



May 18, 2009

Mr. Erik Simonson, President
Duluth Firefighters IAFF Local 101
602 WEST SECOND ST
DULUTH MN 55802

Dear Mr. Simonson:

PERA's Executive Director, Mary Most Vanek, asked that I respond to your letter of May 8, 2009. You asked to be provided with any available correspondence between PERA staff and the City of Duluth as it relates to the employer-paid amounts that have been reported as salary for pension purposes for certain current and former employees of the City of Duluth.

Our records indicate that the initial communication on this matter between representatives of the City of Duluth and PERA was made through the exchange of e-mails in July 2007. On July 31, 2007, Chris Arcand, a PERA staff member, advised City Auditor Wayne Parson that the employer-paid amounts in question were not eligible for PERA contributions. Enclosed are copies of those e-mail communications.

It is my understanding that PERA staff did not realize that the employer-paid amounts in question dated back to the 1990's until Duluth's Chief Administrative Officer, Lisa Potswald, pointed it out in her letter to PERA dated September 15, 2008 (enclosed).

Sincerely,

A handwritten signature in cursive script that reads 'Cheryl Keating'.

Cheryl Keating, Manager
Account Information Management Division
Public Employees Retirement Association

Enc. 8

EXHIBIT 6

From: Wayne Parson [mailto:wperson@duluthmn.gov]
Sent: Tuesday, July 31, 2007 3:50 PM
To: Chris.Arcand@state.mn.us
Subject: PERA SPAM WARNING: PERA Salary Definition

Chris,

Please see attachments. My interpretation of the information under "Salary not Subject to PERA Withholding" in the PERA Employer Manual is that these employer paid benefits are not PERA salary and accordingly employee and employer PERA contributions should not be withheld/paid.

Basic - Article 8 - Please see article 8.8 Basic - Article 21 Please see article 21.1(b)
CDSA - Article 12 & 13 - Please see the last paragraph in article 12.1 and article 13.1(b)

Wayne Parson, CPA
City Auditor - City of Duluth
411 West 1st Street, Room 107
Duluth, MN 55802
(218)730-5028
wperson@duluthmn.gov

Basic

7.4. Notwithstanding any provision in this Agreement to the contrary, employees working the Police Record Bureau may be scheduled to work shifts consisting of seven and one-half (7 1/2) consecutive hours of work with no lunch periods. For the purposes of this paragraph, the workweek may commence at midnight Friday.

7.5. The Employer and the Union agree that overtime pay and other benefits shall be negotiated for employees who may work schedules that provide for other than thirty-seven and one-half (37 1/2) hours per week with seven and one-half (7 1/2) hour days and forty (40) hours per week with eight (8) hour days.

7.6. An employee's work schedule shall not be changed without seven (7) working days' notice.

7.7. Flexible Scheduling

A. This Part 7.7 applies to any employees of work teams covered by the collective bargaining agreement who choose to work assigned schedules as provided for in this Part 7.7.

B. The assignment of work, and of work schedules, shall continue to be a right of management, except as modified by this collective bargaining agreement. This Part 7.7 will allow the Employer to implement, for the employees, a normal work schedule that results in hours of work that are different from those set out above in this Article of the collective bargaining agreement. Participation in the new assigned work schedule under this Part 7.7 must be voluntary on the part of the employee. The implementation of this Part 7.7 shall not result in any loss of the employer's rights to set schedules or assign work.

C. The employees specified in A. above, may be scheduled to regularly work the hours each work day, and the work days in each work week which are decided upon, after conferring, by the employee and her or his supervisor, and posted by the employer. Copies of all new, or amended, work schedules for work teams shall be distributed by the Supervisor, to the Union, department director, and City's Administrative Assistant, and made available, by posting or otherwise, to employees.

D. Each employee will be eligible for overtime rate of pay after he or she worked the hours in a day which are regularly and previously scheduled for that day, by the process set out in this Part 7.7, or after he or she has worked the hours in a work week which were regularly and previously scheduled for that week, by the process set out in this Part 7.7, or total at least 40 hours.

