

**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

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Allen Johnson, et al., Petitioners

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**FACTS**

Dean Cooke, David Hanson, Jeffrey N. Johnson, Matthew Ketola, Richard Mattson, Darrell Youngblom and Lee Youngblom (hereinafter Movants) are employed by the City of Duluth in the Fire Department and are members of Local 101 of the International Association of Firefighters (hereinafter "Local 101"). (Simonson Aff'd., ¶3).

Since 1983 and before Local 101 has had a Collective Bargaining Agreement ("CBA") with the City of Duluth that establishes the terms and conditions of employment of all Firefighters, Fire Equipment Operators, Fire Inspectors, Fire Captains, Deputy Fire Marshals, Training Officers, Assistant Fire Chief II, Fire Marshall and Assistant Fire Chief I employed by the City. (Simonson Aff'd, ¶4). That the current CBA between Local 101 and the City was effective January 1, 2007 and expires December 31, 2009. It is attached to the Affidavit of Erik Simonson and marked Exhibit 1. Article 13 of the Current CBA is entitled "Holidays – Personal Leave." Article 13.1 provides as follows:

Employees whose averaged work week is fifty-six (56) hours shall receive eleven (11) days off with pay in lieu of time off for holidays, and shall receive two shifts off with pay for personal leave, except that employees who work only part of a calendar year shall receive a proportional number of days or shifts off.

Article 13.3 provides as follows:

Any employee who averaged work week is fifty-six (56) hours, and who during the calendar year does not use all of the personal leave with pay authorized by this article, shall be compensated for such unused leave, such hourly rate shall be the same as that used for calculating overtime pay for service rendered pursuant to Article 9.

Article 9 is entitled "Overtime – Manpower Shortage." Section 9.1 provides as follows:

9.1 Except as provided in Article 10, employees whose normal work week is fifty-six (56) hours who work hours in excess of their normal work week because of a manpower shortage in the Department shall be compensated for such excess hours worked at the rate of one and one-half (12) times their basic hourly rate.

The vacation benefits of the Movants are set forth in Article 24 of the current CBA. (Simonson Aff'd, Exhibit 1, pp. 20).

The 1983 CBA, Exhibit 2 to Simonson Affidavit, between Local 101 and the City did not contain a provision authorizing compensation to employees in lieu of using their personal leave such as is now found in Article 13.3. The 1984 – 1985 CBA, Exhibit 3 to Simonson Affidavit, between these parties added Article 13.3 with identical language as is found in their 2007-2009 CBA. Simonson Affidavit, Exh. 3, p. 6. Also in the 1984-1985 CBA the vacation benefits of the employees were set forth in an entirely separate article (Article 23). Simonson Affidavit, Exh. 3, p. 11. Each CBA between these parties from 1984 to the present has had identical language in Article 13.3 as the 1984 – 1985 CBA. (Simonson Aff'd., ¶ 6).

From 1984 to 2008 the City of Duluth treated all compensation to Movants and other firefighters covered by the CBAs between the City and Local 101 for unused personal leave as salary and contributed to PERA for these earnings. (Simonson Aff'd, ¶ 7).

It has been a long standing option that 56 hour employees of the Fire Department may work their own personal leave days thereby obtaining overtime pay for that work. For example, a 56 hour employee of the Fire Department may schedule a personal leave day of 24 hours for a designated date, for example, September 15<sup>th</sup>. The employee has the option of working 24 hours on September 15<sup>th</sup> and if he does so will be compensated for 24 hours of overtime at time and one-half in addition to his straight time pay for 56 hours that will be included in his pay for the week that includes September 15<sup>th</sup>. Neither PERA nor the City has ever claimed that the overtime compensation that the employee received for working September 15<sup>th</sup> was not salary. (Simonson Aff'd. ¶12).

