

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Howard Swanson, Lambert Niesen,
Steven Bornus, Richard Maus, James
R. Otto, and William H. Kuretsky,

Court File No. 62-CV-10-5285
The Honorable Gregg E. Johnson

Plaintiffs,

AMENDED COMPLAINT

vs.

CLASS ACTION COMPLAINT

State of Minnesota, Public Employees'
Retirement Association of Minnesota,
Minnesota State Retirement System,
Teachers Retirement Association of
Minnesota, Governor Tim Pawlenty (in his
official capacity), Thomas L. Marshall (in
his official capacity), Mary Most Vanek (in
her official capacity), Mary Brenner (in her
official capacity), David Bergstrom (in his
official capacity), Martha Lee Zins (in her
official capacity), and Laurie Fiori Hacking
(in her official capacity),

Case Type: 14 Other Civil

Defendants.

Plaintiffs Howard Swanson, Lambert Niesen, Steven Bornus, Richard Maus, James R. Otto, and William H. Kuretsky, on behalf of themselves and others similarly situated, by and through their attorneys Halunen & Associates and Stember Feinstein Doyle Payne & Cordes, LLC, bring the following action seeking an order for declaratory relief, finding that 2009 Minn. Laws, Ch. 191 and 2010 Minn. Laws, Ch. 359 (collectively, the "2009 and 2010 Pension Legislation") violate the United States and Minnesota Constitutions because they substantially, unreasonably and unnecessarily impair Plaintiffs' right to the annual increase to their pensions ("annual postretirement adjustments") based on the formula under state law in effect when they

became pension recipients. The pensions at issue are those received by retired Minnesota public service employees and include pensions provided through the Public Employees' Retirement Association of Minnesota (PERA), the Minnesota State Retirement System (MSRS) and the Teacher Retirement Association of Minnesota (TRA) (collectively, the "Statewide Pension Plans" or "Plans"). Plaintiffs state and allege the following against Defendants:

PARTIES

1. Plaintiff Howard Swanson is a resident of Elk River, Minnesota. After working for the City of Duluth for 34 years as a Draftsman, he retired in February 2000 and has been receiving pension benefits through PERA since his retirement.

2. Plaintiff Lambert Niesen is a resident of Richfield, Minnesota. He worked for the Dakota County Secondary Technical Center operated by the Intermediate School District 917 for 14 years. Following his retirement effective April 1, 2008, he began receiving pension benefits through PERA.

3. Plaintiff Steven Bornus is a resident of Shoreview, Minnesota. For over thirty-one years he worked as a police officer, primarily in New Brighton, Minnesota, and most recently as a detective. When he retired on May 1, 2007, he began receiving pension benefits through the PERA Police and Fire Plan.

4. Plaintiff Richard Maus is a resident of Northfield, Minnesota. He taught mathematics, physics and computer science to middle and high school students for about 26 years. He worked primarily in District 281, the Robbinsdale Area Schools. He retired on June 16, 2000 and began receiving pension benefits through the TRA.

5. Plaintiff James R. Otto is a resident of Edina, Minnesota. When he retired in 2003, he had served the state for about 39 years in various positions including Chief Attorney of

the Workers Compensation Division, Department of Labor and Industry, and most recently as a Workers Compensation Judge in the Office of Administrative Hearings. When he retired in 2003, he began receiving pension benefits through the MSRS "General Employees Retirement Plan" and the "Unclassified Employees Retirement Plan".

6. Plaintiff William H. Kuretsky is a resident of Minnetonka, Minnesota. He was an Assistant Attorney General for over thirty-two years. At the time he retired, he worked in the Government Operations Division of the Minnesota Attorney General's Office. He retired effective December 3, 2008 and began receiving pension benefits through the MSRS Unclassified Employees Retirement Plan.

7. Defendant State of Minnesota is a state that has its capitol in St. Paul, Minnesota. It engaged in the conduct complained of through the Minnesota State Legislature and various agencies and instrumentalities of state government.

