



FROM: Lawrence A. Martin, Executive Director *JAM*

RE: Amendment LCPR09-02A; Resolution of Public Pension Problem of Sandra Barnhouse of Underwood, Minnesota

DATE: February 26, 2009

Introduction

This memorandum and the attached blind amendment, LCPR09-02A, are in response to your request of February 25, 2009, for the language needed to resolve the public pension problem of Sandra Barnhouse of Underwood, Minnesota.

Public Pension Problem of Sandra Barnhouse

Based on a telephone conversation with Sandra Barnhouse, a copy of an email summary provided to your office, and a chronology of events assembled by the Public Employees Retirement Association (PERA), I have a sense of Ms. Barnhouse's public pension problem.

Sandra Barnhouse, a resident of Underwood, Minnesota, age 65, has periods of public employment in Minnesota with retirement coverage by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), by the Teachers Retirement Association (TRA), and by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General). The MSRS-General coverage relates to employment by St. Cloud State University and totals 20 years, ending in 1998. The TRA coverage relates to part-time/substitute teaching employment. The PERA-General coverage relates to recent part-time employment by the Underwood municipal liquor store.

After beginning to draw her Social Security at age 62 in 2005, Ms. Barnhouse applied for and began receiving her MSRS-General retirement annuity on 2007 at age 64. Because the Minnesota public pension plan portability provision, the Combined Service Annuity, Minnesota Statutes, Section 356.30, Subdivision 1, Paragraph (b), Clause (2), requires that retirement from all applicable retirement plans must occur within a one-year period, Ms. Barnhouse requested benefit estimates from TRA and from PERA-General in 2008. To obtain a TRA annuity, Ms. Barnhouse needed to repay a past refund of member contributions. Ms. Barnhouse received a number of benefit estimates from PERA, initially without including MSRS-General in the Combined Service Annuity benefit estimate and subsequently including MSRS-General in the estimate. In order to receive a retirement annuity from PERA-General, Ms. Barnhouse was required to terminate her part-time municipal liquor store employment without local government reemployment for at least 30 days, which she did, and began drawing PERA-General and TRA annuities under the Combined Service Annuity provision in April 2008. In July 2008, more than three months after retiring, PERA, MSRS, and TRA conducted a final benefit calculation of Ms. Barnhouse's three annuity amounts, resulting in a reduction in her PERA-General retirement annuity of \$116.55 per month, because alternatively her MSRS-General annuity would be \$485.75 per month less if MSRS-General was included under the Combined Service Annuity provision rather than calculated freestanding with deferred annuities augmentation. Ms. Barnhouse feels that PERA failed in its duty to properly counsel her on her retirement benefits by supplying her with incomplete initial benefit estimates and complains that she has been misled into terminating her part-time municipal employment, foregoing those earnings, risking that she would not be subsequently reemployed after the 30-day post-termination period, and disqualifying her from any additional PERA-General service credit after 2008. PERA will recover the benefit overpayment by reducing subsequent payments, but intends to wait to do so until after the 2009 Legislative Session to provide Ms. Barnhouse with an opportunity to pursue a legislative remedy.

Ms. Barnhouse would like to be able to revoke her Spring 2008 retirement annuity applications (PERA-general or both PERA-General and TRA) and restore her status as a PERA-General active member as if her reemployment by Underwood, Minnesota, and would like either to have the \$436.92 overpayment from PERA-General waived or recovered more slowly than demanded by PERA once she does eventually retire from her part-time municipal employment.

Summary of Amendment LCPR09-02A

Amendment LCPR09-02A, drawn blind to allow it to be added to any potential retirement bill, allows Sandra Barnhouse, described as the intended sole member of a potentially general class of individuals based on factors unique to her, to revoke retirement annuity applications she previously filed with the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and/or the Teachers Retirement Association (TRA) and have the recovery of a \$436.92 alleged annuity overpayment waived, thereby correcting for bad advice she allegedly received from PERA and permitting her to continue in public employment and take the two retirement annuities at its conclusion.

Background Information on Public Pension Plan Portability, the Service In More Than One Fund Provision, and the Combined Service Annuity Provision

Background information is set forth in Attachment A on portability of public pension benefits in Minnesota generally, on the Service In More Than One Retirement System portability provision specifically, and on the Combined Service Annuity portability provision specifically.

