



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director EB

RE: S.F. 3264 (Metzen); H.F. 3616 (Atkins): PERA-P&F; Authorizing Service Credit Purchase for Eveleth Police Service Prior to Merger

DATE: March 23, 2006

Summary of S.F. 3264 (Metzen); H.F. 3616 (Atkins)

S.F. 3264 (Metzen); H.F. 3616 (Atkins) would authorize Mr. Tom Nelson to receive service credit in the Public Employees Police and Fire Retirement Plan (PERA-P&F) for police service provided to the City of Eveleth for a 14 month period prior to the merger of the Eveleth Police Relief Association into PERA-P&F in 1978. To obtain this service credit, the individual would be required to make a full actuarial value service credit payment to PERA-P&F, although the city may agree, at its option, to pay a considerable portion of the cost. The purchase is not authorized if the individual took a refund of employee contributions under Laws 1977, Chapter 61, failed to take action under that chapter to obtain service credit in a timely fashion, and if the service credit to be purchased was for a period of time that was properly excluded from coverage under law or city ordinance.

Background Information on the Public Employees Police and Fire Plan (PERA-P&F)

In 1959, to assist police officers and firefighters in local government, the Legislature established the Public Employees Police and Fire Retirement Plan (PERA-P&F). Initially, the coverage applied to any public employee in law enforcement or fire suppression but, as the licensing of police officers began in the 1970s, the membership qualifications were refined. Coverage is governed by Minnesota Statutes, Section 353.64, Subdivisions 1 and 2. Currently, PERA-P&F membership requires that the employees meet the following requirements to qualify as a police officer:

1. Police Employment. Employment must be as a police officer by a municipal police department of a county sheriff's office.
2. Primary Law Enforcement Function. Primary employment function must be to enforce the law.
3. POST Board Licensure. Peace officers must be licensed by the Peace Officers Standards and Training Board (POST Board).
4. Property and Safety Protection. Peace officers must be engaged in the hazards of protecting the property and safety of others.
5. Arrest with a Warrant. Peace officers must be empowered to arrest with a warrant.

For firefighters, the PERA-P&F membership provision requires that the municipal employee must either be a full-time firefighter or a person in charge of a designated fire company and be engaged in the hazards of firefighting.

For part-time employees engaged in police work or firefighting, PERA-P&F membership is available if the employing municipality declares by governing body resolution that the part-time employee meets the statutory police officer or firefighter requirements, except that the individual does not perform the applicable duties full-time. For full-time police officers or firefighters who are periodically assigned other duties, the other duties must be in the same department and the other duties must be secondary services, with the police or firefighting services being the primary focus of the person's employment.

Since 1959, all newly employed county deputy sheriffs have PERA-P&F pension coverage and, since 1980, all newly employed municipal police officers and all newly employed municipal paid firefighters have pension coverage by PERA-P&F.

As a public safety employer pension plan, PERA-P&F pays larger retirement annuities, disability benefits, and survivor benefits than a general employee retirement plan and has an earlier normal retirement age for the retirement annuity. Because of these benefit plan differences, the plan typically has a greater actuarial cost and greater member and employer contributions than a general employee retirement plan. As law

enforcement officers, members of PERA-P&F are not covered by Social Security under both state and federal law for their state law enforcement employment.

The policy reasons for having a more lucrative benefit program for public safety employee retirement plans are that:

- Public safety employment (police officer or firefighter service) is particularly hazardous;
- It requires the maintenance of a particularly vigorous and robust workforce to meet the strenuous requirements of the employment position; and
- The normally expected working career of a public safety employee will be significantly curtailed as a consequence of the hazards and strenuous requirements of that type of employment when compared to a general public employee.

Public employee pension plans are intended to assist the governmental personnel system by encouraging the recruitment of qualified and motivated new employees, the retention of able and valued existing employees, and the orderly and predictable out-transitioning of employees at the expected end or normal conclusion of their working career. For public safety employees, public safety employee retirement plans provide more lucrative benefits to assist in the recruitment and retention of new and existing personnel, but most clearly emphasize the out-transitioning function.

Background Information on the Eveleth Police and Fire Relief Associations

The Eveleth Salaried Firefighters Relief Association and the Eveleth Police Relief Association were created in 1935 to provide pension coverage to Eveleth salaried firefighters and to Eveleth police officers, respectively. In 1977 (Laws 1977, Chapter 61), the active members of each relief association had their pension coverage transferred to PERA-P&F, with the pension coverage for any existing benefit recipients of the two relief associations transferred to a joint Eveleth retired police and firefighters retirement trust fund, which is required to be managed by the City of Eveleth.

The coverage transfer for active members was prompted by active member dissatisfaction over the modest benefit coverage provided by the two local relief associations. At the time of the 1977 coverage transfer, the two relief associations provided very modest benefits compared to other local relief associations.

Background Information on the Merger of Eveleth Relief Association Active Members into PERA-P&F (Laws 1977, Chapter 61)

Laws 1977, Chapter 61, merged the Eveleth Salaried Firefighters Relief Association and the Eveleth Police Relief Association active members into PERA-P&F. This merger or consolidation predated by approximately ten years the general law provisions enacted in 1987 to allow local paid fire and relief associations to consolidate with PERA-P&F, and procedures in the merger of the Eveleth relief associations and PERA-P&F differed considerably from the general law procedures later enacted.

Under Laws 1977, Chapter 61, Section 2, the two Eveleth relief associations were dissolved. Section 5 stated that retired members of the two Eveleth relief associations were to receive continuing benefits paid by a newly established Eveleth Police and Fire Trust Fund, financed by a transfer of \$123,600 from these relief associations to the trust fund. The trust fund was to be managed by the city.

