KETCHIKAN GATEWAY BOROUGH

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February 14, 2014

Kathy Wasserman
217 Second Street, Suite 200
Juneau AK, 99801

Subject: Termination Study and Past Service Costs

Dear Kathy,

You asked that the Ketchikan Gateway Borough relate some of the concerns it has regarding the current treatment of termination studies and past service costs for the Public Employee Retirement System (PERS). In short, the Borough finds the termination study to be a waste of time and expense unless there is a significant drop in the proportion of a municipality's work force employed in PERS covered positions.

The Borough supports an amendment or interpretation of the PERS termination study provisions that does not get the Department of Administration involved in the day to day hiring, firing, layoff and allocation of public services decisions of municipalities. This position is evidenced by Resolution 2316 adopted in April of 2011 by the Borough Assembly

As it stands now, several municipalities are in a quandary as to how to make what were previously routine public services decisions because of the potential large financial impact of changes in allocation of municipal resources for public services. This can best be understood by the historical method as contrasted with the method and interpretation since 2009.

Historically, AS 39.35.615 regarding amendments to a participation agreement is not new. The voluntary election to seek to terminate participation of a particular group of employees in PERS had been around for a while. Similarly, the need to amend a participation agreement to add a group of employees has been around for a while as well. Each of these actions requires an amendment to the PERS participation agreement. Taking the Ketchikan Gateway

Borough, for example, we have amended our 1970 agreement 5 times. We removed IBEW employees, we added MM & P union employees, we addressed elected officials, and we recently removed the manager position.

What we have never done is amended the participation agreement in connection with addition or deletion of staff, functions, departments or groups of positions each time we lay persons off or create new functions. For example, when we created a public works director, a lands management office, an economic development director, an assistant aquatic supervisor, a transportation supervisor, downgraded the parks and recreation director to a supervisor, and a number of other staffing decisions, we did not amend the PERS participation agreement to add or delete these positions.

AS 39.35.625 was new in 2008, and 2 AAC 35.235 was new in 2010. Both of these laws refer to actions to be taken where the employer seeks to terminate coverage for a department group or other classification of employees. If the application of these new provisions were consistent with the past practice regarding interpretation of AS 39.35.615, then there would not be a problem. The termination study and costs associated with payment of the unfunded liability for removed positions would be limited to those circumstances where an employer was affirmatively removing and exempting a group or classification of its employees from participation in PERS. However, where it is applied to the termination of employment of individual positions or groups of employees whose employment is terminated, whose positions are eliminated, and who are not still employed as non-PERS covered employees, it is inconsistent.

It is routine for employers to change the mix of services provided by public employees. Often positions may be funded by grants that are discontinued. At times the demand for services changes the need for programs, such as the IM program in Anchorage and Fairbanks which may be long standing and then discontinued. Or services may be added if an employer takes on new functions such as road plowing in a new service area or the construction of a new community small boat harbor. Changes may be caused by the transfer of functions or powers between municipalities such as if a Borough takes on library or solid waste functions previously provided by cities.

In the past these changes did not require amendment to participation agreements for the addition or deletion of positions from a municipal budget. There is nothing in the new language in 2008 and 2010 which should trigger a change in the interpretation by DOA to require employers to request amendment of their PERS participation agreements from such events.

I draw a distinction from situations where an employer affirmatively seeks to remove a position or department from PERS participation with the intention of continuing the employment of the position as a non-PERS covered position. If the starting point is that all positions not exempted by the PERS participation agreement are in PERS, then the employment of a person in a classification which is not already exempted would require an amendment to the participation agreement. However, there is no reason to require an amendment each time a person is hired into a newly created classification or a classification is terminated due to layoff or elimination of the position(s). Were it otherwise, each year there would be numerous PERS participation agreement amendments for each hiring and firing decision which involves a new or discontinued function or job. This has not been the past practice prior to 2010, nor should it be.

The underlying policy objective of preventing municipalities from avoiding their share of the unfunded liability is served by provisions which address significant shifts in personnel from PERS covered positions to a different category. The current methodology, however, significantly impacts personnel and service delivery decisions and inserts the State Department of Administration into those decisions to a degree which is not justified by the underlying policy objective.

The PERS termination study issue, as currently administered by regulations adopted and applied by the Department of Administration, creates a significant hardship which bears most strongly on smaller communities. The effect of requiring communities to perform termination studies and pay the past service cost rate on eliminated positions is more likely to occur, and in fact, has occurred with greater frequency in smaller communities. For example, in a large community which may have several engineers, the layoff of two or three does not trigger a termination study or past service cost liability. However, if a community has a single engineer, and that position is eliminated, the current regulations will impose an ongoing liability, currently at 18.65% of the rate of pay of that position.

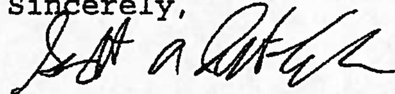
If, in fact, these service allocation decisions are intended to trigger a need to amend participation agreements and pay past service costs for minor shifts, then the policy needs to be evenly applied and the same process must be followed when large employers such as the Municipality of Anchorage, the University of Alaska or the State make changes in personnel, open and close offices, or lay off positions. Otherwise a large entity could reduce their contributions by dozens of employees without incurring

any liability for their share of the unfunded liability as long as they retain one employee in a classification, while small employers with only one employee in a department or classification will incur the costs from a single layoff or change in service delivery.

The current interpretation imposes significant penalties as consequences from normal shifts in emphasis in the provision of local government services. It also provides a disincentive to accept grant funds for programs and positions which may be short lived as a program, but could impose long term payment obligations. These penalties, which are exacted with greater frequency from smaller communities, are unnecessary in view of the current statutory benchmark in AS 39.35.255(a)(2), which uses the June 30, 2008, payroll to set a floor for contribution towards past service liability.

Thank you for your attention to this matter.

Sincerely,



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