

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of the PERA Salary
Determinations Affecting Retired and
Active Employees of the City of Duluth,
Allen Johnson, et al., Petitioners

ORDER

This matter came before Administrative Law Judge Bruce H. Johnson (the ALJ) on the Motion by Petitioners Ostman, Purcell and Behning to Join the City of Duluth as a Party. Petitioners filed the motion on September 30, 2009, and the Public Employees Retirement Association (PERA) responded on September 30, 2009. The record on the motion closed on that date.

Elizabeth A. Storaasli, Dryer Storaasli Knutson & Pommerville, Ltd., appeared on behalf of the Petitioners. Jon K. Murphy, Assistant Attorney General, appeared on behalf of the Board of Trustees of the Public Employees Retirement Association (PERA).

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED that the Motion by Petitioners Ostman, Purcell and Behning to Join the City of Duluth as a Party is **DENIED**.

Dated: October 20, 2009

s/Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge

MEMORANDUM

Prior Proceedings

In September 2008, the City of Duluth (the City) advised PERA that since 1996 it had been erroneously treating certain amounts paid to, or on behalf of, a group of City employees as “salary” for PERA reporting purposes and had erroneously made employer/employee contributions to PERA based upon those amounts. PERA subsequently concluded that certain amounts had, in fact, been erroneously reported as “salary.” As a result, it believed that: (1) the affected employees were eligible for a refund of employee contributions made on the invalid salary amounts; 2) that the City was eligible for a refund of employer contributions made on the invalid salary amounts; (3) the benefits paid to retired employees must be reduced; and (4) it was necessary for PERA to recover the amount of overpaid benefits from affected retirees.¹

On July 10, 2009, the PERA Board of Trustees issued Notices of Hearing in 70 separate contested cases to current and retired employees of the City of Duluth. The purpose of those proceedings was to determine whether certain amounts paid by the City to, or on behalf of, Petitioners constitute “salary” for purposes of their PERA retirement plan. On August 13, 2009, PERA filed a petition to consolidate all 70 contested case proceedings into a single proceeding. On August 21, 2009, the ALJ contemporaneously conducted a prehearing conference in all of the pending associated contested cases. By Order entered on August 26, 2009, the ALJ concluded that all of the proceedings involved common questions of law but not necessarily common questions of fact, and ordered that all of the proceedings be consolidated for the purpose of considering and adjudicating any dispositive motions and pending further orders of the ALJ.

The Petitioners are retired City firefighters and parties to this consolidated contested case. On September 30, 2009, they filed a motion for compulsory joinder of the City as a party to this proceeding. Although the statutes and rules governing contested cases² do not specifically provide for either permissive or compulsory joinder of parties, the Petitioners argue that the City should be joined as a party to this proceeding by analogy to Minn. R. Civ. P. 19. Rule 19 allows joinder of persons needed for the just adjudication of a civil action. The Petitioners contend that the City is a necessary party because they received compensation pursuant to collective bargaining agreements between the City and their unions. They argue that the relief being requested by PERA cannot be granted without retroactively affecting the compensation that the City had promised them under their collective bargaining agreements. More specifically, it is the Petitioners’ contention that if PERA obtains the relief it is seeking, the result will be a reduction of their benefits and a breach of their collective bargaining agreement with the City. They argue that the defenses that they will be raising in this proceeding, including reliance, statute of limitations, and estoppel, all relate to actions or inactions by the City. The Petitioners contend that joinder is appropriate because the

¹ See Notices of Hearing.

² Minn. Stat. ch. 14 and Minn. R. ch. 1400, respectively.

City holds information related to those defenses and ultimately must respond to those claims. The Petitioners further argue that there is a risk of inconsistent results if their compensation is reduced in this proceeding and if they have to initiate a new proceeding in district court to recover that compensation. Finally, they allege the failure to join the City will result in hardship during discovery because of the number of necessary subpoenas.

PERA raised three objections in response to the Petitioners' motion. First, it argues that the Public Employees Labor Relation Act (PELRA) prohibits public employers and employees from bargaining over retirement contributions and benefits. Therefore, although an order issued by PERA that contributions to PERA by the City did not constitute "salary" for the purpose of calculating retirement benefits might affect the respective rights and obligations of the City and the Petitioners under collective bargaining agreements, such an order would not give rise to claims that PERA has authority to adjudicate. Second, PERA contends that the Petitioners' motion for compulsory joinder of the City is predicated on erroneous assertions of fact. Finally, PERA contends that the defenses that the Petitioners have raised against the relief being sought by PERA in this proceeding is beyond the ALJ's jurisdiction.

