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RETIREMENT FUND—SECTION 486-65c G. C.—TRANSFER OF MEMBERS' CREDIT FROM LOCAL RETIREMENT SYSTEMS TO PUBLIC EMPLOYES RETIREMENT SYSTEM—SECTION PROVIDES EMPLOYEES SHALL NOT BECOME ELIGIBLE FOR CERTAIN PORTIONS OF RETIREMENT ALLOWANCE UNTIL AFTER EMPLOYERS HAVE PAID INTO SYSTEM FUND "FULL LIABILITY"—ACTUARY ENGAGED BY PUBLIC EMPLOYEES RETIREMENT BOARD TO COVER SERVICES AND PAYMENTS—LIABILITY FOR PENSION BASED ON PRIOR SERVICE—JANUARY 1, 1935—CITY OF CINCINNATI.

SYLLABUS:

Section 486-65c, General Code, provides generally for the transferring of members' credit from local retirement systems to the Public Employees Retirement System and for the making of certain payments to that system's fund by the employees whose credit is being transferred and by their employers. Said section also provides that such employees shall not become eligible for certain portions of the retirement allowance provided for by the Public Employees Retirement Act until after such employers have paid into the public employees retirement system fund the "full liability," as determined by the actuary engaged by the public employees retirement board to cover such services and payments. The phrase "full liability" found in said section includes the liability for the pension based on prior service rendered prior to January 1, 1935, and as defined by the Public Employees Retirement Act.

Columbus, Ohio, July 7, 1952

Mr. Fred L. Schneider, Executive Secretary
Public Employes Retirement System
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The City of Cincinnati operates a retirement system for the majority of the employes of the city. The exception involves about thirty-six employes of the City of Cincinnati who are members of this system. In 1949, the General Assembly enacted Section 486-65c primarily for the purpose of enabling former employes of the City of Cincinnati who had terminated their service with that city and upon termination of that service had become members of the Public Employes Retirement System to receive credit for the service with the City of Cincinnati, providing the conditions outlined in the last paragraph of that section were complied with, both by the employe and by the City of Cincinnati. As a result of that legislation, more than one hundred former employes of the City of Cincinnati have established credit in this system for service rendered the City of Cincinnati.

"A question has now been raised as to the meaning and scope of the phrase, 'the full liability, as determined by the actuary engaged by the public employes retirement board to cover such services and payment.' The question directly relates to whether this full liability involves all service rendered the City of Cincinnati, or only that portion subsequent to January 1, 1935. We therefore request your opinion on the question."

Section 486-65c, General Code, to which reference is made in your request, reads as follows:

"Members of the public employes retirement system who, prior to the date membership was established in said retirement system, were employed by the state of Ohio or any of the several local authorities mentioned in section 486-32 of the General Code, which state or local authority has a local retirement system established under the laws of Ohio for its employes, shall be permitted to pay into the employes savings fund of the public employes retirement system the amount, with interest as determined by the public employes retirement board, said members would have paid through regular salary deductions had they been members of the public employes retirement system continuously since January 1, 1935.

"In case a given member did not enter the employ of the governmental unit having its own retirement system until a date subsequent to January 1, 1935, the payment shall be computed on the salary earned from the date of appointment to the date membership was established in the public employes retirement system.

"Provided, however, such members have not received and are not eligible for benefits from the retirement system of said state or local governmental unit. And further, provided, said members shall not become eligible for the portion of the retirement system as provided in sections 486-60 and 486-61, subsections (b), (c) and (d) and section 486-65, subsection (b) of the General Code, until after such governmental unit has paid into the public employes retirement system fund the full liability, as determined by the actuary engaged by the public employes retirement boards to cover such services and payments."

By way of illustration you have presented the case which raised this question in your office, as follows:

Miss S. was employed by the City of Cincinnati from October 18, 1918, to February 28, 1927, and from January 10, 1938, to March 12, 1947, on which latter date she left the employ of the City of Cincinnati and on that date was employed by an employer amenable to the Public Employes Retirement Act, and on that same date became a member of the Public Employes Retirement System. She has made payments as required under the above quoted section for her annuity covering the period January 10, 1938 to March 12, 1947. I also understand that the City of Cincinnati is making the claim that its "full liability," within the meaning of Section 486-65c, is only to cover the service rendered from January 10, 1938 to March, 1947.

Your request, therefore, raises the question as to the responsibility for the cost of prior service, that is, service prior to January 1, 1935, the effective date of the Public Employes Retirement Act.

Since the original retirement act was enacted, Section 486-68, General Code, has required members of the system to contribute a certain per centum of their salaries to the system for the purpose of providing an annuity at the time of retirement. Upon retirement this annuity becomes a part of a member's retirement allowance as stated in Sections 486-60 and 486-61a, General Code.