Regarding active members of the two relief associations at the time of the merger, Section 3 of Laws 1977, Chapter 61, indicates that these individuals would have PERA-P&F coverage for any prospective service, and these individuals could receive credit in PERA-P&F for any past service that had been covered by one of the local Eveleth relief associations if PERA-P&F received a lump sum payment equal to the liability that would be created in PERA-P&F due to that past service, multiplied by the PERA-P&F funding ratio. At the time of the merger, PERA-P&F was about 80 percent funded (its assets were about 80 percent of its liabilities). Therefore, when PERA-P&F received a payment for past Eveleth police or fire service which equaled 80 percent of the additional liability created in PERA-P&F due to that service credit, this would neither harm nor help PERA-P&F's funding ratio. Section 3 stated that "The amount required to make the purchase of prior service credit.....shall be made by the active employee and the city of Eveleth in a lump sum prior to July 1, 1979, and shall be apportioned between the active employee and the city of Eveleth as the active employee and the city shall agree."

A Commission memo from the early 1980s indicates that some tension developed between the city and employees that had been covered by the two local relief associations. The memo suggests that after some negotiation the city agreed that it would pay 70 percent of the purchase price of the prior service credit.

According to that memo, each employee who wanted past service credit was required by the city to sign an agreement for the purchase of 70 percent of the past service, “as agreed upon by the Mayor and City Council.” If the individual wanted more than 70 percent service credit, he or she had to pay the full cost of the additional service credit without any city subsidy. Various individuals chose not to purchase any service credit beyond that portion which the city agreed to cover, and as a result they only received credit for 70 percent of any past service.

The former members of the relief associations also had another option. Instead of purchasing credit in PERA-P&F for the past Eveleth service, the employee could decide to receive a refund. Under Section 4, an individual wanting a refund of the employee’s accumulated contributions had to file by November 1, 1978. By taking a refund, the individual was forfeiting all further rights in the local plan or PERA-P&F relating to service credit for the years that had been covered by the relief association.

Background Information on Service Credit Purchase Procedures

Prior service credit purchases are opportunities for pension plan members to obtain allowable service credit and, if applicable, covered salary credit in a defined benefit pension plan for a period that was not otherwise credited through normal pension plan membership. A process is followed in obtaining credit for a prior service credit purchase period, usually involving the payment of some amount to defray all or a portion of the actuarial cost attributable to the purchase and the provision of documentation relating to the service period.

Pension plan members seek prior service credit purchases for a variety of reasons, including a desire to gain defined benefit pension plan portability, a desire to obtain a larger pension benefit, or a desire to qualify for a special early retirement provision.

Principle II.C.10 of the Commission’s Principles of Pension Policy covers purchases of service credit and has the following elements:

1. Individual Review. The Commission considers each service credit purchase request separately, whether the request is proposed legislation for a single person or is proposed legislation relating to a group of similarly situated individuals.
2. Public Employment. The period requested for purchase should be a period of public employment or service that is substantially akin to public employment. This is consistent with the notion that public pension plans should be providing coverage for public employees for periods of time when they were serving the public through public employment or through quasi-public employment. Coverage for a period when an individual provided private sector employment is not consistent with this statement.
3. Minnesota Connection. The employment period to be purchased should have a significant Minnesota connection. This is consistent with the notion that Minnesota taxpayers support these public pension plans and bear the investment risk in amassing plan assets. Given the support that taxpayers provide, it is appropriate that the service have a Minnesota connection, reflecting services provided to the people in the state.
4. Presumption of Active Member Status at the Time of Purchase. The principle states that contributions should be made by the member or in combination by the member and by the employer. It is presumed that the individual covered by the service purchase request is an active employee, because retirees generally are not considered to be “members” of a plan and these individuals no longer have a public employer. If there are unresolved issues of whether an individual should have service credit for a given period, those issues should be resolved before the individual terminates from public service, and certainly before the individual retires. The act of retiring undermines a claim that there is sufficient need for the Legislature to consider the coverage issue. If there were considerable hardship caused by the lack of service credit, presumably the individual would not have retired. Entering retirement suggests that the associated pension benefit is adequate without any further increase in the benefit level due to a purchase. Only on rare occasions has the Commission authorized service credit purchases by retirees.
5. Presumption of Purchase in a Defined Benefit Plan. The prior service credit purchase contributions in total should match the associated actuarial liability. The specific procedures in Minnesota Statutes and law for computing service credit purchase amounts, Minnesota Statutes, Section 356.551, presume that the purchase is in a defined benefit plan with a benefit based on the individual’s high-five average salary. There is no process in law specifying a procedure for computing a “full actuarial value” purchase in a defined contribution plan, or even defining what that concept means in the context of a service purchase or service credit purchase in a defined contribution plan.

