

405

1. SALARY—PAY INCREASES—AUTOMATIC—LENGTH OF SERVICE — COST OF LIVING INCREASE — SECTIONS 486-7a, 486-7b, 486-7d, 486-7b9, 486-7a4 G. C.—SUBSTITUTE HOUSE BILL 450, 99 GENERAL ASSEMBLY.
2. SERVICE OVER SIX MONTHS CONSTITUTES A MAJOR PART OF A YEAR.
3. EMPLOYER MUST HAVE SERVED IN CLASSIFICATION HELD BY HIM JULY 1, 1951, FOR MAJOR PART OF YEAR TO BE ELIGIBLE FOR AUTOMATIC INCREASE.
4. EMPLOYEE TO BE ELIGIBLE FOR AUTOMATIC INCREASE MUST BE EMPLOYED JULY 1, 1951 IN CLASSIFICATION UNDER APPOINTMENT MADE MORE THAN SIX MONTHS PREVIOUSLY—RIGHT TO INCREASE NOT AFFECTED BY ANY INTERRUPTION OF SERVICE FOLLOWING WHICH EMPLOYEE REINSTATED TO POSITION IN CLASSIFICATION.

SYLLABUS:

1. Under the provisions of Sections 486-7a, 486-7b, and 486-7d, General Code, as amended by Substitute House Bill No. 450 of the 99th General Assembly, the pay increases applicable to any position are to be applied in the following consecutive order: The "automatic" increase provided by Section 486-7b9, General Code; the "length-of-service" increase provided by Section 486-7a4, General Code; and the "cost-of-living" increase provided by Section 486-7d, General Code.

2. Any service over six months constitutes a "major part" of a year within the meaning of Section 486-7b9, General Code.

3. Under the provisions of Section 486-7b9, as enacted by Substitute House Bill No. 450 of the 99th General Assembly, an employe must have served in the classification held by him on July 1, 1951, for the major part of a year in order to be eligible for the automatic increase provided by said section.

4. For an employe to be eligible for the automatic increase provided by Section 486-7b9, General Code, as amended by Substitute House Bill No. 450 of the 99th General Assembly, it is necessary that he be employed on July 1, 1951, in a classification and under an appointment made more than six months previously. The right to such increase is not affected by any interruption of service following which said employe has been reinstated to his position in such classification under such appointment.

Columbus, Ohio, June 20, 1951

Hon. Carl W. Smith, Chairman, Civil Service Commission of Ohio
Columbus, Ohio

Dear Sir:

I have your request for my opinion concerning several questions raised by Substitute House Bill No. 450 of the 99th General Assembly. This bill was signed by the Governor on June 13, 1951, and since it had been passed as an emergency measure, it became effective immediately.

Your first question is as follows:

"Sections 486-7a, 486-7b, 486-7c and 486-7d, General Code, as amended by Substitute House Bill No. 450 of the 99th General Assembly, provide for three possible pay increases for employes subject to their provisions. Those increases are the so-called 'length-of-service' increase provided by Section 486-7a4; the so-called 'automatic' increase provided by Section 486-7b9; and the so-called 'cost-of-living' increase provided by Section 486-7d, General Code.

"Since this Commission must approve all payrolls carrying the above provisions into effect July 1, 1951, will you please give us your opinion as to the consecutive order in which the above increases are to be applied?"

Sections 486-7a, 486-7b, 486-7c and 486-7d, General Code, were enacted as Amended Substitute House Bill No. 382 of the 98th General Assembly and became effective July 28, 1949. As originally enacted, Section 486-7b, as applied to your question, provided in part as follows:

"* * * After completion of the first year in a position, office or employment, and each year thereafter until the highest step in the pay-range is reached, each employe shall receive an automatic salary adjustment equivalent to one of the steps within the pay-range for his class or grade when his service rating, as shown by the current or last performance report, is equal to or higher than reasonable standards of efficiency to be fixed by the commission, with due consideration, among other factors, of the need for maintaining equality of treatment of employes in the several departments of the state government. The first such adjustment shall become effective as of July first following completion of the first year's service, or major part thereof, and as of July first of each year thereafter until the maximum salary or wage in the pay

range is reached; provided, however, that no adjustments shall be made until July 1, 1951."

Section 486-7a, as related to this question, provided in part as follows:

"* * * After the above adjustments have been made in all cases, the commission, within the available appropriations, shall assign employes to higher salary steps within their respective pay-range in recognition of length of service on the basis of formulae to be adopted by the commission after a public hearing. Such adjustments shall take effect on a date to be determined by the commission and shall not be retroactive."

