

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 PAM WUTZ

OAH DOCKET NO. 4-3600-2080902

Allen Johnson, et al., Petitioners

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

Pam Wutz, being first duly sworn, on oath deposes and says:

1. I am a retired firefighter of the City of Duluth and make this Affidavit in support of the Petitioners' Motion for Summary Judgment.

2. I was employed by the City of Duluth between June of 1987 as a firefighter and fire equipment operator until my retirement in July 2007.

3. At the time I retired in July 2007, that apparently was the date when the City of Duluth changed the practice of including deferred compensation as part of gross salary. The City of Duluth never advised me of this change, and never advised me that there may be audit and adjustment of my salary reported to PERA to calculate my projected annuity for retirement purposes. The salary numbers that the City of Duluth sent to PERA to determine my retirement annuity were based upon the past practice of including deferred compensation and salary, but at the time apparently the City had concluded that those numbers needed to be changed. They never advised PERA or me of this change. The retirement projections I received were at the higher numbers.

4. I made a decision to retire early. I had encountered an incident with a co-employee

in 1990 that was a violation of my rights, and as a result of the incident the other employee ultimately was no longer employed. I determined when that happened that I would attempt to retire at my earliest opportunity.

5. In 2007 I determined that I was first eligible for retirement on the basis of age. In order to do so, I would take a significant penalty, but I carefully reviewed the numbers and determined that I could do so.

6. I also waited six months after retirement to begin collecting my pension in 2008 so that I would have a higher annuity.

7. In December of 2008 or early January of 2009, when it was first publicized that the City of Duluth was planning to change the salary numbers reported to PERA, I determined that I would have to go back to work. I could not afford to be retired if my annuity was reduced. If my PERA retirement annuity was reduced \$158.00 per month, as I was notified by PERA in March of 2009, I would not be able to continue to remain retired.

8. I went to the City of Duluth Human Resources office on January 13, 2009, and spoke with Human Resources Director Kim Hall. I asked her numerous questions about the PERA calculations and the City's reported salary numbers to PERA. I made a request to return to work based upon my reduced retirement income. I followed up with an e-mail on January 23, 2009. I followed that up with a phone call to Kim Hall on January 27, 2009. At that time Kim Hall refused my request to return to work to the City of Duluth. Copies of my notes of that meeting, my e-mail, and the telephone call are attached as Exhibit 1.

9. PERA provided me with a chart of amounts I received under the firefighters contract, which is attached as Exhibit 2. The amounts listed for me as provided by the City of Duluth are different than other firefighters under the same contract. The City's numbers are inconsistent and

unreliable.

10. To my knowledge, throughout my employment the deferred compensation payment was always included as income as part of my total compensation on my paycheck. It was also included as a deduction on the deduction side.

11. I knew throughout my employment that I could withdraw the deferred compensation payments subject to penalty and tax, and I could also request to obtain a loan from the deferred compensation plan.

12. PERA gave me a projected retirement annuity prior to my retirement, and then after my actual retirement PERA later provided me with an audited final annuity amount. I believe PERA should be required to maintain the amount of annuity they promised me after they specifically audited my account, since I made the decision to retire early taking a significant penalty, and I delayed the commencement of my pension based on the specific audited amount, as well as the City's denial of my return to work once I determined that the retirement annuity was insufficient for me to live on.

13. I have been hurt financially by this reduction in my pension. Even though I have been retired three years, I recently applied to return to work at the Duluth Fire Department because of the financial stress I am experiencing due to this reduction in my pension.

FURTHER YOUR AFFIANT SAYS NOT.

Pamela Wutz
Pam Wutz

Subscribed and sworn to before me this
9th day of February, 2010.

Jeri L. Nelson
Notary Public



Kim Hall 01/13/2009

I am looking to get a copy of my records as they were used to recalculate my numbers that were recently sent to PERA. (AUDITOR OFFICE DID RECALCULATION BY TEAM)
(NOT AVAILABLE TO CONFUSE PERA OR ANYONE AT THIS TIME NOT)

Were all records located?
(ALL WERE LOCATED BACK TO 97) WILL VERIFY

How often does the City audit their books and what do they look for in these audits?
(DONE IN AUDITORS)

Does the State audit the city and are those audits public information?
(YES) ASUMING PUBLIC INFOEMATIO)

How Often?
(UNKNOWN)

Does PERA consult with the City on the accuracy of information that is sent?
(NO INTERPRETATION ISSUE ~~YES~~ MIGHT BE INTERNAL PERA DULUTH ?)

The mistake was corrected on payroll checks starting in July of 07, when was it actually discovered or known about? (CANT ANSWER THAT) * INVESTIGATION

Who discovered the mistake?
(I DONT KNOW) * INVESTIGATION

What is/was their Title or relationship with the city?

