

## HF 4139 (Olson, L.): PERA; Excludes from PERA membership Duluth Transit Authority employees covered by the Teamsters multiemployer pension plan

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### Introduction

- Affected Plan:** Public Employees Retirement Association (PERA)
- Laws Amended:** Minnesota Statutes, Section 353.01, Subdivision 2b
- Brief Description:** The bill exempts union employees of the Duluth Transit Authority (DTA) from membership in the Public Employees Retirement Association (PERA) General Plan.
- Attachment:** [Amendment H4139-1A](#)

### Background

The area in and around Duluth, Minnesota, is served by a public transportation company known as the Duluth Transit Authority (DTA). The DTA is in transition. Since its inception in 1969, the DTA has contracted with a private corporation, First Transit, Inc., to provide the employees and services needed to operate the transit system. First Transit is a large multinational corporation that provides transit services in several countries and 43 states, serving over 350 million passengers annually.

A subsidiary of First Transit, ATE Management of Duluth, Inc. (ATE), is the employer of approximately 175 employees, all of whom staff DTA operations. Employees include bus drivers, technicians, and cleaning and administrative staff. These employees are private, not public, employees. Most of the workforce, or approximately 140 employees, is covered by a collective bargaining agreement (CBA) between ATE and Teamsters Local 346. About a fifth of the workforce, or 34 employees, is not part of the bargaining unit and is not covered by the CBA.

### Retirement plans covering ATE employees

Retirement benefits are provided by ATE for the union and non-union employees as follows:

#### 1. Union employees:

- **Central States Pension Plan.** The CBA with the Teamsters requires participation in the Central States Southeast and Southwest Areas Pension Fund, a national multiemployer pension plan. Under the current CBA, effective January 1, 2022, through December 31, 2026, the employer is

required to contribute \$338 per week for each full-time employee. That amounts to \$17,576 per employee per year and approximately \$2.5 million annually for all the union employees.

**Note regarding multiemployer pension plans:** The Commission may recall discussing multiemployer pension plans during the 2019 and 2020 legislative sessions, in the context of employees of the city and school district of St. Paul who are in the building and construction trades. These employees are employed pursuant to collective bargaining agreements that require participation in large national multiemployer pension plans, many of which are underfunded. The city and school district of St. Paul had been contributing to both the PERA General Plan and multiemployer pension plans in violation of Minnesota law. Because it is nearly impossible to withdraw from these plans without incurring significant penalties, called “withdrawal liability,” legislation was approved by the Commission, and eventually enacted, to grandfather employees in certain bargaining units and continue to permit the St. Paul employers to contribute to both the PERA General Plan and the affiliated multiemployer plans on behalf of these employees.

- **Teamsters 401(k) Plan.** The union employees also have access to the Teamsters National 401(k) Savings Plan.

## 2. Non-union employees:

- **ATE Management of Duluth Money Purchase Pension Plan.** Non-union employees participate in a defined contribution plan known as a “money purchase pension plan” (MPP). The MPP is *not* a pension plan in the traditional sense. The MPP is a defined contribution plan, which means that retirement benefits are provided through contributions to individual accounts that ebb and flow in value depending on the investments selected by the participants. The difference between the MPP and a 401(k) plan is that percentage of pay that the employer must contribute each year is stated in the plan document and is not discretionary. Under the MPP plan document, ATE is required to contribute 12% of pay. In order to participate and receive this contribution, employees are required to contribute 2% of pay. If an employee opts out and does not make the 2% contribution, the employee will not receive the 12% employer contribution. Unlike in the PERA General Plan, where employee contributions are mandatory, employees can opt out. Plan documents, recordkeeping, and investments are handled by Securian.

## 3. Union and non-union employees:

- **Minnesota Deferred Compensation Plan.** Since 1988, union and non-union employees have participated in the Minnesota Deferred Compensation Plan (MN DCP), which is the defined contribution plan administered by MSRS intended to satisfy the requirements of Internal Revenue Code section 457(b). This is concerning for reasons unrelated to the DTA, such as whether federal law and the MN DCP plan document permit private sector employees to participate in the MN DCP.