6. Full Actuarial Value Purchase. Within the context of a defined benefit plan, the pension fund should receive a payment from the employee, or from the employee and employer in combination, which equals the additional liability placed on the fund due to the purchase. This amount is referred to as the full actuarial value of the service credit purchase. The procedure used to compute this full actuarial value should be a methodology that accurately estimates the proper amounts. When clear evidence indicates that the employing unit committed an error that caused the individual to not receive pension plan coverage, the Commission has permitted the employee to make the employee contribution for the relevant time period, plus 8.5 percent interest, and the employer has been mandated to cover the remainder of the computed full actuarial value payment. If the employer does not directly make the payment following notification that the employee has made his or her portion of the full payment, the Commission has required that a sufficient amount to cover the remainder of the full actuarial value be deducted from any state aids that would otherwise be transmitted to the employer. The Commission has purposely departed from the full actuarial value requirement when there is evidence that the pension plan administration created the lack of service credit coverage due to pension plan administration error. In situations of pension plan error, the employee may be required to pay the contributions that would have been required for the relevant time period, plus 8.5 percent interest to adjust for the time value of money, leaving any difference between that payment and the full actuarial value to be absorbed by the pension fund.
7. No Violation of Equity Considerations. Purchases of service credit should not violate equity considerations. Equity is a resort to general principles of fairness and justice whenever the existing law is inadequate. In general, any issue or factor associated with a service credit purchase request which can be viewed as lacking fairness or being less than impartial can be a basis for rejecting a request. Requests by existing retirees to purchase additional service credit and have their annuities recomputed could be viewed as being a situation that violated equity considerations. New requests on behalf of individuals who were covered by purchase of service credit authorizations passed by earlier Legislatures but who are dissatisfied with the purchase of service credit terms that were provided can be considered as violating equity considerations. Individuals requesting service credit purchases for periods specifically excluded from plan coverage under the applicable law could be considered as violating equity considerations, among other policy concerns relating to those considerations. Requests to purchase service credit for periods covered by another pension plan may raise equity concerns. Generally, a service credit purchase is intended to fill a gap in coverage, not to create double coverage. Long delays in seeking remedial action can also be considered a violation of equity considerations. Individuals tend to wait until late in their career before seeking any remedial action for lost service credit. Prompt action, closer to the time period when the service credit problem occurred, would often result in a solution at a lower cost and would avoid efforts by the Commission to try to determine the factual situation many years, or even decades, after the event occurred.

Discussion and Analysis

S.F. 3264 (Metzen); H.F. 3616 (Atkins) would authorize Mr. Tom Nelson to receive service credit in PERA-P&F for police service provided to the City of Eveleth for a 14-month period prior to the merger of the Eveleth Police Relief Association into PERA-P&F in 1978. To obtain this service credit, the individual would be required to make a full actuarial value service credit payment to PERA-P&F, although the city may agree, at its option, to pay a considerable portion of the cost. The purchase is not authorized if the individual took a refund of employee contributions under Laws 1977, Chapter 61, failed to take action under that chapter to obtain service credit in a timely fashion, and if the service credit to be purchased was for a period of time that was properly excluded from coverage under law or city ordinance.

In early March, when Commission staff last researched this issue, we did not have the factual information needed for Commission consideration of this matter. Therefore, the drafting directs Public Employees Retirement Association's executive director to determine if the individual meets standards which the Commission usually applies when considering service credit purchase requests. Generally, the Commission does not allow a service credit purchase if the individual took actions which caused that service credit to be forfeited, or if the period the individual wishes to purchase was properly excluded from plan coverage by applicable law.

The individual seeks to obtain 14 months of service credit in PERA for service provided prior to the merger of the Eveleth relief associations into PERA-P&F in July, 1978. In a phone conversation in early March, PERA staff member Allen Eldridge indicated that PERA did not have records relating to pre-July 1, 1978, service by Eveleth police officers or firefighters. Therefore, PERA could not determine from its records the extent of police service Mr. Nelson may have provided before the merger and the extent to which that service should be covered by a plan. PERA will attempt to contact the City of Eveleth to better

understand the factual situation. An email from PERA's Executive Director, Ms. Vanek, indicates that Mr. Nelson has repeatedly emailed the City of Eveleth, but the city has not responded to him.

There are several possible reasons why Mr. Nelson lacks service credit in PERA-P&F for some or all of the police service provided to Eveleth prior to the merger:

1. One possibility is that Mr. Nelson was in the local relief association and signed an agreement with the city, as previously described, but lacks some service credit because of the city's agreement only covering 70 percent of the cost. That would result in an individual receiving service credit for only 70 percent of past service unless he chose to pay for the remainder by July 1, 1979.
2. A second related possibility is that Mr. Nelson was in the local relief association but declined to sign the agreement with the city. If he failed to sign an agreement, it is likely that the city made no payment on his behalf, and therefore, he would have no service credit in PERA-P&F relating to the pre-merger period.
3. A third possibility is that Mr. Nelson was in the local relief association and took a refund, as provided for in the merger law. If that occurred, he would have forfeited any further rights under local plan law or PERA-P&F law related to the pre-merger police service.
4. A fourth possibility is that Mr. Nelson has no service credit or only partial service credit for pre-merger police employment because some or all of that service was properly excluded from the local plan. He may have been in a training or probationary period. Minnesota Statutes 1978, Section 423.43, excludes from local relief association coverage any police officer while he or she is completing any probationary period, as required by laws or ordinances of the city.
5. Finally, Mr. Nelson may not have service credit for some or all pre-merger police service because the city erred by not placing him in the plan. If this is the case, then there is justification for legislative action. However, the long delay in seeking a legislative remedy would be a policy issue for the Commission to consider. The long delay makes it much harder to determine the factual situation.

Policy issues raised by S.F. 3264 (Metzen); H.F. 3616 (Atkins) are as follows:

1. Consistency with Commission Policy on Service Credit Purchases. The service credit purchase request is consistent with most Commission policies regarding service credit purchases, but not necessarily all. Presumably, the individual did provide police service to the City of Eveleth prior to termination of the local relief association plan and the merger into PERA-P&F, but as of this writing, it is unclear whether the individual was a member of that local plan, or whether he was not a member but should have been given then-existing law. The individual may have been an officer-in-training or in a probationary period for some or all of the period for which the individual now seeks to obtain service credit, or perhaps the individual lacked all qualifications necessary to be considered a police officer under law. Allowing an individual to purchase service credit for a period that was properly excluded from coverage by applicable law or local ordinance would be inconsistent with the Commission's policy statement.
2. Equity Concern. An additional equity issue is the long delay in seeking a remedy. The period in question occurred during the late 1970s. The individual is now about age 50, the earliest age at which an individual can retire from the PERA-P&F plan. The long delay in seeking a remedy weakens the justification for permitting a purchase and makes it more difficult to determine the factual situation. The local pension plan in which the individual claims he should have been covered was dissolved in 1978. The city may no longer have full documentation of the events surrounding Mr. Nelson's pension coverage or lack of coverage. It may be difficult now to determine how the city and relief association interpreted the provisions of that local plan.
3. Failure to Utilize Earlier Opportunity. A letter in the attachments, dated September 2, 1982, from PERA to Mr. Nelson, indicates that he did inquire about steps he could take to obtain service credit. He was told that he could receive the service credit he requested by paying omitted deductions. He apparently failed to do so, and whatever authority authorized this treatment has long expired. The Commission might choose to conclude that failure to pay for the service credit under that previous offer voids the justification for recommending this bill to pass.
4. Cost of the Purchase. S.F. 3264 (Metzen); H.F. 3616 (Atkins) is drafted to require that PERA receives the full actuarial value, as determined by the full actuarial value methodology provision in law found in Section 356.551. This is intended to hold PERA harmless. Assuming all the