I keep hearing about an investigation, who did the investigation?
(KIM HALL)

Was there an outside agency involved in the investigation? (IE: DPD or Attorney General etc.)
(DATA PRIVACY CAN NOT ANSWER) * INVESTIGATION

Questions

From: Pamela Wutz (gnesen@hotmail.com)
Sent: Fri 1/23/09 9:29 AM
To: khall@duluthmn.gov

2:40

AS OF JAN 27TH

Ms Hall,

I am looking to find out where you are on the questions that we talked about on Jan 13th. I have two new questions and I will put that at the top of the list. The questions in red are the ones I am still looking for answers to. Please feel free to review and correct any of the other answers.

I have heard that the investigation has been dropped or closed so I have not included questions about the investigation though some of my other questions should be able to be answered now. Questions that I would still like answers to are in red.

DEFERRED COMP \$ 75
PL PAYOFF -->

1. **New question:** I am looking for the information of what changes were made to Duluth Fire Department payroll. (IE: deferred comp, PL's, vacations etc. whatever was changed.)
2. **New question:** I have red a letter as to the reasoning behind some of the alleged errors. Was anyone consulted as to why this was done the way it was done with the city at that time? **LAW - YES JOHN HALL**
3. I am looking to get a copy of my records as they were used to recalculate my numbers that were recently sent to PERA. **As soon as possible.**
4. Were all records located? Your answer was yes believed to 1997, you were going to confirm date.
5. How often does the City audit their books and what do they look for in these audits? Done in the Auditors Office. **PAYROLL RECONCILE YEABLY AUDITED ANNUAL**
6. Does the State Audit the city and are those audits public information? Yes and assume they are public.
7. How often? Unknown
8. Does PERA consult with the City on the accuracy of information that is sent? Might be done internally by PERA, unknown if it is done with the city. Not about issues of interpretation.
9. The mistake was corrected on payroll checks starting in July of 07, when was it actually discovered or known about? (Investigation)
10. Who discovered the alleged mistake? (Investigation)
11. What is/was their Title or relationship with the City?
12. When did the **Current** and **Past** administrations: Mayor, City Administrator and Dept. Heads become informed of the error and situation? (Investigation)
13. I retired in July of 2007 **BASED** on the numbers that the **CITY** provided PERA. These numbers were sent **KNOWING** that they were wrong! I was not informed of any PERA issues, errors or questions at that time. As I would not have retired.
14. Can I return to work? **NO**
APPLY GO THROUGH PROCESS
NO PREFERENCE

Thank you for your time and prompt reply,

Pamela Wutz

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION (PERA)
 EMPLOYER-PAID AMOUNTS THAT DULUTH CITY REPORTED
 AS SALARY BETWEEN JANUARY 1, 1997 AND OCTOBER 23, 2008**

Name of PERA Member PAMELA WUTZ	SID 541667
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Information provided by the City of Duluth indicates that the following amounts have been reported to PERA as salary. PERA staff has determined that these amounts are not salary under the laws governing the retirement plan. This breakdown is provided for informational purposes. PERA staff is not in a position to evaluate the accuracy of the dollar amounts listed; therefore, any questions about these dollar amounts must be directed to the City of Duluth at either 1-888-635-2537 or locally at 218-730-5333. If any of these dollar amounts are incorrect, the City must immediately report the necessary correction to PERA.

YEAR	EMPLOYER-PAID CONTRIBUTIONS TOWARD DEFERRED COMP. PLAN, FLEXIBLE SPENDING ACCOUNT, AND/OR INSURANCE PREMIUMS	TOOL ALLOWANCE	UNUSED PERSONAL LEAVE	ANNUAL TOTAL
1997	\$ 600.08	\$.00		\$ 600.08
1998	\$1,500.16	\$.00		\$1,500.16
1999	\$1,500.20	\$.00		\$1,500.20
2000	\$1,799.98	\$.00		\$1,799.98
2001	\$2,100.02	\$.00		\$2,100.02
2002	\$2,400.06	\$.00		\$2,400.06
2003	\$2,400.06	\$.00		\$2,400.06
2004	\$2,566.11	\$.00		\$2,566.11
2005	\$2,687.88	\$.00	\$1,227.36	\$3,915.24
2006	\$2,687.88	\$.00	\$1,276.18	\$3,964.06
2007	\$1,883.07	\$.00	? \$ 107.43	\$1,990.50
2008	\$.00	\$.00	\$.00	\$.00
TOTAL ALL YRS	\$22,125.50	\$.00	\$2,610.97	\$24,736.47