



**H.F. 476**  
(Kelly)

**S.F. 176**  
(Howe)

**Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* PERA-General  
*Relevant Provisions of Law:* Minnesota Statutes, Section 353.01, Subdivisions 2 and 6  
*General Nature of Proposal:* Authorizing and validating PERA-General coverage for Red Wing Port authority employees  
*Date of Summary:* February 11, 2011

**Specific Proposed Changes**

Specifies local government employees included in PERA-General retirement coverage and defining the term "governmental subdivision" to include the Red Wing Port Authority, by the following:

- specifically includes the Red Wing Port Authority employees in PERA-General;
- specifically includes the Red Wing Port Authority as a PERA-covered governmental subdivision; and
- validates the past retirement coverage, allowable service credit, salary credit, and contributions in or to PERA-General for Red Wing Port Authority since 1984.

**Policy Issues Raised by the Proposed Legislation**

1. Nature of the Red Wing Port Authority employee retirement coverage error and the appropriateness of ratifying past PERA-General retirement coverage for current port authority employees.
2. Status of the Red Wing Port Authority as a governmental subdivision.
3. Appropriateness of the alternative resolution; refund of PERA-General member and employer contributions, plus interest, and service credit cancellation.
4. Appropriateness of continuing exclusion for other Minnesota port authorities.

**Potential Amendments**

No staff amendments.



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Lawrence A. Martin, Executive Director *LA Martin*  
RE: H.F. 476 (Kelly); S.F. 176 (Howe): PERA-General; Authorizing and Validating PERA-General Coverage for Red Wing Port Authority Employees  
DATE: February 11, 2011

General Summary of the Proposed Legislation

H.F. 476 (Kelly); S.F. 176 (Howe) amends Minnesota Statutes, Section 353.01, Subdivisions 2 and 6, specifying local government employees included in General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) retirement coverage and defining the term "governmental subdivision" to include the Red Wing Port Authority, by the following:

- (1) specifically includes the Red Wing Port Authority employees in PERA-General;
- (2) specifically includes the Red Wing Port Authority as a PERA-covered governmental subdivision; and
- (3) validates the past retirement coverage, allowable service credit, salary credit, and contributions in or to PERA-General for Red Wing Port Authority since 1984.

Background Information

Background information on the Red Wing Port Authority is contained in **Attachment A** and background information on membership inclusions and exclusions in PERA-General is contained in **Attachment B**.

Discussion and Analysis

H.F. 476 (Kelly); S.F. 176 (Howe) ratifies the erroneous inclusion of the four current employees of the Red Wing Port Authority in past retirement coverage by PERA-General since December 31, 1984, and authorizes the future inclusion of any Red Wing Port Authority employees in PERA-General retirement coverage.

The proposed legislation raises a number of pension and related public policy issues that the Legislative Commission on Pensions and Retirement may wish to consider and discuss, as follows:

1. Nature of the Red Wing Port Authority Employee Retirement Coverage Error and the Appropriateness of Ratifying Past PERA-General Retirement Coverage for Current Port Authority Employees. The policy issue is the nature of the error that resulted in covering the employees of the Red Wing Port Authority by PERA-General and the appropriateness of ratifying their inclusion in PERA-General retroactively to December 31, 1984. Port authorities have been excluded from PERA-General retirement coverage since either 1959 or 1961. In 1959 (Laws 1959, Ch. 447, Sec. 3, and Ch. 633, Sec. 1-2), port authority employees were included in the federal Old Age, Survivors, and Disability Insurance Program, more commonly known as Social Security, amending a 1955 law (Laws 1955, Ch. 684) initially enacted for municipal housing and redevelopment authority employees. Also in 1959 (Laws 1959, Ch. 650, Sec. 2), seaway port authorities were excluded from PERA-General retirement plan coverage. In 1961 (Laws 1961, Ch. 746, Sec. 1-2), the 1959 seaway port authority PERA-General exclusion was broadened to include all port authorities, with a legislative intent section that indicated that the exclusion in 1959 was intended to be all port authorities and the reference to only seaway port authorities was inadvertent. Social security coverage was not extended to public employees covered by PERA-General until 1963 (Laws 1963, Ch. 793, Sec. 1-11) for public hospital employees and, after much controversy and even state court litigation, until 1967 (Laws 1967, Ch. 687, Sec. 10-21) for other PERA-General covered employment positions. While the Commission office does not have records contemporaneous with the 1959-1961 exemption of port authority employees from PERA-General, it is likely that the 1959-1961 PERA-General exclusion was a function of the presence of Social Security coverage for port authority employees in 1959 and the nature of PERA-General in 1959 as a basic program, without any accommodation for Social Security coverage, and not any other apparent pension policy consideration. For an undisclosed reason occurring at the City of Red Wing, at the Red Wing Port Authority, or at PERA, Red Wing Port Authority employees since its creation in 1985 have been included in PERA-General Retirement Plan coverage as if they were municipal employees. The Red Wing Port Authority employees could have been mistaken for City of Red Wing employees because of the close tie between the port authority and the city and because it appears that the city may have acted as the fiscal agent for the port authority, or because the reporting to PERA of their employees by the

port authority or the city was unclear as to their employer, or because PERA failed to discover their excluded status for 26 years. The Commission may wish to inquire of the Red Wing Port Authority, the City of Red Wing, and PERA as to the cause of the coverage error and may wish to inquire of PERA if this incident has caused any revision in its procedures to insure that coverage inclusions and exclusion errors do not occur in the future.

2. Status of the Red Wing Port Authority as a Governmental Subdivision. The policy issue is whether or not the Red Wing Port Authority is an entity that fits within the broad parameters of the definition of “governmental subdivision” in PERA-General law, Minnesota Statutes, Section 353.01, Subdivision 6, Paragraph (a). That definition includes departments, units, or instrumentalities of state or local government or any public bodies established under state or local authority that has a government purpose and is under public control, employs and pays employee salaries, and receives a major portion of revenues from taxation, fees, assessments, or other public sources. The Red Wing Port Authority is created under state law, is either an instrumentality of the State of Minnesota or the City of Red Wing or is a public body established under state law, is under the control of a board that is publicly appointed, is a regular employer, and receives some of its revenues from property taxes, governmental grants, and fees or assessments from port users. The Red Wing Port Authority is broadly analogous to the Metropolitan Airports Commission, the various economic development authorities, and the St. Paul River Centre Convention and Visitors Authority, which are all current governmental subdivisions covered by PERA-General.
  
3. Appropriateness of the Alternative Resolution: Refund of PERA-General Member and Employer Contributions, Plus Interest, and Service Credit Cancellation. The policy issue is the appropriateness of the alternative resolution of the Red Wing Port Authority/PERA-General coverage inclusion error. Since the current Red Wing Port Authority employees are specifically excluded from PERA-General Retirement Plan coverage and have been since 1959, before the creation of the Red Wing Port Authority, if no remedial legislation is enacted, PERA-General is obligated to refund member and employer contributions related to the four current Red Wing Port Authority employees and 14 former Red Wing Port Authority employees, plus four percent interest, under Minnesota Statutes, Section 353.27, Subdivision 7, for affected port authority employees and former employees with initial erroneous deductions after December 31, 1989, but will continue in PERA-General Retirement Plan coverage affected port authority employees and former employees where the erroneous deductions predate January 1, 1990, if the person’s subsequent service was in the same position for which the erroneous deductions were taken. The 1990 break point date in Minnesota Statutes, Section 353.27, Subdivision 7, was enacted at the request of PERA as part of the 1993 PERA administrative changes (see Laws 1993, Ch. 307, Art. 4, Sec. 17). At the request of the Red Wing Port Authority, although there does not appear to be authorization by any specific provision of PERA law, PERA has agreed to delay implementing the erroneous contribution and deduction receipt adjustment and to continue accepting member deductions and employer contributions through the end of the 2011 Legislative Session. The refund of deductions and contributions would trigger an automatic forfeiture of any credited allowable service and any potential future retirement annuity, including for individuals who may be drawing a retirement annuity or receiving deferred annuity augmentation.
  
