentive pay, or retirement bonuses
- lump-sum settlements not attached to a specific earnings period
- expense payments, per diem payments that represent expenses, uniform expense payments, and flat monthly expense payments
- workers' compensation payments
- employer-paid fringe benefits, flexible spending accounts, cafeteria plan, health care expense accounts, day care expenses, or any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage
- employer-paid amounts used by an employee toward the cost of insurance coverage
- the amount equal to that which the employing government subdivision would otherwise pay toward single or family insurance coverage for a covered employee when, through a contract or agreement with some but not all employees, the employer:
 - a) discontinues, or for new hires does not provide payment toward the cost of the employee's selected insurance coverage
 - b) makes the employee solely responsible for all contributions toward the cost of the employee's selected insurance coverages under a group plan offered by the employer, including any amount the employer makes toward other employees' selected insurance coverages under a group plan offered by the employer; and
 - c) provides increase salary rates for employees who do have any employer-paid group insurance coverages
- except as provided in section 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters
- payments in advance for expenses or reimbursements for expenses
- long-term or short-term disability insurance payments
- jury duty pay
- and charges assessed for personal use of a company vehicle.

	PERA	MSRS	TRA	St. Paul TRA	Duluth TRA	Mpls. TRA	MERF
Base Salary	X	X	X	X	X	X	X
Overtime/Comp Time	X	X	X	X	X	X	X
Extra Curricular			X	X	X	X	
Back Pay	X	X	X	X	X	X	X
Deferred Comp. Employer Match		X		N/A	N/A		N/A
Used Vacation	X	X	X	X	X	X	X
Unused Vacation		*					Yearly--not at term.
Used Sick Leave	X	X	X	X	X	X	X
Unused Sick Leave							Yearly--not at term.
Workers Comp. Payments	Voluntary EE & ER	Voluntary EE & ER		Voluntary EE & ER			
Housing Allowance, Clothing Allowances, etc.				Auto			
Vacation Donation		X					
Lump Sum Performance Bonus	X	X	X	N/A	N/A	X	N/A
Holiday Pay	X	X	X	X	N/A	X	
Per Diem	X	**		X			
Longevity Pay - Stability Pay	X	X	X	X	X	N/A	X
Federal Grants (unless prohibited)	X						
Fees to Employees	X	X	X	X			

None of the funds require deductions on the following: Severance Pay or Retirement Bonus, Employer Paid Fringe Benefits (Flexible Spending Account, Cafeteria plans etc.), Wellness Payments, Payments in lieu of Employer-paid Insurance, Payments to school administrators for service on weekends or holidays.

*State Patrol: Deductions are taken from lump sum payment of vacation and overtime at point of termination, and the number of hours of salary replace lower salary hours from the start of the average salary period five years ago.

**Legislators: Have deductions taken from per diem only while in regular or special session, and this counts as salary in the "5 high year" average salary calculation.

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

2 Section 1. Minnesota Statutes 1994, section 352.01, subdivision 13, is amended
3 to read:

4 Subd. 13 **SALARY.** "Salary" means the periodical compensation paid to any
5 employee before deductions for deferred compensation, supplemental retirement plans,
6 or other voluntary salary reduction programs. It also means wages ~~and includes net~~
7 ~~income from fees.~~ Lump sum sick leave payments, severance payments, lump sum
8 annual leave payments and overtime payments made at the time of separation from
9 state service, payments in lieu of any employer-paid group insurance coverage,
10 including the difference between single and family rates that may be paid to an
11 employee with single coverage, ~~and payments made as an employer-paid fringe~~
12 ~~benefit, and workers' compensation payments, employer contributions to a deferred~~
13 ~~compensation or tax sheltered annuity program, and amounts contributed under a~~
14 ~~benevolent vacation or sick leave donation program~~ are not salary.



Public Employees Retirement Association of MN

Creating opportunities for a successful retirement

HOME

MY PERA

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Salary

Determining what does and does not qualify for salary for PERA purposes is very important for both PERA and its members. PERA has a fiduciary duty to comply with the law and to ensure that only those amounts that meet the definition of salary are used to calculate a member's retirement or disability benefit.