It is the question of jurisdiction that represents the most fundamental problem with the Petitioner's motion for compulsory joinder of the City. Unlike judges of the district court, who possess general jurisdiction, OAH's ALJs may only exercise such limited adjudicatory jurisdiction as the Legislature has conferred on them in a specific statute. Virtually all of OAH's quasi-judicial jurisdiction arises from the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. ch. 14, authorizes the Chief Administrative Law Judge to delegate to ALJs the authority to exercise jurisdiction of and preside over a "contested case," which Minn. Stat. § 14.05, subd. 3, defines as:

[A] proceeding before an *agency* in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an *agency* hearing. "Contested case" does not include hearings held by the Department of Corrections involving the discipline or transfer of inmates or other hearings relating solely to inmate management. [Emphasis supplied.]

Minn. Stat. § 14.05, subd. 2, defines "agency" as:

[A]ny state officer, board, commission, bureau, division, department, or tribunal, other than a judicial branch court and the Tax Court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. "Agency" also means the Capitol Area Architectural and Planning Board.

Minn. Stat. § 14.05, subd. 2, indicates, an agency must have specific authority in some other enabling statute to initiate a contested case. As the Notices of Hearing indicate, PERA's authority to initiate this consolidated contested case arises from Minn. Stat. § 356.96, subd. 12(b), which provides:

Referral for administrative hearing. (a) Notwithstanding any provision of sections 14.03, 14.06, and 14.57 to 14.69 to the contrary, a challenge to a determination of the chief administrative officer of a covered pension plan must be conducted exclusively under the procedures set forth in this section and is not a contested case under chapter 14.

(b) Notwithstanding the provisions of paragraph (a), a governing board, in its sole discretion, may refer a petition brought under this section to the Office of Administrative Hearings for a contested case hearing under sections 14.57 to 14.69.

Although in rare situations the Legislature has granted OAH independent jurisdiction to conduct certain kinds of administrative hearings,³ this is not one of those situations. Rather, the ALJ's jurisdiction in this contested case is derivative only from PERA's statutory jurisdiction to refer for a contested case hearing "a challenge to a determination of the chief administrative officer of a covered pension plan." Moreover, because neither Minn. Stat. § 356.96, subd. 12(b) nor the Notices of Hearing confer final decision authority on the ALJ, the role of the ALJ here is to conduct an administrative hearing and to issue findings of fact, conclusions, and recommendations to the PERA Board of Trustees, which will then issue a final and appealable order.⁴ Nowhere in statute has the Legislature granted either PERA or the ALJ jurisdiction to hear and finally adjudicate actionable disputes between PERA and public employers or disputes between public employers and employees arising out of collective bargaining agreements. Moreover, contract claims have historically been regarded as falling within the general jurisdiction of district courts. Because the Legislature may not delegate to an executive agency, such as PERA or OAH, jurisdiction that infringes upon the district court's original jurisdiction,⁵ a statute purporting to allow the ALJ and PERA to adjudicate any contract claims involving the City and its employees appears to be constitutionally doubtful.

In the Memorandum of Law supporting Petitioners' motion, they note that OAH rules do not contain a provision allowing an ALJ to order either permissive or compulsory joinder of a third party. There is a reason for that. Because district courts have general jurisdiction, there is no legal or constitutional barrier to their joinder of necessary third parties under Minn. R. Civ. P. 19.01 and their subsequent adjudication of related claims involving those third parties. On the other hand, neither PERA nor the ALJ has legal authority and jurisdiction to hear and adjudicate issues that do not precisely fall within the statute that authorizes the agency to initiate the contested case—in this case, Minn. Stat. § 356.96, subd. 12(b). In other words, the only allowable procedure for joining a party in a contested case is for the referring agency to amend its

³ See, e.g., Minn. Stat. §§ 211B.31 *et seq.*

⁴ See Minn. Stat. § 14.50.

⁵ *Holmberg v. Holmberg*, 588 N.W. 2d 720, 725-26 (Minn. 1999).

notice of hearing to include another party over which it also has personal and subject matter jurisdiction.⁶

In summary, the ALJ and PERA only have jurisdiction to review PERA's determinations regarding the legal status of certain items of compensation, i.e., whether certain compensation constitutes "salary" under the PERA definition. It is unnecessary for the City to be a party to make those determinations. Although certain of Petitioners' defenses may pertain to the action or inaction of the City, neither the PERA Board nor the ALJ has authority to adjudicate those claims or to order the City to pay compensation to Petitioners. In other words, the issues raised by Petitioners regarding their contractual relationships with the City are beyond the scope of this proceeding. Accordingly, neither the ALJ nor PERA has jurisdiction to order the City to participate as a party in this matter. Petitioners must seek redress in a different forum for any claim they may have against the City.

Although the City has records that may be relevant to this proceeding, in particular the records and salaries that it reported to PERA, that information is available to the parties via subpoena.

In view of the foregoing, the Petitioners' motion must be denied.

B.H.J.

⁶ Minn. R. 1400.6200 allows third parties to petition to intervene in a contested case. However, even though an intervenor may be permitted to participate in the hearing in any one of several ways, neither the ALJ nor the referring agency may issue a decision that binds the intervenor unless the "petitioner's participation is authorized by statute, rule, or court decision." Minn. R. 1400.6200, subp. 1.