1995 WL 937283 (Minn.Off.Admin.Hrgs.)

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Office of Administrative Hearings
State of Minnesota

*1 IN THE MATTER OF THE RETIREMENT BENEFITS OF WILLIAM G. ALLEGREZZA, SR

Public Employees Retirement Association

1-3600-9270-5

March 1, 1995

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

The above-entitled matter came on for hearing before the Honorable George A. Beck, Administrative Law Judge, on February 14, 1995, at 8:30 a.m. in Room 406 of the Government Services Center, 320 West Second Street, Duluth, Minnesota. The record closed on the date of the hearing.

Jon K. Murphy, Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155-4199, appeared representing the staff of the Public Employees Retirement Association (PERA). Joseph J. Roby, Jr., Esq., of the firm of Johnson, Killen, Thibodeau & Seiler, P.A., 811 Norwest Center, 230 West Superior Street, Duluth, Minnesota 55802, appeared representing William G. Allegrezza, Sr. (the Respondent).

This report is a recommendation, not a final decision. The Board of Trustees of PERA will make the final decision in this matter after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions of Law and Recommendation contained herein. This hearing is a part of the review procedure afforded under Minn. Stat. § 353.03, subd. 3(c). The review procedure may afford Respondent an opportunity to present views at any review proceeding conducted, but is not a contested case under Ch. 14 of Minnesota Statutes. A party should contact Laurie Fiori Hacking, Executive Director, PERA, Suite 200, 514 St. Peter Street, St. Paul, Minnesota 55102, to ascertain the procedure for consideration of this matter by the Board of Trustees.

STATEMENT OF THE ISSUES

The issue to be determined in this proceeding is the appropriate retirement benefit to be paid to the Respondent and whether PERA is estopped from reducing the benefit amount it is presently paying to Respondent.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent was a police officer for the city of Hibbing for 23 1/2 years until his voluntary retirement on December 31, 1993. The Respondent's date of birth is September 27, 1938. He was over 55 years of age at the time he retired. He could have continued to be employed as a police officer in Hibbing had he not elected to retire.

2. On December 31, 1989, the Hibbing Police Relief Association, of which the Respondent was a member, consolidated with PERA. Under the consolidation, PERA assumed administration of the fund and the assets of the local relief association were transferred to PERA. The fund is managed by the State Board of Investment in a separate fund.

3. Upon consolidation, members of the local relief association could either remain with the benefit provisions of the relief association or they could opt for the benefit provisions under PERA. Members had three opportunities to opt to join PERA. They could join PERA within six months of consolidation, between ages 49 1/2 and 50, and at the time of application for retirement benefits.

***2** 4. At the time of consolidation, the PERA staff conducted at least one meeting in Hibbing to explain the differences in benefit provisions between the two funds. The Police Relief Association benefit plan provided for eligibility after 20 years of service and 55 years of age. The amount of the benefit for the first 20 years of service was 53 percent of average annual earnings during the last six months prior to retirement. For each year of service in excess of 20 years, an additional annual benefit of $120.00 was added with the maximum additional annual amount being $600.00. Ex. D. Under the PERA benefit plan, a member would receive 2 1/2 percent of average salary over his or her highest five successive years of service for each of the years of service in which contributions were made by the member. Ex. C.

5. Under the Hibbing Police Relief Association Plan, a spouse is entitled to 30 percent of a deceased member's average annual earnings during the last six months of employment whether the decedent was employed or retired. Ex. D. Under the

PERA plan, a surviving spouse has two options. The spouse may elect either a monthly survivor benefit equal to 50 percent of the average salary over the full six months immediately preceding death or a 100 percent joint and survivor annuity payable to the spouse if the member dies at age 50 or older.

6. All of the 20 present retirees from the Hibbing police force have elected to receive benefits under the PERA plan except for one person because it provides more money over the retiree's lifetime. Most retirees selected the PERA benefit because after 22 years of service the retiree would receive more than 53 percent of your average monthly salary. The Respondent elected to receive benefits under the local plan because it provides a survivor benefit after retirement of 30 percent of salary, where the PERA plan does not. Because the Respondent's wife is 12 years younger than he is, he felt this was appropriate.

7. On June 4, 1992, PERA sent a letter to the Respondent following his request for an estimate of benefits. The letter indicated that if he retired on June 30, 1992, the amount payable under the Hibbing Police Relief Association Plan would be $1,707.35 per month. The letter also indicated that under the PERA plan, the normal annuity would be $1,380.45 per month. Ex. H.

