

926

TEACHER ENTITLED TO SERVICE CREDIT—SALARY SCHEDULE FOR TIME SPENT IN ARMED FORCES—PRIOR TO FIRST JOB OF TEACHING—SECTIONS 4848-4a, 486-10 G. C.

SYLLABUS:

A teacher by the terms of Section 4848-4a, General Code, is entitled to service credit on the salary schedule for time spent in the armed forces prior to his first job of teaching.

Columbus, Ohio, November 14, 1951

Hon. Luther L. Liggett, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir:

I have your request for my opinion, which reads as follows:

“I would like your opinion on the following question which has been submitted to me by the Board of Education of the M. Exempted Village School District:

“The said Board of Education has in its employ four teachers who are veterans of World War II, but who did not graduate from college or enter any public school system until after their discharge from the armed forces. In attempting to determine the service credit for these teachers in accordance with the minimum salary schedule for teaching personnel, the Board has had difficulty in interpreting the meaning of sentence 2, paragraph 8 of Section 4848-4a of the General Code of Ohio which I quote as follows:

‘Furthermore, any person employed in any public school system in Ohio who has served or who may serve in the armed forces of the United States shall be given full service credit for time spent in such armed forces.’

“My specific question is: Does a teacher get service credit on the salary schedule for the time spent in the armed forces prior to his first job of teaching?”

Section 4848-4a, General Code, to which you refer, provides:

“There is hereby established a minimum salary schedule for teaching personnel employed in the public schools of this state as follows:

“(1) Teachers with less than three years of recognized college training shall receive a beginning annual salary of \$2,000 and an annual increase of \$100 for each of the first five years of service;

“(2) Teachers with three years of recognized college training, but who have not received a bachelor’s degree, shall receive a beginning annual salary of \$2,200 and an annual increase of \$100 for each of the first five years of service;

“(3) Teachers with a bachelor’s degree from a recognized college shall receive a beginning annual salary of \$2,400 and an annual increase of \$100 for each of the first five years of service;

“(4) Teachers with a bachelor’s degree from a recognized college and an additional year of recognized college training shall receive a beginning annual salary of \$2,500 and an annual increase of \$110 for each of the first five years of service;

“(5) Teachers with a master’s degree from a recognized college shall receive a beginning annual salary of \$2,600 and an annual increase of \$120 for each of the first five years of service.

“‘Beginning annual salary’ shall mean the annual salary received by the teacher during the first year of employment as a teacher.

“In computing years of service, credit shall be given for each school year such teacher was in service as a regular teacher in any public school system; provided, however, each board of education may evaluate such service for each new teacher employed by the board of education except that no new teacher shall be given credit for less than five years if the teacher has served five or more years in a public school system. *Furthermore, any person employed in any public school system in Ohio who has served or who may serve in the armed forces of the United States shall be given full service credit for time spent in such armed forces.* The term ‘armed forces’ as used in this paragraph is the same as defined in section 7896-1a of the General Code.

“The minimum salary schedule herein provided for shall apply to all teaching personnel employed by or in the employ of any school district in this state beginning with the date of the initial quarterly payment, as defined in section 4848-8 of the General Code, distributed under the terms of this act.

“Teaching personnel employed by or in the employ of any school district of this state for the school year immediately following the effective date of this act and thereafter shall be given credit for prior service as defined in this section. The minimum annual salary to which a teacher is entitled shall be an amount equal to the minimum beginning annual salary to which each teacher is entitled by virtue of educational attainments plus an

amount equal to the total of the annual increases to which such teacher is entitled by virtue of years of service.

“Each teacher who has completed training which would qualify him or her for a higher salary bracket shall file by September 15 with the clerk of the board of education satisfactory evidence of the completion of such additional training. The clerk of the board of education shall then immediately place the teacher in the proper salary bracket in accordance with training and experience before certifying such salary, training, and experience to the superintendent of public instruction.

“Provided, however, in the event any teacher in the employ of any school district is entitled to a salary increase under the terms of the minimum salary schedule as set forth in this section in excess of \$400, such increase may be given in annual installments of \$400 each year until the minimum salary schedule has been attained, but this shall not restrict any district from providing additional salary increases from local tax resources or from any other funds available to the school district.

“The above established salary schedule shall be considered a minimum pay scale for teachers in Ohio provided, however, boards of education may establish salary schedules in excess of these pay ranges commensurate with local and state tax resources.”
(Emphasis added.)

This section of the General Code is new, being enacted on June 29, 1951, and as a result, the meaning of the underscored language has heretofore not been considered by any of my predecessors nor has this question come before the courts of this state. This language would seem to give full service credit on the salary schedule for time spent in the armed forces of the United States, even to those who at the time of entry into the military services were not employed as teachers but who became such for the first time after service in the armed forces. The legislature has dealt with the problem of interruption of employment by service in the armed forces in other areas and the language used in the applicable legislation is significant. Section 7896-64a, General Code, gives prior service credit to members of the school system, toward retirement, for time spent in the active service of the armed forces of the United States; in restricting prior service credit to those whose employment was interrupted by military service the following language is used:

“* * * any member of the system who was or is out of active school service by reason of having served in the active service of the armed forces of the United States and who returns to school

service or becomes a member of either the public employes' retirement system or the state teachers' retirement system within two years after receiving such discharge or release shall have such service considered the equivalent of prior service. * * *".