demographic and economic assumptions used in the calculation prove correct over time, PERA should receive in payment the full discounted value of the additional annuity amount that will result from the purchase. However, this means that the purchase provides no net value to the employee unless some party provides a subsidy by covering part of the cost. According to PERA's estimates, the cost would be \$35,095. If the individual is not willing to cover that cost, it may not be worth the time of the Commission to consider this bill. The Commission may wish to hear from the City of Eveleth whether it is willing to cover part of the cost.

5. Harm; Cost Sharing Issue. The issue is whether the local Eveleth Police Relief Association and the City of Eveleth harmed the individual by failing to follow proper procedures and requirements of law. If information becomes available, the Commission may wish to consider whether the city failed to provide proper coverage; or if the individual was a relief association member but the city failed to offer to pay for 70 percent of the cost of purchasing service credit in PERA-P&F for the prior local police employment, as was offered to all or most active members of the relief association following the termination of that plan.

If the Commission were to conclude that the city caused harm, it would justify the consideration of an alternative to the bill draft, an alternative which mandates that the city pay for a portion of the service credit purchase cost. However, the Commission may wish to consider that the September 2, 1982 letter in the attachments suggests that Mr. Nelson failed to take advantage of an earlier opportunity to obtain this service credit, when the cost would have been much less than the current cost. The Commission might conclude that the city should not bear the financial cost of Mr. Nelson's delay.

6. Possible Similar Situations. The Commission may wish to consider that there may be other individuals in a similar circumstance who provided public safety service to the City of Eveleth but were not covered by either the Eveleth Fire Relief Association or the Eveleth Police Relief Association. Also, action on this proposal might cause some individuals who received prorated service credit in PERA-P&F in 1978, because the individual was at that time unwilling to cover the 30 percent of the cost that was not covered by the city, to seek special law authority to purchase the remaining portion of the service credit. The employee's right to make that additional payment and obtain full service credit ended on July 1, 1979.

Potential Amendments for Commission Consideration

Amendment S3264-1A represents the Commission's standard model for handling cases where the Commission concludes that the employer caused harm. The amendment assumes that the city caused harm, and therefore requires that the city pay any portion of the full actuarial value above employee contributions plus interest.

Amendment S3264-2A is an alternative the Commission may wish to consider if the Commission concludes that the city caused harm, but that the individual bears considerable responsibility for the current situation because of a failure in 1982 to take advantage of the opportunity that PERA offered to obtain this service credit at minimal cost. Amendment S3264-2A requires the city and the individual to each pay half of the full actuarial value. If the Commission desires to revise these percentages, the percentages could be amended via verbal amendment.

From: Mary.Vanek@state.mn.us
Sent: Friday, March 03, 2006 9:41 AM
To: Ed Burek
Cc: Allen.Eldridge@state.mn.us
Subject: Actuarial Purchase for Dick Nelson's son, Tom

Ed,

I sent Tom Nelson, Dick's son, to Representative Joe Atkins to request that legislation be drafted on his behalf, with the direction to have Representative Atkin's staff contact the LCPR.

Tom Nelson was initially employed by the City of Eveleth Police Department on November 29, 1976, at which time he should have been enrolled in the Eveleth local relief association. The Eveleth Police and Fire relief associations were fully merged into PERA P&F on January 1, 1978, and according to our records, it was at that point that Tom was reported for coverage in PERA P&F. He is asking that the additional 14 months of service be credited to his account.

The cost of the additional 14 months of service at full actuarial value is estimated to be \$27,321. The minimum cost using contributions, plus interest, is a total of \$35,095, with \$14,038 of that member contribution and the other \$21,057 then employer cost.

Tom's date of birth is 6/5/1976. He told me that he has all of his check stubs from his initial date of employment. We have not yet contacted Eveleth, but I have spoken to Representative Tom Rukavina about it, so he is aware that the city could potentially be put on the line for the employer cost, given what the LCPR has done thus far this year.

I'm leaving at 11 today and will be out of town Monday through Wednesday, so if you need any additional information, please contact Allen Eldridge at (651) 355-0022. He is the manager of our Pension Services Division and should be a good resource for you if you need additional information.

We'll get in touch with Eveleth when I return if we need to do so. Tom has indicated that he had e-mailed the city repeatedly and they have not responded to him.

Thanks,
Mary

Hopefully, nothing will go on while I'm out of town. If anything major comes up, please get in touch with Dave DeJonge, our assistant director. His direct number is (651) 201-2641. He'll be watching schedules, etc., but from what we've seen thus far, it looks like I'm safe.

=====
This e-mail and any files transmitted with it are intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.



pera

public employees retirement association

OFFICERS:
John Allers, Chairperson
Donald J. Sandeen, Vice Chairperson
James F. Lord, Treasurer
C. Mike McLaren, Executive Director

Member No. ~~██████████~~

September 2, 1982

Mr. Thomas A. Nelson
6331 Delaney Avenue East
Inver Grove Heights, MN 55075

Dear Mr. Nelson:

In response to your request, we have checked your file and note that your membership in PERA dates from August 1, 1976 through November 30, 1976 in Coordinated Fund and January 1, 1978 to present in Police and Fire Fund. As of June 30, 1982, you had 4 months of allowable service credit on Coordinated Fund and 4 year, 6 months (Police and Fire Fund) of allowable service credit.

