

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  
CHERYL KEATING**

Allen Johnson, et al., Petitioners.

OAH Docket No. 4-3600-2080902

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

Cheryl Keating, being first duly sworn, deposes and says:

1. I am the Manager of PERA's Account Information Management Division. My duties include managing the processes and systems used by PERA to collect employer/employee contributions and providing programs and services that assist governmental subdivisions ("Employers") understand and fulfill their PERA salary reporting responsibilities.

2. I am providing this Affidavit in order to describe the procedures PERA staff uses to process incoming Salary Deduction Reports, especially with respect to reviewing salary fluctuations or potential errors in the amounts reported.

3. Governmental subdivisions that participate in PERA as Employers send a Salary Deduction Report (SDR) containing salary and deduction information on all covered members at the end of each payroll cycle.

4. Employers with computer programming resources, such as the City of Duluth, send this information as a data file that has been formatted to meet PERA's specifications. Other employers send the payroll data using PERA's web data entry system or by completing a paper report. The computer file format is set forth in PERA's Employer Manual. The Employer

Manual and samples of paper salary deduction reports are available for inspection and copying at PERA's office, 60 Empire Drive, Suite 200, St. Paul, MN 55103.

5. For each member, Employers must categorize the amount reported as PERA-eligible salary using a specific "pay type." This code enables our systems to calculate a member's monthly salary and service credits. Salary is most often reported under "Pay Type 01," meaning it is compensation earned by an employee for regular activity in the current pay period. Regular activity includes wages, overtime, and paid days off (vacation, sick leave, holiday leave, compensatory time used in place of a scheduled work day). We do not require Employers to provide any breakdown of the types of compensation included in a member's 'regular activity' salary. In other words, Employers do not identify if the amount covers solely wages for regular hours worked or if it includes other types of compensation, such as overtime pay or used sick leave.

6. The payroll data submitted to PERA by Employers are processed through various edit programs that check for up to 53 exception conditions. The list of edits used by PERA to identify potentially invalid or questionable payroll is attached. When the system finds a member transaction that has not passed one or more of the edit guidelines, PERA staff contacts the governmental unit to determine how to correct the member transaction. The correction could involve altering the original payroll coverage dates, changing the pay type, modifying the salary amount, invoicing the employer for contribution shortages, deleting duplicate files submitted in error, etc.

7. PERA's program identifies payroll amounts for a member that are significantly *higher* than the average daily salary amount calculated for the preceding fiscal year. PERA believes that reviewing significant increases in salary is a way to potentially uncover situations in

which an Employer has improperly or artificially raised a member's high-five average salary. PERA does not have a system of edits that check for salary amounts that are *lower* than amounts previously reported for a member.

8. In reviewing the amount of salary reported in a transaction, our system calculates a daily earning's amount using the pay period dates. This amount is then compared to the daily average salary amount that was calculated for the previous fiscal year and recorded in the member's account. If the current daily salary amount exceeds last year's daily salary average by 200 percent or more, the transaction is flagged for review.<sup>1</sup> PERA staff then contacts the Employer to discuss the amount reported. Using this process, staff occasionally uncovers ineligible salary that is subsequently removed from the member's account and processed as deductions in error. These procedures have been in place since July 1, 1999. A 160 page printout of member transactions determined by PERA to be invalid and, therefore, removed from members' accounts since July 1, 1999 is available for inspection at PERA's office.

9. With respect to total contributions paid to PERA by a single Employer, PERA staff can view summary data on each Salary Deduction Report (SDR) that has been processed. The report details the member deductions and employer contributions posted under each PERA plan for a specified period. It does not, however, show the "salary" amounts associated with the employee and Employer contributions. The report for fiscal year 2007 and 2008 for the City of Duluth is attached.

10. PERA's current reporting procedures do not alert PERA to the specific kinds of compensation being reported by an Employer as "salary." PERA relies upon the governmental

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<sup>1</sup> Examples of the accounts flagged by PERA system for review due to large salary amounts are available for inspection and copying at PERA's office.

subdivisions to correctly report salary under their statutory duties, and, if uncertain regarding what to report, to contact PERA for assistance.