4. Appropriateness of Continuing Exclusion for Other Minnesota Port Authorities. The policy issue is the appropriateness of including the Red Wing Port Authority in retirement coverage by PERA-General while not addressing the situation of the other 25 port authorities that remain excluded from PERA-General coverage. In 2003, the St. Paul Port Authority was included in PERA-General retirement coverage. The Seaway Port Authority of Duluth is pursuing special legislation to gain past and future PERA-General Retirement Plan coverage. Based on information gathered from Minnesota Statutes, Sections 469.069 to 469.089, the 25 additional port authorities that exist and are excluded from PERA-General retirement coverage other than the Seaway Port Authority of Duluth are:

Albert Lea	Detroit Lakes	Koochiching County	Redwood Falls	Wabasha
Austin	Duluth	Minneapolis	Rosemount	Wadena
Bloomington	Fergus Falls	North Mankato	Roseville	Warroad
Breckinridge	Granite Falls	Ortonville	St. Cloud	White Bear Lake
Cannon Falls	Hastings	Plymouth	South St. Paul	Winona

Adding employing units one by one, at their election, is not a very efficient process from a legislative standpoint. If there is no overarching policy reason for excluding port authorities from PERA-General coverage, but when there could be employment interchanges with other PERA-General covered employing units, it may be more appropriate to include all port authorities in future PERA-General retirement coverage at large. Reaction from port authority representatives may be appropriate before undertaking any broadening the special pension legislation.

## **Background Information on the Red Wing Port Authority**

The Red Wing Port Authority was created by the City of Red Wing in 1985. The port authority is a political subdivision of the State of Minnesota and is governed by Minnesota Statutes, Section 469.081.

The Red Wing Port Authority is the economic development agency for the City of Red Wing. The Port Authority's primary goal is to help companies to take advantage of the opportunities to expand and grow in the economy of Red Wing.

The Red Wing Port Authority provides the following services:

- operates a revolving loan fund with a portfolio exceeding \$3 million to fill the financing gaps in both business expansions and start-ups;
- partners with the state and federal governments and the private sector to coordinate financing and to turn projects into reality;
- administers Red Wing's Tax Increment Districts;
- partners with other organizations, such as the Red Wing Housing and Redevelopment Authority;
- can issue Industrial Revenue Bonds to finance, in whole or in part, the cost of acquisition, construction and reconstruction;
- owns over 100 acres of developable land, complete with infrastructure, including land in two industrial development parks, the River Bluffs Development Park and the New Industrial Business Park;
- operates a riverfront bulk transfer facility (bulkheads), facilitating the shipping of bulk commodities via water transport;
- owns and operates Ole Miss Marina, a two-site, 284-slip marina located at Bay Point Park and at Colvill Park; and
- offers site selection assistance.

The Red Wing Port Authority is governed by a board of eight members, of which one is an ex officio member as Red Wing City Council Administrator and two are members of the Red Wing City Council.

The Greater Red Wing Development Corporation, comprised of community leaders, was formed in 2005 to provide additional financing opportunities for expanding and new businesses in the community.

The Red Wing Port Authority currently has four employees, an executive director, a business development director, a marina manager, and an executive assistant. The Port Authority staff also serves as the staff for the Greater Red Wing Development Corporation.

## Background Information on PERA-General Retirement Plan Membership Inclusions and Exclusions

- a. Current Membership Inclusions. The General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) includes in its retirement coverage employees of governmental subdivisions and public officers performing personal services for a governmental subdivision where salary is paid in whole or in part from revenue derived from taxation, fees, assessments, or other sources, with some specific inclusions, with some optional memberships exercised either by the governmental entity or by the individual employee, and with some specific exclusions.

Specific inclusions are governmental subdivision employees with salary that exceeds \$425 in any month from either one subdivision position or a number of subdivision positions, employees with governmental functions such as town or city clerks or treasurers, county auditors, treasurers or recorders, city managers, or emergency management directors, physicians in public employment, full-time employees of the Dakota county Agricultural Society, and Minneapolis Police Relief Association or Minneapolis Firefighters Relief Association employees.

- b. Current Optional Memberships. Optional PERA-General membership by action of the individual are employees of public sector labor organizations, persons in elected or appointed positions other than local governing body positions, PERA-General members appointed by the governor as a state department head who decline coverage by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), city managers, and pre-2003 St. Paul Port Authority employees who were over age 44 in 2003. Optional PERA-General membership by action of the employing entity are employees of the Minnesota Association of Townships, county historical societies, or Hennepin Healthcare Systems, Inc. employees.

- c. Current Membership Exclusions. Exclusions from PERA-General membership are persons with salary from a governmental subdivision that never exceeds \$425 in any month, public officers on the governing body of a governmental subdivision, election judges and officers, patient or inmate personnel, temporary employees, fire, flood, storm, or disaster emergency employees of a governmental subdivision, persons required by law to be a member of another Minnesota retirement plan by virtue of their governmental subdivision employment, religion order members, employees under age 23 who are full-time students, physician residents, medical interns, and pharmacy residents, part-time technical college instructors with a part-time adult supplementary technical college license, foreign citizens with short-term work permits or visas, public hospital employees electing not to participate before 1972 and in 1988, volunteer ambulance personnel, volunteer firefighters, various local government trades personnel, seasonal employees, supported employment employees, work study employees, independent contractors and their employees, reemployed annuitants, and governmental subdivision board or commission members.

- d. Historical Development of PERA-General Inclusions and Exclusions.

- In 1931 (Laws 1931, Ch. 307, Sec. 1-2), when the Public Employees Retirement Association (PERA) was established, the term “public employee” was defined as any person holding an elective or appointive position as an employee or officer of a county, as an employee or officer of any city of the first class, city of the second class, or city of the third class, whether governed by home rule charter or otherwise, as an employee or officer of any village with a population of more than 7,000, or public school employee or officer with a salary paid from taxation or from public revenues. The term excluded temporary employees and employees with an average period of employment under six months, with membership optional for public employees having that status on April 24, 1931, to be elected before July 1, 1933, and with membership mandatory for public employees accepting public employment after April 23, 1931.
- In 1933 (Laws 1933, Ch. 374, Sec. 1-2), the definition of the term “public employee” was revised to apply to any person who holds a position by election, appointment, or contract with a county, a city, a village, or a school district if the salary is paid in whole or in part through taxation, fees, assessments, or governmental subdivision revenue. The term was defined to also mean a person appointed as a district court reporter, but was indicated that it did not include persons by employment were required to contribute to another retirement fund established under law and did not include temporary employees. The definition of “public employee” was extended to include any incorporated city and any incorporated village with a population of more than 5,000. The definition distinguished between “present public employees” (a public employee who was receiving salary from a governmental subdivision which accepted coverage by PERA on the date

of that acceptance) and “new public employees” (a public employee who entered public employment by a governmental subdivision which accepted PERA coverage after the date of that acceptance). Present public employees in governmental subdivisions accepting PERA coverage were permitted to elect PERA membership until July 1, 1935, with the membership of an elected official who elected coverage remaining binding during the person’s future incumbency, and with the membership in the retirement plan not terminated by resignation or termination of governmental subdivision employment.