On or about October 20, 2008 the City sent letters to all active employees that stated that the City had discovered an error in the payroll calculations for PERA contributions that occurred over a period of recent years. Enclosed with this letter was a page entitled "Frequently Asked Questions" (Exhibit 4). The very first question stated:

What happened? How was the error discovered? The employer's contributions toward active employees deferred compensation, or family health premiums, was reported as eligible PERA salary. In addition the monthly employer contribution provided to employees who obtained Plan 3 single health insurance was also reported as eligible PERA salary. According to Minnesota Statutes, these employer paid fringe benefits are excluded from salary. The error was discovered by an internal audit of payroll records. (Emphasis added)

No where within the October 20, 2008 letter, nor in the attached FAQ page, does the City reference any error regarding compensation for unused personal leave but only errors regarding deferred compensation and contribution to employees who obtain Plan 3 single health insurance. (Simonson Aff'd., ¶ 8).

Each of the Movants received a letter dated March 5, 2009 from Mary Most Vanek the Executive Director of the Public Employees Retirement Association informing them that the PERA staff had determined that certain amounts reported to PERA as “salary” by the City of Duluth cannot be used for purposes of calculating retirement plan contributions or benefits. (Exhibit 5 to Simonson Affidavit is the March 5, 2009 letter Lee Youngblom received from PERA and his Petition For Review). The letter to each of the Movants enclosed for each a breakdown by year of their employer-paid amounts that would not be used by PERA as salary. The letters stated that the adjustment may reduce each Movant’s current high five year average salary for calculating their retirement benefits. For example, a review of the letter and breakdown given to Lee Youngblom shows that the compensation he received for unused personal leave that will not be included as salary in calculating his high five commenced in 2005 in the amount of \$1,288.61; in 2006 in the amount of - \$1,340.09; and in 2007 the amount of - \$1,353.41. Lee Youngblom’s breakdown form shows no prior deduction for compensation made for unused personal leave during the years 1997 to 2004 or in 2008. For each of the Movants PERA only deducted payments for the years 2005, 2006 and 2007 in varying amounts.

Until the Movants’ received their March 5, 2009 letter from PERA neither they nor Local 101 had ever been informed by either the City or PERA that there was any issue that the compensation they received for unused personal leave would not be treated as salary by PERA. (Simonson Aff’d., ¶ 10).

In response to a request from Erik Simonson, President of Local 101, PERA provided him the available correspondence between PERA and the City of Duluth that related to the issue of what was reported by the City as salary for pension purposes. (Simonson Aff’d. Exh. 6) The initial communication between the City of Duluth and PERA, that relate to the employer-paid

amounts that have been reported as salary for pension purposes for current and former employees of the City of Duluth, came from Wayne Parson, the City Auditor, and raised a question regarding deferred compensation related to an employee's election as to hospital/medical insurance coverage. See Article 8.8, Article 21.1(b), Article 12.1 and Article 13.1(b) of the basic contract that Wayne Parsons attached to his e-mail.

Chris Arcand responded on behalf of PERA in an e-mail to Wayne Parson dated July 31, 2007 that addressed the specific issues raised by Wayne Parsons and agreed that these deferred compensation payments would not be part of the employee's "salary" and thus would not be eligible for PERA contributions. The only additional correspondence PERA indicated it had received from the City was a letter dated September 15, 2008 from Lisa Potswald, Chief Administrative Officer for the City of Duluth, to Mary Most Vanek, Executive Director of PERA. The only payments that are discussed in this letter are those raised in the previously discussed e-mails that Ms. Potswald characterizes as an ". . . insurance supplement payment." This letter does not raise any issue regarding compensation to Firefighters for unused personal leave. There has been no communication between the City of Duluth and PERA regarding the issue that is the subject of this Motion for Summary Judgment. (Simonson Aff'd., Exh. 6).

Each of the Movants, after being informed that there would be deducted from their salaries the compensation they received for unused personal leave in the years 2005, 2006 and 2007 filed a Petition for Review before the PERA Board of Trustees. Lee Youngblom stated the reason for his petition is as follows:

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.