## **DTA becomes parent company of ATE**

The management contract between First Transit and the DTA expires on October 31, 2022, and First Transit does not wish to renew the management contract. DTA has explored a number of options for continuing transit services to the community, including replacing ATE with a new transit company that can provide the same services as ATE and retaining ATE by purchasing the stock of ATE from First Transit.

A significant factor in making the decision of how to continue operations is the need to ensure that any change in the ownership or the entity responsible for making contributions to the Central States Pension Plan does not result in withdrawal liability. Under the management contract between First Transit and the DTA, DTA has assumed all liability relating to the labor contract and the pension and retirement plans and must hold harmless First Transit and ATE.

The Central States Pension Plan is significantly underfunded and has been in the news for years for its decision to begin cutting retiree benefits in an attempt to avoid bankruptcy. Recently, Congress approved a bail-out package for Central States. Notwithstanding the bail-out, if ATE attempts to withdraw from Central States or is replaced with another entity, the DTA will incur a crippling withdrawal liability penalty. According to a letter from the Central States Pension Fund to the DTA, dated October 20, 2020, this withdrawal liability is estimated at \$136,885,000.

For this reason, the DTA is negotiating with First Transit to purchase the stock of ATE and thereby continue operations nearly seamlessly. It is anticipated, based on legal advice received by the DTA, that the change in ATE from a private corporation to a governmental subdivision will not affect its ongoing obligations under the CBA and the Central States Pension Plan.

## **ATE becomes a governmental subdivision and the employees become public employees**

Once the transaction closes and DTA assumes ownership of ATE, all employees of ATE will become public employees of a governmental employer. As such, the employees will be required to participate in the PERA General Plan. Participation in the PERA General Plan is mandatory for all “public employees” unless excluded under Minnesota Statutes, section 353.01, subdivision 2. As a public employer, ATE will be required to contribute 7.5% of pay and the public employees will be required to contribute 6.5% of pay.

The impact of the change in ATE from a private corporation to a governmental employer is different for the union employees as compared to the non-union employees. In summary, ATE and the union employees will have no choice but to pay for two pensions at significant cost, unless the law is amended to exclude them from membership in the PERA General Plan. On the other hand, while ATE and the non-union employees will be required to pay for a pension from the PERA General Plan, ATE retains complete discretion to amend or terminate the MPP and thereby provide a compensation package that is financially sustainable and provide both a pension and a defined contribution account, either through an amended MPP or through the MN DCP.

**1. Union employees:**

Under the CBA and federal law, ATE cannot reduce its contributions to the Central States Pension Plan nor end its participation in Central States without incurring withdrawal liability. Union employees will receive a pension at retirement from Central States. When ATE becomes a public employer, union employees will receive a second pension at retirement from the PERA General Plan.

The cost of two pensions is substantial and amounts to a significant portion of an employee’s pay, as shown in the following example, provided by the DTA, of a bus driver who makes \$48,000 per year:

Plan	Percentage of pay	Annual \$ amount
Employer contribution to Central States Pension Plan	36.6%	\$17,576 (per the CBA, \$338 per week)
Employee contribution to PERA General Plan	6.5%	\$3,120
Employer contribution to PERA General Plan	7.5%	\$3,600
Total contribution to pension plans	50.6%	\$24,296

**2. Non-union employees:**

As noted, the non-union employees will be required to join the PERA General Plan when they become public employees. ATE has a number of options with regard to the MPP it maintains for these employees, but most of these require legislation for which there is no precedent.

As explained on page 2, the MPP is a defined contribution plan that provides for a required employer contribution of 12% of pay, if the employee contributes 2% of pay. The ATE and DTA have the discretion to terminate the MPP or amend the MPP to make any other changes permitted under federal and state law, including reducing the contribution requirements.

The recordkeeper, Securian, has indicated that it will not be able to provide recordkeeping services and investments after ATE becomes a public employer because the MPP will become a governmental plan. Governmental plans are not subject to the federal law known as ERISA (Employee Retirement Income Security Act of 1974), which causes many provisions in the current plan document to no longer apply, including the fiduciary protections provided by ERISA. The MPP plan document is a Securian pre-approved plan prototype plan and can no longer serve as the plan document without substantial amendment.

