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RETIREMENT SYSTEM, PUBLIC EMPLOYES:

1. MILITARY SERVICE—PERIOD—SHALL BE ADDED TO PRIOR SERVICE AND BE INCLUDED FOR ALL PURPOSES OF THE ACT SO FAR AS PENSIONS AND RETIREMENT ALLOWANCES ARE BASED—SECTIONS 486-32, 486-47 G. C.
2. ALL SERVICES MILITARY FORCES OF UNITED STATES—COMPUTATION, FIVE YEARS OF SERVICE CREDIT FOR SUPERANNUATION RETIREMENT—TOTAL SERVICE—ALL PRIOR SERVICE CREDIT—SECTIONS 486-55, 486-59, 486-61 G. C.
3. TO DETERMINE ELIGIBILITY FOR DISABILITY PENSION, APPLICANT MUST HAVE SPENT TEN YEARS PRECEDING RETIREMENT AS A PUBLIC EMPLOYEE—SERVICES IN ARMED FORCES OF UNITED STATES NOT TO BE INCLUDED—SECTIONS 486-62, 486-63 G. C.

SYLLABUS:

1. The provision of Section 486-47, General Code, that military service shall be considered as the "equivalent" of prior service means that the period of such military service shall be added to the period of "prior service" as defined in Section 486-32, General Code, and be included for all purposes of the act so far as pensions and retirement allowances are based on or measured by prior service.

2. In computing the five years of service credit required by Section 486-59, General Code, as a condition for superannuation retirement, and the period of "total service" required by Section 486-61, General Code, as a condition for commuted superannuation retirement, there shall be included all prior service credit as shown by the prior service certificate issued pursuant to Section 486-55, General Code, which certificate shall include as a part of the aggregate, all service in the military forces of the United States.

3. In determining eligibility for disability pension under Sections 486-62 and 486-63, General Code, the member applying for such pension must have spent ten years preceding such retirement in service as a public employe within the scope of the act, and service in the armed forces of the United States is not to be included in such determination.

Columbus, Ohio, July 3, 1946

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

Dear Sir:

I have before me your request for my opinion reading as follows:

“We kindly request your opinion as to the interpretation of sentence one, paragraph two of Section 486-47, General Code, involving the phrase ‘shall have such service considered as the equivalent of prior service.’ Does the reference ‘equivalent of prior service’ refer to the credit in the form of an added pension allowance at the time of retirement, to years and or a fraction of the year of prior service or to both?”

By way of explanation we might point out that the question has arisen in connection with the determination whether a member has sufficient years of service credit to qualify for a retirement allowance under the commuted superannuation basis provided in Section 486-61; also with a member having the required ten years of service credit to be eligible for a disability allowance as provided in Section 486-62, as well as in connection with the ten year requirement of Section 486-65a for an indefinite leave of absence status.”

The portion of Section 486-47, General Code, to which you refer reads as follows:

“Upon re-employment in the public service within two years after an honorable discharge, and presentation of an honorable discharge and subject to such rules and regulations as may be adopted by the retirement board, any member of the retirement system who was or is out of active service as a state, county, municipal, park district, conservancy district, health district, township, or public library employe by reason of having become a member of the armed forces of the United States on active duty or prior service shall have *such service considered as the equivalent of prior service.*” (Emphasis supplied.)

“Equivalent,” according to Webster, is defined as “equal in worth or value, force, power, effect, import; of the same import or meaning.”

The term “prior service” as used in the laws relating to the system is defined by paragraph 8 of Section 486-32, General Code, as follows:

“‘Prior service’ shall mean all service as a state employe, county employe, municipal employe, park district employe, con-

servancy employe, health employe, township employe or public library employe rendered before January 1, 1935, and all service as an employe of any employer who comes within the provisions of the state teachers retirement system or of the state public school employes retirement system or of any other retirement system established under the laws of Ohio rendered prior to January 1, 1935, if the employe claiming such service did not contribute to or receive benefits from any retirement system for such service, provided that if the employe served as an employe in any two or all of said capacities, 'prior service' shall mean the total combined service rendered in said capacities prior to January 1, 1935."

It will be noted that there is nothing in either of the sections above quoted which in any way provides for or even suggests a pension or other allowance. Plainly, the section defining "prior service" has reference to a *period* of service either in the system itself or in some other system which under the terms of the law must be considered in arriving at the total period of prior service. Section 486-47 read in connection with the definition given in Section 486-32, General Code, simply means that in addition to the period during which the member of the system has served in a public capacity prior to January 1, 1935, he shall be entitled in case he has been in the armed service of the United States on active duty to have that period of service considered as the equivalent of a period of service as a public employe in civilian life and this added period of military service, regardless of the time when it was rendered, is to become a part of his period of total prior service.

Section 486-55, General Code, provides as follows:

"Subject to such rules and regulations as the retirement board shall adopt, said board shall issue to each original member of the retirement system a certificate certifying to the *aggregate length of all his prior-service* as defined in this act. Such certificate shall be final and conclusive *for retirement purposes* as to such service, unless modified by the retirement board upon application made by the member or upon its own initiative."

(Emphasis supplied.)

This certificate, therefore, in addition to taking account of his service as a state employe within the definition of Section 486-32, General Code, would also take into account and include the period of service in the armed forces and both together would constitute the "aggregate length" of all his prior service.

