



## Document LCPR10-018

(Olson, M.)

### **Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* TRA  
*Relevant Provisions of Law:* Special Law Request  
*General Nature of Proposal:* Enhance retirement annuity by waiving consecutive year requirement to compute high-five salary  
*Date of Summary:* February 5, 2010

### **Specific Proposed Changes**

- Permits the former principal of Red Lake High School have his retirement annuity recomputed using the five highest years of salary rather than the highest five consecutive years of salary because his two years of TRA disability benefit receipt created problems with high-five years.

### **Policy Issues Raised by the Proposed Legislation**

1. Whether there is sufficient justification for the request other than to enhance the retirement benefit.
2. Individual responsibility for decisions; decision to take disability rather than to make use of provisions which would have maintained the high-five average salary (leave of absence, or qualified part-time teaching program).
3. Unusual nature of request to waive TRA definition of average salary for pension purposes.
4. Scope/equity concerns: providing an enhanced benefit for one individual harmed by 2005 Red Lake school murder incident while others who were harmed receive no special benefit.
5. Cost of the proposed additional benefit and TRA's actuarial condition.
6. Appropriate entity to provide relief: the additional benefit would add to TRA liability without additional assets to compensate even though TRA did not cause the harm.
7. Other compensation the affected person may have received which may reduce or eliminate the need for this request.
8. Available self-help remedy: continuing working until closer to normal retirement age.

### **Potential Amendments**

LCPR10-018-1A revises the expiration date on the authority provided from two years to a length of time to be determined by the Commission.



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Ed Burek, Deputy Director *EB*  
RE: LCPR10-018: TRA; Permitting Alternative Computation of Retirement Annuity for Former Principal of Red Lake Senior High School (William Dunshee)  
DATE: January 19, 2010

Summary of LCPR10-018

Draft legislation LCPR10-018 would permit William Dunshee, the principal at Red Lake High School at the time of a mass murder that occurred at the school, to receive a Teachers Retirement Association (TRA) retirement annuity computed using his highest five years of salary without the requirement in general law that the years be consecutive. Under the legislation, Mr. Dunshee would be prohibited from continuing in school employment under a provision in law which permits teachers who are at least age 62 from commencing an annuity while having an agreement to return to employment in the district.

Background Information on Mr. Dunshee's Situation

On March 21, 2005, a mass murder occurred at the Red Lake Reservation in Red Lake, Minnesota, beginning when Jeffrey Weisse, a high-school aged student, shot and killed his grandfather and a friend of his grandfather, both of whom were police officers. After taking a shotgun and an additional pistol from his grandfather's home, Jeffrey Weisse drove his grandfather's police vehicle to the Red Lake Senior High School, where he first encountered two unarmed security guards who manned the school's metal detector. Killing one of the guards, he proceeded to an English classroom where he killed the teacher and several students. A 16-year-old sophomore wrestled with Jeffrey Weisse, allowing others to escape, until the sophomore was seriously wounded by gunshots to the neck and jaw. Weisse then returned to the main entrance, killing two more students and injuring two others, before becoming engaged in a shoot-out with arriving police. Jeffrey Weisse, wounded in the gun battle, retreated to a vacant classroom where he committed suicide by a self-inflicted shotgun wound. The death toll was ten, including Jeffrey Weisse, and five individuals were seriously wounded.

William Dunshee, who is seeking a legislative remedy for his retirement annuity problem, was the principal at Red Lake Senior High School at the time of these murders. As a key administrator at the school, the situation and its aftermath created considerable stress for Mr. Dunshee. He received extensive counseling to help him deal with the situation. Unfortunately, a month after the incident Mr. Dunshee suffered a heart attack. According to TRA, Mr. Dunshee was on a TRA medical leave from February 3, 2006, to June 2, 2006. Under a TRA medical leave Mr. Dunshee could make employee and employer contributions to the pension plan and receive full service credit and full salary credit in the pension plan, as though he remained in full-time employment. Mr. Dunshee did make those payments and received the service and salary credit. He later chose to apply for TRA disability benefits rather than stay on the medical leave. TRA reviewed his application and determined that he qualified for disability under TRA law. Disability benefits commenced in June 2006, approximately \$2,000 per month. During the 2006-2007 school year, because he was in disability benefit receipt status and provided no service to the district and received no salary, he received no TRA service credit or salary credit for that that year. In the 2007-2008 school year, he did provide service to the district at approximately two-thirds time and he earned \$52,200 in salary, although he continued to receive TRA disability benefits. Because of the salary received in 2007-2008, he did receive salary credit and service credit in TRA for that year, but the salary credit was less than would have been the case if he worked full time. The disability benefits finally terminated in August 2008. According to TRA, Mr. Dunshee received approximately \$53,000 in disability payments during the June 2006 to August 2008 period in addition to the \$52,200 salary earned in 2007-2008. Mr. Dunshee has since returned to full-time employment with the school district as the principal at the alternative learning center.

