

March 5, 2009

SID: 544720

LEE YOUNGBLOM


DEAR LEE YOUNGBLOM:

PERA staff has determined that certain amounts reported to our association as "salary" by your current employer, the City of Duluth, cannot be used for purposes of calculating retirement plan contributions or benefits.

Certain current and past provisions in the bargaining agreements (see attachment) covering employees of the City of Duluth (City) provided for employer-paid contributions to optional deferred compensation plans, flexible benefit spending accounts, and/or contributions toward or in lieu of various insurance premium costs, as well as payment for unused personal leave.

Under Minn. Stat. § 353.01, subd. 10(b) (2008), "salary" does not mean... (2) employer-paid amounts used by an employee toward the cost of insurance coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, 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 and certain amounts determined by the executive director to be ineligible."

After reviewing the relevant bargaining agreements, along with current and past laws that cover "salary" for PERA purposes, PERA staff determined that the employer-paid amounts provided under the bargaining agreement have been excluded from the PERA definition of "salary" since July 1, 1994.

Between 1997 and 2008, employee contributions of \$1,742.55 were made to PERA on your behalf on amounts that were not salary for pension purposes. The total amounts reported to PERA as salary were \$26,107.19. Enclosed is a breakdown by year of these employer-paid amounts. Any questions about the dollar amounts listed must be directed to the City of Duluth (1-888-635-2537 or locally at 218-730-5333) and their representatives must notify us if any corrections to the amounts are needed.

Salary and contribution adjustments to your PERA account are necessary under Minn. Stat. § 353.27, subd. 7(c) which states that "employer contributions and employee deductions taken in error from amounts which are not salary under section 353.01, subdivision 10, are invalid upon discovery by the association and must be refunded...."

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EXHIBIT 5

March 5, 2009

The refund of employee deductions taken in error, which totals approximately \$1,742.55, will be made by PERA to the City, which will, in turn, pay the amount to you as income (subject to applicable income taxes). PERA will also adjust the salary amounts recorded in your account to remove the employer-paid benefits totaling approximately \$26,107.19. The salary adjustment, which will be made on a prorated monthly basis for the applicable period, will *not* affect the amount of service credits you have under the retirement system. The adjustment may, however, reduce your current high five-year average salary for calculating retirement benefits. We suggest, therefore, that you disregard any previous estimates of PERA retirement benefits that included the employer-paid payments in your salary.

Current state laws do not allow the payment of interest to members who receive a refund of erroneous employee contributions. However, our office is seeking to modify this provision in the current session of the Minnesota Legislature to allow the payment of interest on the return of erroneous employee deductions beginning June 1, 2009. With such authority, PERA will include interest in your distribution at the same rate that is paid to a member who applies for a refund after having terminated public service (6 percent compounded annually to the first day of the month in which the refund is processed).

If you disagree with the salary eligibility determination made by PERA staff, you (and/or other affected members) may petition the PERA Board of Trustees for review under Minn. Stat. § 356.96. (See enclosure.) To request a review, please complete the enclosed Petition for Review (include a statement giving the reasons that you believe this decision should be modified). The petition must be postmarked no later than 60 days after receipt of this letter. For your information, the earliest available hearing date will be in June 2009 at a location in Duluth to be determined.

If you have questions regarding this information, please contact our members services staff at 651-296-7460 or toll-free at 1-800-652-9026.

Sincerely,

Mary Most Vanek

Mary Most Vanek, Executive Director
Public Employees Retirement Association

Enc: Relevant Bargaining Agreement Provisions
Employer-paid deferred compensation amounts by year
Petition for Review
Notice of Right to Review a Public Pension Plan Benefit Determination (with M.S. § 356.96 Pension Plan Appeal Procedures)

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION (PERA)
EMPLOYER-PAID AMOUNTS THAT DULUTH AIRPORT/CITY REPORTED
AS SALARY BETWEEN JANUARY 1, 1997 AND OCTOBER 23, 2008**

Name of PERA Member	SID
LEE YOUNGBLOM	544720

Information provided by the City of Duluth indicates that the following amounts have been reported to PERA as salary. PERA staff has determined that these amounts are not salary under the laws governing the retirement plan. This breakdown is provided for informational purposes. PERA staff is not in a position to evaluate the accuracy of the dollar amounts listed; therefore, any questions about these amounts must be directed to the City of Duluth at either 1-888-635-2537 or locally at 218-730-5333. If any of these dollar amounts are incorrect, the City must immediately report the necessary correction to PERA.

