

5156

CIVIL SERVICE, CLASSIFIED — WHEN EMPLOYE IS SEPARATED FROM SERVICE MORE THAN ONE YEAR AND UNDER NEW APPOINTMENT AGAIN ENTERS SERVICE — SERVICE PRIOR TO NEW APPOINTMENT MAY NOT BE CONSIDERED TO DETERMINE SENIORITY RIGHTS IN REGARD TO LAY-OFF — SECTION 486-17b G.C.

SYLLABUS:

When an employe in the classified civil service is separated from the service for more than one year and again enters the service under a new appointment, his service prior to the new appointment may not be considered to determine seniority rights in regard to a lay-off within the provisions of Section 486-17b, General Code.

Columbus, Ohio, May 22, 1942.

Miss Gertrude Jones, Chairman, State Civil Service Commission,  
Columbus, Ohio.

Dear Miss Jones:

I have your letter inquiring as to the seniority rights of a resigned service employe who again enters the civil service, in a position similar to the one relinquished, more than a year after the resignation from the position. Submitted with your letter is a communication to you which recites the facts which prompt your inquiry. They are as follows: X, an employe of a municipal fire department resigned from his position February 29, 1936. On February 17, 1940, X again took the civil service examination for fireman, the position he resigned from, and

was appointed as a fireman. During the interim period while X was out of the service new employes came into the fire department. The question is: Should X's prior service, before his resignation, be considered in computing his seniority rating in the department so that X's seniority rating is greater than the new employes mentioned above?

This opinion assumes that the employment of firemen by municipalities is governed entirely by the state civil service statutes, first, because I am not furnished with any local ordinances, and second, because of the recent decisions of the Supreme Court of this state which point to that assumption. See *In Re Fortune*, 138 O.S. 385. I also limit this discussion to such seniority as is considered in Section 486-17b, General Code, which provides for lay-offs, abolishments and reinstatements on a basis of prior service.

While the above mentioned section, Section 486-17b, does provide, upon reduction in the number of employes, for the displacement of "the youngest employe in point of service," it does not, however, provide the means for the computation of service to determine the youngest in point of service. The right of an employe in the classified civil service to reinstatement after separation from service without fault is governed by Section 486-16, General Code, so much of which as is pertinent is as follows:

" \* \* \* Any person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct on his part may, with the consent of the commission, be reinstated within one year from the date of such separation to a vacancy in the same or similar office or position in the same department; \* \* \*."

Obviously the above provision would not give seniority rights to a person such as is contemplated by your letter because the above section has application only when the separation from service has not exceeded a year. However, the section is helpful in arriving at an answer to your question, since the reinstatement contemplated there undoubtedly would include a restoration of whatever seniority an employe might have at the time of his separation from service.

I arrive at this conclusion from a consideration of the definition of the word "reinstatement" which is "to instate again; to place again (in possession or in a former state); to reinstall; to reestablish; to restore (to

a state from which one had been removed).” Webster’s New International Dictionary.

The same view of the meaning of the word “reinstate” is taken in the Massachusetts case of *Horrigan v. Mayor*, 11 N.E. (2nd) 585, wherein at page 588 the court said:

“ \* \* \* The use in the statute of the word ‘reinstated’ indicates that what is meant is reestablishment in the former status with all the ordinary incidents of that status.”

That case likewise involved reinstatement of a civil service employe. It would follow then that if the Legislature provided for reinstatement within a one year period, that provision is the equal of a declaration by the Legislature that there shall be no reinstatement or reestablishment of status after a one year period has elapsed.

Apart from the above reasoning predicated on Section 486-16, General Code, it would be logical to arrive at the same conclusion without the aid of the statute. The concrete case with which you provide me as illustrative of your question may be analyzed to demonstrate the soundness of the result above reached.

Mr. X resigned and after a lapse of several years qualified for a civil service position on exactly the same basis as one who had never held a civil service position. The act of resignation, plus the lapse of time, plus the new appointment in the same manner as a new employe would be appointed indicates, first, a relinquishment of the position and all its co-relative rights, and secondly, an acknowledgment of that relinquishment.

The word “resigned” is defined in Webster’s New International Dictionary as “to sign or give back; to return by a formal act; to yield to another; surrender; relinquish; give up.” In my opinion a resignation of a civil service employe from his position normally would imply a relinquishment and an abandonment of all rights attached to that position in such a manner that they may not be re-asserted upon a later new appointment to the same position.

In the case of *Mullane v. McKenzie*, 275 N.Y.S. 262, a situation analogous to that here considered was before the court and the court reached the following conclusion as shown by the first headnote of the case:

“Where employe was separated from competitive civil service for period of almost four years, his date of original appointment as regards seniority must be deemed to be date of re-entry into service.”

Likewise, in the case of *Weiher v. Greene*, 269 N.Y.S. 297, the same conclusion was reached. The first headnote of the case demonstrates the finding of the court:

“Date of civil service appointment is controlling in determining employee’s right to priority in reinstatement after suspension, provided service after appointment was not interrupted by circumstances constituting definite break in chain of continuous service.”

The above two cases illustrate that prior service as contemplated by the inquiry you submit should not be considered in computing priority rights of civil service employes in a fire department.

From all of the above, I reach the conclusion, and it is my opinion, that when an employe in the classified civil service is separated from the service for more than one year and again enters the service under a new appointment, his service prior to the new appointment may not be considered to determine seniority rights in regard to a lay-off within the provisions of Section 486-17b, General Code.

Respectfully,

THOMAS J. HERBERT  
Attorney General.