- In 1935 (Laws 1935, Ch. 106, Sec. 1), the retirement plan membership provision was modified to accommodate employees of governmental subdivisions at the time of its accepting plan coverage after May 1, 1935, and were given the option of becoming plan members during the two years following the acceptance.
- In 1937 (Ch. 466, Sec. 1-2), the definition of “public employee” was augmented to exclude any period of time for coverage when the person was eligible for membership or was a member of another Minnesota public retirement plan. The covered governmental subdivisions provision was expanded to include any common school district or special school district. The plan membership provision was amended to provide that any person who is appointed to fill an elective office vacancy may exercise a membership option under the same terms and condition as apply to the admission of elective officers.
- In 1941 (Laws 1941, Ch. 285, Sec. 1-2), the definition of “public employee” was modified to exclude temporary employees, and was further refined in excluding individuals for periods of employment when they were covered by a Minnesota public retirement plan and specifically included district court reporters. “Temporary employee” was defined to mean persons who are employed by a governmental subdivision for a period that did not exceed six months in any 12-month period, was a substitute for another employee on a leave of absence, was considered temporary in character, but not seasonal, or is employed part time with annual compensation under \$301 unless the person is in the classified civil service of the employing unit.
- In 1947 (Laws 1947, Ch. 18, Sec. 1-2), the definition of “present public employee” was redefined as employees of governmental subdivisions as of June 1, 1947, for subdivisions which became subject to the retirement plan effective on June 1, 1947. The definition of “new public employee” was redefined as persons who become employees of governmental subdivisions becoming subject to the retirement plan after June 1, 1947. The plan membership provision was separated into subdivisions, with new subdivisions governing the membership process for employees and elected public officials becoming such after June 1, 1947, with a two-year deadline for the exercise of the option back to June 1, 1947.
- In 1949 (Laws 1949, Ch. 84, Sec. 1), the language of the prior exclusion of persons who are members of another public retirement plan was simplified.
- In 1951 (Laws 1951, Ch. 22, Sec. 1-7, 10-13), the definition of “public employee” was substantially revised, newly set as any person performing personal services for a governmental subdivision as an officer or employee whose salary is paid wholly or partially through taxation, fees, assessments, or other public revenue, as a district court reporter, or as an officer or employee of PERA, the definition of “governmental subdivision” was expanded to include boroughs and towns. The term “non-employee member” was defined as a person who continues PERA membership after ceasing to be a public employee. The term “contributory membership” was defined as membership during which contributions are made by salary deduction. The term “new public employee” was redefined as a person who becomes a public employee after the date on which the governmental subdivision accepted PERA coverage. The specification of membership eligibility was totally revised, requiring every public employee who is not already covered by PERA on or after July 1, 1951, to become a PERA member by accepting or continuing in public employment unless an elected official or an appointee to an elected official position, is already age 60, is required to contribute to another public retirement plan by virtue of employment, or is an employee of a governmental subdivision that had not adopted PERA coverage. The public officers membership provision was totally revised, made optional, and continuing during the incumbency of the person in office. A provision specifying optional membership for employees at or over age 60 on July 1, 1951, was added, and a provision governing the commencement of membership on July 1, 1951, was added.
- In 1955 (Laws 1955, Ch. 815, Sec. 1, 2, 11), the membership provisions were modified to add elected members of the Legislature as members and to make PERA membership mandatory for non-member public employees on July 1, 1955, and for newly employed public employees after June 30, 1955, by virtue of the continuation in employment or the acceptance of employment.

- In 1957 (Laws 1957, Ch. 815, Sec. 1; and Ch. 935, Sec. 1, 6), the plan membership provisions were amended to include in coverage the chief clerk of the Minnesota House of Representatives, the Secretary of the Minnesota Senate, and any employee of the League of Minnesota Municipalities. Plan membership provisions were amended to add or clarify exceptions from coverage, set as:
  - persons rendering professional duties and compensation is on a per diem basis;
  - election officers;
  - persons who are employed by contractors under an authorized contract;
  - patient and inmate help rendered to governmental unit;
  - members of boards, commissions, volunteer fire departments, bands, and others employed in intermittent governmental subdivision service and paid on a per diem or for-free basis;
  - temporary, emergency, and seasonal employees as defined by PERA board rule; and
  - public employees required to contribute by virtue of employment to another Minnesota public retirement plan.

Plan membership provisions were amended to also exclude:

  - persons over age 60 with less than six years of allowable service credit as of June 30, 1957, and any post-June 30, 1957, hire unless the person has allowable service credit equal to the number of years in excess of age 55;
  - elected public officials and appointees to elected positions had the option to be covered by the retirement plan within six months of taking office, continuing for the duration of incumbency in the office held when membership was elected; and
  - any public employee who was not eligible for PERA coverage but who was not eligible for federal Social Security coverage, was made eligible for PERA coverage, retroactive to July 1, 1957.
- In 1959 (Laws 1959, Ch. 650, Sec. 1-3, 30, 56), employees of a public elected officer or of governmental subdivision departments were made eligible for PERA coverage. Municipal housing and redevelopment authority employees, seaway port authority employees, soil conservation district employees, and certain hospital district employees were excluded from PERA coverage. PERA membership was limited to periods while engaged in public employee services, and PERA membership was specified to include leaves of absence of less than six months, temporary layoffs of less than six months, authorized sick leaves, and authorized job training leave. Nonemployee PERA membership was abolished as of August 1, 1959, with refunds paid to any former nonemployee PERA member. Former PERA members who are elected officials or employees of a municipality that is not covered by PERA were permitted to continue in PERA membership.
- In 1961 (Laws 1961, Ch. 482, Sec. 1; and Ch. 746, Sec. 1), police matrons who were transferred to county correctional facilities were excluded from PERA coverage and the prior seaway port authority exclusion was corrected as a port authority exclusion from PERA.
- In 1963 (Laws 1963, Ch. 641, Sec. 3-4, 16-17), the independent contractor exclusion from PERA coverage was clarified. The prior other retirement plan or relief association contributor exclusion was modified to not apply to local police or fire relief association members with dues but no pension contributions less than \$13 in any calendar year. The prior extension of membership to leave of absence periods limited to an aggregate of 12 months during the person's entire coverage period rather than six months and the prior extension of membership to temporary layoff or authorized job training leave was limited to periods authorized by the employer transmitted promptly to PERA and not to exceed 3.5 months in any calendar year.
- In 1965 (Laws 1965, Ch. 880, Sec. 1), employees of probate judges or municipal judges were included in PERA coverage. The prior temporary, emergency, and seasonal employee exclusion from PERA membership was replaced by an exclusion of employees in essentially temporary or seasonal positions that do not continue beyond 90 working days in any calendar year and the exemption expires if a former temporary or seasonal employee continues beyond 90 days and earns in excess of \$75 in any calendar month. Part-time employees with less than \$75 in monthly compensation were excluded from PERA membership, along with emergency employees hired by reason of fire, flood, storm, or disaster and with students occasionally employed part time by a governmental subdivision in any capacity.
- In 1967 (Extra Sess. Laws 1967, Ch. 37, Sec. 1), the prior exclusion for part-time employees with earnings under \$75 per month was clarified by eliminating the prior exception for probationary employees with civil service merit system rights. The prior student part-time employee exclusion was expanded to include full-time school or college students.

- In 1969 (Laws 1969, Ch. 940, Sec. 1), the inclusion in PERA membership of persons employed by probate judges was eliminated, and a grammatical error relating to the exclusion of election officers was corrected. The exclusion of public employees covered by another public retirement fund by virtue of their public employment was modified to not apply to volunteer fire relief association members if the relief association does not determine benefits or contributions based on a firefighter's compensation or salary, and the religious organization exemption was modified with respect to the required annuity or benefit waiver.
- In 1971 (Laws 1971, Ch. 106, Sec. 1, 39; and Ch. 503, Sec. 1), the inclusion in PERA membership of the secretary of the Minnesota Senate and the chief clerk of the Minnesota House of Representatives was eliminated, and the inclusion in PERA coverage of Minnesota legislators was limited to persons first elected before December 31, 1969. The broad exclusion from PERA coverage of volunteer fire department members was eliminated, and the exclusion from PERA membership of temporary or seasonal employees was modified as to its continuation from more than 90 working days to 120 working days. The exclusion from PERA coverage of persons with other retirement plan coverage was modified to not apply where legislation specifically authorized supplemental plan coverage, and the exclusion from PERA membership was modified with respect to medical interns and resident physicians to apply only if they are full-time graduate degree candidates.
- In 1973 (Laws 1973, Ch. 753, Sec. 3-5, 79), the PERA membership inclusion was modified to eliminate employees of elected or appointed officers or municipal judges and to eliminate state legislators.

Specific PERA membership inclusions were added, indicated as:

- elected or appointed officers and their employees,
- district court reporters,
- PERA officers and employees,
- League of Minnesota Municipalities employees,
- public hospital officers and employees, and
- school district employees who drive their own buses.

