



June 22, 1999
Room 5 State Office Building

6th Meeting

LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT

MINUTES

Representative Harry Mares called the meeting to order at 10:09 A.M. He noted that the Commission did not yet have a quorum.

Commission members present at this meeting:

Representatives Philip Krinkie, Harry Mares, Mary Murphy, and Stephen Wenzel
Senators Don Betzold, Dean Johnson, Lawrence Pogemiller, LeRoy Stumpf, and Roy Terwilliger

Agenda Items Discussed

2. Summary of 1999 Session Pension Legislation

Edward Burek, LCPR Deputy Executive Director, referred members to the staff memo in their packets and noted that the memo begins with a summary of legislation for specific public pension plans, next it summarizes general provisions applicable to all plans, and the final section summarizes miscellaneous legislation that passed which may be pension related or of interest to Commission members. He reviewed MSRS related legislation that passed which included special benefit provisions for deputy state fire marshals and a waiver of the reemployed annuitant offset for MNSCU faculty.

Rep. Mares noted that since a quorum was now present, he would revert to agenda item 1.

1. Approval of Minutes of the Commission Meetings of February 25, March 3, March 10, March 16, and March 25, 1999

Sen. Betzold moved approval of the meeting minutes for the meetings noted on the agenda.
MOTION PREVAILED.

3. Commission Consideration of MSRS-Correctional Plan Membership Expansion

- **Ratification of Certain Past Extrastatutory Coverage Changes**
- **Formulation of Comments on Proposed Future Coverage Changes**

Lawrence A. Martin, LCPR Executive Director, referred members to the staff memo in their packets and the June 18, 1999 letter from the Department of Employee Relations. He stated that the issue concerns two requests from Employee Relations Commissioner, Karen Carpenter. One of the requests was received in December, 1998, but was not acted upon by the Commission due to the lack of a quorum at the December 16, 1999, meeting and the other request was dated June 2, 1999. These requests are the result of a statutory procedure for adding members to the MSRS-Correctional Plan that requires Pension Commission review and comments prior to action by the Legislative Advisory Commission. He reviewed the statutory procedure and noted that the Commission first participated in the process in June, 1998. He then reviewed the process used by the Department of Corrections and the Department of Human Services through the Department of Employee Relations for adding members to the MSRS-Correctional Plan.

Mr. Martin reviewed the transfers to the MSRS-Correctional Plan that had already occurred without compliance with the statutory procedure. He stated that the 51 employees previously transferred included 32 Department of Human Services employees and 19 Department of Corrections employees. The Commission has been asked to retroactively review and comment on these transfers although they have already occurred. Mr. Martin noted that the Commission is also being asked to review and comment on the prospective transfer of 24 classifications, including 39 current State employees, to the MSRS-Correctional Plan. He stated that 13 of the 24 classifications do not currently have employees in them. Mr. Martin noted that additionally, the Commission is being asked to consider two more classifications and the prospective transfer of three current employees of the Red Wing Correctional Facility. He reviewed the background and intent of Minnesota Statutes, Section 352.91, Subdivision 4, which established this procedure for adding employees to the MSRS-Correctional Plan.

Mr. Martin reviewed the policy issues raised by the retroactive coverage transfer of the 51 employees previously transferred to the MSRS-Correctional Plan. Some of the policy issues raised were the issue of transferring individuals rather than job classifications and the adequacy of the criteria used to determine eligibility for the correctional plan. He also noted that these 51 transfers occurred shortly after the 1996 MSRS-Correctional Plan expansion and would not have been necessary if the Department of Corrections and Department of Human Services had thoroughly reviewed their employment positions as they testified that they had prior to the 1996 expansion.

Other policy issues raised were the precedent for future transfers and the commitment of the agencies involved to this statutory process.

Mr. Martin next reviewed the policy issues raised by the prospective transfers to the MSRS-Correctional Plan. Some of the policy issues raised were the appropriateness of transferring classifications that do not have employees in them, the appropriateness of transferring individuals rather than job classifications, the adequacy of the criteria used to determine eligibility, how these employees conform to that criteria, and the precedent set for future transfers.

Mr. Martin reviewed the staff recommendations which included that the full Commission review these requests, that the Commission review the past transfers and ratify only the transfers that the Commission determines merit inclusion in a public safety pension plan, that the Commission provide negative comments on the 13 job classifications that do not have employees, and that the Commission ratify only the prospective transfers that it determines merit inclusion in the MSRS-Correctional plan.

Mr. Martin noted that Paul Larson from the Department of Employees Relations as well as representatives from the Department of Human Services and the Department of Corrections were here to testify on this issue.