(Simonson Aff'd., Exh. 5)

On July 29, 2009 a Notice of Appearance was filed by the undersigned on behalf of the Movants “. . . who have been paid amounts for unused personal leave that PERA staff has determined that these amounts are not salary under the laws governing the Retirement Plan . . . .”

#### **ISSUE**

Did the PERA staff err in determining that the compensation movants received from the City for not using all of their personal leave did not qualify as “salary” for pension purposes?

#### **PERA DEFINITION OF SALARY**

The relevant provisions of the PERA statute is Minn. Stat. §353.01, definitions:

Subd. 10. Salary.

(a) Subject to the limitations of section 356.611, “salary” means:

(1) the periodic compensation of a public employee, before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs, and also means “wages” and includes net income from fees;

(b) Salary does not mean:

(1) the fees paid to district court reporters, unused annual vacation or sick leave payments, in lump-sum or

periodic payments, severance payments, reimbursement of expenses, lump-sum settlements not attached to a specific earnings period, or workers' compensation payments;

(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;

(3) 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:

(Emphasis added)

## **ARGUMENT**

### **Statutory Construction**

The Minnesota legislature has passed a number of statutes to aid in the construction of the laws it passes. The primary object of all interpretation and construction rules is to ascertain and effectuate the intent of the legislature. Minn. Stat. §645.16 provides as follows:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters;

(1) the occasion and necessity for the law;

- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

As applied to interpreting Minn. Stat. §353.01, Subd. 10 the words of that law as applies to unused personal leave days are clear and free from all ambiguity in that the statute expressly excludes from salary “unused annual vacation or sick leave payments” but does not exclude from salary unused personal leave days. The letter of the law that only excludes from salary unused annual vacation or sick leave payments but not unused personal leave days should not be disregarded under the pretext of pursuing the spirit of the law.

Minn. Stat. §645.19 gives directions on how provisos and exceptions should be construed. It provides as follows:

Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer. Exceptions expressed in a law shall be construed to exclude all others. (Emphasis added)

A number of exceptions as to what salary does not include are written into Minn. Stat. §353.01, Subd. 10. The explicit exceptions that unused annual vacation or sick leave payments are excluded from the definition of “salary” leads to the conclusion that unused personal leave day payments should not be excluded from salary.

In Brandt v. Hallwood Management Company, 560 N.W.2d 396 (Minn. App. 1997) the Court was asked to interpret Minn. Stat. §41.051 that establishes a two year statute of limitation for a person making claims for injuries “. . . arising out of defective and unsafe condition of an improvement to real property. . .” In Brandt the unsafe condition was caused by a company

involved in the demolition of the property. The court concluded that demolition work did not fall within the ordinary definition of the work “construction”. The Court also based its ruling upon an interpretation of Minn. Stat. §645.19 and in doing so the Court stated as follows:

The statute specifically delineates those individuals afforded protection under it. Conspicuously absent is any mention of individuals who perform demolition work. ‘Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others.’ Maytag Co. v. Commissioner of Taxation, 218 Minn. 460, 463, 17 N.W.2d 37, 40 (1944) (citations omitted); Minn. Stat. §645.19 (1996) (“Exceptions expressed in a law shall be construed to exclude all others.”) The legislature failed to include, either intentionally or by mistake, those individuals who perform demolition work within the meaning of Minn. Stat. §541.051. We cannot now do so. It is well established that when construing statutes, a reviewing court ‘cannot supply that which the legislature purposely omits or inadvertently overlooks.’ Northland Country Club v. Commissioner of Taxation, 308 Minn. 265, 271, 241 N.W.2d 806, 809 (1976) (citation omitted). (Emphasis added)