Fifteen specific PERA membership exclusions were added, indicated as:

- persons employed for their regular professional duties,
  - election officers,
  - independent contractors,
  - patient and inmate help in charitable, penal, and correctional institutions,
  - boards, commissions, and band with intermittent service,
  - temporary or seasonal employees up to 120 working days annually and earning less than \$75 per month,
  - part-time employees with monthly compensation under \$75 or annual compensation stipulated under \$900 annually,
  - post-February 1, 1969, elected officials with compensation under \$75 per month,
  - emergency fire, flood, storm, or disaster employees,
  - persons required to be a member of another primary retirement plan by virtue of their employment,
  - public matrons,
  - persons applying for exemption based on religious organization membership,
  - students who are occasional part-time employees and full-time students,
  - resident physicians, medical interns, and pharmacist interns, and
  - appointed or elected officers paid on a fee basis who were not members on June 30, 1971.
- In 1974 (Laws 1974, Ch. 229, Sec. 1), the earnings threshold for membership for temporary employees, seasonal employees, part-time employees, and elected officials was increased from \$75 per month to \$150 per month (or \$1,800 annually if stipulated for part-time employees).
  - In 1976 (Laws 1976, Ch. 329, Sec. 12), the religious organization exemption from PERA membership was amended to require the religious organization to confirm that public retirement membership is forbidden by its religious beliefs, customs, or rites. The student exemption from PERA membership was amended to make it inapplicable to full-time public employees for all applicable personnel effective July 1, 1976.
  - In 1977 (Laws 1977, Ch. 347, Sec. 52; and Ch. 429, Sec. 19-20), the name for the League of Minnesota Cities was corrected and employees of the Association of Minnesota Counties, the Metropolitan Inter-County Council, and the Minnesota Municipal Utilities Association were added



to the PERA membership inclusion provision. The temporary, seasonal, and part-time employee minimum salary threshold for inclusion in PERA coverage was increased from \$150 per month to \$250 per month (or from \$1,800 to \$3,000 if stipulated in advance for part-time employees). The religious organization exclusion from PERA membership was replaced by an exclusion for chaplains and nuns taking a vow of poverty as a religious order member, and the occasionally employed part-time exclusion from PERA membership for students was eliminated.

- In 1978 (Laws 1978, Ch. 471, Sec. 1; Ch. 720, Sec. 6; and Ch. 796, Sec. 23), the PERA membership exclusion provision was modified by:
  - increasing the salary threshold figure from \$150 per month to \$250 per month for elected officials after March 1, 1978,
  - adding an exclusion for participants in the federal Comprehensive Employment and Training Act,
  - clarifying that the other pension plan coverage exclusion applied only if the other plan coverage was coincidental with the potential PERA membership, and
  - excluding from PERA membership town, city, or county assessors if their salary or compensation from any one employer did not exceed \$250 per month or if the employment contract sets the total compensation in advance and specifies in advance that the service will not exceed three months in duration.
- In 1979 (Laws 1979, Ch. 216, Sec. 1; and Ch. 303, Art. 6, Sec. 5), the PERA membership inclusion provision was expanded to include post-1979 Minneapolis city officers and employees, post-1979 Metropolitan Airports Commission employees, post-1979 Minneapolis Employees Retirement Fund employees, and post-1979 Special School District No. 1 employees, and the PERA membership exclusion provision was modified by clarifying that the part-time employee exclusion does not apply to firefighters, by excluding volunteer firefighters who are stipulated in advance and who do not receive compensation greater than \$3,000 annually, by clarifying that the full-time student exclusion does not apply to full-time employees of governmental subdivisions, and by removing an obsolete effective date.
- In 1980 (Laws 1980, Ch. 609, Art. 5, Sec. 20), the PERA membership exclusion provision was expanded by adding persons with part-time adult supplementary vocational-technical school licenses rendering incidental service up to 300 hours annually, and by adding area vocational technical school instructors rendering less than six hours of teaching service per quarter.
- In 1981 (Laws 1981, Ch. 68, Sec. 15), the PERA coverage inclusion provision was expanded with the addition of Range Association of Municipalities and Schools employees and Soil and Water Conservation District employees. The PERA coverage exclusion provision was modified by an increase in the salary threshold for membership for temporary or seasonal employees, part-time employees, and elected officials from \$250 per month to \$325 per month (or from \$3,000 to \$3,900 per annum for part-time employees if stipulated in advance).
- In 1982 (Laws 1982, Ch. 404, Sec. 1, 2, 10; and Ch. 424, Sec. 115), the PERA membership inclusion provision was amended to eliminate the specific inclusions of Minneapolis city elected officials and employees and Minneapolis public schools employees, and to correct the name of the Metropolitan Inter-County Association. The PERA membership exclusion provision was amended to remove the exception of firefighters in the part-time employees with monthly compensation under \$325 exclusion and the specific volunteer firefighter exclusion. The specific definition of a volunteer firefighter was repealed.
- In 1985 (Laws 1985, Ch. 261, Sec. 3), the PERA coverage inclusion provision was expanded with the addition of a specific inclusion for employees of a county historical society.
- In 1986 (Laws 1986, Ch. 399, Art. 2, Sec. 9; Ch. 400, Sec. 9; and Ch. 458, Sec. 11; and 1st Spec. Sess. Laws 1986, Ch. 3, Art. 2, Sec. 41), the PERA membership inclusion provision was expanded to specifically include employees of economic development authorities and was amended by modifying the 1985 inclusion of county historical society employees by specifying that those employees also must be county employees.
- In 1987 (Laws 1987, Ch. 49, Sec. 9; Ch. 284, Art. 5, Sec. 1; Ch. 296, Sec. 1; and Ch. 372, Art. 1, Sec. 5), the PERA coverage inclusion provision was expanded to specifically include full-time firefighters who are employed by the Minnesota Department of Military Affairs.

The PERA coverage exclusion provision was modified by:

- defining incidental service by persons rendering professional services as less than 25 percent of total gross annual earnings,

- including alternatively a school year for a calendar year for the exclusion of temporary or reasonable school district employees or part-time school district employees, with a threshold maximum salary of prorated portion of \$3,900 written stipulated earnings,
  - eliminating the federal Comprehensive Employment and Training Act exclusion,
  - specifying the other retirement plans that trigger an exclusion rather than a more generic exclusion, and
  - replacing the chaplain and nun exclusion with an exclusion indexed to the federal Social Security law religious organization exemption law.
- In 1988 (Laws 1988, Ch. 709, Art. 2, Sec. 1; and Art. 5, Sec. 1), the PERA membership inclusion provision was expanded by including county historical society employees located in a county that certifies the employees as its employees for retirement purposes.

The PERA membership exclusion provision was modified by:

- reorganizing the provision into paragraphs and clauses,
  - revising the language style of the incidental service determination for professional service employees,
  - replacing the former temporary or seasonal employee exclusion with an exclusion for employment not expected to continue for more than six consecutive months,
  - increasing the threshold compensation figure for part-time employees and elected officials from \$325 per month to \$425 per month (from \$3,900 to \$5,100 annually if stipulated in advance),
  - moving to a separate paragraph the exception in the other retirement plan membership exclusion for multiple plan coverage for different service during the same time period,
  - eliminating a 1963 savings clause relating to membership option exercises, and
  - eliminating the modestly compensation town, city, or county assessor exclusion.
- In 1989 (Laws 1989, Ch. 209, Art. 2, Sec. 36; Ch. 319, Art. 3, Sec. 1-2, and Art. 5, Sec. 1; and Ch. 335, Art. 3, Sec. 5), the PERA coverage inclusion provision was expanded:
    - with the addition of Association of Metropolitan Municipalities employees and of Minnesota Association of Townships employees if the association certifies its exercise of the coverage option for all permanent employees,
    - the continuation in membership of pre-July 1, 1988, employees who met the compensation threshold based on total salary from all positions held in multiple governmental subdivisions and court employees who became state employees and elected a continuation of coverage, and
    - correcting statutory cross-references for economic development authority employees.

The PERA coverage exclusion provision was modified to:

- update without apparent substantive change the language style and usage of several provisions,
  - provide an exception to the under-six-months employment exclusion for probationary periods preceding a permanent position, and by repositioning procedures applicable to employees who continue beyond six months or hold concurrent part-time positions and earn more than \$425 monthly,
  - clarify the other retirement plan membership exclusion based on the plan administrative system,
  - to except from the other retirement plan exclusion concurrent membership based on different employment occurring at the same time,
  - add exclusions for pharmacist residents serving in a degree or residency program and for students serving in an internship or residency sponsored by an accredited educational institution,
  - simplify the part-time adult supplementary technical institute license exemption,
  - exclude volunteer ambulance service personnel unless they render compensated service other than as ambulance personnel,
  - exclude volunteer firefighters unless they render compensated service other than service covered by the volunteer fire relief association, and
  - exclude Minneapolis Community Development Agency employees.
- In 1990 (Laws 1990, Ch. 570, Art. 11, Sec. 1), the PERA coverage exclusion provision was modified to exempt from the board and commission member exclusion individuals where membership was a result of public employment by the same employer. The under-six-consecutive-month employment exclusion was revised to clarify that the person must be hired for a position of less than six months in duration and to except from the exclusion employees hired to an unlimited period employment position with a probationary period. The exclusion provision was modified to revise the part time under the threshold salary exclusion as applicable to any employment under \$425 per month (or \$5,100 annually stipulated in advance).