Generally, PERA-eligible earnings are considered gross wages paid periodically by employers to employees for labor performed or services rendered as a regular part of the duties for which the individual was hired. An employee's wage is customarily a level amount that is periodically increased throughout an individual's employment because of promotions, raises based on performance, or cost-of-living increases.

In determining what is and is not salary for retirement purposes, employers and PERA staff must go beyond the name that is given to the payment and consider what the payment is for and the source of the payment. We recommend that employers contact PERA anytime there is uncertainty as to how to classify a type of earnings.

As stated earlier, PERA-eligible earnings, under most circumstances, are those issued to employees for labor performed or services rendered. PERA-eligible earnings will also usually have a time-frame attached to them. In other words, there is a specific time that those dollars were earned. For example, a person works a regular shift Monday through Friday in which he or she is paid a specific hourly wage. Or, there is a particular day that accrued vacation time was used and the employee was paid for that time.

On the other hand, pay that is not eligible for PERA purposes will normally not be related to any services rendered and there is not a specific time frame that can be attached to the earnings. Some examples of salary that is not PERA-eligible include:

- Unused sick or vacation pay
- Vacation and sick leave donations (for the person making the donation, not the individual who receives the donation)
- Severance pay
- Court-ordered damages (this refers strictly to any damages assigned by the courts and not lost wages that are paid as result of a settlement)
- Retirement incentive pay or bonuses
- Expense payments and reimbursements for job-related expenses such as parking, mileage, meals, travel, moving and education
- Workers' Compensation payments made by a third party payer (third party payer also includes employers who are self-insured)

EXHIBIT 2

For additional examples of salary that is PERA-eligible and salary that is not PERA-eligible, refer to chapter 5 of the PERA [Employer Manual](#).

If you are uncertain about how to treat compensation for PERA purposes, we ask that you contact PERA for a determination before remitting contributions. In certain instances, PERA will ask that this request be in writing and include documentation relating to the compensation such as personnel policies or labor agreements.

Last updated 9/8/2005

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Salary Earned versus Salary Paid

When determining monthly earnings for a potential PERA member, employers should include earnings from the first day of the calendar month to the last. This may differ from the dates earnings are paid. When the beginning and ending dates of a pay period lie within the first and last day of the month, it is relatively easy to determine if the individual earned more than \$425. However, if pay periods fall into two or more months, it may be necessary to break down earnings by days worked to determine eligibility. This breakdown of earnings does not need to be reported to PERA. Instead, you may want to retain this information in the employee's personnel file to document your eligibility decisions.

Eligible and Ineligible Earnings

Determining what does and does not qualify as salary for PERA purposes is very important for both PERA and its members. PERA has a fiduciary duty to comply with the law and to ensure that only those amounts that meet the definition of salary are used to calculate a member's retirement or disability benefit. It is equally important that members understand what will be considered as salary so that at the time of their retirements, there will be no surprises or misunderstandings about what will and will not be included in their final high-five salaries.

The definition of salary in Minnesota Statutes 353.01, subdivision 10, was established to provide for employee deductions and employer contributions on predictable wages for services rendered by an employee in a governmental position. Generally, PERA-eligible earnings are considered gross wages paid periodically by employers to employees for labor performed or services rendered as a regular part of the duties for which the individual was hired. An employee's wage is customarily a level amount that is periodically increased throughout an individual's employment because of promotions, raises based on performance, or cost-of-living increases. The salary definitions in law establish a structure that ensures that PERA can reasonably project a member's high-five salary and can fund the member's retirement benefits through the investment of contributions that had been collected throughout the years of public employment.

In determining what is and is not salary for retirement purposes, employers and PERA staff must go beyond the name that is given to the payment and consider what the payment is for and the source of the payment. If an employer is uncertain about how to treat compensation for PERA purposes, we ask that you contact PERA for a determination before remitting contributions. In certain instances, PERA will ask that this request be in writing and include documentation relating to the compensation such as personnel policies or labor agreements.

PERA-deductible earnings are not identical to Social Security-deductible earnings for state or federal taxable compensation. For Social Security and salary information contact the Internal Revenue Service at 1 (800) 829-1040.

Salary Subject to PERA Withholding

Below is a list of some of the types of salary payments that are subject to PERA withholding. The list is not meant to be all-inclusive. If you have questions about any payment type, whether listed below or not, please contact PERA.