E. If the employee and the supervisor of a work group decide that the work group shall use individual work schedules rather than a group schedule, then the following shall apply:

1. The employee shall request an individual schedule.
2. The employee and immediate supervisor shall agree upon a schedule.
3. The Employer must approve the schedule to be implemented.
4. Any schedule that is implemented must not violate the established schedule limits.

F. The employer shall evaluate the effectiveness of any work schedules implemented under this Part 7.7. Work schedules should result in a combination of, or improvement in, the quality and quantity of service to the public; increased employee satisfaction; continuation or improvement in workplace communication and professionalism; continued or increased public access to services; continued or increased office hours. No schedule shall result in increased cost under Federal or State Labor Standards Acts.

G. When an employee is working under a schedule implemented pursuant to this Part 7.7, vacation accumulation will be calculated using hours worked not days, for purposes of 1 1/2 hours for employees working a 37-1/2 hour work week, and eight (8) hours for employees working a 40-hour work week. Basic hourly rate calculation will be adjusted, if needed, so that base pay remains unchanged from what it was before implementation. For purposes of retiree hospital-medical insurance, the "day" shall mean the period of time worked in one day.

ARTICLE 8 - SALARY PROGRESSION - DEFERRED COMPENSATION

8.1. Effective January 1, 2004, the monthly salaries shall be increased by 1.5% per year as indicated in Appendix 2. Effective January 1, 2005, the monthly salaries shall be increased by 4% per year as indicated in Appendix 3. Effective January 1, 2006, the monthly salaries shall be increased by 4% per year as indicated in Appendix 4.

8.2. An employee appointed to a permanent position of the classified service from a Civil Service employment list (open examination) shall be placed in step A of the appropriate pay range as shown in Appendices 1, 2, 3, and 4, or except when otherwise recommended and justified by the appointing authority with the approval of the Administrative Assistant.

8.3. When an employee is promoted or reclassified to a higher position or an employee's position is assigned to a higher pay range, his or her salary shall be increased to that salary in the new pay range which is next over the salary he or she was receiving prior to promotion except when otherwise recommended and justified by the appointing authority with the approval of the Administrative Assistant.

8.4. Employees shall remain at the assigned step as specified above until the beginning of the next pay period following completion of six (6) months service in a permanent position, at which time he or she shall advance one (1) step in the pay range in the applicable Appendix and the employee shall thereafter advance one (1) step in the pay range for each additional twelve (12) months of service; however, salary progression for an employee in a non JATC apprenticeship program shall be governed as specified in Appendix 5. If the employer does not offer course(s) as required in Appendix 5, the employee shall advance to the next pay step with subsequent eligibility. When the employer offers such course(s), the employee shall be required to take such course(s) or the employee will have their salary reduced to the next lower step and the employee shall remain at such step until they complete the course(s).

8.5. No employee shall be required to work out-of-class in a higher job classification without the employee's consent. Any employee assigned in writing by the Appointing Authority or his or her authorized representative to work out of class in a higher classification within a work site shall have his or her salary increased to that step in the pay range for the classification in which the

employee is assigned to work which step is next over the salary he or she was receiving prior to such out-of-class assignment.

The Appointing Authority or his or her designee shall select the employee by seniority in the next lowest class or lower classes in the work unit, provided said employee possesses any license required by job specifications.

No out-of-class pay shall be paid where such assignment is for a period of less than one-half (1/2) day.

Out-of-class pay shall not be paid for employees being trained within a City-approved training program.

No such assignment shall exceed ninety (90) working days, at which time a determination shall be made to permanently fill or vacate the position.

The Administrative Assistant, or his or her designee and the Union shall receive a copy of all written assignments for review for appropriateness of assignment.