Discussion and Analysis

Although complicated because of the number of pension plan involved, the extended time period involved, and the number of administrative problems or irritations that Ms. Barnhouse experienced, it appears that Ms. Barnhouse has a complaint that merits review and that the Legislature (with initial review by the Legislative Commission on Pensions and Retirement) is likely the only venue at which she can air her complaint. The Commission hears one or two dozen complaints in somewhat comparable circumstances each year, including its favored remedy as part of each year's omnibus retirement bill (see Laws 2006, Chapter 271, Article 14; Laws 2007, Chapter 134, Article 12, and Laws 2008, Chapter 349, Article 16).

From Ms. Barnhouse's emails and telephone conversations and from the timeline provided by the Public Employees Retirement Association (PERA) for the Barnhouse annuity application, there appears to have been a failure by the three retirement plans involved, PERA, the Minnesota State Retirement System (MSRS), and the Teachers Retirement Association (TRA), to appropriately identify her as a potential Combined Service Annuity annuitant, to correctly calculate her annuity amounts under the Combined Service Annuity provision, and to notify her of her retirement options in a timely fashion.

Although PERA was notified by MSRS that Ms. Barnhouse was a potential Combined Service Annuity annuitant in August 2007, PERA did not provide Ms. Barnhouse with any information on her potential PERA annuity until December 2007, and the information did not include annuity amounts under the Combined Service Annuity provision. Incomplete Combined Service Annuity provision benefit estimates for PERA and TRA only were provided at the end of January 2008, and a Combined Service Annuity provision benefit estimate including MSRS was not provided to Ms. Barnhouse until the end of March 2008. The "final" Combined Service Annuity provision benefit calculation for Ms. Barnhouse did not occur until July 9, 2008, and notification of PERA's determination of an overpayment was not sent to Ms. Barnhouse until July 22, 2008. TRA is currently paying a Combined Service Annuity provision annuity to Ms. Barnhouse using her MSRS covered salary, representing a different interpretation of the Combined Service Annuity provision.

Conclusion

I hope that this memorandum and the attached amendment adequately respond to your request with respect to the public pension problem of Sandra Barnhouse. If you have any questions about this memorandum or the amendment for Ms. Barnhouse, please contact me (651-296-2750).

Dana Patrick

Attachment A

Background Information on Public Pension Plan Portability, The Service In More Than One Fund Provision, and The Combined Service Annuity Provision

- a. Public Pension Plan Portability, Generally. Pension portability refers to mechanisms that allow a person with two or more different employments ultimately to gain pension coverage for the person's entire working career that reflects the totality of that career and provides an adequate benefit.

Portability can be provided in a number of different ways, which include the use of multiple employer retirement plans, the use of defined contribution retirement plans, the consolidation of one retirement plan with one or more other retirement plans, the purchase of prior service credit authorizations, the transfer of assets representing the value of retirement plan coverage, or combined service portability mechanisms between plans.

The use of a multiple employer retirement plan, especially a defined benefit plan, will provide full portability. Social Security is a defined benefit plan that covers the bulk of private sector and public sector employees in the United States and the ultimate Social Security benefit is portable no matter how many different employments a person has. Within Minnesota, the major statewide retirement plans (the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), and the Teachers Retirement Association (TRA)), function similarly.

The use of defined contribution plans will also provide full portability, because the benefit provided by a defined contribution plan is an asset accumulation and money is fungible. This portability concern is the likely significant factor in the prevalence of the Teachers Insurance and Annuity Association – College Retirement Equity Fund (TIAA-CREF) for private sector and public sector colleges and universities.

Consolidations of pension plans, with prior service credit in one plan becoming allowable service credit in a successor retirement plan, will also provide portability. Consolidations within the public sector sometimes occur within states, but rarely or never occur across state boundaries. Consolidations are not usually prompted by portability concerns, but more usually are part of an initiative attempting to address the adequacy of benefit coverage for a type of employee or to address financial difficulties.

Purchases of prior service credit can provide pension portability, but if it is the selected mechanism, suffers from the fragmented nature in which it will be implemented. Service credit purchases can be implemented by one retirement plan without any consultation with or agreement by other retirement plans and has been the focus of groups seeking greater portability, such as the National Council of Teacher Retirement. Service credit purchases only arise with defined benefit retirement plans, where the non-fungible item of value, allowable service credit, is translated into a fungible item, an additional payment of money. Virtually every teacher retirement plan which is a member of the National Council of Teacher Retirement permits the purchase of prior service for teaching service rendered in another state.