Paul Larson, Assistant State Negotiator for the Department of Employees Relations (DOER), testified that he has become quite familiar with the statutory procedure specified in Minnesota Statutes, Section 352.91, Subdivision 4, for transferring employees to the MSRS-Correctional Plan. He testified that in the 1980's and early 1990's there were so many requests for transfer to the MSRS-Correctional Plan that the Commissioner of Corrections declared a moratorium on transfers until they could be dealt with legislatively. In 1996 the Legislature approved a major expansion of the MSRS-Correctional Plan and, it is his understanding, that the departments were advised to use the Minnesota Statutes, Section 352.91, Subdivision 4, procedure for future transfers to the correctional plan. He testified in support of a favorable LCPR comment for the 51 employees whose prior inclusion in the correctional plan occurred without following the proper procedure and testified that those employees' positions do merit inclusion. He testified that he has reviewed the material provided by the Department of Corrections (DOC) and the Department of Human Services (DHS) and is satisfied that their process for determining eligibility for transferring employees to the MSRS-Correctional Plan is being adhered to. He testified that he typically sees three to four layers of managerial approval prior to DHS or DOC sending the requests to DOER. He also receives and reviews a copy of each employee's position description which shows the percentage of time spent on each duty to assure that the employee meets the criteria established. Mr. Larson testified in support of Commission approval of the vacant job classifications because the duties shown in the job descriptions for those classifications do meet the criteria established for inclusion in the MSRS-Correctional Plan. He then responded to the policy issue raised by adding individuals rather than whole job classifications to the Correctional Plan. He testified that the maintenance employees at the Stillwater Correctional Facility are responsible and accountable for inmate crews but at Oak Park Heights the maintenance employees do not have inmate contact. He testified that this certification and transfer process takes approximately 18 months so employees who are following this process have a combination of MSRS-General and MSRS-Correctional Plan pension coverage.

Rep. Murphy asked Mr. Larson what assurances the Commission has that employees are being properly counseled when they are hired with regard to whether the positions they are taking provide either MSRS-General or MSRS-Correctional pension benefits so that when employees are close to retirement age they don't suddenly believe they should have been placed in a plan that would provide earlier normal retirement? Mr. Larson testified that DOER does not meet with new hires. He testified that shifting employees to the MSRS-Correctional Plan late in their careers is not a problem because it requires three year vesting and purchasing prior MSRS-General service in the Correctional Plan is very costly. Rep. Murphy asked whether supervisors meet the 75% inmate contact criteria? Mr. Larson testified that he fully supported the recommendation from the Department of Corrections and believes that the supervisors included in this transfer meet the criteria.

Rep. Mares asked Mr. Larson for comments on whether there was enough detail in the criteria to assure that only the appropriate employees and positions were being transferred to the MSRS-Correctional Plan? Mr. Larson testified that he is comfortable with the level of managerial approval required. With regard to the criteria used, Mr. Larson testified that he believes the 1996 standard is still being used. He also noted that DOER requests clarification and additional information from the DOC and DHS to assure that transfer requests meet the appropriate requirements.

Sen. Betzold asked to see the letter sent to the Legislative Commission on Pensions and Retirement Chair that requested comments prior to the Legislative Advisory Commission's action. Mr. Martin passed a copy of the letter sent to then Chair of the Commission, Sen. Morse.

Sen. Pogemiller also asked why these transfers constantly occur and why the appropriate classifications are not established so this transfer procedure can be repealed and then deal with this situation through the appropriations process. Mr. Larson testified that the passage of PELRA laws eliminated bargaining for pension benefits and required future expansions of the MSRS-Correctional Plan to be done by the Legislature. He also testified that he believes this is the final review of positions and DOER will not be constantly coming before the Commission with these requests.

Rep. Mares recommended directing staff to draft proposals that would change this process and handle this issue during the legislative session.

Mr. Martin reviewed the 1996 legislation and noted that the Commission did a comprehensive review of the positions to be included in the MSRS-Correctional Plan at that time and recommended the legislation which was then ultimately included in the corrections budget division bill. He also noted that Sen. Stumpf introduced a bill in the 1999 Session to repeal Minnesota Statutes, Section 352.91, Subdivision 4.

Sen. Pogemiller asked if an appropriation was made in 1996? Rep. Murphy answered that an appropriation was made in the Judiciary Finance Committee for the Department of Corrections.

David Bergstrom, MSRS Executive Director, testified that an appropriation was made and they did increase the employer contribution to the MSRS-Correctional Plan to fund the approximately 450 employees being transferred.

Sen. Pogemiller asked why these positions were missed if there was a comprehensive review by the departments in 1996? Rep. Murphy asked what was the potential for employees continuing to request transfer to the Correctional Plan?

