

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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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 DAVID BERGSTROM

OAH Docket No. 4-3600-2080902

Allen Johnson, et al., Petitioners.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

DAVID BERGSTROM, being first duly sworn, deposes and states:

1. I am the Executive Director of the Minnesota State Retirement System ("MSRS") which administers a number of defined benefit plans for state employees under the provisions of Minn. Stat. chapters 352 through 352D (2008). I am the Plan Administrator for the Minnesota State Deferred Compensation Plan. *See* Minn. Stat. § 352.965 (2008).

2. Laws 1994, ch. 528, art. 1, sec. 13, subd. 2 required that the Legislative Commission on Pensions and Retirement establish an advisory committee for the purpose of studying the statutory definitions of covered salary for the statewide public pension plans. The primary purpose of the Committee was to establish uniformity between the retirement plans' definitions of "salary."

3. As the Executive Director for MSRS, I was appointed to the advisory committee. Attached hereto as Exhibit 1 is the advisory committee's report dated February 22, 1995, submitted to Representatives Richard H. Jefferson, and Senator Roy W. Terwilliger. Exhibit 2. Attached hereto is a cover letter to Senator Phil J. Riveness dated August 4, 1994, by which the advisory committee presented a grid illustrating how each statewide pension fund treated certain types of compensation as salary. The grid shows that only MSRS treated employer-paid

contributions to a deferred account as "salary." At that time, none of the other statewide funds treated employer paid deferred compensation amounts as "salary."

4. Laws 1995, ch. 262, art. 1, sec. 3, rewrote MSRS' definition of salary to add the phrase "employer contributions to a deferred compensation or tax sheltered annuity program" to the list of items excluded from salary. *See* Minn. Stat. § 352.01, subd. 13 (2008).

5. The State Deferred Compensation Fund allows for "nonelective employer contributions under Part 3.06 (a) of the Plan document, copy attached as Exhibit 3. However, that part must be read consistent with Minn. Stat § 356.24 (2008) which places limitations on the amounts that Minnesota governmental subdivisions may contribute to a deferred compensation plan. Under Minn. Stat. § 356.24, subd. 1(5), governmental subdivisions, except for state colleges and universities, are authorized to contribute a matching employee contribution on a dollar-for-dollar basis "but not to exceed employer contribution of 1/2 half of the available elective deferral permitted per year per employee, under the Internal Revenue Code. Prior to 2008, this section limited employer contributions to \$2,000 per year. *See* Laws 2008, ch. 349, art. 11, sec. 6. The 2008 law was effective August 1, 2008.

Further Affiant sayeth not.


DAVID BERGSTROM

Subscribed and sworn to before me on
this 29th day of December, 2009


NOTARY PUBLIC

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AND REGISTRARS

LCP & R MAR 7 1995

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,



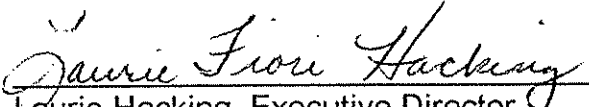
Phil Riveness
Senator, District 40




Bob Johnson
Representative, District 4A




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



Laurie Hacking, Executive Director
Public Employees Retirement
Association



Gene Waschbusch, Executive Director
St. Paul Teachers Retirement
Association



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.



MINNESOTA STATE RETIREMENT SYSTEM

**SECTION 457(b) ELIGIBLE DEFERRED COMPENSATION PLAN
FOR GOVERNMENTAL EMPLOYERS**

Adopted By: Minnesota State Retirement System
Plan Sponsor

Minnesota State Deferred Compensation Plan
Name of Plan

July 1, 2009
Effective Date

MINNESOTA STATE RETIREMENT SYSTEM

SECTION 457(b) ELIGIBLE DEFERRED COMPENSATION PLAN FOR GOVERNMENTAL EMPLOYERS

The State of Minnesota has established a Deferred Compensation Plan for eligible public employees pursuant to Minnesota Statutes §352.965 as provided in this Plan Document. This Plan Document authorizes Minnesota's public employers to implement the Plan on behalf of their employees under written or electronic agreements with employees which would qualify all deferred benefits in accordance with Section 457(b) of the Internal Revenue Code of 1986, as amended, applicable federal regulations and rulings, and Minnesota state law.

Plan Sponsor And Trustees	The Board of Directors of the Minnesota State Retirement System 60 Empire Drive Suite 300 St. Paul, MN 55103 651.296.2761
Plan Administrator Information	The Executive Director of the Minnesota State Retirement System 60 Empire Drive Suite 300 St. Paul, MN 55103 651.296.2761
Plan Sponsor Tax ID Number	41-6111469
Name of Plan	Minnesota State Deferred Compensation Plan
Plan Custodian	State Street Bank and Trust Company 2 Avenue de Lafayette Boston, MA 02111
Plan Recordkeeper	ING Institutional Plan Services, LLC 1 Heritage Drive North Quincy, MA 02171

3.06 Special Rules For purposes of this Article III, the following rules shall apply:

- a) Nonelective Employer Contribution (Employer Matching Contribution) If an employer's personnel policy or collective bargaining agreement between the public employer and the exclusive representative of public employees includes matching contributions on a dollar-for-dollar basis, the employer contribution may not exceed one-half of the available elective annual deferral per year per employee under the Internal Revenue Code (Minnesota Statute §356.24, subd 1). All employer matching contributions are included in the annual maximum deferral limits as stated in sections 3.02 and 3.03.
- b) Participant Covered By More Than One Eligible Plan If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code §457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article III. For this purpose, the Employer shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- c) Pre-Participation Years In applying section 3.04, a year shall be taken into account only if the Participant was eligible to participate in the Plan during all or a portion of the year and Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in section 3.02 or any other plan ceiling required by Code §457(b).
- d) Pre-2002 Coordination Years For purposes of section 3.04 (b)(2)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code §457(b) plan, or a salary reduction or elective contribution under any Code §401(k) qualified cash or deferred arrangement, Code §402(h)(1)(B) simplified employee pension (SARSEP), Code §403(b) annuity contract, and Code §408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code §501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of section 3.03(b)(2)(B) the extent that the total of such contributions does not exceed the aggregate limit referred to in Code §457(b)(2) for that year.
- e) Disregard Excess Deferral For purposes of sections 3.02, 3.03 and 3.04, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in section 3.07. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.