It can be seen that by their original terms the sections in question provide for an automatic promotion effective July 1, 1951, and provided for a possible increase based on length of service if funds were available. This second increase was not made.

As amended by Substitute House Bill No. 450, Section 486-7b, General Code, relative to automatic increases, provides in part as follows:

"* * * 9. Beginning July 1, 1951, each employe who has completed one year, or a major part thereof, in a particular position, office or employment and who is below step 5 in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. Each year thereafter, until the highest step in the pay range is reached, each employe shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. The first such adjustment shall become effective as of July 1, following completion of the first year's service, or major part thereof, and as of July 1 of each year thereafter until the maximum salary or wage in the pay range is reached. On and after July 1, 1953, such adjustments shall be automatic for each employe when his service rating, as shown by the current or last performance report is equal to or higher than reasonable standards of efficiency to be fixed by the commission with due consideration, among other factors, of the need for maintaining equality of treatment of employes in the several departments of the state government."

Section 486-7a, as amended, provides in part as follows:

"* * * 4. Effective as of April 1, 1951, an *additional* adjustment shall be made in the wages and salaries of all employes within the provisions of this act who were working for the state

of Ohio or any of the several departments, commissions, bureaus, boards or councils on said date, to higher salary steps within their respective pay ranges in recognition of their length of service, on the basis of the following, to wit:

“Those employes who, on January 1, 1951, had been continuously employed by the state of Ohio for a period of five years but less than ten years, shall be advanced to the next higher step in their respective pay range; and those employes who, on said date, had been continuously employed for ten years or more, shall be advanced to the second higher step in their respective pay range; provided, however, that no employe shall be advanced beyond step 5 of his respective pay range.” (Emphasis added.)

It can be seen that the amended bill left intact the provision for the automatic increase originally set up in House Bill No. 382, and provided for “an additional adjustment” based upon length of service. It is my opinion that it was the intention of the General Assembly to add another increase to the one already provided for, and that an orderly application of the provisions of the amended bill requires that the length of service increase, if any, be applied after the automatic increase, if any, applicable to a given position has been applied.

The cost of living increase provided by Section 486-7d, both in its original and its amended forms, is of a different nature from the two increases discussed above. While they provide for increases in the steps within a pay range until the maximum step 5 has been reached, the cost of living increase raises all positions—including those within step 5—to a higher pay range. In a sense this increase, or decrease, is superimposed upon the entire pay structure, without regard to individual cases, and in my opinion should be applied after all individual adjustments have been made.

In answer to your first question, you are, therefore, advised that under the provisions of Section 486-7a, 486-7b and 486-7d, General Code, as amended by Substitute House Bill No. 450 of the 99th General Assembly, the pay increases applicable to any position are to be applied in the following consecutive order: The “automatic” increase provided by Section 486-7b9, General Code; the “length-of-service” increase provided by Section 486-7a4, General Code; and the “cost-of-living” increase provided by Section 486-7d, General Code.

Your second question, consisting of three branches, reads as follows:

“Sub Section 9 of the proposed amended General Code

Section 486-7b of Substitute House Bill No. 450 reads, in part, as follows:

'Beginning July 1, 1951, each employe who has completed one year, or a major part thereof, in a particular position, office or employment and who is below step five in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for a class or grade.'

"Question 1:

Does any service over six months constitute a year or the major part thereof, or if not, what portion of the year does constitute the 'major part?'

"Question 2.

Since the date of the original allocation of positions to the classification plan provided by Amended Substitute House Bill No. 382, that is, January 1, 1950, the classifications of many employes have been changed as a result of appeals from the original classifications, promotions, and reclassifications resulting from changed duties. Does the phrase quoted above mean that the employe must have served the year or major part thereof simply as a state employe or does it mean that such service must have been restricted to the identical classification to which his duties have been allocated as of July 1, 1951?

"Question 3:

In order for an employe to qualify for the foregoing automatic step advancement, must he have actually served for the year or major part thereof, that is, must his name actually have appeared on the payroll for such period with no exceptions for breaks in service such as: leave of absences, military leave, lay-offs, etc., as authorized in the definition of the phrase 'continuously employed' found in General Code Section 486-7a of Substitute House Bill No. 450."

Since the General Assembly has not undertaken to define what is the "major part" of a year, and in the absence of a rule by your Commission on the subject, it is my opinion that the language must be given its ordinary English interpretation. Webster's New International Dictionary defines "major" in part as follows:

"* * * Constituting the majority; as, the major vote."

The same work defines "majority" in part as follows :

"* * * The greater of two numbers that are regarded as parts of a whole or total; the number greater than half; more than half of any total; * * *."