Asset transfers also can provide pension portability and represent a more systematic version of the prior service credit approach. Some jurisdictions (i.e., Louisiana, Missouri, New York and Rhode Island) have authority to enter into interstate pension reciprocity agreements where assets related to a member's accrued retirement benefit would be transferred from one plan to another plan and translated into retirement benefit coverage in the subsequent retirement plan. The four-state authority has led to the development of model interstate portability transfer legislation by the National Council of Teacher Retirement.

In Minnesota, which boasts a large number of both statewide and local retirement plans, intrastate portability has been developed through the "service in more than one plan" combination vesting provision (see Minnesota Statutes, Section 354.60, for an example) or through the "combined service annuity" portability provision. The "service in more than one plan" provisions allow portability of service credit for purposes of vesting for an eventual benefit. The "combined service annuity" provision provides for full portability, with recognition of past service credit for vesting purposes and with the utilization of a common final average salary for all benefit calculations.

- b. Service in More Than One Fund Provisions. Twelve Minnesota public employee retirement plans are or have been covered by a limited portability provision, the Service In More Than One Fund provisions.

The Service In More Than One Fund provisions are:

Minnesota Statutes, Section	Plan(s)	Initially enacted as:
3A.12	– Legislators Retirement Plan	Laws 1975, Chapter 368, Section 11
352.72	– General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), and – MSRS Correctional State Employees Retirement Plan	Extra Session Laws 1961, Chapter 67
352B.30	– State Patrol Retirement Plan	Laws 1975, Chapter 368, Section 40
352C.051	– Elective State Officers Retirement Plan	Laws 1978, Chapter 796, Section 19
352D.085	– Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified)	Laws 1973, Chapter 624, Section 10
353.71	– General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) – Public Employees Police and Fire Retirement Plan (PERA-P&F) – PERA Local Government Correctional Employees Retirement Plan	Laws 1963, Chapter 641, Section 2
354.60	– Teachers Retirement Association (TRA)	Extra Session Laws 1961, Chapter 17, Section 15
354A.39	– First Class City Teacher Retirement Plans	Laws 1979, Chapter 217, Section 24
422A.16, Subd. 8	– Minneapolis Employees Retirement Fund (MERF)	Laws 1971, Chapter 552, Section 5

The Service In More Than One Fund provisions generally allow members of two or more retirement plans containing the provision to add the service in the applicable plans together to meet the length of service vesting requirement of each plan and to qualify for an eventual deferred retirement annuity.

- c. Combined Service Annuity Provision. The Combined Service Annuity provision, found in Minnesota Statutes, Section 356.30, was enacted in 1975. This law provides portability between the Minnesota public pension plans included in the provision. Before 1975, if a person shifted employment between a city, covered by the Public Employees Retirement Association General Employees Retirement Plan (PERA), and state employment, covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) or some other MSRS plan, the person would receive separate benefits from each pension plan calculated without reference to the other public employment. The PERA benefit would be those determined under the applicable laws at the time the individual left PERA covered employment. The MSRS-General benefit would be determined under laws in effect when the individual left MSRS-General covered employment. Both are high-five average salary defined benefit pension plans, but the salaries used to compute the benefits would be different, since one reflects recent salary while the other may be based on salary received years or even decades earlier.

With the Combined Service Annuity law, the benefit calculations for a person with multiple public pension plan coverage are very similar to those for a person who changed employment between employers covered by the same plan. To provide benefit treatment for the public employee who changed employment to another public employer covered by a different retirement system that is similar to that of a public employee who changes jobs all covered by the same retirement plan, the Combined Service Annuity law requires the benefit to be computed using a common high-five average salary, with the years used for determining the high-five average salary to include the most recent employment, the prior employment, or a combination of the two, whichever provides the highest average. The common high-five average salary is then used to compute the benefits from all plans to be included in the calculations. The accrual rates and other plan features used to compute the benefits are those in effect for each included plans on the date the individual terminated from the last plan. Under the Combined Service Annuity provision, the individual is advantaged by receiving benefits from all the plans based on the recent high-five average salary, and the individual receives any benefit improvements or other plan changes that occurred since the individual terminated from the prior plan or plans. If two plans are involved, the benefit is computed by the first plan using the years of service credit the individual had under that plan. The second plan would compute its benefit based on the years of service credit the individual had under the second plan. Thus, an individual with 15 years of service under one plan and 5 years of service under another would receive two benefit checks, one

from each plan, but the total of the two benefit checks should be the same, or very close, to the single retirement check received each month by a comparable individual, in comparable employment, with 20 years of service credit within a single plan.

