

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 JACKIE MORRIS

OAH DOCKET NO. 4-3600-2080902

Allen Johnson, et al., Petitioners

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

Jackie Morris, being first duly sworn, on oath deposes and says:

1. I am a retired employee of the City of Duluth. I was employed by the City from January 1979 to December 31, 2008. My job titles were Data Entry Clerk, Payroll Coordinator, and Manager of Payroll/Personnel Systems from the late 1980's to retirement. Throughout my employment between 1982 and 2008 I was responsible for payroll of the City of Duluth.

2. When the deferred compensation was first added to employee compensation in 1995, we called down to PERA before we determined how it would be handled. We asked specifically for instruction. At that time PERA included almost everything in salary, and we were subject to large fines if we did not include all correct items in salary. I recall we were told to include the deferred compensation in salary and we continued to do that throughout the years.

3. I was a member of the City of Duluth Supervisors Association in 1995, and I recall being present at the Association meeting to approve the proposed contract. Bob Larson specifically asked in that meeting whether the new deferred compensation offer from the City was includable in salary for PERA. I recall the question because my neighbor in the meeting asked me why Larson

would ask that type of question. I recall the answer was specifically that deferred compensation was includable as salary for PERA.

4. The deferred compensation has always been subject to social security on the payroll.

5. In 1996 we instituted a payroll software change. The first payroll under the new system was in 1997. I recall that because we slept all night on the floor in preparation for the first payroll under the new system in 1997.

6. Throughout my employment the deferred compensation was always treated as wages on the payment calculation side of the paystub, the "going in side." It was listed on the "going out side" as a number which could either be the initial deferred compensation payment according to the labor contract, or also include additional amounts contributed by the employee.

7. Each January the Office of State Auditor performed a payroll audit of the City of Duluth. The audit had to be completed to be included in the City's annual report, and made our work very busy in the month of January. The standard procedure was for the Office of State Auditor to ask for a sample of random payroll check numbers. Typically the individuals involved from the Office of State Auditor were Greg Mutchler and Nancy Klassen. When we received those check numbers, we had to pull the checks and all backup documents including W-4's, contracts, time sheets, etc. I recall that the payroll audit always included paystubs for firefighters since their pay was very complicated. If all the pay stubs were "clean," the Office of State Auditor would add paystubs from Les Bass and/or me since we were individuals who had access to manipulate payroll software. All the audits were clean.

8. Virtually all employees of the City had deferred compensation benefits. The Office of State Auditor knew about the benefits since the greater majority of employees received the

deferred compensation and did not elect family medical coverage. The benefits were clearly noted on the paystubs.

9. The deferred compensation plans participated in by City of Duluth employees were all 457 plans. Employees could elect to withdraw funds, and when that happened the deferred compensation company would notify payroll of a discontinuance of contribution. The employee was then ineligible for contributions for a six month period of time. Loans were also available to employees from their 457 plans. Initially only Great West was available for selection, but later on employees could split their 457 funds between Hartford, Minnesota Mutual, Great West and others.

10. I recall specifically a payroll audit by the Office of State Auditor in 2001. The City of Duluth plan had never had a required match to deferred compensation. In 2001, the Office of State Auditor specifically reviewed the deferred compensation program. Individuals involved for the Office of State Auditor were Greg Mutchler, Wayne Parsons and Nancy Klassen.

11. I specifically recall in approximately 2001 my supervisor Les Bass, who was then the City Auditor, came and asked me whether the City was including deferred compensation payments as salary for PERA purposes. I notified him "Yes" and Mr. Bass replied "Good." Mr. Bass told me that because the City was including the deferred compensation as salary for PERA purposes, it meant that a potential audit finding by the Office of State Auditor was resolved. He also mentioned that it was important that the plan did not require matching for the payments made into the deferred compensation program. The Office of State Auditor was then advised that the City had always included the deferred compensation as part of employees' gross salary, and always included it as a deduction. There was no mandatory match. I understand that the State Auditor was satisfied with this response.

12. The City of Duluth never provided an insurance policy for either single or family

medical coverage. The City provided a set dollar amount which employees could apply, either to family medical coverage or deferred compensation. The group electing family medical was a small group and frequently employees would drop family coverage for either the spouse's coverage, or buy a separate private policy for the family. As the plan became smaller, the costs became higher and due to anti-selection the employee cost was very high.

