

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 ELIZABETH A.
STORAASLI**

OAH DOCKET NO. 4-3600-2080902

Allen Johnson, et al., Petitioners

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

Elizabeth A. Storaasli, being first duly sworn, deposes and says:

1. Affiant is one of the attorneys for the Petitioners in this matter. The Petitioners include retired firefighters, police officers, and surviving spouses of PERA participants.

2. Your Affiant made a Motion on behalf of Petitioners to join the City of Duluth as a party, which Motion was denied on October 20, 2009. The Petitioners were issued a Subpoena directed to the City of Duluth for inspection and copying of documents of attached Interrogatories and Request for Production of Documents on October 21st, 2009. That subpoena and attachments were served upon the Duluth City Attorney on October 21, 2009, returnable on November 19, 2009.

The City's objection to the Subpoena was not received until November 16, 2009, three days before its response was due. The City did not produce any documents until November 23, 2009, and copies may not be available for several days following.

3. The discovery deadlines currently provide that discovery closes on November 30, 2009. If the City is successful in its refusal to answer the subpoena, Petitioners may be required to set depositions of City employees to gather the requested information. Such depositions cannot be

completed within current discovery deadlines.

4. The Notice and Order for Pre-Hearing Conference and Hearing served and filed July 10, 2009, by PERA in this proceeding includes a written Statement of Issues, specifically stating that this matter refers back to 1996. On page 3 of the Notice, PERA lists six Issues, specifically including the issues of “promissory estoppel or any other related claim to reliance.” (See Issue 155)

In Issue 156, PERA raises the issue of whether it was reasonable for PERA to rely on the records submitted by the City of Duluth to PERA to make its benefits adjustments.

Issue 151 deals with amounts paid by the City of Duluth under applicable collective bargaining agreements which may be characterized as “insurance supplement payments” salary for PERA purposes.

Issue 154 deals with whether PERA is barred from taking action to recover over-payments or reduced future benefits based upon any applicable statute of limitations. Issue 152 relates to “personal leave days” and Issue 153 relates to deferred compensation as salart, and both issues refer back to 1996.

5. In its Statement of Issues, PERA notes that City of Duluth has advised PERA that the City had erroneously made payments on behalf of its employees since 1996. It appears that PERA’s demand for recharacterization of payments made by the City of Duluth goes back potentially to 1996.

6. On information and belief, in its 2001 audit of the City, the State Auditor raised the issue of the legality of the deferred compensation provision. The City of Duluth convinced the State Auditor of the legality of its practices. The City may have documents relating to this transaction. Les Bass is the individual believed to have been directly involved in these communications.

7. On information and belief, the City keeps notes of its labor negotiators, and as

recently as April 30, 2008, the notes, including those of Karl Nollenberger, who introduced the deferred compensation provision into the contracts, were on the shelf in the office of the Chief Administrative Officer of the City of Duluth.

8. On information and belief the City ceased treating certain types of compensation as salary for PERA purposes in 2007, and notified PERA of the alleged “error” in 2008. City Human Resources employee Kim Hall completed an investigation of this issue in 2007 or 2008 that the City has not identified or disclosed.

9. The City in its objection has not identified or disclosed the number of documents that might be produced, or the time or work necessary to produce those.

10. That your Affiant’s office has spent at least 10 hours preparing this Motion to Compel and Movants should be awarded Attorney’s fees for the City’s failure to respond to the Subpoena without good cause.

11. That the delay by the City of Duluth raising objections has caused harm to Movants in that they cannot take depositions which may now be required within the current schedule in the Prehearing Order. In comparison, another non-party, the Office of State Auditor, when served with Interrogatories and Request for Production of Documents, immediately communicated its willingness to respond and provided substantial responses in September 2009, even without a subpoena being served.

12. On information and belief, the extension of the discovery and scheduling deadlines are agreed to by PERA attorney Jon Murphy and Petitioner Bryan Brown.

FURTHER YOUR AFFIANT SAYS NOT.

/s/

Elizabeth A. Storaasli, Atty. Reg. No. 106070
DRYER STORAASLI KNUTSON
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Subscribed and sworn to before me this
15th day of November 2008.

/s/ Jeri L. Nelson

Notary Public