Similarly, in Board of Education Minneapolis v. Public School Employees Union Local No. 63, 233 Minn. 144, 45 N.W.2d 797 (1951) the Court was asked to construe Minn. Stat. §185.19 that prohibited the granting of injunctions in labor disputes except that it “. . . shall not be held to apply to policemen or firemen or any other public officials charged with duties relating to public safety.” In this case the public employees involved were school janitors. In denying an injunction against the janitors the court stated:

This interpretation of the statute is in accord with the well-settled rule that where a statute designates an exception, proviso, saving clause, or a negative, the exclusion of one thing includes all others. . . . In the Maytag Co. v. Commissioner of Taxation, 218 Minn. 460, 463, 17 N.W.2d 37, 40, we stated: ‘. . . Where a statute enumerates the persons or things to be affected by its provision, there is an implied exclusion of others. (Citing cases.) The maxim operates conversely where the statute designates an exception, proviso, saving clause, or a negative so that the exclusion of one thing includes all others.’ (Emphasis added)

Minn. Stat. §353.01, Subd. 10 states a number of exceptions to the definition of salary, including “unused annual vacation or sick leave payments”. These specific designations of exceptions means that “unused personal leave day payments” must be included within the definition of salary as “the exclusion of one thing includes all others.”

### **Legislative History**

In 1994 the legislature revised Minn. Stat. §353.01, Subd. 10(b) by adding the word “vacation”. Prior to this revision subdivision 10(b) read in pertinent part: “Salary does not mean . . . unused annual or sick leave payments. . . .” After the revision in 1994 subdivision 10(b) in pertinent part reads as follows: “(b) Salary does not mean . . . unused annual vacation or sick leave payments . . . .” The legislative history that is available relating to this 1994 change includes the August 12, 1994 memorandum from Lawrence A. Martin, Executive Director, Legislative Commission on Pensions and Retirement. Attached to this report was a simplified grid comparison of covered salary definition 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 Association’s and the Minneapolis Employees Retirement Fund (MERF) prepared by Mr. David Bergstrom, Executive Director of the MSRS. (Andrew Aff’d. Exh. 1) What is significant about this grid is that while it separates used vacation from unused vacation, and used sick leave from unused sick leave, holiday pay is not so separated and all of the Funds recognize holiday pay without distinction, whether it was used or unused, as salary.

Also submitted with this report was a comparison of what is included as salary and not included as salary in public employee retirement plans from a number of additional states

including Colorado, Illinois, Iowa, Missouri, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington and Wisconsin. This chart separated out holiday pay from unused holiday pay. See lines 27 and 28. Thus, the legislators who rewrote Minn. Stat. §353.01, Subd. 10(b) in 1994 were aware that there was a distinction between holiday pay and unused holiday pay but chose not to add unused holiday pay when they added unused vacation to the list of items excluded from the definition of salary in 1994.

The August 12, 1994 memorandum from Lawrence A. Martin, Executive Director of the Minnesota Legislative Commission on Pensions and Retirement to the legislative committee chairs points out that the function of a definition of “salary” in a defined benefit public pension plan is to indicate the retired member’s pre-retirement standard of living. As the memorandum states:

Background on the Function of Public Pension Plan Covered Salary Definitions.

b. Function In Defined Benefit Pension Plans.

\* \* \*

In a defined benefit plan using a final covered salary figure or a final average coverage 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. (emphasis added)

In this case the movants and other Duluth Firefighters used their right to be compensated for unused personal leave to increase their annual income and their standard of living.

