

Legislative Commission on Pensions and Retirement

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TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Chad Burkitt, Analyst, and Susan Lenczewski, Executive Director

DATE: May 7, 2019

RE: H.F. 2775 (Youakim); S.F. 2713 (Latz); MnState IRAP/TRA: Authorizing transfer of coverage and service credit for Sarah Dahl Gednalske

Summary of H.F. 2775 (Youakim); S.F. 2713 (Latz)

H.F. 2775 (Youakim); S.F. 2713 (Latz) is a bill for the benefit of one individual, Sarah Dahl Gednalske, who works in the Minnesota State system (formerly Minnesota State Colleges and Universities) and participates in the Minnesota State Individual Retirement Account Plan (IRAP). The bill allows Ms. Dahl Gednalske to elect future coverage by the Teachers Retirement Association (TRA) and to purchase credit for past service with Minnesota State for purposes of her TRA pension.

The cost to purchase credit for past service would be paid in at least two steps:

- First, Ms. Dahl Gednalske must pay the difference in employee contributions between her actual contributions to the IRAP and the contributions she would have made to TRA had she been covered by TRA for the entire period of past employment in the Minnesota State system, which began January 3, 1995.
- Second, Ms. Dahl Gednalske's account in the IRAP must be transferred to TRA.
- Third, if the employee contributions (in step one) plus the amount transferred from the IRAP (in step two) are less than the actuarial present value of her TRA pension, calculated by taking into account the past service being purchased, Minnesota State must pay the remaining balance.

Ms. Dahl Gednalske may decide whether to initiate the transfer of coverage and purchase of past service credit. She must make her election within one year of the effective date of the legislation.

TRA estimates that the cost of the service credit purchase is \$262,449. Of this amount, the Minnesota State system is expected to pay approximately \$78,524.

Background Information

Ms. Dahl Gednalske was first hired on January 3, 1995, by the Minneapolis Community College (today, the Minneapolis Community and Technical College). She was initially hired as an academic advisor, and remained so employed until she was laid off on June 29, 2018. She was rehired by the system as an academic advisor at Metro State University. During her entire employment in the Minnesota State system she participated in the IRAP.

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The IRAP was established in the late 1980s, when state university and college teachers and related employees sought coverage by a defined contribution plan, as an alternative to TRA, which is a defined benefit pension plan. When the IRAP was established, in 1988 (Laws 1988, Ch. 709, Art. 11), it covered state university, college, and community college faculty and administrators. The plan was expanded to include technical college managerial employees in 1993 and technical college faculty in 1994.

Initially, IRAP coverage was mandatory for new hires without prior covered service, while employees in eligible positions who had prior TRA service were given an option to elect IRAP rather than continued membership in TRA. Several statutory changes in the early 1990s expanded the election options for new hires in various circumstances. A blanket right to elect coverage by TRA for new employees was added by the legislature in 1995.

Ms. Dahl Gednalske claims that she had a right to elect coverage into TRA and that Minnesota State had a duty to provide her with notice regarding the election, but failed to inform her of the election option. Furthermore, she claims that had she been provided with the option to elect, she would have selected TRA coverage. Ms. Dahl Gednalske therefore requests that the legislature approve a special law that will permit her to transfer coverage and credit for past service from the IRAP to TRA.

Discussion and Analysis

1. Did 1994 law provide Ms. Dahl Gednalske with an election to transfer coverage to TRA? At the time of Ms. Dahl Gednalske's hire, on January 3, 1995, Minnesota Statutes 1994, Section 354B.02, governed her eligibility to elect coverage. The general rule provided in Subdivision 1 of that section required that anyone hired in an eligible community college position be covered by the IRAP, unless the individual had prior service under TRA.

However, Subdivision 5 of the same section would supersede if it applies. It states:

Notwithstanding any other provision of this chapter or chapter 354 to the contrary, state university and community college employees who have not previously exercised their option to elect to transfer to this plan or remain with the teachers retirement association are eligible to make that election. Participants in either the plan or association may transfer benefit coverage to the other. A transfer election is . . . subject to the conditions of paragraphs (b), (c), and (d).

It is unclear whether this provision applies because it has two possible interpretations. It can be read expansively to mean: *Any state university and community college employees, except those that have previously exercised their option to elect to transfer to this plan or remain with the teacher's retirement association, are eligible to make that election.*

Or, it could be read narrowly to mean: *Only those state university and community college employees are permitted to make an election who: (1) previously had an option to elect to transfer to this plan or remain with the teachers retirement association and (2) had not previously exercised such an option.*

Under the second interpretation, Ms. Dahl Gednalske did not have a right to elect because she did not previously have an option to elect to transfer coverage. Under the first interpretation, she likely

should have had the option to elect because she was a community college employee and had not previously made an election.

An LCPR staff memorandum dated March 8, 1994, supports the first interpretation by stating that the effect of the statutory change is that “[c]urrent and future teaching personnel in the State University System or in the State Community College System would be permitted to elect coverage. . . .” The best evidence that Ms. Dahl Gednalske had a right to elect would be evidence that other community college employees hired at the same time were given the right to elect, but such evidence has not been provided.

Based largely on the 1994 memo, the weight of the evidence suggests that the 1994 legislature intended to give Ms. Dahl Gednalske and other similarly situated persons a right to elect coverage. However, it is a close call. The same legislation also provided for a right to elect coverage within 60 days of being hired for anyone first hired after June 30, 1995. One could argue that if the intent of the legislature was for those hired after the 1994 legislation was passed, but before June 30, 1995, to have a right to elect coverage upon hire, why didn’t the legislature provide for a right to elect that began in 1994?