- Gross earnings, wages, and overtime pay for services performed in an eligible position during the coverage period being reported. Gross earnings must include compensation treated as deferred income for federal or state income taxation or both.
- Cash payments from accrued or banked compensatory pay when attached to an earnings period and paid routinely to employees in the course of employment. Employers that pay accrued banked compensatory pay on an annual or periodic basis must report the amounts separately from any regular earnings being paid and must indicate a specific earnings period for the pay. Example: An employer makes a lump-sum payment to all clerical employees for accumulated unused overtime hours at the end of the calendar year 2001. The payments are PERA-eligible because they are for hours worked by the employee from January 1, 2001 through December 31, 2001.
- Used vacation, sick, and personal leave pay for periods of excused absence from work. This includes sick leave that is used by the recipient of donated vacation hours under a sick leave donation program. Please also see section, Paying Accrued Vacation and Sick Leave to Terminating Members, that appears later in this chapter for further details.
- Holiday pay when paid as routine earnings for a period of excused absence and lump-sum payments for accrued holidays that are available to a group of employees and made periodically throughout the course of employment. Employers that pay accrued unused holiday pay on an annual or periodic basis must report the amount separately from any regular earnings being paid and must indicate a specific earnings period for the holiday pay. When a contract or agreement governs cash-out payments, employers should provide a copy of the written agreement to PERA for its records.
- Merit increases
- Retroactive pay or "back pay." These are wages paid to employees or former employees for any period before the current payroll period. Often, retroactive pay is the result of a salary increase negotiated

through a management/union contract settlement with a retroactive effective date.

- Payments for lost wages. These commonly occur in two instances: 1) when an employee who had been discharged is awarded an amount for lost wages (excluding any interest awarded) through a court order or arbitrator's award to remedy a wrongful discharge, or 2) when a person receives an amount that is deemed to represent back wages as a result of an agreement between the employer and the employee. A copy of the Court Order, arbitration document, or agreement must be submitted to PERA for review.
- Longevity or stability bonus pay when it meets four conditions: 1) it is attached to a specific earnings period, 2) it represents a periodic payment, whether paid annually or more frequently, 3) it is available to a group of employees throughout the course of employment, and 4) it is based on length of service. Employers paying longevity pay on an annual basis must report the amount separately from any regular earnings and must indicate a specific earnings period for the longevity pay (such as 01/01/02 – 12/31/02).
- Additional pay for working on a scheduled holiday. Example: A police officer works on July 4th and has the choice of taking another day off with pay or receiving an extra day's pay. When the employee takes the extra day of pay, the payment is viewed similarly to overtime pay and is PERA-eligible salary.
- Salary or sick leave paid in addition to Worker's Compensation payments. (See later section on Workers Compensation payments for further explanation.)
- Employee-paid amounts to flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or an amount that voluntarily reduces the employee's salary. Often these amounts are not treated as income for federal income taxation under Internal Revenue Code.
- Performance bonus pay is PERA-eligible salary when it meets three conditions: 1) it represents a periodic payment available to a group of employees throughout the course of employment, 2) is given in consideration of high achievement or exceptional service, and 3) is associated with a specific performance period. PERA recommends that employers document the bonus programs in their personnel policies or in their written employment agreements to be able to provide a copy of such documentation to PERA staff upon request. Employers that issue performance bonus pay to employees must report the amounts separately from any regular salary and indicate a specific earnings period for the performance bonus pay. Example: Several school employees are given a lump-sum achievement award of \$1000 for their accomplishments in a computer system development project that went on for the entire school year. This payment is PERA-eligible because it is for exceptional services rendered by the

employees to the employer from September 1, 2001 through May 31, 2002.

- Salary paid to district court reporters
- Fees paid to employees (excluding court reporters) in addition to salary
- Short-term disability payments from self-insured governmental subdivisions are generally considered salary; however, employers should provide a copy of the program's provisions to PERA for a determination. As a general rule, PERA considers payments from employers to employees under short-term disability programs as salary when the:
 - ✓ short-term disability program is an extension of a current or previous sick leave benefit provided directly by the employer,
 - ✓ the employer is replacing the full salary of the employee,
 - ✓ the employee continues to accrue sick/vacation/personal leave while on short-term disability, and
 - ✓ the employer continues to pay the cost of medical coverage provided as part of its benefit package.
- Tips when collected by the employer and paid to employees as wages
- Jury duty leave paid by employers – Paid absences of employees excused from work for jury duty
- Court appearance pay awarded by the employer to its police officer employees.