The accumulated salary deductions credited to your account as of November 30, 1976, total \$93.75 in Coordinated Fund.

The accumulated salary deductions credited to your account as of June 30, 1976, total \$7,245.45 in Police and Fire Fund.

No credit is given for police service with the Eveleth Police Department prior to January 1, 1978. If you wish credit for you service with city of Eveleth prior to January 1, 1978, you may do so by paying omitted deductions.

Before we can determine whether omitted deductions can be paid for the period November 29, 1976 through December 31, 1977; we must have a month by month schedule of your earnings certified by the proper department head. Upon receipt thereof, further information will be mailed.

We hope we have satisfactorily answered your questions; however, if we may be of any further assistance to you, please do not hesitate to contact our office.

Sincerely,

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

Frank Mattila

Frank Mattila, Member Services

FM/sc13
Enc.

PERA
Mary VaneK
651.296.7460

CHAPTER 60—S.F.No.855

[Not Coded]

An act relating to St. Louis county; providing for the automobile expenses of county commissioners; amending Laws 1959, Chapter 301, Section 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Laws 1959, Chapter 301, Section 1, is amended to read:

Section 1. **ST. LOUIS COUNTY; AUTOMOBILE EXPENSE OF COMMISSIONERS.** County commissioners of St. Louis county are hereby authorized to pay themselves when they submit a certified claim to the board, for the use of their privately owned cars used in county business at the rate permitted by law, from the road and bridge fund of their respective districts, and said payments shall be over and above their general expenses for county business authorized by Laws 1951, Chapter 391, Section 2, but not to exceed in any one calendar year the sum of \$1200 \$1800 for each commissioner.

Sec. 2. This act is effective upon its approval by the board of county commissioners of the county of St. Louis, and upon compliance with Minnesota Statutes, Section 645.021.

Approved May 4, 1977.

CHAPTER 61—S.F.No.1039

[Not Coded]

An act relating to retirement; firemen's pensions in the cities of Eveleth and Two Harbors; consolidation of the police and firemen's relief associations in the city of Eveleth into the public employees police and fire fund; amending Laws 1935, Chapter 208, Section 11, as added and amended.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Laws 1935, Chapter 208, Section 11, as added by Laws 1975, Chapter 200, Section 1, and amended by Laws 1976, Chapter 78, Section 1, is amended to read:

Sec. 11. **EVELETH FIREMEN'S PENSIONS; INCREASE IN BENEFITS.** Any pension payable to a retired member or to a widow pursuant to section 1 of Laws 1935, Chapter 208, as amended, as of April 4, 1976 February 1, 1977 shall be increased by \$25 per month, effective with the first monthly payment after the effective date of this act. Notwithstanding Minnesota Statutes, Section 356.18, increases in pensions pursuant to

Changes or additions indicated by underline deletions by striketh

this section shall be made automatically, unless the recipient files written notice with the association requesting that the increase not be made. No retired member or surviving widow shall receive increases under both Laws 1975, Chapter 200, or Laws 1976, Chapter 78, and this act. The amount of any increase payable under section 1 of this act shall be paid retroactive to January 1, 1977. The retroactive increase payments shall be included with the first monthly payment after the effective date of this act.

Sec. 2. **COVERAGE BY THE PUBLIC EMPLOYEES POLICE AND FIRE FUND.** Notwithstanding any provisions of law to the contrary, as of the effective date of this act, all active employees of the police department and the fire department of the city of Eveleth shall cease to be members of the Eveleth police relief association or the Eveleth firemen's relief association respectively, and shall cease to have any accrual of service credits, rights, or benefits from the respective relief associations. From and after the effective date of this act, all active members of the police and fire departments of the city of Eveleth shall be members of the public employees police and fire fund established pursuant to Minnesota Statutes, Sections 353.63 to 353.68.

Sec. 3. **PURCHASE OF PRIOR SERVICE IN THE PUBLIC EMPLOYEES POLICE AND FIRE FUND.** Any active employee who has pension coverage transferred from the local relief association to the public employees police and fire fund pursuant to section 2 of this act shall be entitled to receive credit in the public employees police and fire fund for any or all periods of service as either a police officer employed by the Eveleth police department or a firefighter employed by the Eveleth fire department. Service credit in the public employees police and fire fund for each active employee who elects to purchase prior service credit shall be granted upon receipt of an amount equal to that percentage of the required reserves which the assets of the public employees police and fire fund bear to the accrued liability of the fund as determined by the most recent actuarial valuation submitted to the legislative commission on pensions and retirement pursuant to Minnesota Statutes, Chapter 356, for the period or periods of service which the employee elects to purchase as calculated by the actuary of the public employees police and fire fund and certified by the board of trustees of the public employees retirement association. The amount required to make the purchase of prior service credit under this section shall be made by the active employee and the city of Eveleth in a lump sum prior to July 1, 1979, and shall be apportioned between the active employee and the city of Eveleth as the active employee and the city shall agree.

Sec. 4. **REFUND OF EMPLOYEE CONTRIBUTIONS.** Any active employee who has pension coverage transferred from a local relief association to the public employees police and fire fund pursuant to section 2 of this act shall be entitled upon making written application prior to November 1, 1978, to a refund of the employee's accumulated contributions. Acceptance of the refund by the active employee shall terminate all rights which the active employee has to any benefits from the respective local association.