Sandi Blaeser, Labor Relations Director for the Dept. of Corrections, testified that DOC has developed an extensive process for review of these positions and believes it will weed out those situations. She testified that in this latest action, eight or nine requests were turned down by DOC because they did not meet the criteria. Rep. Murphy stated that she is concerned that if employees are turned down by the agencies they will go to their legislators with their request. She noted that originally in 1996 the goal was to add two groups that had previously been missed and that the final large number of employees and positions added to the plan was unexpected. She hoped that this was the last round of transfers to the Correctional Plan. Ms. Blaeser testified that DOC's policy requires an annual review of positions and a response to every employee's request for a job review to determine if the job meets the established criteria for transfer to the Correctional plan. DOC has an interest in maintaining the integrity of the MSRS-Correctional Plan because of policy reasons and because of the fiscal impact on the department.

Sen. Pogemiller asked if DOC and DHS did a comprehensive review in 1996, why were these positions not included. Ms. Blaeser testified that the Departments did not think of the 1996 list as a final list, it included the employees and positions that could be accommodated by the appropriation provided in 1996. She also noted that in 1995 the Department began to establish criteria and a review process to gain some control of the expansion of the Correctional Plan.

Rep. Krinkie asked what kind of counseling a new employee receives with regard to the pension plan benefit program that their position qualifies for. Ms. Blaeser testified that the Human Resource person at each facility goes over the employee's benefit package including which pension plan the employee is eligible for. The Human Resource office reviews each position that is vacated to assure that the position still meets the criteria for MSRS-Correctional Plan eligibility so that the designation can be adjusted prior to refilling the position.

Terry Anderson, Department of Human Services, testified that they have had large numbers of people transferring into the Correctional Plan. He cited the example of the Moose Lake facility where MSRS provided a number of counseling sessions for employees considering going into the plan and an explanation of what the benefits would be. Each Human Resource office provides counseling to their employees on an individual basis.

Rep. Krinkie asked whether the employee signs off on their understanding of the benefit plan they

are in? He stated that he understands that if employees change their positions their benefit coverage may change but if employees do not change positions, why should an employee think they should be covered by a different plan if they are being adequately counseled when they accept the job? Ms. Blaeser testified that she did not know if an employee signed a document to that effect.

Rep. Mares asked Mr. Bergstrom to comment on the 51 retroactively covered employees and the vacant job classifications being added. Mr. Bergstrom stated that it would be very difficult to remove the 51 employees who have already been transferred to the MSRS-Correctional Plan and he recommended leaving them in the plan. Mr. Bergstrom also supported approval of the vacant classifications since it allowed an employee to start the position immediately in the plan that the position qualified for.

Sen. Pogemiller asked who was behind the large number of employees seeking MSRS-Correctional Plan coverage and which unions represented those employees? Mr. Larson responded that the unions covering those employees were the MN Nurses Association, MN Association of Professional Employees, and AFSCME.

Rep. Mares asked Mr. Martin to comment on the direction the Commission has asked him to go. Mr. Martin stated that his understanding of the Commission's intent was to have the staff take two actions. The first was to prepare a letter to DOER with the Commission's comments on the retroactive and prospective expansion of the MSRS-Correctional Plan which would be signed by the Commission Chair. The second action was to review MSRS-Correctional plan membership for both the group added by statute and those added by this administrative process and to craft a statute that clearly delineates who should be covered by the MSRS-Correctional Plan.

Sen. Pogemiller stated that he is not prepared to approve the retroactive or prospective expansion of MSRS-Correctional employees without further review. He stated that this law has been around since 1980 and it seemed very clear. He did not believe that the 51 employees already added to the Correctional Plan should get to stay there without further review and certainty on the part of the Commission that their positions merited that coverage. He also asked if the Legislative Advisory Commission has asked for a fiscal impact statement for the employer contribution? Mr. Larson stated that he will indicate the increased employer contribution on the appropriate form for the Legislative Advisory Commission. Sen. Pogemiller asked what the dollar amount would be? Neither Mr. Larson nor Mr. Bergstrom had that number at this time.

Rep. Murphy asked if approving comments would include the vacant positions. Rep. Mares stated that since there was no negative testimony on that issue, they would be included.

Rep. Mares commented to Mr. Larson that DOER was remiss in their letter requesting comments from the Commission Chair since the letter was addressed to David Bergstrom and Sen. Morse was only copied on the letter. Rep. Mares stated that method of requesting Commission comments was inappropriate.

Sen. Pogemiller again stated his concern with DOC and DHS claiming to have done a thorough review of job classifications in 1996 and now requesting an additional 30% increase in classifications. Mr. Anderson speculated that part of the DHS increase was due to the growth of the psychopathic personality program at Moose Lake and St. Peter and the rest may be employees who were excluded in 1996 and saw Subdivision 4 as an opportunity to try again.