- In 1991 (Laws 1991, Ch. 341, Sec. 1), the PERA membership exclusion for members of religious orders was modified with the inclusion of a statutory cross-reference for a Social Security coverage election option.
- In 1992 (Laws 1992, Ch. 432, Art. 2, Sec. 2), the PERA coverage exclusion provision was amended to make various apparently non-substantive language style and usage modifications.
- In 1993 (Laws 1993, Ch. 307, Art. 4, Sec. 1-3, 5-6, 11), the general definition of “public employee” was modified to specify that independent contractors and their employees are not eligible for PERA coverage. The PERA membership inclusion provision:
  - was reconfigured and revised to specify that exceeding the \$425 per month salary threshold in any month requires membership in the association for all subsequent months,
  - clarified the inclusion of employees in concurrent non-temporary positions with one governmental subdivision that exceeds the salary threshold,
  - clarified that the elected official inclusion applies to officials elected by the public at large or appointed to fill an elective office vacancy who elected to be a member and who met the salary threshold,
  - added governor-appointed state department heads who elected not to be covered by MSRS, and
  - eliminated a number of specific former inclusions for employing units included in the definition of the term “governmental subdivision.”

The PERA membership exclusion provision was revised by:

- adding elected public officers who did not elect PERA coverage, replacing the prior membership election procedure contained in the definition of the term “member,”
  - eliminating the exclusion of professional service personnel,
  - eliminating the board and commission intermittent service exclusion,
  - adding an exclusion for non-temporary employees who resign that position and accept a temporary position within 30 days in the same governmental subdivision,
  - eliminating the exclusion for certain police matrons,
  - eliminating the exclusion of fee-basis paid officers,
  - eliminating the exclusion for technical college instructors with teaching license exemptions for teaching less than 61 hours per year,
  - eliminating the exclusion for Minneapolis Community Development Agency,
  - adding an exclusion for foreign citizens working under a short-term work permit or visa, and
  - adding exclusion for public hospital employees who failed to elect PERA coverage before 1972 and again in 1988.
- In 1994 (Laws 1994, Ch. 572, Sec. 5), the PERA coverage inclusion provision was expanded to include former area vocational technical college employees who became MnSCU employees and elected to retain PERA membership.
  - In 1997 (Laws 1997, Ch. 241, Art. 2, Sec. 1), the PERA membership exclusion provision was amended to clarify that it applied to both PERA-General and PERA-P&F and to exclude St. Paul public school pipefitters and associated trades personnel hired after May 1, 1997, or who elected exclusion if employed before May 2, 1997.
  - In 1998 (Laws 1998, Ch. 254, Art. 1, Sec. 87), the 1994 inclusion of former area vocational technical college employees in MnSCU employment who elected to retain PERA membership by statutory cross-reference was eliminated following the 1995 repeal of the cited statute in a Revisor’s bill.
  - In 1999 (Laws 1999, Ch. 222, Art. 4, Sec. 4), the local police and fire relief association membership exclusion from PERA coverage was modified to accommodate the former police and fire consolidation account members who were covered by the consolidation account merger into PERA-P&F.
  - In 2000 (Laws 2000, Ch. 461, Art. 3, Sec. 7; and Art. 7, Sec. 1), the general definition of the term “public employee” was modified with the addition that reemployed annuitants are not included in coverage by virtue of the reemployment and the PERA membership exclusion provision was expanded with the exclusion of various electrical workers, plumbers, carpenters, and associated trades personnel employed by the St. Paul School District or the City of St. Paul employed after May 1, 2000, or who elect to be excluded if employed before May 2, 2000.
  - In 2001 (1st Spec. Sess. Laws 2001, Ch. 10, Art. 10, Sec. 1-2; and Art. 11, Sec. 2-5), the general definition of the term “public employee” was revised to include an optional membership provision and the specific exclusions of independent contractors and reemployed annuitants were removed.

The PERA membership inclusion provision was expanded by adding full-time Dakota County Agricultural Society employees and was totally revised by requiring all persons meeting the general definition of “public employee” to be a member of the applicable PERA-administered retirement plan as a condition of employment from the first day of employment unless specifically excluded, or do not exercise an individual option for coverage when applicable, or was employed by a governmental subdivision that did not exercise a group option for coverage when applicable and continuing all members having that status as of June 30, 2002, as members.

The PERA membership exclusions provision was revised by:

- excluding all elected public officials first taking office after July 1, 2002, other than county sheriffs,
- excluding election judges,
- eliminating patient or inmate personnel for all government subdivisions, not just charitable, penal, or correctional institutions,
- limiting the temporary position employees to persons other than temporary employees filling permanent positions or unspecified period positions,
- eliminating the under \$425 per month salary threshold exclusion,
- clarifying the full-time student exclusion as any education exclusion if the employment is predicated on the individual’s student status, by adding an exclusion for post-2002 employees limited in duration to 185 calendar days or less,
- adding an exclusion for supported employment or work study positions limited to less than three years’ duration,
- adding an exemption for independent contractors, and
- adding reemployed PERA annuitants.

A PERA optional membership provision was added, with an individual option for labor organization employees, elected officials, state department heads appointed by the governor, and city managers and with a group-basis election by the applicable governmental subdivision for the Minnesota Association of Townships and county historical society employees.

- In 2002 (Laws 2002, Ch. 392, Art. 3, Sec. 1-2), the PERA coverage inclusion provision was amended to add a \$425 per month minimum salary threshold for PERA membership. The PERA coverage exclusion provision was amended by adding an under \$425 per month salary threshold exclusion, by adding an age 23 limit on the full-time student exclusion, by excepting Hennepin County employees from the under-three-year student exclusion, and by excepting Hennepin County employees from the under-three-year work permit or visa foreign citizen exclusion.
- In 2003 (1<sup>st</sup> Spec. Sess. Laws 2003, Ch. 12, Art. 4, Sec. 1), the PERA optional membership provision was amended to add an individual option for the St. Paul Port Authority.
- In 2004 (Laws 2004, Ch. 267, Art. 1, Sec. 2), the PERA membership exclusion provision was modified to eliminate the \$425 per month salary threshold for temporary employees.
- In 2005 (Laws 2005, Ch. 10, Art. 5, Sec. 1; and Ch. 125, Art. 3, Sec. 1-2), the general definition of the term “public employee” was augmented by providing that it includes full-time Dakota County Agricultural Society. The PERA membership exclusion provision was modified to except the Hennepin Healthcare System from the under-three-year work permit or visa foreign citizen exclusions. The optional PERA membership provision was amended with respect to the group option for the Hennepin Healthcare, Inc., for employees other than paramedics, emergency medical technicians, and protection officers if the corporation establishes an alternative retirement plan.
- In 2006 (Laws 2006, Ch. 271, Art. 3, Sec. 5-6), the PERA coverage inclusion provision was amended to also include physicians employed by governmental subdivisions who did not elect coverage under the PERA Defined Contribution Plan. The PERA optional membership provision was amended to clarify the maximum age on the Port Authority of St. Paul optional membership individual election and to clarify the conditions on the optional membership for the three group election provisions.
- In 2007 (Laws 2007, Ch. 134, Art. 1, Sec. 4; and Art. 2, Sec. 13-14), the PERA membership inclusion provision was amended to clarify that the \$425 per year minimum salary threshold applies to one or multiple public employment positions and clarifies the participation duration for pre-2002 PERA members is until incumbency ends for elected officials and until termination of public employment broadly. The PERA membership exclusion provision was amended to eliminate the pre-2002 elected official membership grandparent duration language moved to the inclusion provision and the other retirement plan coverage exclusion provision was amended to eliminate an obsolete reference to the Minneapolis Teachers Retirement Fund Association.