From 1975 (Laws 1975, Chapter 262, Section 1) until 1983, to utilize the Combined Service Annuity provision, a Minnesota public pension plan member was required to apply for all retirement annuities at the same time. In 1983 (Laws 1983, Chapter 286, Section 14), the period during which a public pension plan member can utilize the Combined Service Annuity provision was extended from retirement from all applicable retirement plans at one time to six months. In 1994 (Laws 1994, Chapter 528, Article 2, Section 14), the election period was further extended to retirement from all applicable plans within one year. The extension of the time period during which the Combined Service Annuity provision must be elected generally coincided with the allowance for retroactive annuity applications and the extensions in the permissible retroactive time period.

Initially, the Combined Service Annuity was elected in lieu of any deferred annuity augmentation (i.e., automatic annual percentage increase in a retirement annuity amount during the period from the termination of covered employment until the annuity application date). Augmentation was intended to maintain some or all of the purchasing power of a retirement annuity between the end of the covered working career until the date of annuity receipt, but is not necessary under the Combined Service Annuity where the final average utilized in all annuity calculations is the five-year period producing the highest average and tends to be the most recent period of public employment. In 1992 (laws 1992, Chapter 432, Article 2, Section 45), deferred annuities augmentation was extended to Combined Service Annuity provision annuities from the date of conclusion of the most recent period of covered employment, making the Combined Service Annuity provision more attractive to individuals who leave all covered Minnesota public employment considerably in advance of reaching normal retirement ages.

1.1 moves to amend, as follows:

1.2 Page ..., after line ..., insert:

1.3 "Sec. PERA-GENERAL AND TRA; ANNUITY APPLICATION
1.4 REVOCAATION; OVERPAYMENT WAIVER.

1.5 (a) An eligible person specified in paragraph (b) may elect to revoke retirement
1.6 annuity applications as provided in paragraph (c) and may elect to have the recovery of
1.7 a retirement annuity overpayment waived as provided in paragraph (d). The elections
1.8 must be made in writing and must be filed with the executive director of the applicable
1.9 retirement plan.

1.10 (b) An eligible person is a person who:

1.11 (1) was born in 1943;

1.12 (2) was employed as publications editor for St. Cloud State University for twenty
1.13 years, ending in 1998, and was covered by virtue of that employment by the general state
1.14 employees retirement plan of the Minnesota State Retirement System;

1.15 (3) retired from the general state employees retirement plan of the Minnesota State
1.16 Retirement System in 2007;

1.17 (4) was employed by the Underwood, Minnesota, municipal liquor store in early
1.18 2008, terminated that employment on April 18, 2008, applied for a retirement annuity from
1.19 the general employee retirement plan of the Public Employees Retirement Association
1.20 and from the Teachers Retirement Association under Minnesota Statutes, section 356.30,
1.21 in April or May 2008, and was subsequently reemployed by the municipal liquor store
1.22 on or about May 20, 2008; and

1.23 (5) was informed by the Public Employees Retirement Association of a retirement
1.24 annuity overpayment of \$349.65 on July 22, 2008.

1.25 (c) If elected, the eligible person may revoke the person's application for a retirement
1.26 annuity from the general employee retirement plan of the Public Employees Retirement
1.27 Association, or revoke the person's application for a retirement annuity from the Teachers
1.28 Retirement Association, or revoke the person's application for a retirement annuity from
1.29 both retirement plans. If a retirement application is revoked, the person's retirement
1.30 annuity ends, the entitlement of the person to a future retirement annuity is restored, and
1.31 that future retirement annuity amount must be adjusted by subtracting the total value of
1.32 the retirement annuity amounts received from that retirement plan from the actuarial
1.33 present value of the eligible person's future annuity without adjustment, calculated based
1.34 on the mortality table for retired lives of the applicable retirement plan and 8.5 percent
1.35 interest rate assumption, and determining the adjusted annuity amount from the remaining
1.36 actuarial present value amount using the same interest and mortality assumption.

2.1 (d) If elected, the recovery of a \$436.92 alleged overpayment by the general
2.2 employee retirement plan of the Public Employees Retirement Association is waived.

2.3 **EFFECTIVE DATE.** This section is effective the day following final enactment."

2.4 Renumber the sections in sequence and correct the internal references