Section 486-68a, General Code, requires the employer to make periodic payments into the fund to provide pensions of the various types

to retiring employes. These payments are based on a certain rate or per centum of the salaries of the covered employes. The rate is composed of (1) a normal contribution, and (2) a deficiency contribution, as these terms are defined in Sections 486-68b and 486-68c, General Code. Briefly, the normal contribution is the amount required of the employer at the time of retirement of the employes to match the annuity derived from the employes' contributions. In addition, the normal contribution includes the employer's costs of survivor benefits (see Section 486-66a, General Code), and the minimum benefits for members retiring after age sixty-five, as provided for in Section 486-60, General Code. The deficiency contribution is the amount required of the employer to provide at the time of retirement of the employe (1) the prior service pension, and (2) the basic pension of \$15.00 per month.

When a member of the system retires, his allowance is computed on the basis of the formula provided in Section 486-60 if he is sixty or more years of age, or the formula provided in Section 486-61 if he is between the ages of fifty-five and sixty. While the amount of pension receivable under Section 486-60 differs from that receivable under Section 486-61, each is made up of the same four basic component parts, as follows:

- (a) an annuity based on the member's accumulated contributions;
- (b) a matching pension, i.e., an amount equal to (a) and charged against the employer "normal contribution;"
- (c) a prior service pension—paid from the employer deficiency contribution;
- (d) the basic pension—paid from the employer deficiency contribution.

Also, it should be added that if the retiring member is sixty-five or more and the amount provided for in the above (a), (b), (c) and (d) does not provide the minimum per year for each year of service, the employe has a guaranteed amount added to his allowance, the cost of which is provided from the employer normal contribution.

It appears clear that the retirement act provides that the employe pays only for his annuity and that the remainder of the cost of the retirement allowance is placed on the employer, which means that the cost of prior service, as well as the cost of the matching pension and the basic pension, is placed upon the individual employer.

I do not see how the amendment to the act in 1949, codified as Section 486-65c, General Code, and previously set out herein, in any way changes this theory, but, rather, reaffirms it—that the cost of prior service is placed upon the employer.

As previously stated, the employe has met the payment required of her under Section 486-65c. Section 486-65c, General Code, provides, however, that “said members shall not become eligible for the portion of the retirement system as provided in sections 486-60 and 486-61, subsections (b), (c) and (d) and section 486-65, subsection (b) of the General Code,” until the former employer has paid “the full liability * * * to cover such services and payments.” Subsections (b), (c) and (d) of Sections 486-60 and 486-61, respectively, provide for payment of the matching pension, the prior service pension and the basic pension. Thus, it is clear that the payment by the member of “the amount, with interest as determined by the public employes retirement board, said members would have paid through regular salary deductions had they been members of the public employes retirement system continuously since January 1, 1935,” would make such employe eligible only for the annuity provided for in subsections (a) of Sections 486-60 and 486-61. Thus, it follows that to be entitled to the matching pension provided by subsections (b), the prior service pension provided by subsections (c) and the basic pension provided by subsections (d), certain payments must have been made into the retirement system fund by the governmental unit which had employed such member.

Section 486-65c, in effect, provides that the matching pension, the prior service pension and the basic pension shall not be paid until such former employer has paid into the state retirement system fund “the full liability, as determined by the actuary engaged by the public employes retirement boards to cover such services and payments.”

Since, as previously pointed out, all payments of matching pensions, prior service pensions and basic pensions are paid from employers' contributions either as a “normal contribution” or a “deficiency contribution,” it must follow that the payment of the matching pension, the prior service pension and the basic pension is conditioned upon the prior payment by the former employer of an amount equal to the “normal contribution” and “deficiency contribution” which would have been paid to the Public Employes Retirement System by such employer had the member in question

been a member of the Public Employes Retirement System continuously since January 1, 1935, or continuously since first employed by the governmental unit in question subsequent to January 1, 1935.

“Prior service” is defined in Section 486-32, paragraph 8, of the act as follows:

“ ‘Prior service’ shall mean all service as a public employe rendered before January 1, 1935, * * *.”

Under the provisions of Section 486-65c, General Code, the member in question is entitled to a pension not only for her period of employment with the City of Cincinnati from 1938 to 1947, but also to a prior service pension for a period of employment with the City of Cincinnati from 1918 to 1927, but only if the City of Cincinnati pays into the Public Employes Retirement System fund the contributions it would have been required to make had such member been a member of the Public Employes Retirement System at all times she was employed by the City of Cincinnati subsequent to the creation of such system in 1935.

Since a prior service pension, authorized by subsections (c) of Sections 486-60 and 486-61, is required to be paid from the “deficiency contribution,” as defined by Section 486-68c, and since Section 486-65c specifically authorizes the payment of the pension provided in subsections (c) of Sections 486-60 and 486-61 “after such governmental unit has paid into the public employes retirement system fund the full liability, as determined by the actuary engaged by the public employes retirement boards to cover such services and payments,” it is my opinion that the phrase “full liability” necessarily has reference to full payment of the “deficiency contribution,” as well as to full payment of the “normal contribution.” Thus, it is my opinion that the phrase “full liability” found in Section 486-65c, General Code, includes liability for the pension based on prior service rendered prior to January 1, 1935.

Respectfully,

C. WILLIAM O'NEILL,
Attorney General