

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 PETITIONER**  
**PAUL OSTMAN**

Allen Johnson, et al., Petitioners

OAH Docket No. 4-3600-2080902

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

Paul Ostman, being duly sworn on oath, deposes and says:

1. I am a retired firefighter of the City of Duluth. I am a Petitioner in the above proceeding, and make this Affidavit in support of my Petition for Review of the PERA salary determinations reducing my retirement annuity.

2. I retired effective May 31, 2006.

3. Each year we would receive from PERA an estimated retirement benefits report. I have attached as Exhibit 1 a sample of what we received in the year 2003. I had a fairly complex retirement situation since I was employed not only by the City of Duluth, but by Lake Superior College, which was covered under Duluth Teachers Retirement. Two years before anticipated retirement, I began asking for projections and gathering information to determine when I would be eligible. I learned on the City side I had to reach age 55 and 20 years of service, and on the Lake Superior College side I had to hit the rule of 90 as the minimum threshold. I have hereto as Exhibit 2 my request for projections in May of 2005. The surprising thing for me is the extent to which these calculations were all being made by hand by PERA.

4. I met with Bryan Rantala, the PERA representative in the Duluth office, as well as obtaining other information. Without the Teachers retirement, I would have retired in April 2005. However, I waited to retire until 2006 in order to get the full pension on the Teachers side. I have attached hereto as Exhibit 3 the calculations that were completed in May and June of 2006 prior to my retirement.

5. I did receive from PERA an estimated retirement benefits report dated April 25, 2006 (Exhibit 4), showing the various amounts I would receive depending on which survivor option I chose. The options were about \$200 different, and I selected based upon my evaluation of the difference of those amounts. Two hundred dollars per month was a significant amount in our decision.

6. I did proceed with retirement, and obtained my supervisor's verification of retirement and returned the form to PERA (Exhibit 5).

7. Once I submitted my verification of retirement, and selected a 50 percent option, I received a letter from PERA dated May 7, 2006, indicating the effective date of my benefit (Exhibit 6). In this letter I was told that when PERA received my final salary information, PERA would calculate my final benefit payment amount. I knew that based on my final salary information, the final benefit amount could be adjusted and there would be retroactive adjustments for overpayments and underpayments.

8. After I did retire, I received a communication from PERA on June 7, 2006, advising me of the payment that would be direct deposited to my account. The amount of monthly benefit was \$5,348.71, subject to withholding. That letter indicated that my account would be audited and a final calculation made (Exhibit 7).

9. I did receive on August 25, 2006, the final monthly benefit calculation after audit

from PERA. I have attached hereto as Exhibit 8 the notification showing that my gross amount of the audited monthly benefit was \$5,503.68.

10. I did receive from PERA cost of living increases, and I received a 2.5% increase effective January 1, 2007, as set forth in Exhibit 9. I also received a 2.5% increase commencing January 1, 2008, as set forth in Exhibit 10. I also received a 2.5% increase effective January 1, 2009 (Exhibit 11). By that point my new gross benefit amount was \$5,794.36.

11. In March of 2009 I received a notice from PERA that due to a change in federal tax tables resulting from the stimulus bill in Washington, my April 2009 benefit payment would change. I received a \$67 increase, though it only affected withholding, not the ultimate tax due, as set forth in Exhibit 12.

12. On March 11, 2009, almost three years after my retirement, I received notice from PERA that PERA staff had determined that certain amounts included in my annuity had been excluded from PERA definition of "salary," and PERA was re-computing the pension amounts payable to me. PERA indicated that they would send me corrected benefit information in the "near future." They also told me not to contact them. That communication is attached hereto as Exhibit 13.

13. By letter dated March 26, 2009, I received the calculations claiming that my employee contributions of \$1,333.81 and employer paid amounts of \$20,706.61 needed to be refunded. The employer paid amounts were the City's payments required under the Firefighters collective bargaining agreement and had been included as gross income on my paystubs since 1997. The letter from PERA stated that the correct amount after reduction of these salary amounts was \$249.14 per month less, reducing my benefit to \$5,545.22 per month. The letter claimed that the amount of overpaid benefits was \$7,418.69. Along with that letter I was given a listing of employer paid

amounts claimed by the City of Duluth to have been reported to PERA as salary. They totaled \$20,706.61. This letter and the enclosures to it are attached hereto as Exhibit 14.

14. I was very concerned about the accuracy of any calculations prepared by PERA, and the basis for the reduction in my annuity. Therefore, I requested from PERA a complete copy of my entire PERA file. PERA was not pleased with this, claiming there would be significant staff time to get the file and print it, and they charged me \$100. However, I did obtain the file. I have attached hereto as Exhibit 15 all of the portions of my file produced by PERA which showed the recalculations of my annuity amounts. I was quite surprised at the amount of hand calculation involved.