8.6 The Employer and the Union agree there shall be Apprenticeship Programs as established in Appendix 5.

8.7. Notwithstanding any other provision of this article to the contrary, any employee who subsequent to August 1, 1980 commences employment in a position as a participant in an apprenticeship or training program which is approved by the Joint Apprenticeship Training Committee (J.A.T.C.) shall be compensated in accordance with the following formula:

TRAINING WAGE FORMULA						
Program Years	5 years	4 1/2 years	4 years	3 years	2 years	1 year
	Entrance	Entrance	Entrance	Entrance	Entrance	Entrance
0-6	79%	84%	86%	78%	80%	88%
6-12	80%	86%	88%	81%	83%	88%
12 months	82%	88%	90%	84%	84%	100%
18 months	84%	90%	92%	92%	94%	
24 months	86%	92%	94%	96%	100%	
30 months	88%	94%	96%	98%		
36 months	92%	96%	98%	100%		
42 months	94%	98%				
48 months	97%	100%				
54 months						
60 months						

When a Utility Service Person promotes to an Appliance Mechanic Apprentice, that employee shall be placed at the 92% level. The employee will move to the 94% level after six months.

When a Meter Reader promotes to a Utility Service Person, that employee shall be placed at the 92% level. The employee shall move to the next step after such employee completes the necessary requirements, in accordance with the J.A.T.C. rule, for advancement to that step.

However, any employee who commences employment in a position contained in the J.A.T.C. Information/Finance Program, shall be compensated in accordance with the following formula:

Level 1 - Clerical Support Technician	
0-6 months	79% of Range 121-Step E
6-12 months	82%
12 months	85%
18 months	88%
24 months	91%
30 months	94%
36 months	97%
42 months	100% of Range 121-Step E

Level 2 - Information or Finance Technician	
0-6 months	82% of Range 126-Step E
6-12 months	85%
12 months	87%
18 months	90%
24 months	92%
30 months	95%
36 months	97%
42 months	100% of Range 126-Step E

Level 3 - Administrative Information or Finance Specialist	
0-6 months	90% of Range 129-Step E
6-12 months	92%
12 months	95%
18 months	97%
24 months	100% of Range 129-Step E

Further, promotions of employees from one level to the next level within the J.A.T.C. Information/Finance Program shall be according to the following procedure:

- A. When an employee reaches the 100% level in his/her current program level, his/her name will be placed on an eligible list for the next higher level;
- B. When an opening occurs at the appropriate higher level, all eligibles will be notified of that opening.
- C. If an eligible employee wishes to be considered for that opening, his/her name will be placed on an interview list; and

[Handwritten signature]

D. If there are more than 10 eligible names on the interview list 10 names will be randomly drawn from the list. Those 10 people would be interviewed for the vacancy. If the interview list contains fewer than 10 eligibles, all such eligibles would be interviewed.

Employees interested in considering a lateral transfer within a program level, also may have their name added to the interview list.

Notwithstanding any other provisions of this article to the contrary, any employee who commences employment in a position contained in the J.A.T.C. Financial Analyst Program, shall be compensated in accordance with the percentage pay plan that is listed below. Except where otherwise limited to the J.A.T.C. Approved program description, a participant's advancement through this plan shall be as follows:

- a. One step shall be earned for completion of each 16.67 hours of J.A.T.C. approved training; and
- b. Two steps shall be earned for completion of each 600 hour unit of O.J.T. hours (the approximate amount of O.J.T. accumulated in 6 months of employment).

1 (entrance)	70.00%	21	85.75%
2	70.75%	22	86.50%
3	71.50%	23	87.25%
4	72.25%	24	88.00%
5	73.75%	25	88.75%
6	74.50%	26	89.50%
7	75.25%	27	90.25%
8	76.00%	28	91.00%
9	76.75%	29	91.75%
10	77.50%	30	92.50%
11	78.25%	31	93.25%
12	79.00%	32	94.00%
13	79.75%	33	94.75%
14	80.50%	34	95.50%
15	81.25%	35	96.25%
16	82.00%	36	97.00%
17	82.75%	37	97.75%
18	83.50%	38	98.50%
19	84.25%	39	99.25%
20	85.00%	40 (completion)	100.00%

Administration of the J.A.T.C. Financial Analyst Program pay provisions shall be as follows:

- 1. Upon entry into this program, an employee's compensation shall be established at the higher of the following amounts:

a. the percentage rate in the pay plan which corresponds to the amount of advanced standing approved for that employee by the J.A.T.C.;

or, for current employees only,

b. the percentage rate in the pay plan which is next over the employee's current rate of pay.