Salary not Subject to PERA Withholding

By law, some forms of compensation are not subject to PERA deductions and must not be reported as salary. PERA withholding cannot be made on the following forms of compensation. Again, this list is not all-inclusive. If you have any questions, please contact PERA.

- Fees paid to district court reporters
- Unused sick or vacation pay, especially when issued as a lump sum.
- Lump-sum longevity or stability payments that are not periodic such as a one-time payment issued upon completion of 20 years of service
- Lump-sum payments made under wellness programs or incentive programs that provide compensation for the preservation of accumulated sick leave.
- Vacation and sick leave donations for the individuals making the donation
- Lump-sum settlements not attached to a specific earnings period
- Severance pay
- Court-ordered damages
- Retirement incentive pay or retirement bonuses

- Expense payments and reimbursements for job-related expenses such as parking, mileage, meals, travel, moving, and education; per diem payments that represent expenses, uniform expense payments and allowances or fixed amounts given to employees to pay expenses regardless of whether the individual uses the full amount for expenses or receives cash for any unused allowance.
- Workers' Compensation payments made by a third-party payer. Also see section, Workers' Compensation payments, that appears later in this section.
- Employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or any payments instead of any employer-paid insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage
- Employer-paid amounts paid directly to an employee to be used toward the cost of insurance coverage regardless of whether the individual uses the full amount for insurance coverage or receives cash for any unused allowance.
- The amount equal to that which the employing governmental subdivision would otherwise pay toward single or family insurance coverage for a covered employee when, through a contract or agreement with some but not all employees, the employer:
 - discontinues, or for new hires does not provide payment toward the cost of the employee's selected insurance coverage;
 - makes the employee solely responsible for all contributions toward the cost of the employee's selected insurance coverage under a group plan offered by the employer, including any amount the employer makes toward other employees' selected insurance coverage under a group plan offered by the employer; and
 - provides increased salary rates for employees who do not have any employer-paid group insurance coverage.
- Except as provided in section 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters for ambulance or fire fighting services
- Referral pay given to employees by his or her employer that help to recruit new workers to the agency, and signing bonuses awarded to new employees.
- Long-term or short-term disability insurance payments paid by a third-party insurance provider. As a general rule, long-term disability payments from self-insured governmental subdivisions to employees are considered a fringe benefit, rather than salary for PERA purposes. However, employers should provide a copy of the long-term disability program's provisions to PERA for a determination.
- Jury duty compensation paid to a PERA member by the court, or expense payments to a PERA member paid in addition to regular

salary while on jury duty leave. Some county employers add the pay for jury services to their employees' wages and issue one payment. When this is done, the pay for jury services is not PERA-eligible salary. Other employers reduce an employee's regular salary by the amount the person receives directly from the court for jury duty. When employers reduce the member's pay by the amount of the jury duty expense, this reduces the compensation from which PERA contributions are made. The net effect of this practice is that the employer does not pay for the full work absence of the employer for jury duty.

- Mileage reimbursement payments
- Payments that represent charges assessed to an individual for personal use of a company vehicle
- Amounts paid to a former police officer for a court date appearance that falls after the individual's termination date and thus after the employer/employee relationship has ended.

DBP Compensation Limits

Certain federal and state laws restrict the amount of compensation upon which PERA Defined Benefit Plan contributions can be made and used for calculating member benefits. The compensation limit applies to employees who became PERA members on or after July 1, 1995. Under federal regulations, the limitation is \$200,000 in 2002. This limit will be indexed for inflation annually in \$5,000 increments. Under state law, compensation paid to certain employees of local governmental agencies cannot exceed 95% of the governor's salary unless approved by the Commissioner of the Department of Employee Relations. The state compensation limit does not apply to school district employees, medical doctors, or doctors of osteopathy.