Mr. Dunshee will be age 63 in August 2010. He is considering retiring soon and has become concerned about the impact that his period of disability will have on his retirement annuity. The portion of the disability period during which he did not provide service reduced his total service credit, compared to a situation where he had not been disabled and worked during that entire disability period, or had stayed on a medical leave. If he stayed on medical leave rather than seeking disability, he could have purchased service and salary credit for that period by making required contributions. The disability period also disrupted his high-five years. The retirement annuity is computed from the applicable accrual rate or rates

multiplied by years of service and the high-five average salary. For pension purposes in TRA law, average salary is defined as the five consecutive years which produces the highest average.

### Discussion and Analysis

William Dunshee received disability benefits from TRA for two years before recently returning to full-time employment as a school administrator. He now seeks to retire in the near future. Because of the period of disability, he has slightly less service credit and salary credit than would be case if the disabling event had not occurred and he had continued in full-time employment as the principal at Red Lake Senior High School, and his high-five years have been interrupted. Mr. Dunshee is requesting special legislation granting him a retirement annuity computed using his highest five salary years without the requirement in TRA law that the years be consecutive.

Proposed legislation LCPR10-018 raises numerous pension and related public policy issues:

1. Justification for the Request. The issue is whether the treatment given to Mr. Dunshee under general law is sufficient, or whether some additional treatment not permitted by general law is justified. Mr. Dunshee chose to apply for disability benefits and received those benefits for approximately two years, although he provided part-time employment to the district during one of those years. The period of disability had some impact on his eventual retirement benefits because of the loss of a year of service credit and the disruption of his high-five average salary years. However, TRA has determined that the disability benefits he received from TRA exceed the reduction that the disabling event would have on his retirement annuity. In other words, TRA general law provided Mr. Dunshee with a package of benefits (disability payments plus the eventual retirement annuity) that exceeds the value of the benefits Mr. Dunshee would receive if the disabling event had not occurred. The Commission is being asked to decide whether a further enhancement is justified.
2. Individual Responsibility. The issue is Mr. Dunshee's personal responsibility for the decisions he made. Unquestionably, Mr. Dunshee has dealt with horrific events which caused great stress. However, as noted above, Mr. Dunshee seems to have made rational decisions despite the stress. The combination of disability benefits coupled with a somewhat reduced retirement annuity has greater value than the retirement annuity he would receive if the disabling event had not occurred. Also, for half of his disability period he was providing service to the school district, working two-thirds time in a high-level administrative position. The ability to provide that service suggests he was capable of high-level decision making at the time these decisions were made.
3. Alternative of Using the Qualified Part-Time Teacher Program. If Mr. Dunshee was concerned about maintaining his high-five average salary years, presumably he could have used the qualified part-time teaching program during the year in which he worked two-thirds time. That program (Minnesota Statutes, Section 354.66) would have allowed Mr. Dunshee to work part time while making contributions based on full-time equivalent salary. He could not use this program, however, if he chose to stay on TRA disability.
4. Unusual Nature of the Request. The issue is the unusual nature of the request of a waiver from TRA's usual average salary definition. Commission staff cannot recall any request of a similar nature.
5. Support by TRA. The issue is whether TRA would oppose legislation for Mr. Dunshee.
6. Appropriate Scope; Equity Concerns. A teacher was killed in the incident at the Red Lake high school, and also several students and a security guard. The survivor or survivors of the deceased teacher received no TRA benefit other than the survivor annuity or death refund permitted under general law. If Mr. Dunshee is permitted to receive a TRA retirement benefit beyond that permitted under general law, it will be difficult to justify, at a minimum, not also providing some form of enhanced TRA benefit to the survivor or survivors of the murdered teacher. Others who died might be covered by PERA, or by no public plan. Regarding those who suffered physical or psychological injury or stress, many other teachers and administrators in addition to Mr. Dunshee had direct injuries or otherwise had their health negatively impaired, or made decisions about whether to continue providing service given these events. It may be impossible to identify all those who could make an argument similar to Mr. Dunshee's in justification for relief. Even those with no readily apparent health impacts may contend they decided to retire earlier than they otherwise would, and ought to be compensated for the reduced retirement benefits they receive due to that decision. They might also argue for a lump sum payment to compensate for foregone salary due to a decision to retire early.
7. Cost of the Proposal. The issue is the cost to TRA of the enhanced retirement benefit. TRA will need to provide an estimate of that cost. The cost will increase considerably if the scope is expanded.