2. An employee's participation in and progress through this program shall be in accordance with the procedures of the J.A.T.C.

[Handwritten mark]

8.8 For each employee beginning the first day of the month following the date of hire, the Employer shall contribute two hundred twenty-four dollars (\$224.00) per month beginning January 1, 2004, and an additional five dollars (\$5.00) per month for each employee enrolled in plan 3 single coverage hospital-medical insurance, for either contribution to a qualifying and approved deferred compensation plan, or for contribution to a city-sponsored family dependant hospital-medical plan premium, whichever is designated by the employee during the open window for insurance selection or at the time of a life event.

8.9. The entrance and completion rates of pay for each such program shall be determined by the Labor-Management Committee, but shall be within the minimum and maximum monthly rates of pay specified for the position by Appendices 1, 2, 3 and 4. The percentages indicated in the above formula shall mean percentages of the completion rate of pay so determined. The J.A.T.C. shall monitor changes to Appendices 1, 2, 3 and 4 so as to insure that appropriate entrance and completion rate adjustments are made in connection with related changes made to Appendices 1, 2, 3 and 4. When an employee enters a J.A.T.C. program, the employee shall not receive pay less than what the employee was being paid in the employee's previous classification. An employee who voluntarily demotes or is demoted to a J.A.T.C. Program shall receive not less than two steps below 100% of the top rate of the appendices classification. The J.A.T.C. Committee shall have the authority to determine which step the demoted employee will receive.

8.10. Compensation increases authorized by the above formula shall be implemented only if the employee has served the time indicated and has satisfactorily completed the appropriate program training, which shall be verified by the J.A.T.C.

ARTICLE 9 - LONGEVITY AWARD

9.1. In addition to the monthly pay prescribed herein, any employee who has been continuously employed by the City for a number of qualified pay periods, the total of which is not less than eight (8) years, shall receive from and after the beginning of the next pay period following completion of his or her eighth year of service, a monthly longevity award equal to four percent (4%) of his or her basic monthly pay and any employee who has been continuously employed by the City for a number of qualified pay periods, the total of which is not less than sixteen (16) years, shall receive from and after the beginning of the next pay period an additional monthly longevity award equal to four percent (4%) of his or her basic monthly pay. Such longevity award shall be computed to the nearest dollar per month. The term "qualified pay period" shall mean any regular minimum period of time at the end of which full-time employees of the City are regularly paid and during

(d) the knowledge employees have of the geographical area involved in a particular assignment.

(e) the need for employees to have a certain amount of experience before being assigned to night or weekend shifts.

20.6. The Employer and Union agree with the principle that seniority shall be a factor in making any assignments other than those specified in Sections 20.3 and 20.5 of this article.

20.7. The Employer and Union agree that the Employer will provide data, assistance, and use of data processing system to jointly develop with the Union a seniority list, at least annually.

20.8. When calculating classification seniority, the following criteria shall be used:

(a) An employee who is reclassified to a higher position shall have his or her seniority date changed to the effective date of the reclassification.

(b) An employee who is reclassified to a position at the same salary range shall retain his or her previously established seniority date.

(c) When two (2) or more persons have equal seniority in a job class as calculated in 20.1, the order of seniority in such cases shall be determined first by the total continuous department years of service within the bargaining unit, second by the total continuous years of service within the bargaining unit, and if a tie still exists, from the highest score on the last examination for the job title that the employee currently holds.

20.9. This article shall not be construed to affect in any way the provisions contained in Article 38 regarding the layoff of employees.

20.10. For the purposes of this article, the Civil Service job classifications of Collection System Maintenance Worker, Utility Operator and Water and Gas Maintenance Journey person shall be treated as one job title.