2. Address this recurring issue with general legislation rather than special legislation? The Minnesota Constitution and the LCPR’s *Principles of Pension Policy* state a clear preference for general legislation. The Minnesota Constitution, Article XII, Section 1 states:

In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2 [relating to local government legislation] The legislature shall pass no local or special law . . . granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever. . . .

It is possible that a court could find that this legislation is unconstitutional because it grants an individual a special or exclusive privilege. The bill applies only to one individual and does not extend the option to transfer to TRA to other similarly situated individuals.

As the Commission is aware, this special legislation is one in a series of special bills introduced over many years to address recordkeeping and notice issues related to the option to elect to transfer coverage from the IRAP to TRA. Similarly affected individuals could be addressed through general legislation. In cases such as this, where the individual is claiming that Minnesota State failed to fulfill a statutory duty years ago, there is not currently an administrative remedy available to participants. One possible solution for Ms. Dahl Gednalske would be general legislation that creates an administrative process through which she could bring a claim and have the claim investigated and adjudicated. This might be an appropriate approach because it is highly likely that the LCPR will be asked to consider similar special legislation in the future for other similarly situated individuals.

The issue of whether special legislation like this is constitutional remains an unsettled question of law because no individual pension bill has been challenged as unconstitutional in Minnesota. The Commission has approved similar bills over the years, many of which have become law. The

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Commission should be aware, however, that a party, injured as a result of the legislation, may have grounds to challenge the constitutionality of the bill.

3. Is the LCPR, a legislative entity, the best place to investigate and decide this claim? Special legislation like this often results in the LCPR acting in a quasi-judicial capacity, rather than a strictly legislative capacity. Through the legislative process, the LCPR is asked to adjudicate a fair outcome for Ms. Dahl Gednalske's claim that she was entitled to an election, that Minnesota State failed to perform its duty to administer the election, and that as result, she was unable to exercise her election to her detriment.

In evaluating whether to support the proposed legislation, the Commission will want to evaluate the merits of Ms. Dahl Gednalske's claim. Doing this requires making a number of factual and legal determinations: Was Ms. Dahl Gednalske legally entitled to make an election? Was she given the opportunity to elect coverage? Was she actually harmed as a result? The LCPR may wish to consider whether the Commission is the best venue to make factual and legal determinations of this kind or if an administrative or judicial forum might be better suited for developing a factual and legal record.

4. Should Minnesota State be required to pay the balance? The bill requires that if Ms. Dahl Gednalske's employee contributions payment plus her IRAP account balance is less than the actuarial present value of the pension based on her transferred service credit, then Minnesota State is required to pay the remaining balance. Minnesota State has been unable to produce evidence that it offered an option to elect TRA coverage to Ms. Dahl Gednalske. However, Ms. Dahl Gednalske has not provided any basis that would allow the Commission to find that she had a right to elect TRA coverage under applicable law. As explained in section 1, above, the statutory authority in effect at the time she was hired is not clear. Given these circumstances, the Commission may wish to consider whether to hold Minnesota State liable for any unpaid balance. An alternative is to require that Ms. Dahl Gednalske be liable for any unpaid balance after paying the employee contributions and taking into account the transfer of her IRAP account.
5. Should TRA be required to accept IRAP funds? The Commission considered legislation during the 2019 session intended to bring the IRAP into compliance with federal law. The legislation, H.F. 2489, which has been incorporated into the omnibus pension bill, increases the IRAP employee contribution rate to make it equal to the TRA employee contribution rate. Representatives from Minnesota State testified that the legislation is necessary to bring the IRAP into compliance with federal requirements with which the IRAP must comply in order to maintain its status as a tax-qualified plan.

The transfer of Ms. Dahl Gednalske's account from the IRAP to TRA may jeopardize TRA's qualified plan status because it will be accepting assets from a plan that may not be considered a qualified plan under applicable federal law. TRA should not be required to accept these assets if it determines accepting the assets would threaten TRA's status as a qualified plan. Under Minnesota statutes section 356.441, which applies to transfers in other situations, a public pension plan is permitted to accept a transfer of funds from another plan only if the other plan is qualified under relevant sections of the Internal Revenue Code, including Code Section 401(a), which governs the IRAP.

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The LCPR may wish to consider amendments to the bill that would not require TRA to accept a transfer of funds from the IRAP. The following two amendments are alternatives offered for Commission consideration:

- **Amendment H2632-14A.** The bill would be amended to allow Ms. Dahl Gednalske to find other sources of funds with which to pay the amount that would have been transferred from her account in the IRAP. Such funds could come from other pre-tax sources such as the Minnesota Deferred Compensation Plan, a 403(b) plan or an individual retirement account (IRA).
- **Amendment H2632-15A.** An alternative to the -14A amendment, the bill would be amended to allow Ms. Dahl Gednalske to change coverage to TRA prospectively only. Her IRAP account would remain in the IRAP and continue to be invested under the IRAP. This would allow her to take advantage of compounding returns in the IRAP from contributions made early in her career. Beginning TRA coverage now would allow her to get the benefit of her future high-five salary during her final years of employment under TRA. However, she would not get credit for past service in calculating her TRA pension.