

LETTER OPINION
98-L-70

June 8, 1998

Mr. Sparb Collins
Executive Director
North Dakota Public Employees
Retirement System
400 East Broadway, Suite 505
P.O. Box 1214
Bismarck, ND 58502-1214

Dear Mr. Collins:

Thank you for your letter asking whether the North Dakota Public Employees Retirement System Board, consistent with North Dakota Century Code chapter 54-52.1, may use the gains from one of the subgroups of the Uniform Group Insurance Program to offset increased costs in another subgroup. Those gains would be in the form of refunded premiums from the life insurance company which result from lower than expected claims.

The Uniform Group Insurance Program is created by N.D.C.C. § 54-52.1-02, which authorizes the Public Employees Retirement Board to divide it into the following subgroups:

1. Medical and hospital benefits coverage group consisting of active eligible employees and retired employees not eligible for medicare.
2. Retired medicare-eligible employee group medical and hospital benefits coverage.
3. Active eligible employee life insurance benefits coverage.
4. Retired employee life insurance benefits coverage.
5. Terminated employee continuation group medical and hospital benefits coverage.
6. Terminated employee conversion group medical and hospital benefits coverage.
7. Dental benefits coverage.
8. Vision benefits coverage.
9. Long-term care benefits coverage.
10. Employee assistance benefits coverage.

You note that not all members of one subgroup are also members of each of the other subgroups. Also, as you noted, the health

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insurance premiums are paid by the employer, and the majority of the life insurance premiums are paid by the employee.

The Legislature has provided some guidance on this issue. N.D.C.C. § 54-52.1-06 provides:

Each department, board, or agency shall pay to the board each month from its funds appropriated for payroll and salary amounts a state contribution in the amount as determined by the primary carrier of the group contract for the full single rate monthly premium for each of its eligible employees enrolled in the uniform group insurance program and the full rate monthly premium, in an amount equal to that contributed under the alternate family contract, including major medical coverage, for hospital and medical benefits coverage for spouses and dependent children of its eligible employees enrolled in the uniform group insurance program pursuant to section 54-52.1-07. The board shall then pay the necessary and proper premium amount for the uniform group insurance program to the proper carrier or carriers on a monthly basis. Any refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium amount must be credited at least annually to a separate fund of the uniform group insurance program to be used by the board to reimburse the administrative expense and benefit fund of the public employees retirement program for the costs of administration of the uniform group insurance program. Any amount credited to the separate fund in excess of the costs of administration of the program must be held in the separate fund to be used by the board to reduce the amount of premium amounts paid monthly by enrolled eligible employees, to reduce any increase in premium amounts paid monthly by enrolled eligible employees or to provide increased insurance coverage, as the board may determine. In the event an enrolled eligible employee is not entitled to receive salary, wages, or other compensation for a particular calendar month, he may make direct payment of the required premium to the board to continue his coverage, and the employing department, board, or agency shall provide for the giving of a timely notice to the employee of his right to make such payment at the time such right arises.

(Emphasis added.)

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The above underlined language does not specify whether the "refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium amount" from one subgroup is to be applied only to that subgroup, or whether it can be applied to all subgroups within the uniform group insurance program. Since that language is susceptible to two different, rational interpretations, it is ambiguous, and external aids may be used to interpret it. See Northern X-ray Co., Inc. v. State ex rel. Hanson, 542 N.W.2d 733, 735 (N.D. 1996).

The statute's legislative history is one extrinsic aid that may be used in its interpretation. N.D.C.C. § 1-02-39. The above underlined language was added during the 1973 legislative session. 1973 N.D. Sess. Laws ch. 434, § 1. The legislative history reflects the Legislature's consideration of the possibility that the members of one subgroup may be forced to pay the expenses of another subgroup. Hearing on S. 2087 Before the Senate State and Federal Government Comm. 43rd N.D. Leg. (January 8, 1973) (Testimony of Tor A. Hegland, Executive Director, Public Employees Retirement System, and Al Mayer, Chairman, Public Employees Retirement System). The legislative history further indicates that the Legislature did not intend that result, especially when the subgroups were made up, in part, of different members. The proponents of the legislation intended the gains from a particular subgroup would be used only for that subgroup. Id.

Accordingly, it is my opinion that the Board may not use the gains from one Uniform Group Insurance Program subgroup, such as the life insurance program, to offset the cost of future increases for another subgroup, such as the group health insurance program.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

sam/bah