HF 2937 (Fischer); SF 3087 (Wiger): Bill allowing one individual to purchase service credit under the PERA Police & Fire Plan

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Introduction

Affected Plan: Public Employees Police and Fire Retirement Plan (PERA P&F)

Type of Law Change: Session law, will not be included in Minnesota Statutes

Brief Description: HF 2937 (Fischer); SF 3087 (Wiger) permits a former firefighter employed by the City of Maplewood to purchase service credit under PERA P&F for a period of approximately 7 months when he should have been participating in the plan, but had not been enrolled by the City. If the member pays the missed employee contributions with interest, the City must pay the missed employer contributions with interest, and PERA will credit the service.

Background

An individual who is a member of the Public Employees Police and Fire Retirement Plan (PERA P&F) began employment with the City of Maplewood as a casual part-time firefighter on May 13, 2013. By June 28, 2013, the individual's salary exceeded the threshold for eligibility, requiring the City to enroll him in PERA P&F. The City, however, did not enroll the individual in the PERA P&F Plan until January 29, 2014, when the City first began deducting employee contributions from his pay.

After the individual became a full-time employee of the Metropolitan Airports Commission in 2017, he contacted PERA about the period of service during which no contributions were deducted from his pay or made by the City. The rest of the timeline is as follows:

- July 20, 2018: PERA staff informed the individual that PERA could not make a claim against the City for the missed contributions because the statute of limitations barred such an action. Without being able to collect the missed contributions, staff informed the individual that he could not purchase the seven months of service.

- The individual appealed the staff's determination to PERA's executive director.

- August 14, 2018: PERA's executive director considered the appeal and affirmed the decision by PERA staff.

- September 27, 2018: The individual appealed the executive director's decision to PERA's board of trustees.
- January 4, 2019: The board of trustees issues its determination that while the individual should have been enrolled in PERA beginning on June 28, 2013, PERA is unable to commence action to compel the City to make the missed contributions.

The applicable statute of limitations, Minnesota Statutes, Section 353.27, Subdivision 12, Paragraph (e), prohibits PERA from commencing an action to recover missed employee and employer contributions after the expiration of three calendar years after the calendar year in which the contribution were missed. Since the last missed contribution was in January 2014, an action by PERA to collect the missed contributions from the City would have had to have been started no later than December 31, 2017.

PERA had asked the City to explain why it did not begin making contributions for the individual as early as June of 2013. City staff responded that they could not explain the delay, since the personnel records for the individual from that period of time indicate that the individual should have been covered by PERA P&F beginning with his date of hire. Neither the finance director nor the payroll clerk, who would have been involved in deducting contributions from the individual's pay, are still employed by the City.

The individual is now employed as a full-time firefighter by the Metropolitan Airports Commission and his pay has increased since employment with the City. This means that the value of the missed seven months is significantly more than the sum of the missed employee and employer contributions with interest. The individual's higher pay will figure into the calculation of his benefit, magnifying the impact of seven additional months of service credit. As calculated by PERA in 2019, the missed employee and employer contributions plus interest amount to approximately $2,000 for the seven months, compared to approximately $11,300 for the estimated present value of the benefit increase.

PERA is willing to absorb the difference between the present value of the benefit increase and the amount it will receive for the missed employee and employer contributions with interest. The City has expressed its willingness to make the payment required by the bill.

The City had identified one other individual who had similarly been enrolled late and negotiated a settlement with the other individual. The individual requesting this legislation had been approached by the City to settle his claim, but the individual wanted the service credit rather than a payment outside of the PERA P&F Plan.

Section-by-Section Summary

HF 2937 (Fischer); SF 3087 (Wiger) is a session law, which means it will not be included as a new section or chapter in Minnesota Statutes. There is only one section in the bill, so the following describes the bill by subdivision.

Subdivision 1

Subdivision 1 states that an eligible person is entitled to purchase service in the Public Employees Police and Fire Retirement Plan (PERA P&F) upon making the payment described in the bill. "Eligible person" is defined by reference to events rather than the individual's personal information, such as birth date and employment dates, as has historically been the approach with pension-related bills for individuals. Paragraph (c) requires the executive director of the Public Employees Retirement Association (PERA) to credit the service upon receipt of the missed employee contributions.