- In 2008 (Laws 2008, Ch. 349, Art. 5, Sec. 14), the PERA coverage exclusion provision was amended by expanding the resident physician, medical intern, and pharmacist resident and intern exception to apply to clinics as well as hospitals.
- In 2009 (Laws 2009, Ch. 169, Art. 12, Sec. 4-5), the general definition of the term “public employee” and the PERA membership inclusion provision were amended by moving the Dakota County Agricultural Society full-time employee inclusion from the general definition of the term “public employee.” The PERA membership inclusion provision was amended by moving the Dakota County Agricultural Society full-time employee inclusion from the general definition to the inclusion provision and by adding Minneapolis Firefighters Retirement Association (MFRA) and Minneapolis Police Retirement Association (MPRA) employees not otherwise excluded by law.
- In 2010 (Laws 2010, Ch. 359, Art. 5, Sec. 1-4; and Art. 11, Sec. 1-2), the general definition of the term “public employee” had a reference to “public officer” added and the language style and usage of the provision were modified in an apparent non-substantive nature. The PERA coverage inclusion provision was modified by:
  - clarification of the mandatory nature of membership for included employees and a specification of the date on which membership commences,
  - setting forth three additional specific inclusions, persons meeting the salary threshold from one or more positions in a governmental subdivision, persons performing the functions of town or city clerk or treasurer, county auditor, treasure or recorder, city manager, or emergency management director, and elected county sheriffs,
  - specifically providing that membership continues for all months of public service once the threshold is first met,
  - including pre-2003 elected officials in the 2002 PERA member grandparenting provision,
  - including MERF members in membership of the MERF Division of PERA, and
  - making various language style and usage changes.

The PERA coverage exclusion provision was modified by:

- clarifying that employees who never exceed the minimum salary threshold are never eligible for membership,
- clarifying the application of the public office holder exclusion applying to city mayors and not applying to county sheriffs,
- simplifying the language usage and style of the short-term work permit or visa foreign citizen exclusion,
- specifically excluding board or commission appointees,
- not excluding from membership as independent contractors persons performing clerk, treasurer, recorder, city manager, or emergency management director functions under a contract, and
- making various language style and usage updates.



November 30, 2010

**Retirement and Pension Committee Chair  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
335 State Office Building, Room 55  
St. Paul, Minnesota 55155**

RE: *Proposed Legislation Regarding the Red Wing Port Authority*

Dear Committee Chairperson:

On behalf of the City of Red Wing and the Red Wing Port Authority, we are writing to ask for your assistance in enacting special legislation during the upcoming state legislative session. The Red Wing Port Authority is a public subdivision of the State of Minnesota which works closely with City of Red Wing employees and is subject to the authority of the City Council, but it is not considered to be a City department. For the entirety of its existence, the employees of the Port Authority were contributing members of the Public Employees Retirement Association ("PERA"). PERA plan administrators have recently determined that Port Authority employees are not eligible to be PERA members, costing these employees any retirement benefits which they may have accrued during their years of service to the Port Authority. Thus, the Port Authority and City of Red Wing are requesting your assistance in enacting special legislation which retroactively includes the employees of the Port Authority as eligible employees under PERA.

The City of Red Wing created the Port Authority in 1985 for the purpose of expanding economic development in the City. Since that time, the Port Authority has functioned as an economic development agency under the supervision of the Red Wing City Council. The Port Authority has employed several employees over the years to conduct its day to day functions. Employees of the Port Authority work closely with City employees, have similar conduct rules, and are paid by the City.

PERA is a state office which administers plans that provide retirement benefit plan coverage to state employees and employees of local governments. Since 1985, the City has deducted a portion of the Port Authority employees' paychecks and contributed to PERA on behalf of these employees. Based on this longstanding deduction and

acceptance of the contributions by PERA administrators, the City believed that the Port Authority employees were members of PERA. However, PERA administrators recently informed the City that Red Wing Port Authority employees are not eligible to participate in PERA or receive its benefits.

Minnesota Statutes Section 353.01 outlines the public employees who are eligible to participate in PERA plans. Subdivision 2 defines a public employee as “a governmental employee performing personal services for a governmental subdivision defined in subdivision 6.” Minn. Stat. § 353.01, subd. 2. Subdivision 6 defines “governmental subdivision” as a public body established under the authority of a county, city, town, or school district, but specifically exempts port authorities in Subdivision 6(c) when it states: “Governmental subdivision does not mean . . . any Port Authority organized under sections 469.048 to 469.089 other than the Port Authority of the city of St. Paul.” Minn. Stat. § 353.01, subd. 6(c). Since port authorities are not considered to be governmental subdivisions under this statute, employees of the Red Wing Port Authority are not eligible to participate in PERA plans because they do not meet the definition of “public employee” under this statute.

In 2003, the St. Paul Port Authority drafted and the legislature enacted special legislation which changed Subdivision 6(c), among other provisions, to include the employees of the St. Paul Port Authority as members of PERA. Prior to this special legislation, no port authority employees in Minnesota were eligible to participate in PERA. Currently, the St. Paul Port Authority employees are the only port authority employees in Minnesota who are eligible to participate in PERA.

PERA administrators recently discovered their error in accepting the contributions on behalf of the Red Wing Port Authority employees. After PERA contacted the City regarding the errors, the City decided that it would seek special legislation retroactively adding Red Wing Port Authority employees to the list of employees who are eligible for PERA. Without such legislation, PERA has indicated that the contributions that Port Authority employees contributed to PERA would need to be refunded, leaving the retirees and current employees of the Port Authority without a public retirement plan. PERA administrators have agreed to hold the funds and not begin the refund process while the City seeks the special legislation.

The Red Wing Port Authority currently has four employees who have had deductions taken from their paychecks and submitted to PERA, and who believed that they were eligible members of PERA. In addition to these four current employees, the Port Authority has fourteen former employees who either receive or at some point may expect to receive PERA benefits. As such, a total of eighteen employees will lose the benefits that they expected based on their contributions without the special legislation.

Enclosed with this letter is a draft of the proposed legislation. The proposed legislation would add the Red Wing Port Authority employees to the definition of public employees, thus making the employees eligible for PERA. The enactment of retroactive special legislation would allow the former and current Port Authority employees to continue their membership in PERA.

The first proposed legislative change is to Minnesota Statutes Section 353.01, Subdivision 6(b). This section defines "governmental subdivision" for the purposes of PERA eligibility, and currently states: "Governmental subdivision also means . . . the Port Authority of the city of St. Paul." The City and Port Authority request that this language be changed to: "Governmental subdivision also means . . . the Port Authorities of the cities of St. Paul and Red Wing." This change would specifically identify the Red Wing Port Authority as a governmental subdivision alongside the St. Paul Port Authority.

The second proposed legislative change is to Minnesota Statutes Section 353.01, Subdivision 6(c). This section states that: "Governmental subdivision does not mean . . . any port authority organized under sections 469.048 to 469.089 other than the Port Authority of the city of St. Paul." As with the previous section, the City and Port Authority request that this language be changed to: "Governmental subdivision does not mean . . . any port authority organized under sections 469.048 to 469.089 other than the Port Authorities of the cities of St. Paul and Red Wing." By exempting the Red Wing Port Authority from the governmental subdivision exclusion for port authorities contained in this statute, the employees of the Port Authority would work for a governmental subdivision and be eligible to participate in PERA.

The proposed legislation specifically states that it will be effective the day following enactment and that it will apply retroactively. It is key that the legislature express its intent that the legislation apply retroactively so that the current and former Port Authority employees can continue their membership in PERA based on their past contributions to the fund.

It is the belief of the City and the Port Authority that these requested legislative changes will solve the issues raised by PERA and fully include the employees of the Port Authority in the PERA program at their current contribution levels. The Port Authority adopted a resolution which resolved to seek such special legislation on October 5, 2010. A copy of that resolution is enclosed.

PERA administrators have also indicated that they approve of this plan to include Red Wing Port Authority employees as eligible members of PERA. A letter that the City received from PERA indicating this support is also enclosed.



I will contact you shortly to discuss the proposed legislation. In the meantime, if you have any questions or would like to discuss the special legislation further, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Roger Seymour".