Sec. 5. **TRUST FUND FOR RELIEF ASSOCIATION BENEFICIARIES.** Notwithstanding any law to the contrary, effective January 1, 1978, the special funds of the Eveleth police relief association and the Eveleth firemen's relief association shall be transferred to the city of Eveleth. The city of Eveleth, on the same date, shall transfer an amount equal to \$123,600 to a special account established by the city which shall be

Changes or additions indicated by underline deletions by strikethout

maintained separately as a trust fund for the exclusive benefit of the retired members of the Eveleth police relief association and the Eveleth firemen's relief association who were receiving benefits on the effective date of this act and their surviving spouses if otherwise entitled to benefits under the laws governing the respective former relief associations. The trust fund shall be managed by a board of trustees composed of three members, with one member selected by the retired members of the former firemen's relief association, one member selected by the retired members of the former police relief association, and one member selected by the city council. The term of the board shall be indefinite and shall continue until a vacancy shall occur in one of the positions on the board. The city of Eveleth shall perform whatever services are necessary to administer the trust fund. The balance of the trust fund shall not revert to the city of Eveleth until all obligations of the trust fund are paid. The benefit provisions of the Eveleth police relief association and the Eveleth firemen's relief association which were in effect as of the effective date of this act shall continue in force to govern the respective benefits paid out of the trust fund.

Sec. 6. **FINANCIAL REQUIREMENTS OF THE TRUST FUND.** Commencing January 1, 1978, the city of Eveleth shall provide by annual levy an amount sufficient when added to the investment income of the trust fund to pay the benefits provided under the trust fund for the succeeding year as certified by the board of trustees of the trust fund. The annual levy under this section shall not be included in any limitation as to rate or amount set by charter and shall be a special levy for purposes of Minnesota Statutes, Section 275.50, Subdivision 5. All revenues generated by the levy required under this section shall be transferred to the trust fund.

Sec. 7. **FINANCIAL REQUIREMENTS FOR ACTIVE MEMBERS.** The city of Eveleth shall make the employer contribution to the public employees police and fire fund as specified in Minnesota Statutes, Sections 353.63 to 353.68. Notwithstanding any contrary provisions of Minnesota Statutes, Chapter 69, any fire state aid or police state aid received by Eveleth may be allocated by the city council between the financial requirements set forth in section 6 of this act and this section. Amounts allocated for use in meeting the financial requirements under section 6 of this act shall reduce the levy required pursuant to that section.

Sec. 8. **AUTHORITY TO BOND TO ACCOMPLISH THE PURPOSES OF THIS ACT.** The city of Eveleth is hereby authorized to sell bonds in such amount as will provide the necessary funds to pay the employer's share of the purchase of prior service in the public employees police and fire fund pursuant to section 3 of this act. The maturity of such bonds shall not be more than 15 years from the date of sale. The bonds may be issued and sold without a vote of the electorate and shall not be included in the net debt of the city for purposes of any charter or statutory debt limitation. Taxes for the payment of the bonds and interest thereon shall not be subject to any statutory or charter limitation on the rate or the amount.

Sec. 9. **TWO HARBORS FIREMEN'S PENSIONS; VALIDATION OF PREVIOUS PAYMENTS.** All retroactive payments of service pension increases granted to retired members from the special fund of the Two Harbors volunteer firemen's relief association made prior to April 1, 1977, in accordance with the bylaws of the association are hereby deemed authorized.

Changes or additions indicated by underline deletions by strikeout

Sec. 10. This act is effective with respect to the city of Eveleth upon approval by the Eveleth city council and with respect to the city of Two Harbors upon approval by the governing body of the city of Two Harbors and upon compliance with Minnesota Statutes, Section 645.021.

Approved May 4, 1977.

CHAPTER 62—S.F.No.1331

[Not Coded]

An act relating to the city of Litchfield; firemen's service pensions; validation of certain prior payments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **LITCHFIELD; FIREMEN'S RELIEF ASSOCIATION.** All payments of service pensions from the special fund of the Litchfield volunteer firemen's relief association made prior to January 1, 1977, to former members of the association who were not age 50 at the time of the receipt of the service pension but which were not made prior to the age specified by the bylaws of the association are hereby deemed authorized.

Sec. 2. This act is effective upon approval by the Litchfield city council and upon compliance with Minnesota Statutes, Section 645.021.

Approved May 4, 1977.

CHAPTER 63—S.F.No.1381

[Not Coded]

An act relating to the city of Saint Paul; authorizing the city council to adopt rules permitting payroll deductions for nonprofit entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **ST. PAUL, CITY OF; PAYROLL DEDUCTIONS.** The city council of the city of St. Paul may, by ordinance, adopt rules permitting a written contract between the city and its employees in which an employee may, for periods longer than 60 days, authorize payroll deductions to make contributions to nonprofit entities chosen by the employee. The city council shall not unreasonably preclude a nonprofit entity from payroll deduction contributions. Unreasonable preclusion shall be defined as the refusal of the city to permit a deduction when 50 or more city employees have petitioned for an ability to be eligible for payroll deduction contributions from them.

Changes or additions indicated by underline deletions by strikeout

MN. STAT. 1978

423.392 POLICE PENSIONS

5642

423.392 APPLICATION. The provisions of section 423.37 shall apply to and bind any city of the third class which by a resolution of its governing body, adopted by a majority of the members thereof shall choose to be bound by it, and such city may thereafter continue to be bound by it notwithstanding a subsequent change in the classification of the city; but section 423.37 does not apply to any policemen's relief association in existence April 29, 1947 unless the association elects to come under its provisions as herein provided.

[1947 c 625 s 13; 1951 c 60 s 1; 1971 c 25 s 80]

CITIES FOURTH CLASS

423.41 POLICEMEN'S RELIEF ASSOCIATION; CITIES EMPLOYING FIVE OR MORE POLICEMEN. The police department of each city of the fourth class employing five or more regular and fully paid policemen when authorized by an ordinance approved or adopted by the unanimous vote of the governing body of said city may maintain a policemen's relief association which shall be duly incorporated under the laws of this state. All such associations now existing as such corporations, or hereafter incorporated under the laws of this state, shall have perpetual existence.