Accordingly, it is my opinion that the "major part" of a year must be construed to mean any part greater than half, and in answer to your question, you are advised that any service over six months constitutes a "major part" of a year within the meaning of Section 486-7b9, General Code.

To answer your next question as to whether or not an employe must have been in the classification held on July 1, 1951 for the major part of a year in order to be eligible for the automatic increase, I direct your attention to two provisions of Substitute House Bill No. 450. As originally enacted, Section 486-7b provided, in part, as follows :

"* * * After completion of the first year in a position, office or employment * * * each employe shall receive an automatic salary adjustment * * *. The first such adjustment shall become effective as of July first following completion of the first year's service * * * provided, however, that no such adjustments shall be made until July 1, 1951."

Prior to the effective date of the increases provided by this section, the law was amended by Substitute House Bill No. 450 to its present form which is, in part, as follows :

"* * * Beginning July 1, 1951, each employe who has completed one year * * * in a *particular* position, office or employment * * * shall receive an automatic salary adjustment * * *."

(Emphasis added.)

So, before any raises became effective, the General Assembly specified that automatic raises were to apply only to a particular position, office or employment.

The same General Assembly also provided, in speaking of length of service increases, that :

"Those employes who, on January 1, 1951, had been continuously employed by the state of Ohio for a period of five years but less than ten years, shall be advanced to the next higher step * * * and those employes who, on said date, had been continuously employed for ten years or more, shall be advanced to the second higher step * * *."

Here the General Assembly clearly provided for increases based on length of time spent in state service, without regard to a particular position. When this language is considered with the language particularizing a position, office or employment set out above, it seems to me to lead to the conclusion that the automatic increase was intended to apply to time spent in a particular classification and that if the General Assembly had intended a different result, it would have so provided.

It should be pointed out that my predecessor, in his Opinion No. 2697, dated January 6, 1951, held as indicated by branches 5 and 6 of the syllabus, as follows:

“5. Where a redetermination is made by the Commission with respect to the allocation of a job or position to a classification provided by Section 486-7a, General Code, the adjustments of such job or position to a new salary and wage schedules provided by amended Substitute House Bill No. 382, 98th General Assembly, are required by law to become effective on January 1, 1950.

“6. Where such redetermination is made by the Commission subsequent to January 1, 1950, the adjustments to the new salary and wage schedules, except the adjustments based on length of service, are effective retroactively to that date.”

This opinion should be followed in determining the length of time spent in a particular classification.

Therefore, in specific answer to your question, it is my opinion that under the provisions of Section 486-7b9, as enacted by Substitute House Bill No. 450 of the 99th General Assembly, an employe must have served in the classification held by him on July 1, 1951 for the major part of a year in order to be eligible for the automatic increase provided by said section.

Your last question is concerned with whether an employe must have served continuously without a break in service for the major part of a year in order to be eligible for the automatic increase. In this connection you ask whether the “continuous service” formula used in connection with the length of service increase, Section 486-7a4, General Code should be applied to the automatic increase.

As I pointed out above, I can not see a good reason for reading the language of these two provisions interchangeably. It would have been a simple thing for the General Assembly to have provided that an employe who had completed the major part of a year of “continuous service,” as

defined in Section 486-7a4, in a particular position should have an automatic increase. But it did not see fit so to provide, and I do not feel that it is proper for me to read the literal language into a place where it was not written.

However, I find another reason which leads me to arrive at the same result. The entire Civil Service Law, read as a whole, is set up to provide that certain interruptions of service after which an employe is reinstated shall not be considered as terminating one term of service and beginning a new one. The intent of the law is to protect the employe's rights in case of interruptions that are not his fault or responsibility. And stated as a general proposition, the "continuous service" provisions of Section 486-7a4 outline what the law already provided as to the rights of an employe to reinstatement after certain periods of absence from his duties.

If an employe is on duty in good standing on July 1, 1951 in a classification and under an appointment originally made more than six months previously, it follows that any intervening interruptions were not the fault of the employe, else he would not have been reinstated to his position. It follows that those interruptions should not be counted against him in computing his automatic increases.

Accordingly, and in answer to your question, it is my opinion that for an employe to be eligible for the automatic increase provided by Section 486-7b9, General Code, as amended by Substitute House Bill No. 450 of the 99th General Assembly, it is necessary that he be employed on July 1, 1951 in a classification and under an appointment made more than six months previously. The right to such increase is not affected by any interruption of service following which said employe has been reinstated to his position in such classification under such appointment.

Respectfully,

C. WILLIAM O'NEILL

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