Mr. Roger Seymour  
Employee Services Director, City of Red Wing

cc: Ms. Kay Kuhlmann, City of Red Wing  
Mr. Myron White, Red Wing Port Authority  
Mr. Chris Arcand, Public Employees Retirement Association of Minnesota  
Ms. Mary Most Vanek, Public Employees Retirement Association of Minnesota

RRM: 146058

RECEIVED  
7-1-2010

Public Employees Retirement Association of Minnesota  
60 Empire Drive, Suite 200  
Saint Paul, Minnesota 55103-2088  
Member Information Services: 651-296-7460 or 1-800-652-9026  
Employer Response Lines: 651-296-3636 or 1-888-892-7372  
PERA Fax Number: 651-297-2547  
PERA Website: www.mnpera.org



PERA employer ID No.: 7078-00

September 28, 2010

ROGER SYMOUR EMPLOYEE SERVICES DIRECTOR  
CITY OF RED WING  
315 W 4TH ST  
RED WING MN 55066-2504

Dear Roger Seymour:

Thank you for your letter dated September 22, 2010, in which you provided a list of the Port Authority personnel who have been inadvertently reported to PERA. Also in the letter, you requested our administration to delay taking any action to rectify the situation affecting the pertinent individuals, since the City will be pursuing legislation to include past and present authority personnel under PERA. The following statement is our administration's formal response to the City's request:

The Public Employees Retirement Association acknowledges your request to delay immediate action based on our findings that the City of Red Wing has inadvertently enrolled their Port Authority personnel in our fund, according to the specifications of MN Statute § 353.01, Subd.6. (c).

PERA considers it to be a reasonable arrangement and in everyone's best interests to allow the City to continue reporting the employees through the end of the next session (2011), pending the outcome of the City's special legislative initiative. Thereafter, PERA will re-evaluate the laws which govern our eligibility requirements as they pertain to the Red Wing Port Authority personnel. We will then make a determination as to whether or not we are required to demand the cessation of contributions and issue refunds for past and present employees.

Please keep us informed of the City's legislative efforts and progress by forwarding the language that you are proposing and informing our fund of the sponsorship.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Arcand', written over a light blue horizontal line.

Chris Arcand  
Division of Account Information Management  
Public Employees Retirement Association of Minnesota

EMP00999004124.doc

Public Employees Retirement Association of Minnesota  
60 Empire Drive, Suite 200  
Saint Paul, Minnesota 55103-2088  
Member Information Services: 651-296-7460 or 1-800-652-9026  
Employer Response Lines: 651-296-3636 or 1-888-892-7372  
PERA Fax Number: 651-297-2547  
PERA Website: www.mnpera.org



PERA employer ID No.: 7078-00

December 01, 2010

ROGER SEYMOUR EMPLOYEE SERVICES DIRECTOR  
CITY OF RED WING  
315 W 4TH ST  
RED WING MN 55066-2504

Dear Roger Seymour:

Please accept this letter as a formal statement from the Public Employees Retirement Association, indicating that it is understood the City of Red Wing will pursue special legislation to grandfather their Port Authority personnel into the Coordinated Plan.

As was previously discussed, the City had inadvertently enrolled their Port Authority personnel in our Fund, though they are specifically excluded through MN Statute § 353.01, Subd.6. (c). However, PERA considers it to be a reasonable arrangement and in everyone's best interests to allow the City to continue reporting current employees through the end of the next session (2011), pending the outcome of the City's special legislative initiative.

Since the Authority personnel have already been contributing to PERA's Coordinated Plan, there would be no adverse affect on the Fund if legislation were passed to allow continued, and prospective membership to future employees.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Arcand', written in a cursive style.

Chris Arcand  
Division of Account Information Management  
Public Employees Retirement Association of Minnesota

**RED WING PORT AUTHORITY  
AN ECONOMIC DEVELOPMENT AGENCY  
CITY OF RED WING, MINNESOTA**

**RESOLUTION #247**

**RESOLUTION SUPPORTING SPECIAL LEGISLATION FOR RED WING  
PORT AUTHORITY EMPLOYEES AMEND ELIBLILITY UNDER PERA**

**WHEREAS**, the Red Wing Port Authority, an Economic Development Agency (the "Port Authority") sponsors a pension plan (the "Plan"), and has reserved the right to amend that Plan; and

**WHEREAS**, the state statute that defines Public Employees Retirement Association ("PERA") eligible employees and governmental subdivisions clearly excludes port authorities under MS Section 353.01, Subd. 6. (c) unless as MS 353.27, Subd. 7 grandfathers members who began participating prior to 1990; and

**WHEREAS**, the Port Authority employees have erroneously contributed to PERA since the establishment of the Port Authority; and

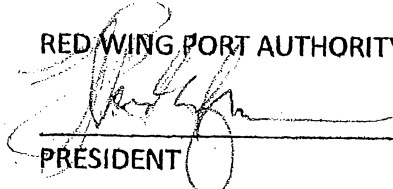
**WHEREAS**, to remedy the situation, the Port Authority would need to seek special legislation to amend ("PERA") rules to permit participation in the PERA Coordinated Plan by eligible past, current and future employees by action of the Board; and

**WHEREAS**, the Port Authority hereby finds that it is desirable to amend the Plan to permit participation in the PERA defined benefit plan.


**NOW THEREFORE, BE IT RESOLVED**, that the Port Authority of the City of Red Wing shall seek special legislation to include all personnel as members of PERA on a retroactive and prospective basis provision.

Dated: October 5, 2010

RED WING PORT AUTHORITY

  
\_\_\_\_\_  
PRESIDENT

ATTEST:

  
\_\_\_\_\_  
MYRON WHITE, EXECUTIVE DIRECTOR

A bill for an act relating to the inclusion of the Red Wing Port Authority as a qualifying governmental subdivision under the Public Employees Retirement Association; amending Minnesota Statutes 2009, section 353.01.

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

**ARTICLE 1**  
**INCLUSION IN PERA PROVISIONS**

Section 1. Minnesota Statutes 2009, section 353.01, subdivision 6(b) and (c), are amended to read:

**Subd. 6. Governmental subdivision.**

(b) Governmental subdivision also means the Public Employees Retirement Association, the League of Minnesota Cities, the Association of Metropolitan Municipalities, charter schools formed under section 124D.10, service cooperatives exercising retirement plan participation under section 123A.21, subdivision 5, joint powers boards organized under section 471.59, subdivision 11, paragraph (a), family service collaboratives and children's mental health collaboratives organized under section 471.59, subdivision 11, paragraph (b) or (c), provided that the entities creating the collaboratives are governmental units that otherwise qualify for retirement plan membership, public hospitals owned or operated by, or an integral part of, a governmental subdivision or governmental subdivisions, the Association of Minnesota Counties, the Minnesota Inter-county Association, the Minnesota Municipal Utilities Association, the Metropolitan Airports Commission, the University of Minnesota with respect to police officers covered by the public employees police and fire retirement plan, the Minneapolis Employees Retirement Fund for employment initially commenced after June 30, 1979, the Range Association of Municipalities and Schools, soil and water conservation districts, economic development authorities created or operating under sections 469.090 to 469.108, the Port Authorities of the cities of St. Paul and Red Wing, the Spring Lake Park Fire Department, incorporated, the Lake Johanna Volunteer Fire Department, incorporated, the Red Wing Environmental Learning Center, the Dakota County Agricultural Society, Hennepin Healthcare System, Inc., and the Minneapolis Firefighters Relief Association and Minneapolis Police Relief Association with respect to staff covered by the Public Employees Retirement Association general plan.

(c) Governmental subdivision does not mean any municipal housing and redevelopment authority organized under the provisions of sections 469.001 to 469.047; or any port authority organized under sections 469.048 to 469.089 other than the Port Authorities of the cities of St. Paul and Red Wing; or any hospital district organized or reorganized prior to July 1, 1975, under sections 447.31 to 447.37 or the successor of the district; or the board of a family service collaborative or children's mental health collaborative organized under sections 124D.23, 245.491 to 245.495, or 471.59, if that board is not controlled by representatives of governmental units.

**EFFECTIVE DATE.** This section is effective the day following enactment and applies retroactively.

This Document can be made available  
in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH  
SESSION

HOUSE FILE No. **476**

February 14, 2011

Authored by Kelly and Lanning

The bill was read for the first time and referred to the Committee on Government Operations and Elections

1.1 A bill for an act  
1.2 relating to retirement; general employees retirement plan of the Public  
1.3 Employees Retirement Association; including employees of the Red Wing Port  
1.4 Authority in the plan; validating retroactive retirement coverage for employees  
1.5 of the Red Wing Port Authority; amending Minnesota Statutes 2010, section  
1.6 353.01, subdivisions 2a, 6.