Section 486-32, paragraph 11, defines "total service" as follows:

"'Total service' shall mean all service of a member of the retirement system since last becoming a member and, *in addition thereto, all his prior service*, computed as provided in this act."
(Emphasis supplied.)

This definition of "total service" is vital in arriving at the answer to the questions you raise, because, as hereinafter pointed out, a member's right to retire in either of the ways provided by the law, is conditioned on his having credit for a certain number of years of "service" or "total service," and the essence of your question, as I understand it, is does the soldier get credit on his "total service" for his period of service in the armed forces, or does he merely get an enlarged "prior service" pension on account thereof?

Section 486-59, General Code, provides in part as follows:

"On and after January 1, 1939, *any member, except a new member with less than five years of service*, who has attained sixty years of age, may retire by filing with the retirement board an application for retirement. The filing of such application shall retire such member as of the end of the quarter of the calendar year then current."
(Emphasis supplied.)

It will be observed that as a condition precedent to retirement one must have had not less than five years of "service," and by the definition last above quoted, his total service for which he is entitled to credit at the time of retirement includes all of his service as a state employe, together with all his prior service. It would seem clear therefore that since a member of the system who has served for a period in the armed forces is entitled to have that period of service considered as the "equivalent" of prior service he would be entitled to have that period of military service considered in making up the five years of service credit necessary to his retirement. In other words, it would seem that if he had had two years of active service as a member, plus three or more years of prior service, he would have the requisite five years of service credit which he must have for retirement.

Upon reaching the age of sixty he is entitled to retire and by the terms of Section 486-60, General Code, is entitled to a retirement allowance consisting of

- (a) An annuity based on his accumulated contributions :
- (b) A pension paid by the system of equivalent amount, and
- (c) An additional pension equal to "2% of his final average salary *multiplied by the number of years of service in his prior service certificate.*"

The use of the words "years in his prior service certificate" is highly significant because, as already pointed out, that certificate must include not only the years spent in civilian public service, but also the years spent in the military service.

"Final average salary" for the purpose of this computation is defined by Section 486-32, paragraph 14, as meaning his average earnings during the ten year period immediately preceding the date of his retirement or if he was not publicly employed during that period then the ten year period immediately preceding the last day that he was actually employed. This "final average salary" is not in any case to exceed \$2,000.00.

Under Section 486-61, General Code, to which you make reference, an employe who has completed thirty years of "total service" and has attained fifty-five years or has completed thirty-six years of service regardless of age may retire on a computed superannuation allowance. Here again reference is made to his "total service." Under the definition heretofore given of "total service" it appears plain that all of the service that is entitled to be included in his prior service certificate becomes a part of his total service credit, and accordingly for the purpose of commuted superannuation retirement as well as for superannuation retirement the member is entitled to have the period of service in the armed forces included in determining his total service credit.

Section 486-62, General Code, makes provision for disability retirement. The pertinent portion of that section reads as follows:

"Medical examination of a member for disability retirement, presumed to be permanent, shall be made upon the application of the head of the department or upon the application of the member or of a person acting in his behalf stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired, provided that the said member was a *state employe as defined in this act for not less than ten years preceding his retirement* and was a member in each of such ten years which were subsequent to the year 1935, * * *

(Emphasis supplied.)

Here it will be noted that the right to a disability retirement is predicated not upon ten years of total service but upon his having been a state employe as defined in the Act for a ten year period and having been a member in each of such ten years which were subsequent to 1935. Here there is no reference to "total service" or to any period of prior service as being the foundation for the right to a disability retirement. A period of military service therefore would not contribute in any respect to the right of a member to retire upon disability. The distinction between this and the provisions for other types of retirement is significant. The General Assembly evidently did not intend to grant disability pension to those who merely had a long period of public service before the system was founded, but to limit that special benefit to those who had been active contributing members for a considerable period. However, in determining the *amount* of the disability pension, prior service is taken into consideration, and this again is predicated on total service. The following portion of Section 486-63, General Code, is pertinent:

"A pension which, together with his annuity, shall provide a retirement allowance of one and one-fifth per centum of his final average salary during the last ten years or fraction thereof immediately preceding retirement, multiplied by the number of his years of *total service*, but not less than thirty per centum of said average salary, with the exception that in no case shall the retirement allowance exceed nine-tenths of the allowance to which he would have been entitled had retirement been deferred to the age of sixty and had contributions at the rate existing during the last year of active service been continued to the age of sixty."
(Emphasis supplied.)

The contrast between the language here used and that quoted from Section 486-62 *supra* is also significant, and I believe, supports my conclusions.

In the light of the foregoing, it is my opinion:

I. The provisions of Section 486-47, General Code, that military service shall be considered as the "equivalent" of prior service means that the period of such military service shall be added to the period of "prior service" as defined in Section 486-32, General Code, and be included for all purposes of the act so far as pensions and retirement allowances are based on or measured by prior service.

2. In computing the five years of service credit required by Section 486-59, General Code, as a condition for superannuation retirement, and the period of "total service" required by Section 486-6I, General Code, as a condition for commuted superannuation retirement, there shall be included all prior service credit as shown by the prior service certificate issued pursuant to Section 486-55, General Code, which certificate shall include as a part of the aggregate, all service in the military forces of the United States.

3. In determining eligibility for disability pension under Sections 486-62 and 486-63, General Code, the member applying for such pension must have spent ten years preceding such retirement in service as a public employe within the scope of the act, and service in the armed forces of the United States is not to be included in such determination.

Respectfully,

HUGH S. JENKINS
Attorney General