8. Defendant Public Employees' Retirement Association of Minnesota (PERA) is a governmental entity that administers defined benefit and defined contribution pension plans for Minnesota's local governmental employees. PERA is a "qualified plan" within the meaning of § 401(a) of the Internal Revenue Code. PERA is governed by its Board of Trustees and is headquartered in St. Paul. For the purposes of this Complaint, PERA includes the Public Employees Retirement Fund, the Public Employees Police and Fire Fund ("PERA-P&F") and the Public Employees Correctional Fund.

9. Defendant Minnesota State Retirement System (MSRS) is a governmental entity that administers defined benefit and defined contribution pension plans for Minnesota's state employees. MSRS is a "qualified plan" within the meaning of § 401(a) of the Internal Revenue Code. MSRS is governed by its Board of Directors and is headquartered in St. Paul. For the

purposes of this Complaint, MSRS encompasses all plans it administers that had reductions in postretirement adjustments resulting from the 2009 and 2010 pension legislation. These include but are not limited to, the General Employees Retirement Plan, the Correctional Employees Retirement Plan, the Elected State Officers Retirement Plan, the Unclassified Employees Retirement Plan, the State Patrol Retirement Plan, the Judges Retirement Plan, and the Legislators Retirement Plan.

10. Defendant Teachers Retirement Association of Minnesota (TRA) is a governmental entity that administers a defined benefit pension plan for Minnesota's public school teachers. TRA is a "qualified plan" within the meaning of § 401(a) of the Internal Revenue Code. TRA is governed by its Board of Trustees and is headquartered in St. Paul.

11. Defendant Tim Pawlenty is the Governor of the State of Minnesota. His office is in St. Paul. As the state's chief executive officer, Governor Pawlenty is charged with enforcing the 2009 and 2010 Pension Legislation. Governor Pawlenty is being sued in his official capacity only.

12. Defendant Thomas L. Marshall is the President of the PERA Board of Trustees. As a PERA Board Trustee, Mr. Anderson is charged with administering PERA pension funds in accordance with state law. Mr. Marshall is being sued in his official capacity only.

13. Defendant Mary Most Vanek is Executive Director of PERA. As the PERA Executive Director, Ms. Vanek is charged with administering PERA pension funds in accordance with state law. Ms. Vanek is being sued in her official capacity only.

14. Defendant Mary Brenner is Chair of the MSRS Board of Directors. As the MSRS Board Chair, Ms. Brenner is charged with administering MSRS pension funds in accordance with state law. Ms. Brenner is being sued in her official capacity only.

15. Defendant David Bergstrom is Executive Director of the MSRS. As the MSRS Executive Director, Mr. Bergstrom is charged with administering MSRS pension funds in accordance with state law. Mr. Bergstrom is being sued in his official capacity only.

16. Defendant Martha Lee Zins is Chair of the TRA Board of Directors. As a TRA Board Trustee, Ms. Zins is charged with administering TRA pension funds in accordance with state law. Ms. Zins is being sued in her official capacity only.

17. Defendant Laurie Fiori Hacking is Executive Director of the TRA. As the TRA Executive Director, Ms. Hacking is charged with administering TRA pension funds in accordance with state law. Ms. Hacking is being sued in her official capacity only.

JURISDICTION and VENUE

18. This is an action requesting that the Court issue an order declaring that Defendants have violated Plaintiffs' and Class Members' constitutional rights to statutory increases to their pensions, and granting remedies under 42 U.S.C. § 1983.

19. Venue is proper in this Court as the alleged illegal conduct occurred within this District and throughout the State of Minnesota.