15. When I obtained my PERA file, I also obtained the worksheets based upon the original audit in August of 2006 after I retired. I have attached hereto as Exhibit 16 the documents supporting the calculation of my final audited annuity amount in August 2006 after final retirement.

16. Interestingly enough, shortly after I had made the request to PERA for a copy of my file, I received a letter dated May 5, 2009, from PERA again addressing my benefit calculation. It reported that PERA had made an error in the calculation on my account. The corrected benefit was not in fact \$5,545.22, but rather \$5,575.97, a \$30.75 increase. No explanation was given for this error. I was also notified that the overpayment to be repaid by me which was listed in the March letter as \$7,418.69, was actually only \$1,294.80. No explanation for this error was given in the May 5, 2009 letter attached hereto as Exhibit 17. As far as I know, I am the only retiree who asked for a copy of my file. I wonder whether if others of the 457 retirees had asked for their files whether PERA would have looked more carefully and found other mistakes as well.

17. On May 18, 2009, PERA directed a letter to me notifying me that the monthly benefit reduction would be implemented effective July 1, 2009. However, the letter indicated that no

recovery of any overpayments would be instituted until after the Petition for Review to the Office of Administrative Hearings was resolved. That May 18, 2009 letter is attached hereto as Exhibit 18.

18. On June 1, 2009, I received notice from PERA that legislation had been passed that could provide a solution to the past overpaid benefits. In her letter dated June 1, 2009, attached as Exhibit 19, the Executive Director of PERA suggested that perhaps I may then “reconsider” whether I still wished to seek review of PERA’s determination.

19. I was still very confused about the change in my benefits, so my wife called PERA and asked for an explanation of the error on my calculations. I received a letter dated June 2, 2009, from PERA attempting to explain why the error was made. Apparently the entire amount of erroneous salary was subtracted from the highest five consecutive years of earnings rather than from only the last five years of earnings. This appears to be a rather basic and significant mistake which leads me to mistrust any and all calculations made by PERA in this matter. Only after I requested a copy of my file was this mistake found. The communication to me stated, “I realize this is a rather confusing explanation.” That letter is attached hereto as Exhibit 20.

20. I received letters from PERA dated June 24 and June 25, 2009, identifying the actual reduction in my monthly benefit effective July 1, 2009. The letters made clear that the calculation does not include the recovery of any overpayments, and also cited recent legislation. Those letters including my recalculated benefit are attached hereto as Exhibit 21.

21. To the best of my knowledge, the deferred compensation payments that were made in accordance with the collective bargaining agreement promises always showed on our paystubs as part of our total compensation and income. All paystubs by all retirees who I have communicated with with regard to this proceeding have determined that deferred compensation was listed as part of total compensation on the paystubs.

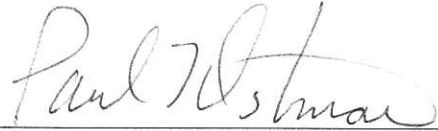
22. I have compared my chart included with Exhibit 14 with the charts distributed to other retirees by PERA based on the numbers provided by the City of Duluth. I have attached hereto as Exhibit 22, the chart of Lee Youngblom. Mr. Youngblom and I were hired on exactly the same day, and for all years worked under the same collective bargaining agreement covering the Duluth firefighters. Accordingly, our numbers should be exactly identical. However, on these charts our numbers differ in the years 1998, 1999, 2000, 2002, 2003, 2004 and 2006. However, since I did retire in 2006, that number would likely be different. It concerns me greatly that not only Mr. Youngblom's chart, but the charts of all other firefighters provided by PERA based on the City of Duluth calculations have significantly different numbers in that column when they should all be the same. Apparently the City had lost the payroll detail prior to 2005 and devised a special software program to recreate the payroll details. However, they are not correct.

23. Each year the City of Duluth confirmed that the deferred compensation payment would be made available to employees. I have attached hereto as Exhibit 23 the statements from the City of Duluth relating to deferred compensation. As you can see, on this statement the City very clearly calls the deferred compensation "supplemental money." In 2001, our entire contribution went to deferred compensation. In 2002, all "supplemental money" went to family medical. In 2003, some supplemental money went to deferred compensation and the other to family medical. In 2004, most of our deferred compensation funds went to deferred compensation.

24. I have attached as Exhibit 24 the employee benefit statement we received for the year 2005. This statement shows that the deferred compensation was determined to be "supplemental dollars," which was clearly a part of our total compensation. It was specifically NOT included in the category of an employer-paid benefit, and it was clearly not in the category of an employee


elected benefit deduction. This deferred compensation plan was a hybrid which had been operated for more than 10 years by the City of Duluth through its collective bargaining agreements and PERA.

FURTHER YOUR AFFIANT SAYS NOT.



Paul Ostman

Subscribed and sworn before me  
this 10<sup>th</sup> day of February, 2010

  
Notary Public