YEAR	EMPLOYER-PAID CONTRIBUTIONS TOWARD A DEFERRED COMP. PLAN, FLEXIBLE SPENDING ACCOUNT, AND/OR INSURANCE PREMIUMS	UNUSED PERSONAL LEAVE	ANNUAL TOTAL
1997	\$ 600.00	\$.00	\$ 600.00
1998	\$1,500.00	\$.00	\$1,500.00
1999	\$1,500.00	\$.00	\$1,500.00
2000	\$1,800.00	\$.00	\$1,800.00
2001	\$2,100.02	\$.00	\$2,100.02
2002	\$2,400.06	\$.00	\$2,400.06
2003	\$2,400.06	\$.00	\$2,400.06
2004	\$2,566.11	\$.00	\$2,566.11
2005	\$2,687.88	\$1,288.61	\$3,976.49
2006	\$2,687.88	\$1,340.09	\$4,027.97
2007	\$1,883.07	\$1,353.41	\$3,236.48
2008	\$.00	\$.00	\$.00
TOTAL ALL YRS	\$22,125.08	\$3,982.11	\$26,107.19

**PETITION FOR REVIEW
BEFORE THE PERA BOARD OF TRUSTEES**



Use of this form is optional. A letter providing the same information is equally acceptable. Mail your petition or letter, along with associated documentation, to the Public Employees Retirement Association (PERA), 60 Empire Drive Suite #200, Saint Paul MN 55103.

SECTION I. (Please print or type.)		
Name of PERA Member LEE YOUNGBLOM	SID 544720	Name of PERA-Covered Employer City of Duluth
Current PERA Membership Status (check the box that applies): <input checked="" type="checkbox"/> Active member/employee <input type="checkbox"/> Retiree or disabilitant <input type="checkbox"/> Former member <input type="checkbox"/> Receiving survivor benefit	Indicate the bargaining unit applicable to your position with the City of Duluth: <input type="checkbox"/> City of Duluth Supervisory Association <input type="checkbox"/> Confidential employees <input type="checkbox"/> Local AFSCME 66 <input checked="" type="checkbox"/> Local 101 International Assn of Firefighters <input type="checkbox"/> Duluth Police Local	

SECTION II. (Please sign in ink.)	
Under M.S. §356.96, I request a review by the PERA Board of Trustees of the determination in letter dated March 5, 2009, that certain amounts I received as a public employee are not salary. The reasons for my request are described in Section III.	
Signature <i>Lee Youngblom</i>	Date 4-27-09

SECTION III. (Please print or type.)
State the reason(s), factual or legal, upon which you believe that the decision of PERA staff should be reversed or modified. Attach all written materials you deem to be relevant. PLEASE SEE ATTACHED SECTION III

What action(s) are you asking the PERA Board of Trustees to take? RECONSIDER THE DECISION TO NOT INCLUDE COMPENSATION FOR UNUSED PERSONAL LEAVE AS SALARY.

Indicate below if you wish to address the PERA Board at a hearing on this matter. <input checked="" type="checkbox"/> Yes. I wish to address the PERA Trustees or have my legal representative do so. <input type="checkbox"/> No. I do not wish to address the PERA Trustees, but I ask that PERA notify me of the outcome of any hearing that is held.
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Section III.

Personal leave is a term and condition of employment contained in Article 13 of my collective bargaining agreement (CBA). It should be noted that this provision is completely and totally separate from vacation time; both as how earned and how unused leave is paid.

Article 13.3 of the CBA clearly states that employees shall be compensated for unused personal leave, and the rate for said compensation shall be the same as that used for calculating overtime pay for service rendered.

I conclude that this compensation in the form of overtime pay was written in the CBA in such a form to insure that said compensation was indeed considered salary, thereby subject to applicable pension contributions and income tax.

I also understand that my union has filed a grievance with the City of Duluth on this very matter.

See Yangblan