[1947 c 624 s 1]

423.42 REGULATION OF MANAGEMENT. Each such relief association shall be organized, operated, and maintained in accordance with its own articles of incorporation and bylaws, by policemen, as hereinafter defined, who are members of said police department. Each association shall have the power to regulate its own management and its own affairs, and all additional corporate powers which may be necessary or useful; subject, however, to the regulations and restrictions of sections 423.41 to 423.62 and other laws of this state pertaining to corporations; not inconsistent herewith.

[1947 c 624 s 2]

423.43 POLICEMAN DEFINED; PRESENT RELIEF ASSOCIATION; PRESENT BENEFIT RIGHTS; ACCEPTANCE. A policeman under sections 423.41 to 423.62 is a duly appointed policeman, policewoman, or police matron, who is regularly entered on the payroll of the police department of such city, serving on active duty therein, after having completed any probationary period required under the laws or ordinances of such city. Probationers in the police department, substitutes and persons employed irregularly from time to time, and elective officials of such department, shall not be deemed to be included under sections 423.41 to 423.62. Any person who is employed in subsidized on-the-job training, work experience or public service employment as an enrollee under the federal comprehensive employment and training act shall not be included as a member of the relief association from and after March 30, 1978 unless the person has as of the later of March 30, 1978 or the date of employment sufficient service credit in the relief association to meet the minimum vesting requirements for a deferred service pension, or the city agrees in writing to make the total required employer contributions on account of that individual from revenue sources other than funds provided under the federal comprehensive employment and training act, or the person agrees in writing to make the required employer contribution in addition to the member contribution.

All persons who are members of the policemen's relief associations of such cities, at the time of the passage of Laws 1947, Chapter 624, whether their status is embraced within the definition of a policeman herein contained or otherwise, shall have the right to continue as members of their respective associations and be entitled to all benefits pertaining thereto, and any member included under the definition of policeman herein provided shall have the right to retain his membership on promotion or appointment to other positions to which such policemen herein may be subject.

Sections 423.41 to 423.62 shall not affect any pensions or other benefits which have been allowed or which are being paid by any such relief association under or in accordance with any prior act or acts, at the time Laws 1947, Chapter 624, become effective. Payment of such pensions and benefits shall be continued by the respective association and bylaws, and shall

State of Minnesota \ LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT

TO: ~~_____~~

FROM: Karen Dudley, Commission Staff *KD*

RE: Purchase of Service in PERA-P&F by Eveleth Officers

DATE: September 14, 1981

BACKGROUND

Laws 1977, Chapter 61, provided for the consolidation of all active members of the Eveleth police and firefighters relief associations into PERA-P&F. Section 3 of that chapter provided that service credit for each active employee who elected to purchase service credit in PERA-P&F was to be granted upon receipt by PERA-P&F of an amount equal to approximately 80% of the required reserves necessary to fund the accrued liability purchased. The section stated that the amount required to purchase the prior service credit was to be made by the active employee and the city of Eveleth in a lump sum by July 1, 1979, and that the amount was to be apportioned between the active members and the city of Eveleth as agreed to by the active employees and the city. Section 8 of that chapter authorized the city to sell bonds in an amount to provide the necessary funds to pay the employer's share of the purchase of prior service pursuant to section 3. The bonds were authorized with a maturity of 15 years and were to be outside the city's charter or statutory debt limitation.

EVENTS FOLLOWING PASSAGE OF LAWS 1977, CHAPTER 61

Although the Commission staff had drafted the amendatory language which provided for the consolidation of the Eveleth personnel into PERA-P&F, there was little or no further correspondence concerning the matter between the Commission and the Eveleth city council or police or firefighters. In April of 1979 a Commission memo was written on the question of the "disparity" in the purchase of prior service. (That memo confuses the matter more than it clarifies.)

In the Commission files are copies of census data as of September 1976; a March 24, 1977, memo from the Commission staff to an Eveleth city council member explaining the proposed consolidation; a copy of the required payments necessary to fund the actuarial accrued liability for the purchases of prior service by the 7 police and firefighters; and a copy of the agreements signed by each of the active police and firefighters in which each agree to purchase "70% of the total years worked as agreed upon by the Mayor and City Council".

The agreement signed by each police or firefighter also included the following: "It is also understood that if I am to buy back in excess of the 70% as agreed by the Mayor and Council, that I will pay 100% contribution for same."

Since 1979, the Commission staff has received numerous inquiries concerning the purchase of prior service in PERA-P&F by the Eveleth police and firefighters. During the 1981 Session, an AFSCME representative looked through the LCP&R files to look for any information concerning the employees' allegation that the city had originally agreed to pay 100% of the cost of the purchase of prior service but then changed the bargain so that only 70% of the prior service was purchased.

The Commission files do not contain much factual material about the agreement between the city and the employees. The files contain copies from PERA of the agreement signed by each employee stating that he agreed to purchase 70% of the total years worked; they also contain an undated slip of paper with the penciled notation that the split on contributions for the Eveleth purchase of prior service was 60% by the employer and 40% by the employee.

THE PROBLEM

Some employees are upset that they have service credit for only 70% of the total years that they worked for Eveleth. They want to purchase that additional service; some want the city to be required to pay all or some of the cost of the additional 30% of their total years of service.

POSSIBLE REMEDIES

The entitlement to purchase prior service credit in PERA-P&F for members of the Eveleth police and firefighters relief associations expired on July 1, 1979.