Section 4628-3, General Code, authorizes the trustees of a police relief and pension funds to adopt rules allowing credit toward retirement of those members of the police department whose period of service in the police department was interrupted by military service. The statute reads as follows:

"Trustees of the police relief and pension fund are hereby authorized to adopt rules for the allowance of credit toward retirement of those members of the police department who have actively served in the armed forces of the United States, army, navy or marine corps in time of warfare or when armed expeditions were conducted *during this period of service*, and such members have been honorably discharged." (Emphasis added.)

Comparing the language of Sections 7896-64a and 4628-3, General Code, and that of Section 4848-4a, General Code, it is difficult to conceive that the legislature intended that the language used in Section 4848-4a, should express the same meaning as that found in the other two sections, i.e., that prior service credit is given under Section 4848-4a only where the employment was interrupted by service in the armed forces. To so hold would be to read into Section 4848-4a a restriction which the lawmakers did not include by force of the wording used. It must be remembered that when speaking of the intent of the legislature, it is the manifest intent that we are concerned with and not the subjective and unexpressed intent of the individual legislators. As stated in 50 American Jurisprudence, Section 368, the rule of construction is as follows:

"Generally, however, where a statute is so plain and unambiguous that it is not susceptible of more than one construction, courts construing the same should not be concerned with the consequences resulting therefrom. The undesirable consequences do not justify a departure from the terms of the act as written, and the courts may not supply a *casus omissus* however desirable it may be to supply the omitted provision. It is not the function of a court to engraft on a statute additions which it thinks the legislature logically might or should have made. In such case, the consequences if objectionable, can only be avoided by a change of the law itself, to be effected by the legislature, and not by judicial action in the guise of interpretation."

Section 4842-10a, General Code, must also be considered before arriving at any definite conclusion. This provision, which became effective July 18, 1951, within a month after the effective date of Section 4848-4a, provides for the reemployment of teachers who have served in the armed forces. It is there provided, in part:

“For the purpose of seniority and *placement in the salary schedule, years of absence* in the service of the armed services of the United States or the auxiliaries thereof, shall be counted as though teaching service had been performed during such time.”
(Emphasis added.)

The minimum salary schedule set out in Section 4848-4a is necessarily a part of the salary schedule of every school district and if the legislature intended to give service credit on the salary schedule (whether the minimum salary scale is applicable or a higher scale that may have been set by the school districts) only where the person had left a teaching position to enter the armed forces, such a result would be brought about by the above quoted provision of Section 4842-10a, and the provision in Section 4848-4a, with which we are concerned would be entirely unnecessary and meaningless. That statutes should be construed to avoid such a condition if possible is a rule which cannot be questioned. Sutherland on Statutory Construction, Vol. 2, Section 4705, states the rule as follows:

“It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute. A statute should be construed so that effect is given to all provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.”

Considering the natural meaning of the language used in Section 4848-4a, General Code, and construing this section in the light of the provision of Section 4842-10a, General Code, so as to give full effect to both, it would seem that Section 4848-4a does not limit prior service credit for service in the armed forces of the United States to those persons whose employment as teachers was interrupted by service in the armed forces.

The effect of construing Section 4848-4a to give service credit on the salary schedule for military service rendered prior to employment as a teacher will merely mean that beginning teachers who are veterans will start at a slightly higher salary than those beginning teachers who did not serve in the armed forces of the United States. Surely such a result can-

not be held to be unreasonable or even unusual, where in other instances the legislature has attempted to make up to the veteran in some degree for the time he has lost because of service in the armed forces, by providing for veteran preferences in employment. In all examinations for classified civil service positions the veteran is given a percentage preference. Section 486-10, General Code, provides in part:

“* * * that any soldier, sailor, marine, coast guardsman, member of the auxiliary corps as established by Congress, member of the army nurse corps, navy nurse corps, or Red Cross nurse who has served in the army, navy or hospital service of the United States, and such other military service as may now or hereafter be designated by the congress of the United States in the war of the rebellion, the war with Spain, including the Philippine insurrection and the Chinese relief expedition, or from April 21, 1898, to July 4, 1902, or the war with the central powers of Europe between the dates of April 6, 1917, and November 11, 1918, or the war with the Axis powers, beginning December 8, 1941, commonly known as world war II(,) who has been honorably discharged therefrom and is a resident of Ohio, may file with the civil service commission a certificate of service and honorable discharge, whereupon he shall receive additional credit given in the regular examination in which he receives a passing grade of twenty per cent of his total grade. * * *”

The underlying purpose of Section 4848-4a, General Code, would seem to be comparable to Section 486-10, General Code, quoted above, i.e., to place veterans as nearly as possible in the position they would have been in, in regard to earnings and employment opportunities, if time had not been taken out in the service of their country.

In specific answer to your question, it is therefore my opinion that a teacher by the terms of Section 4848-4a, General Code, is entitled to service credit on the salary schedule for time spent in the armed forces prior to his first job of teaching.

Respectfully,

C. WILLIAM O'NEILL
Attorney General