### Larson and Allers Cases

It is anticipated that the PERA staff will cite In the Matter of the Retirement Benefits of Robert W. Larson, No. C7-95-2512 (June 11, 1996) 1996 WL 310344 (Minn. Ct. App. (unpublished) June 11, 1996) and Application of Allers, 533 N.W.2d 646 (Minn. Ct. App. 1996), ev. den. (Minn. August 30, 1995) to support its position that the payments received by the movants for their unused personal leave days does not constitute salary for PERA purposes. Both of these cases are readily distinguishable. The Larson case was brought by a man who was the business agent and recording secretary-treasurer of the School Service Employees Union. In deciding the case the court pointed out that PERA is a pension plan for public employees but that a few private employees like Larson were allowed to participate in PERA pursuant to Minn. Stat. §353.017 (1994). As the Court pointed out “Such a situation presents the PERA board with an atypical situation and one where, under its fiduciary duty to the members of the Plan, the taxpayers of the state, and the State of Minnesota, the Board is ‘to be even more diligent in policing the salary reports of the limited number of private employees within its purview.’”

In 1990 when Larson began cashing out his unused sick leave the PERA statute provided that “lump sum annual or lump sum sick leave payments” were not to be considered salary. Minn. Stat. §353.01, Subd. 10 (1989). Effective June 5, 1991 this Section was amended, in part, to read “unused annual sick leave payments, in lump sum or periodic payments are not considered salary.” 1991 Minn. Laws Ch. 341, Sec. 3. Thus, at all times relevant to Mr. Larson’s claims there was a specific exclusion from the definition of salary for payment for unused sick leave. Based upon these statutes the payroll reporting form provided by PERA to the Union stated that “PERA deductions should not be taken from unused vacation, unused sick leave or any other severance pay.” Thus, both the statute in effect at the time and the PERA

directions to the Employer made it explicit that payments for unused sick leave should not be included in salary for PERA purposes. Of course, no such exclusion for compensation for unused personal leave is stated in Minn. Stat. §353.01 Subd. 10(b) or the payroll reporting forms provided to employers by PERA.

In the Allers case the applicants were the former and current president of the Building Service Employees Union Local 284. Again the Court of Appeals pointed out that PERA's retirement fund is for public employees however certain private employees are allowed to participate in PERA. In explaining why the distinction between a public employee and a private employee in PERA is important the court stated at 533 N.W.2d 651, 652:

Pension claims by private employees within the PERA membership present the PERA board with an atypical situation. Whereas PERA can accord deference to the salary of a member because the member is employed by a public agency, See Minn. Stat. §43A.17, Subd. 1 (1992). (The salary \*\*\* of the head of the state agency and the executive branch is the upper limit of compensation in the agency.), no statutory ceiling on salaries applies to private employees. Because the legislature endowed the PERA Board with broad powers to "allow or disallow claims for withdrawals, pension, or benefits payable from the fund," we hold that the fiduciary duty the PERA Board owes its members, the taxpayers of the state, and the state requires PERA to be even more diligent in policing the salary reports of the limited number of private employees within its prevue.

The payments that Allers argued should have been included in his salary was from an "income reserve" account that accumulated dependent upon the existence of accumulated sick leave. At the time of the Allers decision there was a specific exclusion from the definition of salary of unused annual or sick leave payments, in lump sum or periodic payments. Of course there is no such specific exclusion of compensation for unused personal leave in Minn. Stat. §353.01, Subd, 10.

Thus the Larson and Allers are not precedent to support the PERA staff's determination in this case because those cases involved private employees that the PERA must diligently police, while the movants are public employees that the PERA must accord deference to their salary. Ever more important both the Larson and Allers cases involved payments for unused sick leave, that is explicitly excluded from the definition of salary, while the movants case involves compensation for unused personal leave that the statute does not exclude from the definition of salary.

### **PERA Administrative Guidance**

PERA has a website that provides guidance to members, retirees and employers. A two page document from PERA's website defines what does and what does not qualify for salary for PERA purposes. (Andrew Aff'd. Exh. 2). Among the examples of salary that it gives that are not PERA-eligible is unused sick or vacation pay. No where in that two page guidance is there any reference to compensation for unused holiday or personal leave. The guidance indicates that for additional examples of salary that is PERA eligible and salary that is not PERA eligible the reader should refer to Chapter 5 of the PERA Employer Manual. At page 5-17 of that Manual included within the types of salary payments that are subject to PERA withholdings are "used vacation, sick, and personal leave pay for periods of excused absence from work." In addition, the following payments are stated to be subject to PERA withholding:

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 earning period for the holiday pay. When a contract or agreement governs cash – out payments, employers

should provide a copy of the written agreements to PERA for its records. (Emphasis added).