8. In response to another request from the Respondent, PERA sent a letter to him dated February 22, 1993, advising the Respondent that if he retired on December 31, 1993, his pension benefit in the Hibbing Relief Association Plan would amount to approximately $1,899.70 per month. The letter also indicated that under the PERA plan, the normal annuity was estimated to be $1,642.84 per month. The letter indicated that "All estimates are subject to verification." Ex. 1.

9. On July 8, 1993, PERA sent another letter to the Respondent advising him that under the local relief association plan he would receive $1,885.49 per month if he retired on December 31, 1993. An application form was enclosed with the letter. Ex. 3.

*3 10. On August 20, 1993, the Respondent and his wife, Patricia J. Allegrezza, submitted an application for a retirement annuity to PERA with the last date of work indicated as December 31, 1993. Ex. E.

11. Generally, applicants are advised that estimates are subject to verification because the salary during the final six months must be verified and the benefit then precisely calculated. The Respondent relied on the estimate supplied to him by PERA in deciding whether he had the ability to retire. He believed he could live on the amount of the estimate because he had medical coverage and his house was paid for. The Respondent did retire on December 31, 1993.

12. PERA sent the Respondent a letter dated January 10, 1994, advising him that he would be receiving a benefit of $1,885.49 effective January 1, 1994. The letter advised the Respondent that this amount was an estimate only and would be adjusted when all necessary information from his employer was received, the account audited and final calculations made. Ex. 5. PERA then paid this benefit amount to Respondent each month.

13. On August 5, 1994, PERA sent a letter to Respondent which advised him that an error was made in the calculation of his pension. It stated that his monthly payment under the local plan should be $1,618.82 per month, or $266.67 less per month than he was being paid. The letter stated that "The error was made, as we incorrectly were paying you $120.00 per month for each year in excess of 20 years; whereas, the increase for each year in excess of 20 years should be $120.00 per year, or

$10.00 per month." The letter also advised the Respondent that he could still elect the benefit package under the PERA plan which would provide him with a normal annuity of $1,640.08 per month. Ex. 6.

14. If the Respondent had been advised of the correct benefit amount prior to retiring, he states he would have waited two to three years to retire and selected the PERA plan which would have resulted in his benefit being approximately the same as the early 1994 PERA estimate.

15. The Respondent's wife no longer works, but did begin receiving workers' compensation disability benefits in October of 1994, in the amount of $320.00 per month. She has problems with her back and hip and heart and was not working during 1993. She has a claim pending for social security disability benefits.

16. The Hibbing Chief of Police has advised the Respondent that he would not be hired back at this point in time.

17. The Respondent and his wife each have three children from prior marriages and four grandchildren. Should Respondent's pension benefit be reduced, they would have little discretionary income after paying for necessities and might have to forego visiting their children in Arizona.

18. The Respondent's average monthly earnings for his last six months of employment was $2,997.77. Fifty-three percent of this amount is $1,588.82. Since the Respondent worked three years in excess of 20 years, he was entitled to an additional annual benefit of $360.00, or $30.00 per month, which results in a monthly benefit amount of $1,618.82. The PERA staff made an error because it added $360.00 to $1,588.82 rather than $30.00. Ex. G.

*4 19. Under the correctly calculated local plan, the Respondent's monthly benefit amount is $1,618.82 with a survivor benefit of $899.33 per month. Had the Respondent selected the PERA option, he would have received $1,738.63 per month under a normal annuity or $1,619.36 per month under a 25 percent survivor annuity calculated without the income level option. Ex. F. The amount payable to a survivor under the 25 percent option would be $404.84 per month.

20. The miscalculation by the PERA staff was calculated on three separate occasions prior to the letters of June 4, 1992, February 22, 1993, and July 8, 1993. On each occasion, the calculation by a staff member was reviewed by another PERA staff member, but the error was not caught until August of 1993.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The PERA Board of Trustees and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 353.03, subd. 3, 353A.10, subd. 7, and 14.55.

2. That PERA has the burden of proof to show by a preponderance of the evidence that the Respondent's monthly retirement benefit should be reduced to $1,618.82.

3. That the Respondent's monthly retirement benefit amount properly calculated under the terms of the Hibbing Police Relief Association formula amounts to $1,618.82 per month with a survivor benefit of $899.33 per month.

4. That the PERA staff is estopped from reducing the Respondent's monthly benefit of $1,885.49 for the reasons set out in the Memorandum which follows.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the PERA Board of Trustees DENY the proposed action of the PERA staff to reduce the monthly pension benefit of William G. Allegrezza, Sr.

Dated this 1st day of March, 1995.