13. Since the early 80's the City has never provided medical or hospitalization "insurance," but rather has only provided a "pay-as-you-go" medical reimbursement plan. The City pays claims directly, and there is a variable amount of reserves set aside for payment of claims.

14. In August 2007, Wayne Parsons, the former State Auditor assigned to audit the City of Duluth who was now employed by the City of Duluth as City Auditor, approached me to state that he believed the City was treating the deferred compensation payments incorrectly. I did not agree with his interpretation and did call PERA directly to obtain clarification. The individual I spoke to at PERA agreed it was not a "mistake." The City stopped treating the deferred compensation payments as salary for PERA purposes in September 2007.

15. In 2008, I was called and told by PERA that they had been contacted by the City of Duluth Administrative Assistant and advised that there had been a "mistake" and that the City of Duluth contributions to PERA would have to be audited and recalculated. When I contacted PERA, I was told by PERA to go back on the active employees only to 2005. I was told specifically that that was "more than adequate." I have attached a copy of an e-mail I received from PERA stating that the City needed only to provide information that would be "reasonable for the City to compile. For instance, if your records are archived or inaccessible beyond 3 years, we ask that you only go back 3 years through the date that you stopped taking the inadvertent contributions." I was confident of the validity of the numbers and calculations of the City of Duluth on payroll back to 2005. I believe

the numbers back to January 2005 were reliable. I proceeded to complete those reports and was prepared to present them. At that time I was escorted out of the offices of the City of Duluth. I remained on salary until my retirement.

16. The payroll records of the City of Duluth prior to 2005 are of questionable completeness. Although the system we had could have stored every check detail, we did not have enough memory and physical capacity to store all the data. We were only able to maintain the totals, but not the underlying payroll detail. So the deferred compensation contribution amounts for each employee were lumped in together with other categories. The City did not retain copies of paystubs or paychecks. After I was escorted out of the City offices, I was called several times with questions by Skip LeClair, the individual assigned by the City to write specific software programs to recreate the payroll numbers prior to 2005. When he called me, I recall there were numerous inconsistencies with deferred compensation, and people whose numbers were not correct. The detail numbers were not in existence, and the City had to write special software programs to extract all earnings records. Once that program was written, other persons had to interpret the prior payroll software and payroll records since they were all in code. The individuals who made those assumptions and interpretations never worked with the prior payroll systems software and codes in place before 2005. Therefore, they would have to speculate as to interpretation. I would expect there to be numerous errors, and for employees and retirees who were similarly situated to have different results, showing the unreliability of the system used.

17. I am unsure of and cannot vouch for the validity and accuracy of any payroll numbers provided by the City for periods prior to January 2005.

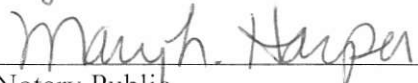
18. As the long-time payroll administrator for the City of Duluth, I believe any payroll numbers for the years prior to 2005 are not reliable or verifiable.

FURTHER YOUR AFFIANT SAYS NOT.

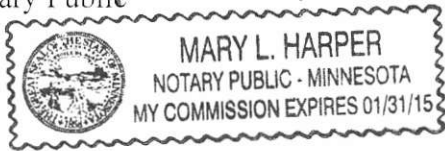


Jackie Morris

Subscribed and sworn to before me this
8th day of February, 2010.



Notary Public



Chris Arcand

From: Chris Arcand
Sent: Thursday, September 18, 2008 3:54 PM
To: 'jmorris@ci.duluth.mn.us'
Subject: Insurance Supplement Employer Payments

Hi Jackie,

As we discussed, I'm wondering if you can provide detailed information regarding the payments that have been deemed inadvertent for PERA contributions.

Based on a letter from Lisa Potswald dated September 15, 2008, the insurance supplement payments have been "substantial" and go back to the "1990's".

Since by law PERA pensions shouldn't be inflated by ineligible salary, we should review and possibly refund the contributions reported in error.

Therefore a spreadsheet detailing the person, payments and pay periods effected would be necessary for our purposes.

We ask only that you provide information that would be reasonable for the city to compile. For instance, if your records are archived or inaccessible beyond 3 years, we ask that you only go back 3 years through the date that you stopped taking the inadvertent contributions.

Please feel free to contact me with any questions you may have regarding this matter. You can reach me directly at (651)355-0050.

Thank you very much,

Chris Arcand
Eligibility Specialist
Public Employees Retirement Association
Employer Line 1-888-892-7372 (#3)
Fax # (651)296-2493
chris.arcand@state.mn.us