SF 950 (Pappas); HF 407 (Nelson): Minnesota State Retirement System (MSRS); Special Legislation Increasing an Individual's Retirement Annuity Amount

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Introduction

Affected Plan:	General State Employees Retirement Plan ("General Plan") of the Minnesota State Retirement System ("MSRS")
Laws Amended:	Establishing a special law for one individual
Brief Description:	Special legislation increasing an individual's retirement benefit because the individual was provided materially misleading information on which he relied when deciding to retire.
Attachment:	Office of Administrative Hearings Records - Findings of Fact, Conclusions of Law, and Recommendation

Background

Overview

David Musielewicz retired from state service on June 2, 2018. Prior to retiring, Mr. Musielewicz requested and received several estimates from MSRS for his benefit from the General Plan. Some estimates were generated by an online calculator, some estimates were automatically generated for Mr. Musielewicz's annual statements. One estimate dated November 17, 2017, was a written estimate reviewed by MSRS staff and sent to Mr. Musielewicz at his request. All of the estimates were consistent with an estimate provided by MSRS's online calculator that indicated if Mr. Musielewicz retired on June 2, 2018, he was eligible for a 75% joint and survivor annuity of about $3,452. However, all of the estimates provided by MSRS miscalculated the annuity amount. About a month after Mr. Musielewicz retired, he received notice of his retirement amount and first payment which showed that he was actually eligible for a 75% joint and survivor annuity of $3,139.91 per month, a difference of approximately $312 per month.

Mr. Musielewicz appealed the MSRS staff determination to the MSRS Executive Director who affirmed the staff determination. Mr. Musielewicz then appealed to the MSRS Board of Directors ("Board"). The matter was referred to an administrative law judge ("ALJ") to determine the facts of the case and make a recommendation to the Board. Following a fact-finding conference, the ALJ recommended that the Board affirm the Executive Director's determination because $3,139.91 was the correct amount authorized under law and no law permitted MSRS to increase the benefit. The Board affirmed the Executive Director's determination but separately directed the Executive Director to assist Mr. Musielewicz in bringing a bill to the Legislature that provides relief to Mr. Musielewicz. SF 950 / HF 407 provides such relief.

Miscalculation of the benefit

The estimates provided to Mr. Musielewicz by MSRS were inaccurate because of an error in the software MSRS uses to calculate its benefits. Because Mr. Musielewicz was first covered by a Minnesota public pension plan prior to July 1, 1989, he was eligible for a benefit under a set of rules called the Rule of 90. The Rule of 90 permits an eligible member, whose age (in years) and service credit (in years) when added together equals at least 90, to receive the better of the following two methods of benefit calculations:

(1) **Step-method.** Under the "step-method" the member's benefit is determined by multiplying the members high-5 salary (the average salary over the highest five consecutive years of salary) by 1.2% for each of the first 10 years of service followed by 1.7% for each subsequent year of service. No early retirement reduction is applied to the member's step-method calculation. Put another way: [(high-5 salary x 1.2% x 10) + (high-5 salary x 1.7% x # of remaining years of service) = pension benefit].

(2) **Level-method.** Under the "level-method" the member's benefit is determined by multiplying the member's high-5 salary by 1.7% for each year of service for all years of service. An early retirement reduction reduces that benefit based on the number of years prior to age 65 that the member retires. Put another way: (high-5 salary x 1.7% x # of years of service x early retirement reduction factor = pension benefit).

The error in the MSRS software resulted in a step-method calculation that erroneously calculated the first 10 years Mr. Musielewicz's benefit at 1.7% instead of at 1.2%. This resulted in MSRS communicating an erroneously high amount to Mr. Musielewicz where 1.7% is used for all years but no early reduction factor was applied.

Summary of the Bill

SF 950 / HF 407 remedies the harm suffered by Mr. Musielewicz by requiring MSRS to increase Mr. Musielewicz's benefit so that the benefit is equal to a level method calculation without a reduction for early retirement. The bill also requires MSRS to increase already paid retirement benefits to the new amount. The result is a benefit that is equal to the amount that was communicated to Mr. Musielewicz by MSRS.

Section-by-section summary

The bill consists of a single uncoded section divided into four subdivisions and an effective date:

Subdivision 1 entitles Mr. Musielewicz (the "eligible person") to an "increased benefit."

Subdivision 2 defines "eligible person" so that the term can apply only to Mr. Musielewicz.