Subdivision 2

Subdivision 2 states that if the individual elects to purchase the seven months of service, the individual must pay, in a lump sum within 90 days of the effective date of the bill, the missed employee contributions plus interest. Interest is compounded annually from the end of 2013 and end of 2014 at 8.5% until June 30, 2015, then at 8% until June 30, 2018, then at 7.5% to the date of payment. The executive director of PERA will notify the individual regarding the amount of the lump sum payment required.

Subdivision 3

Subdivision 3 requires the City of Maplewood to pay the missed employer contributions plus interest, if the individual makes the payment under subdivision 2. Interest is at the same rates as noted in subdivision 2 (see above). The City must make the payment within 60 days of the date of the individual's payment under subdivision 2.

Subdivision 4

Subdivision 4 authorizes the executive director of PERA to take action to collect payment under Minnesota Statutes, Section 353.28, Subdivision 6, if the City of Maplewood fails to make the payment under subdivision 3. Minnesota Statutes, Section 353.28, Subdivision 6, allows the executive director to seek collection by the county auditor or the commissioner of management and budget from property tax revenue or state aid payable to the City.

Effective Date

Subdivisions 1, 2, and 4 are effective the day following final enactment. Subdivision 3 is effective after the City of Maplewood city council and its chief clerical officer timely complete compliance with Minnesota Statutes, Section 645.021, Subdivisions 2 and 3. Section 645.021, Subdivisions 2 and 3, require the approval of the governing body of the local government unit affected by a special law and a filing with the secretary of state. If the approval and filing are not made by the first day of the next regular session of the legislature, this subdivision does not take effect.

Policy Considerations

Evidence of Error.

The City of Maplewood has not been able to provide an explanation as to the reason for the delay in enrolling the individual. PERA has stated that it would not have been able to determine from the enrollment form whether the individual had satisfied the salary threshold and should have begun making employee contributions before February 2014. The Commission has historically approved bills benefiting one individual when there was evidence that the employer or the pension plan, not the employee, committed the error that led to the reduced benefit.

Cost.

The following summarizes the explanation by the executive director of PERA regarding cost to PERA of the addition seven months of service, as compared to the amounts of the missed contributions:

- The estimated present value of the benefit increase due to the additional approximately 7 months of service is about $11,300. This amount is based on the additional seven months of service and assumes continued employment and salary increases until normal retirement age. The estimate was determined as of July 1, 2020. The accumulated value of employee contributions with interest is about $800. The accumulated value of employer contributions with interest is about $1,200.

- From PERA's perspective, had the contributions started when the individual was eligible, PERA would have had approximately $2,000 in additional assets that it does not currently have and so the payments under the bill will compensate for that. PERA acknowledges that the mistake by the City is not what caused the gap between the $11,300 total present value and the total accumulated contributions with interest ($2,000 = $800 employee + $1,200 employer). The reason for the gap is primarily because the individual transitioned to a full-time job with a higher salary. This transition would cause an increase in plan liability with no immediate corresponding increase in plan assets regardless of the previous gap in coverage and contributions.

- Putting this into a broader context, one of the byproducts of a multiple employer plan is that there are individual member changes all the time that create gains or losses and those changes get spread out over time and allocated to all contributing sponsors. A change from part-time to full-time results in a liability loss. An early termination results in a gain. Presumably, in the long run they even out, but in reality, there will always be winners and losses in the gain/loss distribution. So, even if the City had contributed during those seven months, it would not have prevented a plan loss when the individual transitioned to a better paying full-time job. This loss would have been shared by all of the contributing sponsors in the Plan.

Constitutionality.

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. Undoubtedly, there are similarly affected individuals, employed by other public employers, who were not enrolled in the PERA Police and Fire Plan on a timely basis and should be able to receive the same opportunity as the individual described in the bill. General legislation could provide this opportunity to other similarly situated individuals.

Whether special laws such as this legislation, which provides a benefit to one individual, is constitutional remains an unsettled question of law because the issue has never been litigated in a Minnesota court.

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