20.11 a. No City of Duluth employee will be forced to transfer or reclassify into the Utility Operator classification. Employees holding the classification of Collection System Maintenance Worker, Water and Gas Maintenance Journey person, Regulator Mechanic, W & G Equipment Operator, Lift Station Operator, W & G Pipeline Welder, Water Quality Specialist, or Warehouse Assistant will be allowed to hold such classification for the remainder of their employment with the City, all the way to and including their retirement if the employee so chooses. The City will maintain these classifications and agrees not to eliminate them so long as there are employees who wish to remain in these classifications.

b. The Layoff Series Agreement between the City of Duluth and AFSCME Local 66 will be revised to allow Collection System Maintenance Workers and W & G Maintenance Journey persons to bump into the Utility Operator position, according to date of hire, in the event of a layoff.

c. An open window period will be provided for a period of ninety (90) days from the execution of this agreement during which time the employees can move into or out of the Utility Operator classification. During this open window period any employee holding the classification of Collection System Maintenance Worker, Water and Gas Maintenance Journey person, Lift Station Operator, W & G Pipeline Welder, Water Quality Specialist will be allowed to be reclassified to Utility Operator should the employee choose to do so. During this open window period any employee holding the classification of Utility Operator will be allowed to be reclassified to a classification previously held by the employee should the employee choose to do so with the exception of W & G Maintenance Apprentice. Each employee will be allowed only one such reclassification during this open window period.

d. Once this agreement is executed, it is agreed that the seniority within the Utility Operator classification will be determined based upon each employee's date of hire with the city with the exception of those employees who either promoted or demoted into Utility Operator - those employees will have their seniority based on when they were reclassified into Utility Operator. Once the window closes the seniority for those employees holding the classification of Utility Operator at that point in time will continue to be determined based upon each employee's date of hire with the city, with the exception of employees who either promoted or demoted into Utility Operator. These employees will be allowed to maintain this seniority (based on date of hire) as long as they hold such classification. Once the window closes any employee who voluntarily reclassifies to Utility Operator subsequent to the closing of the window will have their seniority as Utility Operator determined according to the date of their classification to Utility Operator, not their hire date.

ARTICLE 21 - HOSPITAL-MEDICAL INSURANCE

21.1. During the period of this Agreement, the Employer will make available to employees hospital-medical benefit plan coverage containing the same level of benefits as provided under the four hospital-medical benefit plans in effect on 7-1-2004.

(e) The Employer agrees to pay for the employees without claimed dependents the entire cost of the single employee hospital-medical benefit plan selected by the employees.

(f) The Employer agrees to hold a two week open enrollment period within 15 days following the approval of this agreement. Effective the first of the month following the end of the open enrollment period, the Employer will deposit fifty dollars (\$50) per month into a flexible benefits spending account for each employee without claimed dependents enrolled in Comprehensive Plan 3. At such time as the Employer becomes eligible to offer employees an approved medical savings type account, the employee may elect to have the fifty dollars (\$50) per month deposited into either a flexible benefits spending account or a medical savings account. The employee may change this designation during the annual open enrollment period for insurance selection, or at the time of a life event.

(g) The employer agrees to deposit into the Group Health Fund at the end of each fiscal year, any unused balance in each employee's flexible benefits spending account.

(d) Effective the first of the month following the two week open enrollment period in Article 21.1.b, the Employer agrees to pay 35% of the monthly premium for family hospital-medical benefit Plans 1, 2, and 4. The Employer agrees to pay 80% of the monthly premium for family hospital-medical benefit Plan 3.

CDSA

ARTICLE 12 - DEFERRED COMPENSATION

12.1. The employer shall allow an employee to participate in any deferred compensation plan of the employee's choice which meets the following criteria:

- a. It has been approved by the deferred compensation commission.
- b. It qualifies under the laws and regulations of the United States, State of Minnesota, Internal Revenue Service.
- c. The employer can accomplish any record keeping, data processing, accounting, or administration of the plan by making a reasonable effort.

The employer shall not do any act to change, alter, amend, or terminate any employee's deferred compensation plan without first giving at least sixty (60) days' written notice of its intention, and completing the processing of any grievance brought concerning the proposed action, unless law, ruling or order of the Internal Revenue Service requires it.