8. Actuarial Condition of TRA. The issue is TRA's actuarial condition, particularly given the impact of large asset losses due to the investment markets which will be affecting the actuarial value of assets over the next few years due to asset smoothing techniques. Below are the results of TRA's most recent actuarial valuation:

TRA 2009		
<u>Membership</u>		
Active Members		77,786
Service Retirees		46,108
Disabilitants		624
Survivors		3,476
Deferred Retirees		12,490
Nonvested Former Members		<u>23,073</u>
Total Membership		163,557
<u>Funded Status</u>		
Accrued Liability		\$23,114,802,000
Current Assets		<u>\$17,882,408,000</u>
Unfunded Accrued Liability		\$5,232,394,000
Funding Ratio	77.36%	
<u>Financing Requirements</u>		
Covered Payroll		\$4,049,217,000
Benefits Payable		\$1,381,366,000
Normal Cost	8.88%	\$359,579,000
Administrative Expenses	0.28%	\$11,338,000
Amortization	<u>7.66%</u>	<u>\$310,170,000</u>
Total Requirements	16.82%	\$681,087,000
Employee Contributions	5.50%	\$222,860,000
Employer Contributions	5.69%	\$230,325,000
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.44%	\$17,948,000
Other Govt. Funding	0.06%	\$2,500,000
Administrative Assessment	<u>0.00%</u>	<u>\$0</u>
Total Contributions	11.70%	\$473,633,000
Total Requirements	16.82%	\$681,087,000
Total Contributions	<u>11.70%</u>	<u>\$473,633,000</u>
Deficiency (Surplus)	5.12%	\$207,454,000

9. Appropriate Entity to Provide Relief. If some form of relief can be justified, the question is which entity should provide that relief. It may not be appropriate to provide relief through a pension plan or plans. Pension plans provide retirement benefits, disability benefits, and death benefits to survivors, but they are not authorized or otherwise equipped to compensate individuals for suffering or income losses due to events which impact their lives. The workers' compensation system or the courts are better equipped to handle such matters, or perhaps some compensation fund created and administered by the Minnesota Department of Education.
10. Other Compensation Received. The Commission may wish to determine through testimony any compensation, financial awards, or insurance settlements Mr. Dunshee may have received as a result of the incident at the school, which may reduce the need for any legislative action.
11. Question of Harm. The general issue is whether some outside party, either TRA or the school district, harmed Mr. Dunshee. If the Commission were to conclude that TRA harmed Mr. Dunshee, it may justify providing some form of relief from TRA. Perhaps an argument can be made through testimony that Red Lake school district administration or TRA failed to adequately counsel Mr. Dunshee regarding the various options he had prior to his decision to apply for disability benefits. However, of the options that have been identified, the option he chose, to receive disability benefits followed in a few years by a retirement annuity computed under general law, has higher value than the other options. However, there is no harm if someone did not inform him of inferior options.
12. Available Self Help Remedy. TRA has indicated that if Mr. Dunshee feels he is harmed, he has a self-help remedy of working a few years longer so that the high-five years under general law occur after the 2006-2008 disability period.

#### Potential Amendment for Commission Consideration

**Amendment LCPR10-018-1A** revises the expiration date on the authority provided by the bill from two years following the effective date to a length of time to be determined by the Commission by filling in the blank on line 1.3 of the amendment.

## **Background Information on TRA Disability Provisions**

Disability benefits are ancillary benefits provided through a public pension plan's benefit package. The ancillary or casualty benefit coverage is funded actuarially in whole or in part by the primary age and service retirement annuity coverage provided by the pension plan and supplants or supplements other employment-related insurance coverage. In many Minnesota public pension plans, the disability benefit represents early access to or early payment of the unreduced benefit portion of a public pension benefit plan can become a de facto early retirement incentive program.