Mr. Bergstrom testified, in response to Sen. Pogemiller's question, that the dollar amount for including these employees would be approximately \$80,000 to \$90,000 per year for 50 employees.

Sen. Pogemiller suggested that DOC and DHS redo their thorough analysis and put an end to expanding this plan. He also stated that this was a substantial number of employees to deal with in this manner and he suggested repealing Subdivision 4 unless a very good argument was made with regard to the necessity of having the flexibility it provided. Ms. Blaeser responded that DOC policy requires them to annually review all their classifications. She testified that positions do change over time so it is necessary to regularly review them. Sen. Pogemiller stated that the policy was established to address a few employees and to provide some flexibility for management but this large volume causes him to think something else is occurring. Rep. Mares directed DOER, DOC, and DHS to stay in contact with Commission staff to provide the necessary information to develop legislation for the next session to handle this issue.

Rep. Krinkie asked why the Commission needs to act on these at this time? Mr. Martin stated that for the 51 employees requesting a retroactive transfer, it simply gives approval to what already has

occurred but the 42 employees requesting prospective transfer will not be included in the plan until the Commission takes action, so their future coverage time is at stake. Discussion followed.

Rep. Mares moved to pass favorable comments with regard to the requests from DOER for coverage transfers to the MSRS-Correctional Plan to the Legislative Advisory Commission.

MOTION PREVAILED.

4. Commission Consideration of Proposed Actuarial Assumption Changes

- **Thomas K. Custis, F.S.A., Milliman & Robertson, Inc.**

Rep. Mares noted that the radar broke down at the Minneapolis-St. Paul airport so Mr. Custis' plane landed in Rochester and he was unable to get to the Pension Commission meeting. He postponed this topic until the next meeting.

5. Commission Interim Project: Development of Administrative Process For Handling Single Person Pension Problems and Complaints (First Consideration)

Mr. Martin referred members to the staff memo on this topic. He noted that this was an interim project requested by the Commission Chair. The purpose of the topic was to determine if there was a better process for handling the increasing number of single person and small group bills that are essentially claim requests related to public employee pensions which the Commission reviews every session. He referred members to the chart at the bottom of the first page of the memo which showed members the number of these bills that have been introduced over the past nine years. The chart did not include the number of amendments drafted that the Commission may be requested to review during a session. He reviewed policy issues raised by delegating this legislative authority to the executive or judicial branch. Mr. Martin reviewed the 15 elements of the administrative process that he had identified beginning with which public pension plans would be covered by this process. He continued to review the other elements. He stated that if the Commission wished to delegate the largest number of single person or small group legislative requests to the new process limiting the new process to handling service credit purchases would accomplish that goal. He continued with his review. Mr. Martin stated that staff will provide more detail on a new process and refine the policy analysis based on Commission comments and testimony provided at this meeting for the next review of this topic. Discussion followed.

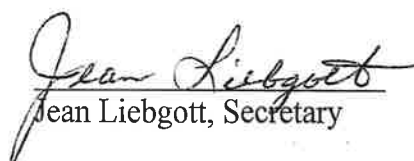
Bruce Johnson, Assistant Chief Administrative Law Judge, testified that his group would be willing to work with the Commission on this project. He stated that his office currently holds neutral factfinding conferences for PERA after which they make a non-binding recommendation. He testified that if the Commission selected this alternative, in order to avoid conflict with the State Constitution, the Commission should not provide the ALJ with final decision authority but should have the ALJ make recommendations to some other body, either the Legislature or the public pension plans. He testified with regard to the process used with the City of St. Paul in reviewing liquor and gun licenses. In light of the recent Supreme Court decision on child support, it would have to be determined whether his office could enter into a contract with the Commission or whether it would have to be with one or all of the major pension plans. He concluded his testimony by stating that his office would be available to help the Commission design a process to handle this issue.

Rep. Mares stated that he thought the Commission would be derelict if it did not handle these responsibilities but there might be a way to set up a system to review these cases and bring them back for Commission approval. He asked Mr. Johnson what his estimate for the time and cost would be for their review. Mr. Johnson responded that the hearings would probably take about four hours plus two and a half times that for judicial deliberation time and the current charge was \$90 per hour. He testified that the ALJ Office could provide the Commission with a factual record by hearing evidence and determining whether an error was made.

Rep. Murphy suggested also requesting information from the Office of Dispute Resolution.

Rep. Mares announced that the next Pension Commission meeting would be July 29, 1999, and the topics would include the Improved Money Purchase Plan and the Commission actuary's review of the potential changes to actuarial assumptions. He also noted that Mr. Custis did make it to this meeting but his presentation has been rescheduled for the July 29, 1999 meeting. He also noted that there will not be a Commission meeting in August.

The meeting adjourned at 12:48 P.M.


Jean Lieb Gott, Secretary