

N.D.A.G. Letter to Person (Nov. 10, 1987)

November 10, 1987

Mr. Alan Person
Executive Director
North Dakota Public Employees
Retirement System
1930 Burnt Boat Drive
Box 1214
Bismarck, ND 58502

Dear Mr. Person:

Thank you for your letter of October 12, 1987, in which you request my opinion as to whether or not the North Dakota Public Employees Retirement System (NDPERS) Board may impose deductions on salaries of state employees who are participants in the state of North Dakota's Uniform Group Health Insurance Program.

Initially, it must be noted that state law prohibits payroll deductions other than those amounts which are required by state or federal law or authorized in writing by the employee. N.D.C.C. § 34-14-04.1 provides:

34-14-04.1. LIMITATIONS ON WITHHOLDINGS. Every employer shall withhold from the compensation due his employees those amounts which are required by state or federal law to be withheld and may deduct other items authorized in writing by the employees.

State law further restricts the authority of state agencies to make payroll deductions for state employees. N.D.C.C. § 54-14-08 provides:

54-14-08. ALL DEPARTMENTS, AGENCIES, BOARDS, COMMISSIONS, AND INSTITUTIONS IN STATE GOVERNMENT SHALL HAVE THE AUTHORITY TO WITHHOLD CERTAIN AMOUNTS FROM STATE EMPLOYEES' COMPENSATION. All departments, agencies, boards, commissions, and institutions in state government shall compute and withhold from state employees' monetary compensation only those amounts which are required by law to be withheld and only those other items approved by the office of the budget.

N.D.C.C. § 54-14-08 interpreted in conjunction with N.D.C.C. § 34-14-04.1, therefore, permits deductions on salaries of state employees only if the deduction is authorized in writing by the employee and the withholding of that item is also approved by OMB. The Office of Management and Budget generally approves payroll deductions for amounts other than those required by law only when a minimum of 50 central payroll employees

request any specific payroll deduction. See OMB Policy 109 (July 1, 1987). N.D.C.C. § 54-14-08 also allows deductions from state employees' salaries when such withholding is "required by law."

I will first discuss whether the contemplated payroll deductions are "required by law." If the answer to the first issue is negative, I will then discuss whether the participants of the Uniform Group Health Insurance Program have "authorized in writing" the payroll deductions being considered by NDPERS.

A review of the relevant statutory provisions (N.D.C.C. ch. 54-52.1) clearly indicates that the Legislature has not specifically established a payroll deduction system to fund the Uniform Group Health Insurance Program. Even so, it is possible that the Legislature has delegated to NDPERS the power to implement such a payroll deduction system unilaterally. If the NDPERS Board is statutorily authorized to implement payroll deductions unilaterally for the purpose of funding the Uniform Group Health Insurance Program, it is my opinion that such deductions would then be "required by law" and would comply with N.D.C.C. §§ 34-14-04.1 and 54-14-08. Therefore, it is necessary to determine the NDPERS Board's statutory authority to implement such a payroll deduction system unilaterally.

N.D.C.C. ch. 54-52.1 establishes the Uniform Group Health Insurance Program and authorizes the NDPERS Board to administer that program. N.D.C.C. ch. 54-52.1 generally does not provide much guidance to the Board in administering the program. However, it is clear that N.D.C.C. ch. 54-52.1 does not specifically authorize the NDPERS Board to impose payroll deductions for the purpose of funding the program. The only reference to premium payments is set forth in N.D.C.C. § 54-52.1-06, which provides that "[e]ach department, board, or agency shall pay to the board each month from its funds appropriated for payroll and salary amounts a state contribution [established by the legislature]" for each participant in the Uniform Group Health Insurance Program. Based on the premium revenue established by the legislature, the NDPERS Board determines the benefits that can be provided to participants. It does not appear, however, that the NDPERS Board has the authority to increase premium revenue by unilaterally imposing payroll deductions on participants. As a result, it is my opinion that the contemplated payroll deductions are not authorized by law and, therefore, cannot be implemented by the NDPERS Board unilaterally.

Having determined that the NDPERS Board is not authorized to impose the payroll deductions unilaterally, it is next necessary to determine whether the employees have "authorized in writing" payroll deductions for the purpose of funding the Uniform Group Health Insurance Program. As indicated above, a payroll deduction is appropriate if an employee provides written authorization for the deduction.

In the Uniform Group Insurance Application that an employee signs to obtain health insurance through the Uniform Group Health Insurance Program, the employee authorizes the employer "to deduct from my salary the amounts necessary to provide for the life and health insurance coverages I have selected." However, this authorization for

payroll deductions seems clearly related to the optional life insurance coverage and the optional additional health insurance coverage. When the employee signs the application, the employee is informed that additional premium payment deductions are only required for health insurance through the Uniform Group Health Insurance Program if the employee elects a Family (90/10 Copayment) Standard Plan. The employee is also informed that no premiums will be deducted from the employee's salary for the basic health insurance coverage plan (that is, a Self Only Plan or a Family (80/20 Copayment) Alternate Plan). Indeed, many employees may have chosen to obtain basic health insurance coverage through the Uniform Group Health Insurance Program instead of one of the HMO options because no payroll deduction was required for that insurance and additional premiums were required to obtain health insurance through the HMO plans. Therefore, this language in the Uniform Group Insurance Application cannot be used to establish that the employees gave the NDPERS Board blanket authority to deduct from their salaries premium amounts of which the employees were not previously informed. On this basis, it cannot reasonably be contended that this authorization for payroll deduction applies to the basic health insurance coverage plan.

In summary, it is my opinion that the NDPERS Board may not unilaterally impose deductions on the salaries of state employees for the purpose of funding the Uniform Group Health Insurance Program. It is my further opinion that the Uniform Group Insurance Application does not provide the requisite written authorization for the contemplated payroll deductions. However, PERS certainly has the option to request participants to sign authorizations permitting payroll deductions.

Sincerely,

Nicholas J. Spaeth

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