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

1.8 Section 1. Minnesota Statutes 2010, section 353.01, subdivision 2a, is amended to read:

1.9 Subd. 2a. **Included employees; mandatory membership.** (a) Public employees  
1.10 whose salary exceeds \$425 in any month and who are not specifically excluded under  
1.11 subdivision 2b or who have not been provided an option to participate under subdivision  
1.12 2d, whether individually or by action of the governmental subdivision, must participate as  
1.13 members of the association with retirement coverage by the general employees retirement  
1.14 plan under this chapter, the public employees police and fire retirement plan under this  
1.15 chapter, or the local government correctional employees retirement plan under chapter  
1.16 353E, whichever applies. Membership commences as a condition of their employment on  
1.17 the first day of their employment or on the first day that the eligibility criteria are met,  
1.18 whichever is later. Public employees include but are not limited to:

1.19 (1) persons whose salary meets the threshold in this paragraph from employment in  
1.20 one or more positions within one governmental subdivision;

1.21 (2) elected county sheriffs;

1.22 (3) persons who are appointed, employed, or contracted to perform governmental  
1.23 functions that by law or local ordinance are required of a public officer, including, but  
1.24 not limited to:

1.25 (i) town and city clerk or treasurer;

- 2.1 (ii) county auditor, treasurer, or recorder;
- 2.2 (iii) city manager as defined in section 353.028 who does not exercise the option
- 2.3 provided under subdivision 2d; or
- 2.4 (iv) emergency management director, as provided under section 12.25;
- 2.5 (4) physicians under section 353D.01, subdivision 2, who do not elect public
- 2.6 employees defined contribution plan coverage under section 353D.02, subdivision 2;
- 2.7 (5) full-time employees of the Dakota County Agricultural Society; ~~and~~
- 2.8 (6) employees of the Minneapolis Firefighters Relief Association or Minneapolis
- 2.9 Police Relief Association who are not excluded employees under subdivision 2b due
- 2.10 to coverage by the relief association pension plan and who elected general employee
- 2.11 retirement plan coverage before August 20, 2009; and
- 2.12 (7) employees of the Red Wing Port Authority who are not excluded employees
- 2.13 under subdivision 2b.

2.14 (b) A public employee or elected official who was a member of the association on

2.15 June 30, 2002, based on employment that qualified for membership coverage by the public

2.16 employees retirement plan or the public employees police and fire plan under this chapter,

2.17 or the local government correctional employees retirement plan under chapter 353E as of

2.18 June 30, 2002, retains that membership for the duration of the person's employment in that

2.19 position or incumbency in elected office. Except as provided in subdivision 28, the person

2.20 shall participate as a member until the employee or elected official terminates public

2.21 employment under subdivision 11a or terminates membership under subdivision 11b.

2.22 (c) If the salary of an included public employee is less than \$425 in any subsequent

2.23 month, the member retains membership eligibility.

2.24 (d) For the purpose of participation in the MERF division of the general employees

2.25 retirement plan, public employees include employees who were members of the former

2.26 Minneapolis Employees Retirement Fund on June 29, 2010, and who participate as

2.27 members of the MERF division of the association.

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

2.29 Sec. 2. Minnesota Statutes 2010, section 353.01, subdivision 6, is amended to read:

2.30 Subd. 6. **Governmental subdivision.** (a) "Governmental subdivision" means a

2.31 county, city, town, school district within this state, or a department, unit or instrumentality

2.32 of state or local government, or any public body established under state or local

2.33 authority that has a governmental purpose, is under public control, is responsible for the

2.34 employment and payment of the salaries of employees of the entity, and receives a major

2.35 portion of its revenues from taxation, fees, assessments or from other public sources.

3.1 (b) Governmental subdivision also means the Public Employees Retirement  
 3.2 Association, the League of Minnesota Cities, the Association of Metropolitan  
 3.3 Municipalities, charter schools formed under section 124D.10, service cooperatives  
 3.4 exercising retirement plan participation under section 123A.21, subdivision 5, joint powers  
 3.5 boards organized under section 471.59, subdivision 11, paragraph (a), family service  
 3.6 collaboratives and children's mental health collaboratives organized under section 471.59,  
 3.7 subdivision 11, paragraph (b) or (c), provided that the entities creating the collaboratives  
 3.8 are governmental units that otherwise qualify for retirement plan membership, public  
 3.9 hospitals owned or operated by, or an integral part of, a governmental subdivision or  
 3.10 governmental subdivisions, the Association of Minnesota Counties, the Minnesota  
 3.11 Inter-county Association, the Minnesota Municipal Utilities Association, the Metropolitan  
 3.12 Airports Commission, the University of Minnesota with respect to police officers covered  
 3.13 by the public employees police and fire retirement plan, the Minneapolis Employees  
 3.14 Retirement Fund for employment initially commenced after June 30, 1979, the Range  
 3.15 Association of Municipalities and Schools, soil and water conservation districts, economic  
 3.16 development authorities created or operating under sections 469.090 to 469.108, the Port  
 3.17 Authority of the city of St. Paul, the Red Wing Port Authority, the Spring Lake Park Fire  
 3.18 Department, incorporated, the Lake Johanna Volunteer Fire Department, incorporated,  
 3.19 the Red Wing Environmental Learning Center, the Dakota County Agricultural Society,  
 3.20 Hennepin Healthcare System, Inc., and the Minneapolis Firefighters Relief Association  
 3.21 and Minneapolis Police Relief Association with respect to staff covered by the Public  
 3.22 Employees Retirement Association general plan.

3.23 (c) Governmental subdivision does not mean any municipal housing and  
 3.24 redevelopment authority organized under the provisions of sections 469.001 to 469.047;  
 3.25 or any port authority organized under sections 469.048 to 469.089 other than the Port  
 3.26 Authority of the city of St. Paul; the Red Wing Port Authority; or any hospital district  
 3.27 organized or reorganized prior to July 1, 1975, under sections 447.31 to 447.37 or the  
 3.28 successor of the district; or the board of a family service collaborative or children's mental  
 3.29 health collaborative organized under sections 124D.23, 245.491 to 245.495, or 471.59, if  
 3.30 that board is not controlled by representatives of governmental units.

3.31 (d) A nonprofit corporation governed by chapter 317A or organized under Internal  
 3.32 Revenue Code, section 501(c)(3), which is not covered by paragraph (a) or (b), is not a  
 3.33 governmental subdivision unless the entity has obtained a written advisory opinion from  
 3.34 the United States Department of Labor or a ruling from the Internal Revenue Service  
 3.35 declaring the entity to be an instrumentality of the state so as to provide that any future



4.1 contributions by the entity on behalf of its employees are contributions to a governmental  
4.2 plan within the meaning of Internal Revenue Code, section 414(d).

4.3 (e) A public body created by state or local authority may request membership on  
4.4 behalf of its employees by providing sufficient evidence that it meets the requirements in  
4.5 paragraph (a).

4.6 (f) An entity determined to be a governmental subdivision is subject to the reporting  
4.7 requirements of this chapter upon receipt of a written notice of eligibility from the  
4.8 association.

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

4.10 Sec. 3. **VALIDATION OF PAST RETIREMENT COVERAGE AND**  
4.11 **CONTRIBUTIONS FOR RED WING PORT AUTHORITY EMPLOYEES.**

4.12 (a) Retirement coverage by the general employees retirement plan of the Public  
4.13 Employees Retirement Association, allowable service credit, and salary credit for  
4.14 employees of the Red Wing Port Authority who were so employed after December 31,  
4.15 1984, who had monthly salary in any month of at least \$325 until June 30, 1988, and who  
4.16 had monthly salary in any month of at least \$425 after June 30, 1988, who were not  
4.17 otherwise excluded under the applicable edition of Minnesota Statutes, section 353.01,  
4.18 subdivision 2b, and who had member deductions taken and transferred in a timely manner  
4.19 to the general employees retirement fund before the effective date of this section are  
4.20 hereby validated.

4.21 (b) Notwithstanding any provision of Minnesota Statutes, chapter 353, to the  
4.22 contrary, employee contributions deducted from employees of the Red Wing Port  
4.23 Authority described in paragraph (a) before the effective date of this section and associated  
4.24 employer contributions are valid assets of the general employees retirement fund and are  
4.25 not subject to refund or adjustment for erroneous receipt except as provided in Minnesota  
4.26 Statutes, section 353.32, subdivision 1 or 2; or 353.34, subdivisions 1 and 2.

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