Personal leave has always been an extension of holiday pay with the only difference being that the employee has the right to choose the day off. Even this distinction does not apply for the Movants as under their CBA they can choose the days they want to be off for their holidays since the fire departments need to be staffed on a 24-7 basis everyday of the year. (Simonson Aff'd. Exh. 1, Art. 13.1) Here the City of Duluth has agreed to compensate the Movants for accrued unused personal leave days on an annual basis which is always done during the last pay period of the year. This clearly fits within the above-quoted statement that "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 earning period for the holiday pay period."

Also listed as pay that is subject to PERA withholding is the following found on page 5-18 of the Employer Manual:

Additional pay for working on a scheduled holiday. Example: A police officer works on July 4<sup>th</sup> and has the choice of taking another day off with pay or receiving an extra days pay. When the employee takes the extra day of pay, the payment is viewed similarly to overtime pay and is PERA-eligible salary. (Emphasis added).

It has been a longstanding option that 56 hour employees of the Fire Department may work their own personal leave days thereby obtaining overtime pay for that work. If the 56 hour employee who has scheduled a personal leave day exercises his option to work on that day he will be compensated for all the hours he works and for his personal leave time compensated at time and one half. This compensation will be made to the employee with a payroll check covering the period that he designated as a personal leave day. Neither PERA nor the City has ever

questioned that such compensation for personal leave is subject to PERA withholding. There is no difference between such a payment and the PERA's example of extra pay for working on a scheduled holiday quoted above. Similarly, a Movant should not be penalized because he chooses to take his accrued personal leave compensation during the last pay period of the year.

Based upon the PERA's own administrative guidance the compensation the Movants receive for unused personal leave, whether taken during the year or during the last pay period of the year, is salary for PERA purposes.

### CONCLUSION

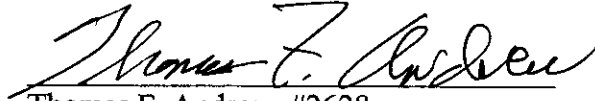
PERA staff erred in determining that the compensation Movants receive from the City at the end of each year if they did not use all of their personal leave did not qualify as "salary" for pension purposes. These payments to Movants clearly fit within the definition of salary found in Minn. Stat. §353.01(a) as they are part of the "periodic compensation" of the Movants. Since Minn. Stat. §353.01(b) states "unused annual vacation or sick leave payments" as a specific exclusion from salary the mandate of Minn. Stat. §645.19 that "Exceptions expressed in the law shall be construed to exclude all others," should be followed as to Movants' compensation for unused personal leave. Since the words of Minn. Stat. §353.01, Subd. 10 are clear the PERA Board should not disregard the letter of the law under the pretext of pursuing the spirit. The legislative history of the changes to the definition of salary that occurred in 1994 show that the legislature was aware that there was both used and unused holidays and personal leave days but chose not to add unused holiday or personal leave days to the exception of what was salary when they added unused vacation days. In addition, PERA's own administrative guidance supports the

Movants' position that compensation for unused personal leave days whether accruing during the year or during the last pay period are salary for PERA pension purposes.

Dated: Nov. 4, 2009

Respectfully submitted,

ANDREW & BRANSKY, P.A.



Thomas F. Andrew, #2628  
302 West Superior Street, #300  
Duluth, MN 55802  
218-722-1764; 218-722-6138 - Fax  
Attorneys for Dean Cooke, David Hanson, Jeffrey Johnson, Matthew Ketola, Richard Mattson, Darrell Youngblom and Lee Youngblom, Movants