CLASS ACTION ALLEGATIONS

Pursuant to Minn. R. Civ. P. 23, the class is defined as:

- (1) All retirees who as of May 15, 2010 were recipients of pension benefits from the defined benefit plans administered by MSRS, PERA or TRA; and whose benefits were first received on or after July 1, 1992.
- (2) All survivors of retirees who as of May 15, 2010 were recipients of pension benefits from the defined benefit plans administered by MSRS, PERA or TRA; and whose benefits were first received (to the survivor or to the retiree upon which the right to survivor's benefits is based) on or after July 1, 1992.

- (3) All individuals who may receive survivor benefits from MSRS, PERA or the MTRA in the future because of the death of individuals described in subparagraph (1) or (2) above.

20. Because there are approximately 130,000 persons receiving pensions, the joinder of all class members is impracticable. A class action is the most efficient means of adjudicating these claims and will conserve the resources of this Court and the parties.

21. There are common questions of law and fact that affect all Class Members, namely, whether Defendants had authority to alter contractually-mandated postretirement adjustments even after the Class Members commenced receiving benefits.

22. Given the common pattern of conduct by Defendants (and the common theories to redress it), this case should be maintained as a class action pursuant to Rules 23.02(b) and/or 23.02(a) of the Minnesota Rules of Civil Procedure.

23. Plaintiffs are committed to and have the resources to vigorously prosecute this action. Plaintiffs have retained competent counsel who are experienced in litigating class actions, including those involving retirement benefits and civil rights violations. Neither the Plaintiffs nor Plaintiffs' counsel have any interest that conflicts with or is adverse to the interests of the Class or that might lessen their zeal in pursuing this action.

24. The claims of the named Plaintiffs are typical of the claims of the Class, and the interests of the named Plaintiffs are identical to the interests of the other members of the Class.

25. Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

26. This action is properly maintained as a class action under Minn. R. Civ. P. 23.02(b), since Defendants have acted on grounds generally applicable to the class by unilaterally reducing the annual postretirement adjustments they were obligated to provide to

Class Members, thereby making final injunctive relief or declaratory relief appropriate for the class as a whole.

27. Alternatively, this action may be maintained as a class action under Minn. R. Civ. P. 23.02(a). Because the United States and Minnesota Constitutions establish uniform standards that Defendants must observe, prosecution of separate actions by individual members of the class would create a risk of: (i) inconsistent adjudications that would establish incompatible standards of conduct for Defendants; and (ii) adjudications that would be dispositive of the interests of non-party class members or substantially impair such non-party class members' ability to protect their interests.

FACTUAL ALLEGATIONS

A. The Annual Increases to the Statewide Pension Plans

29. Plaintiffs and Class Members have spent all or a portion of their working lives in public service. Class Members include, among other public employees, retired public school teachers who taught millions of Minnesota's children; retired state judges who interpreted and enforced the laws of the state; retired police officers who put themselves in harms' way to protect Minnesota's citizens; and other retired state, county and local government workers who ensured the proper functioning of all sectors of Minnesota government.

30. The retirement benefits from the Statewide Pension Plans that Plaintiffs and Class Members receive are an integral and significant part of their compensation for public service.

31. For most public employees, the Statewide Pension Plans substitute for Social Security, since public employees typically do not receive Social Security benefits for the time they worked in government service.

32. Further, most of the Statewide Pension Plan retirees who do qualify for Social Security benefits based on work in the private sector have their Social Security benefits reduced or eliminated as a result of the Social Security's Windfall Elimination Provision and Government Offset Provision. *See* 42 U.S.C. § 415.

33. The benefits administered by the Statewide Pension Plans are funded by contributions from each and every participating member and the governmental entities that employ them. For example, active PERA members who are police officers and firefighters are currently required by law to contribute 9.4% of their wages to PERA.

34. By making the requisite contributions to Statewide Pension Plans over the years, and by attaining the age and service credit required for retirement, retiring, applying for and being found eligible for benefits and receiving the benefits, Class Members acquired vested rights to their pensions, including the right to statutory postretirement adjustments to their pension benefits.