George A. Beck
Administrative Law Judge

MEMORANDUM

The PERA staff made an error in calculating the estimated benefit for the Respondent because it allowed him $120.00 per month for every year of service over 20 years instead of $120.00 per year for every year of service over 20 years. The mistake was conveyed to the Respondent in three letters, the last two having been sent just prior to Respondent's retirement. The mistaken estimates were apparently checked by more than one staff person. Generally, benefit applicants are advised that the estimates are merely estimates and are subject to correction. However, the correction normally results from verification of the applicant's exact income in the last six months rather than from correction of a staff error in an estimate. The usual correction is a matter of a few dollars rather than the $267.00 per month or $3,200.00 per year which is proposed as a reduction as in this case.

The Minnesota Supreme Court has indicated that generally it is realistic, fair and practical to analyze the interests of an employee in his pension benefit by the doctrine of promissory estoppel. The court cited the restatement of contracts in defining the doctrine as follows:

> *5 A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

Christensen v. Minneapolis Municipal Employees Retirement Board, 331 N.W.2d 740, 749 (Minn. 1983). The Christensen court observed the promissory estoppel, like equitable estoppel, may be applied against the state to the extent that justice requires. In examining Christensen's right to a pension benefit, the court observed that:

> In applying promissory estoppel, two factors must be kept in mind: (1) What had been promised by the state? and (2) To what degree and what aspects of the promise has there been reasonable reliance on the part of the employee? Not every promise and all its implications is necessarily enforceable under promissory estoppel. Estoppel applies only to avoid injustice.

331 N.W.2d at 749.

In the case of Brown vs. Minnesota Department of Public Welfare, the Supreme Court set out the requirements for equitable estoppel of government outside of the pension benefit area. The requirements are more detailed than Christensen. The party asserting estoppel must show fault or wrongful conduct on the part of the agency, reasonable reliance on the representations made, harm to the party if estoppel is not allowed, and that the equities of the case outweigh the public interest. Brown vs. Minnesota Department of Public Welfare, 368 N.W.2d 906, 910 (Minn. 1985).

In this case, the Respondent has proved each element of promissory or equitable estoppel. The PERA staff admits that it was at fault in miscalculating the pension benefit it announced to the Respondent by some $267.00 per month, or $3,200.00 per year. As one of the witnesses for the PERA staff testified, calculation of the formula is not particularly difficult. The mistake was apparently repeated three times even though it was checked by a second staff person. The PERA staff acknowledged that it realizes that applicants for pension benefits rely on these estimates in planning their retirement. They knew that Mr. Allegrezza intended to retire on December 31, 1993. This conduct is sufficient to establish fault or wrongful conduct on the part of the agency. Although the staff letters did indicate that estimates were subject to verification, this could reasonably be interpreted to mean that a minor adjustment of a few dollars might be made at a later time.

The Respondent reasonably relied on the PERA staff to calculate the benefit amount. Mr. Allegrezza testified that he believed the PERA staff to have expertise in making such estimates and he believed he could rely upon them for an accurate calculation. The Respondent points out that he was a police officer rather than an accountant. Most retirees would not attempt to double check such a calculation before proceeding to make a decision about retirement based upon it. It is reasonable to assume that an agency such as PERA would carefully and accurately make such estimates.

*6 Harm will result to the Respondent if his benefit is reduced. Based upon the erroneous estimate by the staff, the Respondent quit a job paying him over $36,000.00 per year. He was not required to retire and had he worked for another three years, he would have had the benefit of the approximate amount estimated by PERA early in 1994. Should his benefit be reduced by $3,200.00 per year, the Respondent, in his late fifties, will have little discretionary income and poor prospects of any employment. The Police Chief has indicated to him that he could not be rehired. Part of the harm which will result involves the fact that the Respondent cannot regain the employment that he gave up based upon the representations of the PERA staff.

There is, of course, a public interest in the payment of accurate benefit amounts so that the retirement system is operated on a basis which is fair to all retirees. However, equities in this case favor the Respondent for two reasons. First, the Respondent acted properly in making several inquiries to try to determine what his benefit amount would be so that he could make an informed decision about whether or not to retire. It was reasonable to rely upon the estimates given. The equities also favor the Respondent because what has happened cannot be undone at this point. The Respondent has lost his job and cannot regain it. There is no way to put the Respondent back to where he would have been had the mistake not been made. The staff argued that an applicant is responsible for calculating the retirement benefit himself or herself rather than just relying upon the agency. However, given the sophistication of the Respondent and the apparent expertise of PERA, it was reasonable to assume that the staff was better qualified and capable of making this calculation. It would be unfair to second guess whether or not the Respondent would have continued to work at age 55 if he had been presented with an accurate benefit amount. His testimony is that he definitely would have continued to work. Any doubt on this point should properly be resolved against the agency since its mistake created the problem.

G.A.B.

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