Minnesota Statutes, Section 354.48, is the Teachers Retirement Association (TRA) disability benefit provision. To qualify for a TRA disability benefit, the individual must meet a total and permanent disability standard, common to our general employee plans, meaning that the individual must be unable to engage, for at least one year, in any substantial gainful activity due to a medically determined physical or mental impairment. Another requirement is that the individual must be vested (have at least three years of service). If there has been a prior break in service, at least two years of service must have been provided after the break. The disability benefit application must be filed by the disablitant or a person authorized to act on behalf of the disablitant within the 18 months following the disablitant's termination of teaching service. The disability benefit is payable as of the day after the disability, the day after the last payment of a teaching salary, or the date occurring six months before the disability application is filed, whichever is later.

The disability determination is made by the TRA executive director, subject to the appeal of an adverse determination to the TRA board of trustees. In making these determinations, TRA relies on the commissioner of the Department of Health or a designee to act as the plan's medical advisor. The medical advisor shall designate licensed physicians, chiropractors, and psychologists to examine applicants for physical and mental impairments. At the discretion of the TRA executive director, the disablitant may be subject to periodic physical examinations or reviews for mental impairment to determine whether the individual remains eligible to receive disability benefits. If an examination indicates the person no longer qualifies for disability or if the individual refuses to submit to an examination, disability benefits are terminated.

The disability benefit is computed like a retirement annuity (using the individual's service credit, high-five average salary, and applicable accrual rate or rates) without any reduction for early receipt. The disability annuity can be either a single-life annuity or an optional annuity (joint-and-survivor annuity), whichever is elected.

TRA's disability provision includes a subdivision covering partial reemployment situations, specifying that if the disabled person resumes a gainful occupation in which earnings are less than the person's salary at the date of disability, the amount of earning plus the disability benefit originally granted may not exceed the salary at the date of disability. If there is an excess, the disability benefit is reduced to eliminate it. In general plans, partial reemployment provisions create some tension with the total and permanent disability standard. If an inability to undertake any gainful employment due to physical or mental impairment is required to qualify for disability, it is unclear how an individual could be even partially employed and continue to qualify. TRAs' provision does state that payment of any disability benefit could be ended if the executive director determines that the partially employed individual no longer meets the total and permanent disability standard.

Persons receiving disability benefits are in benefit receipt status, so generally they do not accrue service and salary credit while in disability status. TRA's disability provision does include a return-to-teaching service subdivision stating that a disablitant who returns to active teaching status will have contributions deducted from salary and will accrue service credit. This clearly covers situations where an individual has recovered, disability benefits are terminated, and the individual returns to teaching. What is less clear is this subdivision's application to individuals who remain in disability status, but who begin providing part-time or intermittent teaching service.

Individuals are prohibited from receiving a TRA disability benefit and a TRA retirement annuity at the same time. When a disablitant reaches normal retirement age, he or she is transferred to normal retirement status, and if an optional annuity has not previously been elected, another opportunity is provided at normal retirement age.

## Background Information on Teachers Retirement Association Leaves of Absence

- a. Medical Leave of Absence. Since 1990, the Teachers Retirement Association (TRA) has permitted teachers to obtain service credit for an authorized medical leave of absence under Minnesota Statutes, Section 354.095. When a TRA-covered employing unit grants a medical leave, it is required to certify the leave to TRA on a prescribed form. To receive service and salary credit, the teacher is obligated to pay to TRA the member contributions on the full-time salary paid when the leave began, and the teacher must also pay the corresponding employer contributions if the employing unit chooses not to cover the employer contributions. Payment may be made by June 30 without interest. If paid after June 30 and before the next June 30, payment must include interest at a monthly rate of 0.071 percent (8.5 percent annual) interest until the end of the month in which payment is made. If payment is made after that, a full actuarial value payment is required. TRA cannot accept payment after the individual retires.

Service credit is limited to one year under a medical leave, but presumably an individual could obtain more than one year of credit through a series of medical leaves. TRA's medical leave provision states that if the member is receiving a disability benefit from TRA for the leave period, the teacher is not permitted to obtain service credit for the leave. Also, to qualify for a medical leave, the person must have the right to be reinstated as a teacher by the employing unit both during and at the end of the medical leave.