Further Affiant sayeth not.

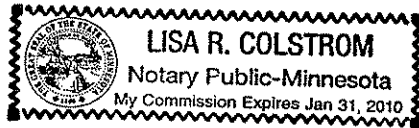
*Cheryl Keating*  
CHERYL KEATING

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ADMINISTRATIVE

Subscribed and sworn to before me on  
this 15<sup>th</sup> day of October, 2009

*Lisa Colstrom*  
NOTARY PUBLIC

AG: #2524393-v1



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2. I am providing this affidavit in order to describe the procedures PERA staff follows to inform "Employers" of their statutory reporting requirements and how PERA staff responds to "salary" eligibility questions.

3. PERA publishes a reporting manual for participating Employers that serves as a comprehensive resource document. The Reporting Manual is available at PERA's offices and is published on PERA's website. PERA's staff encourages Employer representatives to refer to Minnesota Statutes and the Employer Manual for guidance on PERA reporting requirements. The Manual includes a discussion of the

categories of compensation that are, and are not “salary,” under PERA’s definition set forth at Minn. Stat. § 353.01, subd. 10.

4. The reporting requirements for governmental subdivisions are set forth in Minn. Stat. § 353.27, subd. 4. Employers must report the amount of each participating employee’s eligible salary and the employee/employer deductions for each pay period. This responsibility is described in Chapter 2 of the Employer Manual.<sup>27</sup>

5. PERA Staff advises Employers that are uncertain about how to treat compensation for pension purposes, to contact PERA *before* remitting contributions. See Employer Manual, chapter 2.

6. PERA maintains local and toll-free telephone lines solely for Employers to use in order to contact PERA which provide menu options to facilitate call distributions to the appropriate PERA staff member. One of these options (menu item #3) routes the caller directly to staff who can answer questions about member or salary eligibility. In 2007 and 2008, staff responded to 1,808 and 1,913 calls respectively that had been directed to them through menu option #3. PERA has two long term employees, Chris Arcand and Scott McLeod, assigned to this task.

7. When an Employer representative calls PERA with a salary eligibility question, staff navigates the person through the appropriate chapter of the Employer Manual or section of law to arrive at a conclusion. Staff estimates that about 95% of salary-related telephone calls are resolved in this manner.

8. If the law or Employer Manual does not provide a clear answer to a salary eligibility question, PERA staff looks for any relevant documentation or case history on

file before making a determination. As deemed necessary, staff will consult with the appropriate PERA supervisor, manager, or director for an interpretation of law or policy.

9. If an Employer informs PERA staff in writing or over the telephone that amounts reported as pension-eligible salary for previous pay periods were in error, staff will request a detailed list or spreadsheet for the affected members. Various letters that sent by PERA staff to Employers about correcting salary amounts on a retroactive basis are available for inspection and copying at PERA's office. These letters have been collected based upon "institutional memory," as it would require substantial resources to review the historical files for over two thousand Employers in order to determine whether salary related correspondence transpired between PERA and a specific Employer.

10. PERA staff believes that PERA reporting errors made by employers are typically discovered within several pay periods or months of the date in which the error first occurred. On occasion, however, PERA staff learns that an error has gone unnoticed for years and the Employer no longer has the full historical payroll data available or accessing the full data would be prohibitive. In these instances, PERA staff has asked the Employer to go as far back as is reasonably practical for obtaining accurate information.

11. Minn. Stat. § 353.27, subd. 11(b) sets forth the process for reporting earnings where payroll records have been lost or destroyed. I believe that PERA has used this process in the past but only for estimating employer/employee contributions. It has never been construed as applicable to refunds of erroneous salary deductions.


Further Affiant sayeth not.

  
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CHERYL KEATING

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HEARINGS

Subscribed and sworn to before me on

this 15<sup>th</sup> day of October, 2009

  
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