In addition, the ATE and DTA could continue to maintain the MPP, but it will be a supplemental plan that does not satisfy the requirements for supplemental plans under Minnesota Statutes, section 356.24. If the MPP is to be continued, it will need to be amended to satisfy those requirements and those requirements will need to be waived for this plan through legislation.

As explained above, under the MPP, employees contribute 2% and the employer contributes 12%, for a total contribution to participant accounts of 14% of pay each year. Under the PERA General Plan, employees contribute 6.5% and employers contribute 7.5%, for a total contribution to the plan

of 14% of pay each year. The overall cost is identical between the two plans, but differs in the proportion of employee to employer contributions.

One difference between the MPP and the PERA General Plan that will negatively impact the non-union employees relates to vesting. Under the MPP, employees are immediately 100% vested in their own contributions, but vest incrementally from 2 to 6 years in the employer contributions. After 2 years of service, an employee is 20% vested, and continues to vest at a rate of 20% each year thereafter, until the employee becomes 100% vested upon completing 6 years of service. All but 6 employees are at least some percent vested and 18 employees are 100% vested, meaning they have been employed for at least 6 years.

Under the PERA General Plan, employees are 100% vested in their employee contribution, in that they can take a refund of their employee contributions if they leave employment and request a refund. These employees, however, will not be vested in a pension until they have had five years of service. The attached amendment could be adopted to give them past service credit for vesting purposes toward their PERA pension.

## Summary of the Bill

HF 4139 (Olson, L.) consists of one section and an effective date.

**Section 1** amends subdivision 2b of Minnesota Statutes, section 353.01, to add one more exclusion to the list of “excluded employees” listed in this subdivision. Section 353.01 is the definitions section for Chapter 353, which governs the PERA General Plan. Subdivision 2 defines “public employees,” subdivision 2a defines “included employees,” and subdivision 2b defines “excluded employees.”

Specifically, new clause (22) is added to subdivision 2b, to exclude from participation in the PERA General Plan persons employed by the DTA, or any subdivision of the DTA, who are members of the Teamsters General Local Union 346 and the Central States Southeast and Southwest Areas Pension Plan.

**Effective date:** The bill is effective on the date persons employed by the DTA, or any subdivision of the DTA, become public employees.

## Considerations

- 1. Precedent.** Excluding the union employees from membership in the PERA General Plan will not set a new precedent in that it follows existing precedent. It appears that when a public employer has negotiated its way into participating in a multiemployer pension plan, the cost of participating in both the multiemployer pension plan and the PERA General Plan is not sustainable for the public employer, depending on the size of the required contribution under the collective bargaining agreement. The list of “excluded employees” in subdivision 2b includes exclusions for:
  - Employees in a variety of building and construction trades who are employed by certain specified employers, including the St. Paul School District, the Metropolitan Airports commission, and the Minneapolis Park and Recreation Board, and who are covered by certain specified multiemployer

pension plans, including the pension plans of pipefitters, electrical workers, plumbers, carpenters, bricklayers, and laborers, to name a few; and

- Most relevant to the DTA, employees of the St. Cloud Metropolitan Transit Commission who are in a Teamsters local and covered by the Central States pension plan.

We are not aware of any precedent for excluding the non-union employees of a governmental entity similar to the DTA from membership in the PERA General Plan. These employees would not fit into any of the other exclusions in subdivision 2b, such as for part-time, temporary or seasonal employees, elected officers, students, visa holders, or volunteer ambulance personnel or firefighters.

- 2. Vesting credit for non-union employees.** As noted above, the bill could be amended to add a session law that will give the non-union employees credit for past service for vesting purposes. We understand that PERA will not oppose such an amendment. Giving credit for past service for benefit accrual purposes would be more costly to the PERA General Plan and would likely be opposed by PERA.

### Proposed amendment

A proposed amendment, [H4139-1A](#), is attached.

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