

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 GENEVIEVE A.
STARK**

Allen Johnson, et al., Petitioners

OAH DOCKET NO. 4-3600-2080902

STATE OF FLORIDA)
) ss.
COUNTY OF POLK)

Genevieve A. Stark, 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 December 1976 to December 2009. I was employed in the Finance Department and became the Assistant City Auditor from 1985 to 2002, the City Auditor from 2002 to 2005, and the Finance Director from 2005 to 2009. I retired effective December 1, 2009. As Finance Director I was responsible for all City finances including payroll and audit, and as such, indirectly supervised personnel responsible for overseeing PERA contributions according to contracts and council resolutions. These employees answered directly to the City Auditor.

2. I recall that when the deferred compensation provision was first added to the collective bargaining agreements, I spoke with Les Bass, my supervisor, regarding how the deferred compensation should be reported on the payroll system. As Assistant City Auditor I was not involved with payroll issues, but was told it had been determined that we would report the deferred compensation payments mandated in collective bargaining agreements as wages on the employees' paystubs, and would also report contributions to deferred compensation as deductions on the paystub. That manner of reporting of deferred compensation as salary

continued until some time in 2007.

3. I was also aware that whether the deduction was made from the salary amount, or from an employee's additional contributions, they were both listed together as one deduction. From the commencement of the plan in the 1990's until 2007, the paystubs never split out any additional contributions by the employee beyond the payroll amount.

4. I recall that I was a member of the CDSA (City of Duluth Supervisors Association) when the deferred compensation provision was first added to the contract in the 1990's. It was an additional fixed dollar amount included in our collective bargaining agreement as part of our salary. Only after the next round of bargaining was there an option to direct any portion of the deferred compensation toward the cost of family medical reimbursement.

5. With the exception of a short period of time in the late 1970's or early 1980's, throughout my employment at the City of Duluth I personally selected only single medical reimbursement coverage. Single coverage was fully paid by the City of Duluth. In the 1990's although I could have elected family coverage, I never did so. Accordingly, all payments made to deferred compensation on my paystub were directed to my deferred compensation account only.

6. The City of Duluth since the early 1980's has operated a "pay-as-you-go" medical reimbursement plan. There is no insurance product involved; rather, the City hires a third party administrator such as Blue Cross Blue Shield or Epic to administer the plan. The City may or may not have reserves set aside for payment of claims.

7. In the early 1980's there were changes made in the accounting standards by the National Council on Governmental Accounting (NCGA) which required governmental units to book liabilities on their balance sheet for promises made to employees for future payments. At

that time the City was advised it had to include as a liability on the balance sheet all vacation pay promised to employees in collective bargaining agreements, and set aside funding for payment of accrued vacation. At that time the City of Duluth also had accrued sick leave benefits and a sick leave bank in the labor contracts. The City had promised that each employee could earn and keep a maximum of either 60 or 120 days sick leave, and would receive credit for the cash value of their accrued sick leave bank upon retirement. The City would pay up to that amount toward the cost of the employee's health insurance after retirement. This was a substantial unfunded liability, and the City had insufficient assets to fund that liability. It is my understanding the City was advised that instead of operating the sick leave bank as set forth in the contracts, the City could avoid booking a liability by agreeing to pay all medical claims for retirees for life; at that time the premium cost approximately \$85 per month per person. As I was told, the bargaining units were reluctant to give up the sick leave bank because it had a set, known value and the City's promise to pay all future medical claims was indeterminate. But they ultimately agreed in negotiations to give up the sick leave bank in exchange for a promise by the City to pay all future medical costs. At the same time the City switched from purchased insurance plans to the self-funded "pay-as-you-go" plan. Over the years, the City used any sick leave/medical reimbursement fund balance to pay claims, and at times the fund balance was minimal.

8. Each year the City and the insurance committee reviewed the recommendations from the third-party administrator as to what the claim costs had been and what medflation was estimated to be, and used a three year weighted average to recommend rates for the next year applicable to active employees and retirees. In accordance with MN statutes, the contract for third party administrator must be bid out at least once every five years.

9. The medical reimbursement plan is not purchased insurance, and the City of

Duluth has not purchased medical insurance for employees since the early 1980's.

10. Around June of 1995, the City upgraded its computerized accounting system known as LGFS...Local Government Financial System. This software system also included a very sophisticated payroll system that was being paid for annually but was not in use until that time. A year or so ago I read a letter written by then-Finance Director, Todd Torvinen, that stated the City's union payroll and benefit structure in Duluth is as complex as any system in the US. The payroll software system was designed around multiple tables for all pay, deduction and leave categories. In his correspondence, Mr. Torvinen used an example of a 3D Excel spreadsheet or 3D chess game, only five layers thick with each layer needing to be lined up perfectly with the next. Each union contract would be a different spreadsheet or chess game and would take large amounts of time and energy to change in addition to normal bi-weekly payroll duties in an environment of ever-decreasing resources.

I was later told by then-City Auditor Les Bass that once this software was installed and in place for a year, the Finance Director felt it necessary to have an extensive audit of the payroll system done by the State Auditor's office. It is my understanding that audit was completed and did not detect any issues related to deferred compensation.

11. In addition to that special audit, each year the Office of State Auditor does a complete payroll audit of the City. The State Auditor reviews all legal and accounting issues including statutes and laws at the federal, state and local level. They would randomly select at least 25 payroll checks identifying the check number, and the City would have to provide supporting documentation for each check including the W-4 form, time cards, and authorization for any deductions to support each check number. I know the paychecks provided to the State Auditor each year included the deferred compensation salary on the paycheck, as well as the

deferred compensation deductions. The State Auditor was well aware of the City of Duluth deferred compensation plan.

12. To the best of my knowledge, I know that deferred compensation was always included as compensation on the employee pay stubs, and also shown as a deduction. I believe the deferred compensation amounts are subject to social security withholding, but not to any income tax withholding.

13. I know the State Auditor questioned in 2001 or 2002 in their draft working papers for their Management and Compliance Report whether the City's deferred compensation program was in compliance with MN statutes. I do recall that the draft working papers prepared by the State Auditor, specifically Greg Mutchler, Wayne Parson and Nancy Klassen, questioned that the deferred compensation plan amount paid to employees exceeded \$2000. Then-City Auditor, Les Bass and I argued the City's payments could not be considered as deferred compensation, since the same statute required an employee match, and the City's union contracts did not require any match. Les Bass made clear to them that under the City of Duluth deferred compensation plan all amounts paid by the City were treated as salary and were shown as salary on the paystubs. I believe the State Auditors further consulted with the City Attorney's Office and must have been fully satisfied, because they removed any finding related to the deferred compensation plan in their final Management and Compliance report for that year. I do not recall any other audit findings related to the City's handling of their deferred compensation plan.

FURTHER YOUR AFFIANT SAYS NOT.

Genevieve A. Stark

Genevieve A. Stark

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

Anthony M. Bonacum
Notary Public

