



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Susan Lenczewski, Executive Director  
RE: H.F. 3136 (Thissen); S.F. 2853 (Pappas): Increase in Maximum Permitted Contribution to a Laborers Pension Fund  
DATE: March 28, 2016

### Summary of H.F. 3136 (Thissen); S.F. 2853 (Pappas)

H.F. 3136 (Thissen); S.F. 2853 (Pappas) increases the maximum permitted employer contribution to a laborers national industrial pension fund or a laborers local pension fund under Minn. Stat. § 356.24, subdivision 1, clause (8), the Restrictions Upon Government Units Supplemental Pension or Deferred Compensation Plans provision, from \$5,000 to \$7,000, per year per employee, effective August 1, 2016.

### Background

Minn. Stat. § 356.24, subdivision 1, generally prohibits school districts, governmental subdivisions, and state agencies from contributing public funds to supplemental pension or deferred compensation plans that are in addition to the primary pension program that otherwise covers the entity's employees. The statute sets forth a number of exceptions to this general prohibition, such as for group health, disability or death benefit plans, the State of Minnesota Deferred Compensation Plan, and other individual account and deferred compensation plans. Included in the list of exceptions are several exceptions for union pension funds.

The particular exception at issue in the proposed legislation permits supplemental pension coverage under a laborers national industrial or local pension fund for employees covered by a collective bargaining unit that provides for coverage by the fund. Based on information provided by Russell Hess, Political Coordinator of the Laborers District Council of Minnesota and North Dakota (Union), the particular pension fund at issue is the Laborers' International Union of North American National (Industrial) Pension Fund (LIUNA Pension Fund). The employers are the City of Minneapolis, the City of St. Paul, the Minneapolis Park and Recreation Board, and the St. Paul Public Schools. The employees of these entities who are covered by the LIUNA Pension Fund are also covered by the Public Employees Retirement Association (PERA), so the LIUNA Pension Fund would be considered supplemental to the primary coverage provided by PERA.

The LIUNA Pension Fund is a multiemployer pension fund that, under federal law, is in "critical status" or "red zone" status, which means that the fund is less than 65% funded. This underfunded status caused the fund to implement an annual 10% increase in the employer contributions to be paid by each participating employer, among other rehabilitation measures. Employers are required to transmit these contributions or risk interest charges, legal action to collect delinquent contributions and a 100% excise tax. (The Teamsters' Central States Pension Fund is a much-publicized multiemployer plan, also in critical status, which has opted to apply to reduce pensions for current retirees and active employees.)

The public employers at issue apparently bargained over these supplemental pension benefits and are participating employers in the LIUNA Pension Fund. It is nearly impossible for an employer to disengage from a multiemployer plan, short of bankruptcy, which is not likely to occur in the case of a public employer. If an employer withdraws from a multiemployer plan, the employer is required to pay withdrawal liability that is generally equal to the employer's proportionate share of the plan's unfunded vested liabilities, as determined under a statutory formula.

Commission staff has the following limited information regarding the participating employers, the number of employees participating, and the rates of contribution per hour of pay. (The citation to the page in the collective bargaining agreement that addresses these contributions is also provided.)

<b>2015</b>	<b>City of Minneapolis</b>	<b>City of St. Paul</b>	<b>Minneapolis Park &amp; Recreation Board</b>	<b>St. Paul Public Schools</b>
Number of Members	464	139	193	8
Contribution Rate 15	\$1.18	\$1.80	\$1.18	\$1.27
Contribution Rate 16	\$1.30	\$1.98	\$1.30	\$1.40
Contribution Rate 17	\$1.43	\$2.18	\$1.43	\$1.54
Contribution Rate 18	\$1.58	\$2.40	\$1.58	\$1.70
CBA Page; Article	5-6; 1.09	2; 4	4; 1.04	20; 15

The St. Paul Public Housing Agency is also a contributing employer to this multiemployer plan, but does not participate in PERA.

### **Policy Considerations**

H.F. 3136 (Thissen); S.F. 2853 (Pappas) raises the following pension and public policy issues:

1. “Employer contributions” are Actually Coming Directly Out of Employee Wages. Under the collective bargaining agreements, these public employers are required to pay contributions to the LIUNA Pension Fund and, under the rehabilitation plan, beginning in 2011, a 10% annual increase. To make these contributions, the employers have had to increase and will continue to increase the deduction from employees' hourly wage. Federal law recognizes these contributions as employer contributions.

Commission staff understands that the \$5,000 annual limit on employer contributions currently in the Minnesota Statutes for the LIUNA Pension Fund will be reached for some categories of employees in 2016. The employers and the Union need the annual limit increased in order to increase the annual contribution to the LIUNA Pension Fund and thereby satisfy the requirements of the rehabilitation plan.

If the Pension Commission approves the bill and it becomes law, the hourly wages of the effected employees will be reduced by the additional 10% required by the LIUNA Pension Fund's rehabilitation plan and the amount taken out of paychecks will be sent to the Fund. The employees have no choice regarding the increase in the wage reduction and will receive no pension benefit increase in exchange for additional contributions.

2. Consequences of Not Approving the bill and Not Increasing the Annual Limit. If the annual limit is not increased, the public employers at issue will have to choose between complying with the collective bargaining agreements, which now require compliance with the contribution increases under the LIUNA Pension Fund's rehabilitation plan, or violating state law. It is not clear what violating state law would mean, since the statute does not include any consequences for doing so.

It appears that state law has already been violated in that "prior legislative authorization" is required under Minnesota Statute § 356.24, subdivision 2, whenever there is a change in employer contributions under a supplemental pension plan. Under subdivision 2, arguably, these employers or the Union should have requested legislative approval for all previous increases, but we are not aware of such requests having been made or considered by the Pension Commission.

3. Public Employers Had No Duty to Bargain Over Pension Benefits But, When They Did, They May Also Have Negotiated Hold Harmless Protection from the Union. These public employers agreed to become participating employers in the LIUNA Pension Fund and send wage reductions to the Fund, notwithstanding Minnesota law that would have permitted these employers to not bargain over pension benefits. Minnesota Statutes § 179A.03 ("Definitions") includes the following definition for "terms and conditions of employment" (as subdivision 19):

"Terms and conditions of employment" means the hours of employment, the compensation therefor including fringe benefits **except retirement contributions or benefits** other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees. In the case of professional employees the term does not mean educational policies of a school district. ...

Minn. Stat. § 179A.01 states: "Nothing in sections 179A.01 to 179A.25 [most of Chapter 179A titled "Public Employment Labor Relations"] impairs, modifies, or alters the authority of the legislature to establish rates of pay, **or retirement** or other benefits for its employees."

By agreeing to bargain over pension benefits, the employer ended up agreeing to become participating employers in an underfunded multiemployer plan. In at least one of the collective bargaining agreements involved, the employer negotiated a hold harmless which requires the Union to defend and indemnify the employer in certain circumstances relating to the employer's participation in the LIUNA Pension Fund. We did not receive the collective bargaining agreements, only excerpts, so do not know if the other agreements contained similar indemnification. It may be possible for the employer to obtain indemnification and other relief from the Union if the legislature were to leave the current \$5,000 annual limit as is, thereby forcing the employer to decide not to increase employee wage deductions in compliance with the limit.