If any officers, either police or fire, wish to now purchase prior service credit for the 30% of their total service not covered by the agreement with the city, they would require Legislative approval for that purchase. That permission may be readily agreed to by the Purchase of Prior Service Subcommittee of the Commission, if the officers agree to pay the actuarial value of the additional service purchased in PERA-P&F. Approval by the Subcommittee would most likely be accepted by the full Commission and approved by the entire Legislature.

If the officers request that the Legislature force the city of Eveleth to pay the cost of the additional service, then the Legislature would be unable to provide this aspect of a requested remedy. The Minnesota Constitution does not permit the Legislature to force such an action. The Legislature could potentially extend the right of the city to bond to finance the purchase, but this would have to be subject to the local approval provision.

If the officers wish to contend that the city changed the agreement concerning the purchase of service in PERA-P&F, that the city originally agreed to pay for all of the years of service but then changed its mind and had the agreement drafted so that the officer agreed only to purchase 70% of the total years of service, it appears that their only relief would come through legal action. Admittedly the agreement that each officer signed is not the clearest, yet the fact remains that each officer signed the agreement that clearly states that only 70% of the total years of service are to be purchased and that if the officer wished to purchase more he must pay 100% of the cost of the additional service.

CONCLUSION

The Legislature could easily agree to permit officers currently covered by PERA-P&F who were formerly members of the Eveleth police and firefighters relief associations to purchase additional prior service credit in PERA-P&F.

The Legislature could also agree to permit the city to pay a portion of the cost of the purchase of additional service credit, but the Legislature could not require the city to pay that additional cost without the agreement of the city through the local approval provision.

The Legislature could not address the question of whether or not the city changed its agreement with the individual officers concerning the amount of service credit to be purchased in PERA-P&F. That matter is only subject to legal remedy.

1.1 moves to amend S.F. No. 3264; H.F. 3616, as follows:

1.2 Page 2, after line 11, insert:

1.3 "Subd. 4. **Payment.** (a) If an eligible person meets the requirements to purchase
1.4 service credit under this section, the public employees police and fire fund must be paid
1.5 the amount determined under Minnesota Statutes, section 356.551. Of this amount:

1.6 (1) the eligible person must pay an amount equal to the employee contribution rate
1.7 during the period of service to be purchased, applied to the actual salary in effect during
1.8 that period, plus interest at the rate of 8.5 percent per year compounded annually from
1.9 the date on which the contributions should have been made to the date on which payment
1.10 is made under this section; and

1.11 (2) the city of Eveleth must pay the remainder of the amount determined under
1.12 Minnesota Statutes, section 356.551.

1.13 (b) If the city of Eveleth fails to pay the amount required under paragraph (a), clause
1.14 (2), within 30 days of notification from the executive director of the amount required, the
1.15 executive director shall inform the commissioner of the Department of Finance of the
1.16 amount of the deficiency, and the amount must be deducted from any subsequent state
1.17 aid to the city."

1.1 moves to amend S.F. No. 3264; H.F. 3616, as follows:

1.2 Page 2, after line 11, insert:

1.3 "Subd. 4. **Payment.** (a) If an eligible person meets the requirements to purchase
1.4 service credit under this section, the public employees police and fire fund must be paid
1.5 the amount determined under Minnesota Statutes, section 356.551. Of this amount, the
1.6 eligible person must pay half and the city of Eveleth must pay the remaining half.

1.7 (b) If the eligible person makes the specified payment, and if the city of Eveleth fails
1.8 to pay the amount required under paragraph (a), clause (2), within 30 days of notification
1.9 from the executive director of the amount required, the executive director shall inform
1.10 the commissioner of the Department of Finance of the amount of the deficiency, and the
1.11 amount must be deducted from any subsequent state aid to the city."

Senators Metzen, Larson, Michel, Langseth and Pogemiller introduced—
S.F. No. 3264: Referred to the Committee on State and Local Government Operations.

A bill for an act

relating to retirement; authorizing purchase of service credit from the public employees police and fire plan for city of Eveleth police service.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **PURCHASE OF SERVICE CREDIT.**

Subdivision 1. Eligibility. An eligible person may purchase allowable service credit from the public employees police and fire plan for a period of service as a police officer provided to the city of Eveleth immediately prior to January 1, 1978, not to exceed 14 months. An eligible person is a person who:

(1) is currently a member of the public employees police and fire plan;

(2) was first employed by the city of Eveleth police department on November 29, 1976; and

(3) was born on June 5, 1956.

Subd. 2. Purchase requirements. An eligible person must apply to the executive director of the Public Employees Retirement Association to make the service credit purchase authorized in this section. This application for a purchase of service credit under Minnesota Statutes, section 356.551, must be in writing and must contain documentation required by the executive director.

Subd. 3. Additional requirements; restrictions. (a) In addition to the one-year payment time limit in Minnesota Statutes, section 356.551, the authority provided by this section is voided if the payment amount is not paid to the executive director of the Public Employees Retirement Association prior to termination of service by the eligible person.

2.1 **(b) This section is voided if the eligible person received a refund of contributions**
2.2 **relating to the eligible period stated in subdivision 1, due to Laws 1977, chapter 61, section**
2.3 **4, or any other refund provision in applicable law or plan documents.**

2.4 **(c) This section is voided relating to any portion of the eligible period specified in**
2.5 **subdivision 1 which was properly excluded from coverage by statute, law, or ordinance**
2.6 **then in effect, or if the lack of coverage was due to an election made by the eligible**
2.7 **individual, or by a failure by that individual to obtain the applicable service credit under**
2.8 **service credit purchase authority in effect when the service was rendered or within two**
2.9 **years following the merger of the Eveleth Police Relief Association members into the**
2.10 **Public Employees Retirement Association police and fire plan as authorized by Laws**
2.11 **1977, chapter 61.**

2.12 **Sec. 2. EFFECTIVE DATE.**

2.13 **Section 1 is effective the day following final enactment.**