Coinciding with the health plan effective date in Article 13.2, the Employer shall contribute two hundred twenty-nine dollars (\$229) each month, for each employee enrolled in plan 3A hospital-medical insurance, for contribution to a qualifying and approved deferred compensation plan, and/or for contribution to family-dependent hospital medical premium, as designated by the employee during the open enrollment period for insurance selection, or at the time of a life event.

ARTICLE 13 - HOSPITAL-MEDICAL BENEFIT PLAN

13.1. Effective January 1, 2007, the Employer will make available to employees comprehensive hospital-medical benefit Plan 3A.

a. The Employer agrees to pay for the employees without claimed dependents the entire cost of the premium for single employee hospital-medical benefit Plan 3A.

b. Effective January 1, 2007, the Employer will deposit the sum of seventy-five dollars (\$75) per month into a flexible benefits spending account and/or a qualifying and approved deferred compensation plan, as designated by the employee for each employee without claimed dependents. The employee may change this designation during the annual open enrollment period for insurance selection, or at the time of a life event. The employer agrees to deposit into the Group Health Fund at the end of each calendar year, any unused balance in each employee's flexible benefits spending account.

c. After thirty-six (36) months of continuous employment from the date of hire for any permanent full-time employee hired on or after January 1, 2006, the Employer shall make a one time deposit of twelve thousand dollars (\$12,000) into a post employment health care savings plan account established by the employer in the name of the employee. An employee is eligible for one payment only in his or her lifetime under this article. Said funds and accumulated interest shall be made available to the employee as required by law.

From: Chris Arcand
Sent: Tuesday, July 31, 2007 4:35 PM
To: 'Wayne Parson'
Subject: RE: PERA SPAM WARNING: PERA Salary Definition

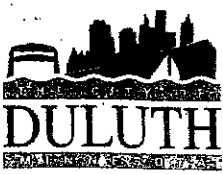
Wayne -

I agree that these are employer paid benefits, not employee; 'that voluntarily reduces the employee's salary'.

Therefore, they would not be eligible for PERA contributions.

Thank you for contacting me.

Chris Arcand
PERA Eligibility
1-888-892-7372 (ext.3)



CITY OF DULUTH
CHIEF ADMINISTRATIVE OFFICER
411 West First Street, Room 402
Duluth, Minnesota 55802

218/730-5319 FAX 218/730-5904
lpotswald@duluthmn.gov

LISA POTSWALD
Chief Administrative Officer

September 15, 2008

Ms. Mary Most Vanek
Executive Director
Public Employees Retirement Association
60 Empire Drive, Suite 200
St Paul, MN 55103

I am writing to inform you about an error made by the City of Duluth in the treatment of certain employer-paid benefits as salary subject to PERA taxes. The City makes payments to its employees for benefits best characterized as an insurance supplement payment. The City Auditor discussed this issue with Chris Arcand from your office some time ago. After reviewing our bargaining agreements it was Mr. Arcand's interpretation these employer paid benefits should not have been reported as PERA salary and, accordingly, not subject to PERA taxes.

The City has made these insurance supplement payments for a number of years dating back to the 1990's. The amount of PERA contributions made over the years for these employer paid benefits is a substantial amount of money. The City has discontinued treating insurance supplement payments as PERA salary subject to PERA taxes.

My concerns about this issue extend beyond the fact that we made an error that impacts PERA taxes and retiree pensions. This error went undetected for a number of years. Our annual financial statement audit conducted by the Office of the State Auditor did not detect this error. Finally, it appears that PERA relies upon governmental employers correctly interpreting the PERA Employer Manual for compliance. It is quite possible other governmental employers may be making this same mistake.

If you need additional information regarding the insurance supplement payments that were incorrectly reported as PERA wages, please contact the City Auditor, Wayne Parson CPA, at wparson@duluthmn.gov or at (218)-730-5028.

Sincerely,


Lisa Potswald
Chief Administrative Officer

Cc: Wayne Parson, Auditor, City of Duluth