35. While each Statewide Pension Plan is separately administered, the Legislature sets the formula to calculate permanent annual postretirement adjustments to the pensions and this formula has been uniform among the three Statewide Pension Plans at all relevant times.

36. From 1981 through 1992, the Statewide Pension Plans increased pension benefits based on the investment earnings of the Plan. During this period, postretirement adjustments averaged 6.47% a year while the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) averaged 4.11%.

37. In 1992, the Legislature approved a new formula to calculate postretirement adjustments that included both an investment component and a component to compensate for the effects of inflation. *See* 1992 Minn. Laws, Ch. 530, §§ 1-2 (effective July 1, 1992).

38. The inflation-adjustment component increased annual benefits equal to 100 percent of the inflation rate as measured by the CPI-W up to a maximum of 2.5 percent. Minn. Stat. § 11A.18, subd. 9(b) (2008). On its website, PERA referred to the inflation-based adjustment as the “**Permanent Inflation Component.**” (emphasis added).

39. The investment-based component was paid only if investment returns, averaged over a five-year period, exceeded the amount needed to pay: (1) the inflation-based component (2.5 percent maximum), and (2) the 6 percent annual actuarial earnings assumption. In addition, all accumulated investment losses from prior periods were required to be recovered before the investment-based portion of this calculation was to be paid. Minn. Stat. § 11A.18 (2008). PERA referred to the investment-based adjustment as the “**Permanent Investment Component.**” (emphasis added).

40. Between 1993 and 2002, using the dual-component formula, the average annual postretirement adjustment included both the investment and inflation components.

41. However, between 2003 and 2009, the postretirement adjustment was based solely on the inflation-based component and averaged 2.1% a year, while the CPI-W during this period was 2.84%.

B. In 2009, the Legislature Eliminates the Dual-Component Formula and Replaces it with a Guaranteed 2.5% Annual Increase.

42. In 2009, the Legislature passed and Defendant Pawlenty signed a law eliminating the dual-component formula for many pension plans and replacing it with a guaranteed 2.5% annual increase. 2009 Minn. Laws, Ch. 191 (codified at Minn. Stat. § 356.415 (2010)) (“2009 Pension Legislation”). The 2.5% automatic postretirement adjustment is less than the average annual CPI-W between 1993 and 2009, which was 2.83%.

43. This legislation was applied not only to Plan members who were still in active service, but also to those Plan members who were already receiving pensions.

44. The 2009 Pension Legislation violated the vested right of Class Members who retired prior to January 1, 2010 to receive annual postretirement adjustments to their pensions according to the formula in effect when they retired and began receiving a pension, which included the Permanent Inflation Component and the Permanent Investment Component.

45. On January 1, 2010, Defendant Plans implemented the postretirement adjustment established by the 2009 Pension Legislation by increasing pension benefits by 2.5% or by a pro rata amount for recent retirees.

46. The Legislature recently passed an Omnibus Retirement Bill ("2010 Retirement Legislation"), 2010 Minn. Laws, Ch. 359, which Defendant Governor Pawlenty signed into law on May 15, 2010.

47. Among other changes, the 2010 Pension Legislation eliminated the guaranteed 2.5% annual increase for many plans that had been instituted just the previous year, and replaced it with the following provisions, which further reduce the postretirement adjustments:

MSRS. Until the respective MSRS-administered plan achieves a 90 percent funding ratio (market value of assets as a percentage of actuarial accrued liability), the annual post-retirement adjustment rate is reduced from 2.5 percent to 2.0 percent for the MSRS General State Employees Retirement Plan, the MSRS Correctional State Employees Retirement Plan, the Legislators Retirement Plan, the Unclassified Employees Retirement Plan, and the Judges Retirement Plan. For the State Patrol Retirement Plan, post-retirement increases are reduced from 2.5 percent to 1.5 percent until a 90 percent funding ratio is achieved.