Subdivision 3 defines "increased benefit" as the amount Mr. Musielewicz would have received if his benefit had not been reduced for early retirement. It also requires MSRS to pay Mr. Musielewicz any backpay resulting from the change back to the day he began to receive his annuity.

Subdivision 4 clarifies that the increased benefit replaces Mr. Musielewicz's current benefit and includes language to construe the section narrowly and only for that purpose.

Effective date. The bill's effective date is the day following final enactment.

Policy Issues Raised by the Bill

1. Cost to the MSRS General State Employees Retirement Fund.

If the bill is enacted, Mr. Musielewicz's benefit would increase from approximately $3,140 per month to approximately $3,450 per month. The exact amount of the increased benefit would be based on calculations by MSRS. The higher benefit would increase the MSRS General Plan's actuarial accrued liabilities by approximately $48,000. As of the July 1, 2020, actuarial valuation, the MSRS General Plan had $13.86 billion in assets and $15.18 billion in actuarial accrued liability and was 91.9% funded.

2. Did MSRS take sufficient steps to warn members of possible errors in their estimates?

Perhaps the most important retirement decision for members of Minnesota's public defined benefit pension plans is deciding when to retire. Once a member retires, if their benefit is too low, it can be difficult or impossible for the member to return to a covered position to get the additional service credit or salary credit needed to increase their benefit. The decision of when to retire can have implications for income security and standard of living affecting the member for the rest of his or her life. Thus, it is important that members have access to reliable and substantially accurate retirement estimates before deciding when to retire.

In this case, Mr. Musielewicz did not have access to an accurate retirement estimate before retiring. Mr. Musielewicz took the step of calling MSRS and requesting a staff-reviewed written estimate only to receive an inaccurate estimate. While Mr. Musielewicz did not meet in-person with a retirement counselor from MSRS, there is no reason to believe he would have gotten a correct estimate if he had. A reasonable conclusion is that there was nothing Mr. Musielewicz could have done differently to obtain a correct estimate.

Furthermore, it appears that MSRS was aware that there was an error in their software but did not take steps to mitigate the risk of inaccurate estimates. In his memorandum to the Board, the ALJ was critical of MSRS's lack of efforts to prevent members from relying on incorrect estimates. The ALJ found that MSRS officials were aware that its computer system was, in some cases, incorrectly tabulating benefit estimates, but that MSRS did not disable the calculator or otherwise warn visitors to the website or other plan members that the system was incorrectly estimating benefits in some cases.[1]

3. Were other plan members affected by the software error?

It is likely that Mr. Musielewicz was the only member who retired in reliance on an inaccurate estimate caused by this software error. According to the MSRS Executive Director, the error in MSRS's software affected only the members of the General Plan who were eligible for the Rule of 90 and had transferred from the Unclassified Plan. The Executive Director reported that no others fitting that category received an inaccurate estimate because the system correctly identified the level-method as producing a superior benefit.

4. Equitable Considerations.

The common law doctrine of promissory estoppel may provide a good framework for evaluating the equitable considerations. Loosely speaking, the doctrine may indicate that relief is warranted where Mr. Musielewicz actually, reasonably, and foreseeably relied on the estimates that MSRS provided. And, where such reliance was detrimental to Mr. Musielewicz. The record indicates that Mr. Musielewicz did retire in reliance on the estimates provided. The Commission may wish to consider whether Mr. Musielewicz reasonably relied on the estimates, whether such reliance was foreseeable by MSRS and whether Mr. Musielewicz was harmed as a result. Some key facts to consider are:

(1) MSRS was aware of an error in their estimation software.

(2) MSRS estimates include disclaimers such as, "This estimate is based on current information. Changes to your work pattern or legislative actions could affect the final monthly benefit amount… We reserve the right to correct errors and prepare a new estimate."[2]

(3) There was not an alternative for Mr. Musielewicz to receive a more accurate estimate of his retirement benefit.

(4) The difference between the two monthly benefits was about $312 or nearly 10% of the actual benefit.

[1] Findings of Fact, paragraphs 30 and 32.
[2] Mr. Musielewicz's November 17, 2017, estimate.

5. Constitutionality of special legislation for the benefit of one individual.

The Minnesota Constitution states:

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. . . .[3]

Whether a special law such as this is constitutional is an unsettled question of law because the issue, as it relates to public pensions, has never been litigated in a Minnesota court. It is possible that bills such as this one could be vulnerable to a legal challenge on constitutional grounds. The LCPR has regularly approved similar bills in the past.

Legislative Commission on Pensions and Retirement

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[3] Minnesota Constitution, Article XII, Section 1.