- b. Extended Leave of Absence. TRA has an extended leave of absence provision, Minnesota Statutes, Section 354.094. When a TRA-covered employing unit grants an extended leave, it is required to certify the leave to TRA on a prescribed form. Extended leaves cannot exceed five years. To receive service and salary credit, the teacher is obligated to pay the member contributions on the full-time salary paid when the leave began to TRA, and the teacher must also pay the corresponding employer contributions if the employing unit chooses not to cover the employer contributions. Payment may be made by June 30 without interest. If paid after June 30 and before the next June 30, payment must include interest at a monthly rate of 0.071 percent (8.5 percent annual) interest until the end of the month in which payment is made. If payment is made after that, a full actuarial value payment is required. TRA cannot accept payment after the individual retires.

To qualify for an extended leave of absence, the person must have a right to reinstatement as a teacher by the employing unit both during and at the end of the leave.

- c. TRA Part-Time Teaching/Full-Time Service Credit Provision. Under the TRA qualified part-time teacher provision, Minnesota Statutes, Section 354.66, a teacher can receive full-time retirement credit for part-time teaching, providing the requirements of the program are met, including making the necessary full-time equivalent contributions to TRA. The employee pays an employee contribution based on full-time equivalent salary. The employing unit pays the employer contribution on the part-time salary. The difference between this amount and a full-time equivalent employer contribution must also be contributed to the fund, with the payment shared by the employee and employing unit as agreed to by the parties.

To qualify for the program, there must be an agreement assigning the teacher to the program executed before October 1 of the school year and filed with TRA. Later filings are permitted, although the school district must pay a fine, and TRA cannot accept an agreement filed more than 15 months late. Positions in the part-time teaching program must constitute at least 50 full days of teaching service or its equivalent and must not be compensated in excess of 80 percent of the compensation of a full-time teacher with identical education and experience in the district. Participation in the program is limited to ten years. While utilizing the qualified part-time teacher retirement fund participation provision, the teacher is not allowed to:

- (1) simultaneously be a member of, make contributions to, and receive service credit from another Minnesota public pension plan other than a volunteer firefighter relief association;
- (2) utilize the qualified part-time teacher retirement fund participation provision in more than one employing unit simultaneously;
- (3) utilize the provision in one district during a year when the teacher also takes a full-time or a part-time teaching position in another employing unit other than that of a substitute teacher; and
- (4) utilize the provision for any part of any year for which the teacher qualifies for full service credit from the applicable retirement fund.

- 1.1 ..... moves to amend S.F. No. ....; H.F. No. ...., document LCPR10-018,
- 1.2 as follows:
  
- 1.3 Page 2, line 8, delete "two years" and insert " ....."

A bill for an act

relating to retirement; Teachers Retirement Association; permitting alternative computation of retirement annuity for former principal at Red Lake Senior High School.

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

Section 1. **TEACHERS RETIREMENT ASSOCIATION; ALTERNATIVE COMPUTATION OF RETIREMENT ANNUITY FOR PRIOR PRINCIPAL OF RED LAKE SENIOR HIGH SCHOOL.**

(a) For an eligible person described in paragraph (b), notwithstanding the definition of average salary in Minnesota Statutes, section 354.05, subdivision 13a, the executive director of the Teachers Retirement Association shall compute the retirement annuity, following submission of a valid retirement application, using an average salary upon which contributions were made for the highest five years of formula service credit, without the requirement that the years be successive.

(b) An eligible person is a person who:

(1) is an active Teachers Retirement Association member;

(2) was the principal at Red Lake Senior High School on March 21, 2005, when several murders occurred at the high school;

(3) suffered a heart attack a few weeks after March 21, 2005;

(4) was on a Teachers Retirement Association medical leave from February 3, 2006, to June 2, 2006;

(5) commenced receipt of Teachers Retirement Association disability benefits in June 2006; and



2.1 (6) later returned to full-time employment with the school district as the principal  
2.2 at an alternative learning center.

2.3 (c) An eligible person shall provide to the executive director of the Teachers  
2.4 Retirement Association any relevant documentation that the executive director requests to  
2.5 ensure proper application of this section.

2.6 (d) Any person for whom an annuity is computed under this section is prohibited  
2.7 from entering into a return-to-work agreement under Minnesota Statutes, section 354.444.

2.8 (e) Authority to have an annuity computed under this section expires two years  
2.9 after the effective date.

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