PERA Plans, Except PERA-P&F. Until the respective PERA-administered retirement plan other than the Public Employees Police and Fire Retirement Plan (PERA-P&F) achieves a 90 percent funding ratio on a market value of assets, the annual post-retirement adjustment rate is reduced from 2.5 percent to 1.0 percent for PERA-General and the Local Government Correctional Service Retirement Plan (PERA-Correctional).

PERA-P&F. In January 2011 and January 2012, the post-retirement adjustment will be one percent in each year. In January 2013 and until the retirement fund is 90 percent funded on a

market value basis, and if the retirement fund falls below 90 percent funded on a market value basis, the postretirement adjustment will be equal to the percentage increase in the CPI-W up to 1.5 percent annually. Upon attaining 90 percent funded on a market value basis, the postretirement adjustment will be equal to the percentage increase in the CPI-W up to 2.5 percent annually.

TRA. The automatic 2.5 percent annual post-retirement adjustment is suspended for TRA for 2011 and 2012, followed by a 2.0 percent increase until the plan becomes 90 percent funded based on market value of assets.

The legislation further limited to 2.5% any postretirement adjustments to non-specified covered retirement plans.

48. Defendants have not restricted application of the changes called for by the 2010 Pension Legislation to new hires, employees not eligible to retire, or even those who are eligible to retire but have not yet done so. Instead, Defendants have applied the changes to cover all Statewide Pension Plan members, including those like Plaintiffs and the members of the Class, who began receiving pensions before the legislation was passed.

49. The 2010 Pension Legislation violates the vested right of all Class Members to receive annual postretirement adjustments to their pension benefits according to the formula in effect when they began receiving a pension.

50. The 2010 Legislation requires 90% funding of a Plan fund before a 2.5% postretirement adjustment (or 2% for TRA) will be paid. This will likely not occur for many years for several funds based on current funding levels and past history. For example, the PERA Basic Plan was funded at 69.99% as of June 30, 2009 and never reached 90% of funding between 1975 and 2009. *See* PERA website (providing actuarial levels of funds since 1975). Similarly, the MSRS Correctional Employees Fund had a funding ratio of 71.88% and the MSRS Judges Fund had a funding ratio of 60.84%, as of June 30, 2009.

51. The following chart demonstrates the impact over a ten-year period of the reduction of the postretirement adjustment from the guaranteed annual 2.5% increase as provided in the 2009 Pension Legislation, to the 1% for a PERA retiree (assuming the fund does not reach 90% funding) as provided in the 2010 Pension Legislation. The example in the chart is based on a hypothetical Class Member who in 2008 received an annual pension of \$29,076 (the average yearly benefit in 2008 for retirees in the Public Employee Retirement Fund who had 30 or more years of credited service) and whose pension was increased 2.5% on January 1, 2009 and January 1, 2010 to total \$30,548 in 2010:

Year	2.5% Annual Increase	1% Annual Increase
2011	\$31,311.70	\$30,853.48
2012	\$32,094.49	\$31,162.01
2013	\$32,896.85	\$31,473.63
2014	\$33,719.28	\$31,788.37
2015	\$34,562.26	\$32,106.26
2016	\$35,426.31	\$32,427.32
2017	\$36,311.97	\$32,751.59
2018	\$37,219.77	\$33,079.11
2019	\$38,150.27	\$33,409.90
2020	\$39,104.02	\$33,744.00
Total 10-Year Benefits	\$350,796.93	\$322,795.67
Total 10-Year Increases	\$45,316.93	\$17,315.67

52. As a result of the 2010 Legislation, this hypothetical "average" PERA retiree will lose just over \$28,000 in benefits over the next ten years due to the elimination of the guaranteed 2.5% annual increase and if the Public Employee Retirement Fund does not reach a 90% funding level.

53. The above calculations can also be reasonably applied to the elimination of the dual-component formula as it is likely that the CPI-W will average not less than 2.5% over the next ten years, given that the annual average of the CPI-W for the last 30 years has been 3.13% and the 10-year Treasury Rate is currently 3.44% (as of May 14, 2010). If investments rebound enough to have triggered payment under the investment component, the losses to the Class Members who retired prior to January 1, 2010 would be even greater.

