



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director
RE: Minnesota Police Officers and Firefighters and Social Security
DATE: November 18, 2013

Introduction

During the November 7, 2013, meeting of the Legislative Commission on Pensions and Retirement, Senator Julie Rosen raised the question, in connection with the presentation of the supplemental Commission staff materials on the current post-retirement adjustment mechanisms, of the reason or reasons why police officers and firefighters in Minnesota are not covered by the federal Old Age, Survivors and Disability Insurance Program (Social Security).

Social Security Coverage

Social Security coverage is the applicability of a set of federal governmental benefit programs, the Old Age, Survivors, Disability, and Health Insurance programs, which provide various retirement and casualty benefits. While virtually all private sector employees are covered by Social Security on a mandatory basis, Social Security coverage for public sector general employees in Minnesota historically (before 1986) was elective by the Legislature and by the employee groups and Social Security coverage is not available for public sector public safety employees in Minnesota by virtue of their public employment.

General Summary of the Provision of Social Security Coverage for Minnesota Public Employees

Social Security is a product of the Great Depression of the 1930s, when being old generally meant being poor, and represents the response of the federal government to this phenomenon of poverty among the elderly. Since President Franklin D. Roosevelt announced his initiative to provide a Social Security program on June 8, 1934, Social Security has become a key element in the retirement planning of most U.S. citizens. The first Social Security Act was signed into law on August 14, 1935. The original act provided only lump sum retirement benefits.

In 1939, dependent (spouse and minor children) benefits were added to the old age assistance benefits in the event of the premature death of a worker were also added. In 1940, monthly Social Security benefits replaced lump sum benefits. Social Security coverage was extended to public sector workers, under an agreement between the federal government and the applicable governmental unit, in the early 1950s. Ad hoc cost-of-living adjustments to Social Security benefits began in 1950, with automatic Social Security cost-of-living adjustments beginning in 1972. In 1956, a disability benefit program was added to Social Security and was expanded in 1958. In 1956, the minimum retirement age for Social Security benefit eligibility was reduced to age 62 for women, and in 1961, for men. In 1965, Medicare (the Health Insurance Program) was added to Social Security.

Currently, 17 percent (45 million) of all Americans receive a Social Security benefit, of which about 30 million are retirees. Approximately 98 percent of all American workers are covered by Social Security. Most workers who are not covered by Social Security are public employees.

Old Age, Survivors, Disability and Health Insurance program (Social Security) coverage for public employees, under 42 U.S. Code Section 418, is generally provided through coverage agreements (referred to as Section 218 agreements) between the applicable state and the federal Department of Health and Human Services. When Social Security was established in 1935, it did not permit coverage for public employees since it is funded by employee and employer payroll taxes (the Federal Insurance Contribution Act or FICA tax) and the taxation of state governments by the federal government has been determined by the U.S. Supreme Court as being unconstitutional. In 1954, Social Security coverage was extended to public employees by virtue of intergovernmental (state-federal) agreements. The applicable law in Minnesota is coded as Minnesota Statutes, Chapter 355. In 1986, Medicare coverage was extended on a mandatory basis by federal law to all public employees and in 1991, Social Security coverage was extended on a mandatory basis to any public employee who is not covered by a public employee pension plan.

Social Security Coverage for Police Officers and Firefighters

Under both state and federal law, Minnesota police officers and firefighters with Minnesota public pension plan coverage are not eligible for coverage by Social Security. Under Minnesota Statutes, Section 355.07, enacted in 1955, police officers and firefighters are not permitted to be included in any agreement between the State of Minnesota and the federal Department of Health and Human Services extending Social Security to public employees. The statute indicates, in part, that

[n]othing in any provision of this chapter shall authorize the extension of the insurance system established by this chapter, as amended, to service in any police officer's or firefighter's position or in any position covered by a retirement system applicable exclusively to positions in one or more law enforcement or fire fighting units, agencies or departments.

Under federal law, 42 U.S. Code, Sections 418(d)(5)(A) and 418(d)(8)(D), police officers and firefighters are not eligible for inclusion in a Social Security coverage agreement, although 42 U.S. Code, Section 418(l) has been amended to permit police officers and firefighters to be included in a Social Security coverage agreement. Previously, 42 U.S. Code, Section 418(l) allowed police officer and firefighter inclusion in Social Security coverage agreements in only 22 states and Puerto Rico unless the governor of each of the remaining 28 states determined that Social Security coverage would improve the firefighters' benefit coverage. Minnesota's Section 218 Social Security coverage agreement does not include Minnesota police officers or firefighters in Social Security coverage. Pre-1994 special inclusions of police and firefighters in Social Security coverage were:

<u>State</u>	<u>Year Added</u>
Alabama	1957
California	1959
Florida	1956
Georgia	1957
Hawaii	1957 (as territory)
Idaho	1972
Kansas	1959
Maine	1962
Maryland	1957
Mississippi	1976
Montana	1974
New York	1957
North Carolina	1956
North Dakota	1959
Oregon	1956
Puerto Rico	1968
South Carolina	1956
South Dakota	1956
Tennessee	1957
Texas	1959
Vermont	1957
Virginia	1960
Washington	1958

A provision added in 1967, 42 U.S. Code, Section 418(p)(2), authorizes any other state to extend Social Security coverage to persons serving in firemen's positions if the Governor of the state or his designee certifies to the Secretary of H.E.W. that "the overall benefit protection of employees in such positions would be improved by reason of the extension."