PERA does not ask employers to monitor the wages of their DBP members against the federal or state limits or to stop withholding deductions when a member reaches the limits. In the first quarter of each calendar year, PERA staff reviews earnings data collected from employers in the previous year to determine if any member's annual salary exceeded the federal or state limits. PERA will inform you if you have members who have exceeded the salary limit and issue refunds to the employee and employer of the contributions for amounts beyond the limitations. The refund method PERA uses assures that service credit is properly given for the calendar year in which employees' earnings exceeded the limits.

Workers' Compensation Payments

Under Minnesota law Workers' Compensation payments are not considered salary for PERA purposes when issued from a third-party payer. When an employee is placed on an extended Workers'

Compensation leave, the employee generally receives a Workers' Compensation payment equal to two-thirds of his or her normal salary. PERA deductions should not be taken from Workers' Compensation payments and should not be reported as part of the employee's salary. PERA deductions are to be taken from salary that is paid in addition to Worker's Compensation payments. Further, if the employee chooses to use accumulated sick leave to make up for the other one-third of his or her salary, then the used sick leave payment is to be reported as salary and deductions taken from it.

Sometimes employees are placed on Workers' Compensation retroactively and are issued retroactive payments for pay periods in which the employee's full salary was reported and PERA contributions were taken. If this happens, you must notify PERA so that the employee's salary and contributions can be corrected. PERA will issue a refund of contributions for any salary amounts that have been retroactively replaced by workers' compensation payments.

Paying Accrued Vacation and Sick Leave to Terminating Members

When a PERA member is terminating public service, the individual often times is eligible to receive compensation for accrued vacation and sick leave hours and severance pay as part of finalizing the employee's separation. Employers may pay a terminating member for accumulated vacation or sick leave in a lump sum or may keep the employee on the payroll until the accrued leave is fully used and paid out. The method of payment selected affects PERA contributions and service credit as noted below.

Accrued vacation

Lump-sum payments

The effective date of the employee's termination is the last day worked. If accumulated vacation hours are paid in a lump sum when an employee terminates, PERA contributions are not to be deducted. PERA service credit is not earned on lump-sum vacation leave payments made by employers to employees.

Carried on payroll in a paid time-off status

The effective date of the employee's termination is the last day the employee is in a "paid-status." If the PERA member is carried on the payroll by the employer as an employee until all accrued vacation leave is used, PERA contributions are deducted from the amounts paid to the employee for each pay period and the employee is given service credit.

*Withholding
PERA
contributions on
lump sum
vacation or sick
leave payments is
one of the most
common mistakes
employers make.*

Accrued sick leave**Lump-sum payments**

Lump-sum pay for accrued sick leave is not to be reported to PERA as eligible salary under Minnesota law. If accumulated sick leave hours are paid in a lump sum when an employee terminates, PERA contributions are not to be deducted.

Carried on payroll in a paid time-off status

Pay that is issued to an employee for days or hours in which the person is absent from work due to approved use of sick leave for medical reasons is considered salary and should be reported as regular wages upon which PERA deductions are withheld.

Please note that when a written agreement or contract stipulates the terms of the member's separation of public service, employers must send a copy of the agreement to PERA before making any final determination about PERA withholding.

**Annual
Exclusion
Reports**

As an administrator of public pension funds, PERA is responsible for verifying that persons eligible for membership are enrolled. To fulfill this legal obligation, PERA requires employers to submit an *Annual Exclusion Report* each year. This report must list the names of all individuals who worked for the employer any amount of time in the past school or calendar year but did not contribute to PERA or another qualified pension plan. Employers must provide the reason that each employee was not enrolled using PERA's numeric exclusion codes.

For school districts, the exclusion report should cover employment during the school year (July 1 through June 30). All other employers report based on the calendar year of January 1 through December 31.

Individuals to Include on the Exclusion Report

Employers must list all individuals who worked any amount during the contract year but did not have pension deductions withheld from their earnings, including:

- All current employees who worked during the fiscal year as well as those employees who terminated service during the year, and
- Independent contractors who use Social Security numbers in place of a Minnesota Tax or federal Employer I.D. number and were paid by the employer during the year.

*Exclusion
Reports cover
either July 1
through June 30
(school districts)
or January 1
through
December 31*