COUNT I

(Declaratory Relief: Seeking a Judicial Determination that the 2009 and 2010 Pension Legislation violate the Contract Clause of the Minnesota Constitution)

54. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs and incorporate them by reference.

55. The Contract Clause of the Minnesota Constitution instructs: “No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.” Minn. Const. art. I, § 11.

56. Defendants’ obligation to provide pension benefits to Plaintiffs is cognizable under the Contract Clause of the Minnesota Constitution. *Christensen v. Minneapolis Municipal Employee’s Retirement Board*, 331 N.W.2d 740 (Minn. 1983).

57. The Contract Clause of the Minnesota Constitution restricts the Defendants from enacting and enforcing laws that adversely affect pension benefits of public employees have already earned and are receiving.

58. The named Plaintiffs having made the requisite contributions to the Plans throughout their public sector employment, having met the age and service eligibility requirements to receive a pension, having terminated their employment, and having begun

receiving pension benefits from the Plans, their right to annual postretirement adjustments were terms of a contract binding on the State of Minnesota and the Plans.

59. The named Plaintiffs are contractually entitled to benefits at the levels that were specified under Minnesota law when they began receiving their pensions, which include the annual postretirement adjustments.

60. The 2009 and 2010 Pension Legislation violate the contractual rights of Plaintiffs and Class Members to annual postretirement adjustments to their pensions at the levels and in the manner specified by Minnesota law when they began receiving their pensions.

61. Because the 2009 and 2010 Pension Legislation diminish vested pension benefits and because Defendants' actions were neither reasonable nor necessary and because alternatives were available to Defendants to shore up the Statewide Pension Plans funding without breaching the contractual rights of Plaintiffs and Class Members, Defendants violated the Contract Clause of the Minnesota Constitution.

62. Minn. Stat. § 555.01 provides, "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."

COUNT II

(Declaratory Relief: Seeking a Judicial Determination that the 2009 and 2010 Pension Legislation violate the Takings Clause of the Minnesota Constitution)

63. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs and incorporate them by reference.

64. The Takings Clause of the Minnesota Constitution instructs: “Private property shall not be taken, destroyed or damaged for public use without just compensation.” Minn. Const. art. I, § 13.

65. Plaintiffs had a legitimate expectation that they would receive annual postretirement adjustments to their pensions at the levels specified under the law in effect when they began receiving pension benefits from the Plans.

66. Because the 2009 and 2010 Pension Legislation diminish the vested right to pension benefits of Plaintiffs and Class Members without just compensation, Defendants have violated the Takings Clause of the Minnesota Constitution .

COUNT III

(Declaratory Relief: Seeking a Judicial Determination that the 2009 and 2010 Pension Legislation violate the Contract Clause of the United States Constitution)

67. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs and incorporate them by reference.

68. The Contract Clause of the United States Constitution declares that “[n]o state shall...pass any...law impairing the obligations of contracts...” U.S. Const. art. I, § 10.

69. The Contract Clause of the United States Constitution restricts Defendants from enacting and enforcing laws that adversely affect vested pension benefits of public employees.

70. Because the 2009 and 2010 Pension Legislation diminish vested pension benefits and because Defendants’ actions were neither reasonable nor necessary and because alternatives were available to Defendants to shore up the Statewide Pension Plans funding

without breaching the contractual rights of Plaintiffs and Class Members, Defendants violated the Contract Clause of the United States Constitution.

COUNT IV

(Declaratory Relief: Seeking a Judicial Determination that 2009 and 2010 Pension Legislation violate the Takings Clause of the Constitution of the United States)

71. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs and incorporate them by reference.

72. The Takings Clause of the United States Constitution states “private property [shall not] be taken for public use, without just compensation.” U.S. Const. Amend. V.