In addition to the police officers and firefighters in the states listed above, any person serving in a policeman's or fireman's position employed by an interstate instrumentality can be included in Social Security coverage under U.S. Code, Section 418(d)(8)(D).

In 1990 legislation, effective July 1, 1991, amending 42 U.S. Code, Section 410(a)(7)(F), Social Security coverage was extended to those public employees who are not covered by a public pension plan. Public pension plan coverage for purposes of 42 U.S. Code Section 410(a)(7)(F) was defined as coverage by any pension plan established for public employees unless provided differently by federal Department of Treasury regulation. Treasury regulation 26 Code of Federal Regulation, Section 31.3121(b)(7)-2 specifies which public employees are considered to have sufficient public pension coverage to be exempt from Federal Insurance Contribution Act (FICA) taxes if not included in a federal-state social security coverage agreement under U.S. Code, Section 418.

Since 1994, states may provide Social Security coverage for police or firefighter positions that are covered under a retirement plan if state law permits and if so provided in their Section 218 Social Security agreement.

Rationale for Excluding Police and Firefighters from Social Security Coverage

While there are no legislative records remaining from 1955, when the decision not to include Social Security coverage in the retirement coverage for police officers and firefighters was codified in statute (Laws 1955, Ch. 665, Art. 1, Sec. 1; Minn. Stat. Sec. 355.07, Para. (d)), there are four likely alternative or complementary reasons why police and fire positions were excluded from the introduction of Social Security to public employee retirement coverage in Minnesota, which are:

1. Difficulty in Accommodating Differentials in Normal Retirement Age. When Social Security coverage was permitted for public employees in the 1950s, the age at which unreduced retirement benefits were first paid was age 65, while the normal retirement age for police officers and firefighters covered by one of the state's 50+ local relief associations was age 50. That 15-year differential in normal retirement ages can be bridged (see the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) from 1973 until 1997), but in the 1950s, there were few models for such adaptations and there was little membership interest in redesigning the local relief association benefit plans into a two-part (i.e., age 50-age 65 increased benefit level, post-age 64 reduced benefit level) formula to accommodate Social Security coverage. In the 1950s, to complicate the situation, Social Security did not have annual cost-of-living adjustments, while most of the local police and paid firefighter relief associations provided service pensions and casualty benefits that were indexed after retirement to the prevailing pay of the top ranked patrol officer or firefighter position in the respective city.
2. Lack of Need for Elderly Relief with Long-Standing Local Relief Pension Plans. Social Security was a federal government program that was developed during the Great Depression of the 1930s in order to pull the greatest portion of the population then in poverty, the elderly, out of poverty. Where a population had pension plan coverage from their employer, that group of elderly was unlikely to be in poverty in the 1930s and in the 1950s. For most of Minnesota's largest and/or oldest cities in 1955, a local police or firefighter relief association had been established to provide service pensions or disability benefits to those public safety employees, and, in those locales, there was little or no interest in adding coverage by the newly available (to public employees) Social Security System. For county sheriff's departments and for police departments and paid fire departments in municipalities without local relief associations, retirement coverage was provided by the Public Employees Retirement Plan, now the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), the same plan that covered public employees who were not employed in public safety positions. The Public Employees Police and Fire Retirement Plan (PERA-P&F) was only created in 1959. Within the PERA-General, the addition of Social Security coverage to the overall retirement package was controversial during the mid-1960s, with disputes arising between factions on the PERA Board and litigation. PERA coordinated with Social Security for hospital employees in 1965 and coordinated with Social Security for all non-police and non-firefighter local government public employees in 1967, 12 years after the Minnesota State Retirement System (MSRS) coordinated and eight years after the Teachers Retirement Association (TRA) coordinated.
3. Different Salary Maximum Figures. When Social Security coverage for public employees was authorized by the federal government in the 1950s, Social Security had a maximum annual covered salary of \$4,800, while the local police and paid firefighters did not have an annual maximum covered salary figure, although most local relief associations set their benefits based on the salary of the top grade patrol officer or firefighter position in the respective department no matter the rank of the relief association member. To the extent that police and firefighter salaries exceeded \$4,800 annually, Social Security would be an unattractive choice for relief association members.
4. Off-Duty Employment Social Security Coverage. If the stereotype of regular and persistent off-duty employment by police officers and firefighters was true in the mid-1950s and continued thereafter, many police officers and firefighters would already have had Social Security by virtue of their off-duty employment in the 1950s and 1960s, making the extension of Social Security coverage to police or fire department generally uninteresting to police officers and firefighters.

Conclusion

I hope that this information is of assistance in understanding why Minnesota police officers and firefighters have not been included in Social Security coverage. If you have any questions about this memorandum, please contact me.