73. The Takings Clause of the United States Constitution is binding on the states through the Fourteenth Amendment.

74. Plaintiffs had a legitimate expectation that they would receive annual postretirement adjustments to their pensions at the levels specified under the law in effect when they began receiving pension benefits from the Plans.

75. Because the 2009 and 2010 Pension Legislation diminish the vested right to pension benefits of Plaintiffs and Class Members without just compensation, Defendants have violated the Takings Clause of the Constitution of the United States.

COUNT V

Violation of 42 U.S.C. § 1983 – Contract Clause (Against Individual Defendants in their official capacities only)

76. Plaintiffs repeat and reallege the allegations of preceding paragraphs of this pleading and incorporate them by reference.

77. 42 U.S.C. § 1983 provides:

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

78. Individual Defendants are “persons” within the meaning of 42 U.S.C. § 1983.

79. Individual Defendants have acted under color of law by enforcing the 2009 and 2010 Pension Legislation and impairing the contractual rights of the Plaintiffs and Class Members to receive postretirement adjustments to their pension benefits at the level in effect at the time they began receiving their pensions.

80. Individual Defendants have violated the rights of Plaintiffs and Class Members secured by the Contract Clause of the United States Constitution.

COUNT VI

Violation of 42 U.S.C. § 1983 – Takings Clause (Against Individual Defendants in their official capacities only)

81. Plaintiffs repeat and reallege the allegations of preceding paragraphs of this pleading and incorporate them by reference.

82. Individual Defendants have acted under color of law by enforcing the 2009 and 2010 Pension Legislation and taking the Plaintiffs’ and Class Members’ private property for public use without just compensation.

83. Individual Defendants have deprived Plaintiffs and Class Members of their rights secured by the Takings Clause of the United States Constitution.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs request that this Court order the following relief:

- A. Assume jurisdiction of this case;
- B. Enter a declaratory judgment pursuant to Minn. Stat. § 555.01, finding that the 2009 and 2010 Legislation violated the Contract Clause and Takings Clause of the Minnesota Constitution, and the Contract Clause, the Taking Clause and the of the United States Constitution;
- C. Issue a permanent injunction barring implementation of the 2009 and 2010 Legislation;
- D. Certify the proposed Class pursuant to Minn. R. Civ. P. 23;
- E. Issue an order appointing Halunen & Associates and Stember Feinstein Doyle Payne & Cordes, LLC as counsel for the class;
- F. Award Plaintiffs and the Class monetary damages (plus prejudgment interest), pursuant to Minn. Stat. § 555.08 to make them whole for any loss and to restore them to the positions they would have been in but for the 2009 and 2010 Legislation;
- G. Award attorney fees and costs incurred in this action pursuant to 42 U.S.C. § 1988 and/or as available under state law or otherwise; and
- H. Issue such other relief as the Court deems just and proper.

Dated: July 2, 2010

Respectfully submitted,

By: Susan M. Coler
Susan M. Coler (#217621)
Clayton Halunen (#219721)
Halunen & Associates
1650 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Telephone: (612) 605-4098
Facsimile: (612) 605-4099

William T. Payne, Esq.
Stephen M. Pincus, Esq.
John Stember, Esq.
Stember Feinstein Doyle Payne
& Cordes, LLC
Allegheny Building, 17th Floor
429 Forbes Avenue
Pittsburgh, PA 15219
Telephone: (412) 281-8400
Facsimile: (412) 281-1007
(motions for *pro hac vice* to be filed)

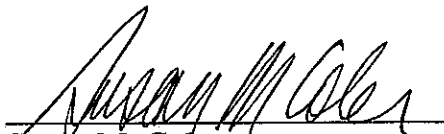
On behalf of Plaintiffs and others similarly
situated

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney's fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

Dated: Dated: July 2, 2010

HALUNEN & ASSOCIATES



Susan M. Coler