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1. RETIREMENT SYSTEM, PUBLIC EMPLOYEES—MEMBER PRIOR TO JUNE 29, 1955 REDEPOSITED ACCUMULATED CONTRIBUTIONS PREVIOUSLY WITHDRAWN—INTEREST—MADE RESTORATION OF ANNUITY RIGHTS AND CONTRIBUTING SERVICE CREDIT FORMERLY FORFEITED—SECTION 145.31 RC.
2. STATUS, MEMBER WHO SEEKS TO RESTORE CONTRIBUTING SERVICE CREDIT FORFEITED BY WITHDRAWAL OF ACCUMULATED CONTRIBUTIONS—ON OR AFTER JUNE 29, 1955—MEMBER MUST REDEPOSIT IN EMPLOYEES' SAVINGS FUND AMOUNT WITHDRAWN WITH INTEREST AT RATE TO BE CREDITED TO ACCUMULATED CONTRIBUTIONS AT RETIREMENT, COMPOUNDED ANNUALLY—FIRST MONTH OF WITHDRAWAL TO AND INCLUDING MONTH OF DEPOSIT—MUST DEPOSIT IN EMPLOYERS' ACCUMULATION FUND ONE-HALF OF AMOUNT SO REDEPOSITED—SECTION 145.31 RC.

SYLLABUS:

1. A member of the public employees retirement system, who, prior to June 29, 1955, redeposited in the employees' savings fund accumulated contributions previously withdrawn, with interest, pursuant to former Section 145.31, Revised Code, or Section 486-57, General Code, thereby made restoration of the "annuity rights" and contributing "service credit" formerly forfeited by him.

2. A member of the public employees retirement system, who, on or after June 29, 1955, the effective date of the latest amendment to Section 145.31, Revised Code, seeks to restore contributing "service credit" previously forfeited by an earlier withdrawal of accumulated contributions, must redeposit in the employees savings fund the amount withdrawn with interest at the rate to be credited to his accumulated contributions at retirement, compounded annually, from the first of the month of withdrawal to and including the month of deposit, and must deposit in the *employers' accumulation fund one-half* of such amount so redeposited.

Columbus, Ohio, April 18, 1956

Hon. Fred L. Schneider, Executive Secretary,
Public Employees Retirement System
Columbus, Ohio

Dear Sir :

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

“The Retirement Board * * * instructed the writer to request an opinion of you as to the effect of the 1955 amendments to Section 145.31 of the Revised Code.

“The pertinent part of the section, before the 1955 amendment read as follows :

‘Should a member who separates from his service as a public employee and relinquishes his membership in the public employees retirement system through withdrawal of his accumulated contributions, return to public service and to membership in this system within seven years of the date of withdrawal and within the same period restore to the employees’ savings fund, his accumulated contributions as they were at the time of withdrawal, together with regular interest thereon from the date of withdrawal to the date of redeposit, the annuity rights provided in section 145.33, 145.34, or 145.36 of the Revised Code which were forfeited by him at the time of separation shall be restored. In addition to restoring his annuity rights such member may restore prior service credit forfeited by such withdrawal by paying into the employers’ accumulation fund an additional amount equal to fifty per cent of the employers’ total contribution during the period of contributing membership prior to such withdrawal, together with regular interest thereon from the date of withdrawal to the date of payment. The public employees retirement board shall have final authority to fix the amount and manner of such payment. * * *

“The 1955 amendments changed the formula for computing superannuation retirement allowances (Section 145.33(E)) and substantially increased the amount of those allowances by making ‘total years of service credit’ a major factor in determining the amount of the allowance in a given case. At the same time Section 145.31 was amended.

“The pertinent part of this amendment reads as follows :

‘A member or former member of this retirement system with at least two years of contributing service credit in

this system, in the state teachers retirement system, or in the school employees retirement system subsequent to the withdrawal of contributions and cancellation of service credit in this system may restore such service credit by redepositing in the employees' savings fund the amount withdrawn with interest at the rate to be credited to his accumulated contributions at retirement, compounded annually, from the first of the month of withdrawal to and including the month of redeposit, and by depositing in the employers' accumulation fund one-half of such amount so redeposited. The public employees retirement board shall have final authority to fix the amount and manner of such payment.'

"The question the Retirement Board is interested in is this:

"Does a member, who, before the date the 1955 amendments were effective, had forfeited membership by applying for and accepting a refund of contributions, had returned to public service and made a restoration, as then provided by the section, qualify for 'service credit' for the period of time during which he had contributed to the system prior to the refund to be used in computing the so-called 'minimum benefits' provided under Section 145.33(E) without any further payment? Or does the amended Section 145.31 mean that subsequent to the 1955 amendments something more than the restored 'annuity rights' (service credit restoration which is of far greater value) may be secured by making an additional payment?"

Since you have quoted most of the material part of Section 145.31, Revised Code, both before and after its amendment by the 101st General Assembly, I shall not requote the statute. The problem can be treated more effectively perhaps by taking a hypothetical fact situation in order to analyze just what rights a member had *before* the recent amendment and what rights a member has *now*.

Mr. A and Mr. B were contributing members of the public employees retirement system from 1938 to 1948. In 1948 their public employment terminated, and both made application for a refund of accumulated contributions. Both Mr. A and Mr. B took refunds. In 1950 both re-entered the public employment and became new members of the system. In 1952 Mr. A restored to the employees' savings fund his accumulated contributions as they were at the time of withdrawal, together with regular interest thereon from the date of withdrawal to the date of redeposit. Mr. B, in July 1955, subsequent to the most recent amendment to Section 145.31, redeposited in the employees' savings fund the amount withdrawn with interest, from the time of the withdrawal to and including the month

of redeposit, and deposited in the *employers'* accumulation fund one-half of the amount redeposited in the employers' savings fund. Both Mr. A and Mr. B complied fully with the law in effect at the time they made their redeposit.

The basic question is: *What* did Mr. A restore when he made his redeposit in 1952? More specifically, did Mr. A restore "service credit" for the years 1938 to 1948, (the period of his initial membership), when he made his redeposit in 1952? It is clear that Mr. B, in 1955, restored "service credit" upon making his redeposit plus the payment to the employers' fund, since the recent amendment specifically refers to "restored service credit."

The total years of service credit are, as you say, a major factor in determining the amount of a retirement allowance in a given case. Section 145.33(E), Revised Code, effective June 29, 1955, now provides for a minimum benefit determined by multiplying the member's "total service credit" by sixty-three dollars. It is not accurate to say, however, that *prior* to June 29, 1955, total years of service credit, other than prior service, did not enter into the calculation of a member's retirement allowance. I shall defer discussion of this for the time being.

Prior to 1955, and at the time Mr. A made his redeposit, Section 145.31, Revised Code, provided that upon making the redeposit, the "annuity rights" which were forfeited by him at the time of separation were to be restored. In addition to restoring his annuity rights the member could restore *prior* service credit, service before January 1, 1935, which had been forfeited by the withdrawal by paying into the employers' accumulation fund an additional amount equal to fifty per cent of the employers' total contribution during the period of contributing membership prior to such withdrawal.

No question has been raised about *prior* service credit. Your question is concerned with whether or not Mr. A, at the time he restored his "annuity rights," also restored his contributing service credit.

Up until 1951, a member, upon retirement, was granted a retirement allowance consisting of: (a) an *annuity* having a reserve equal to the amount of the member's accumulated contributions at that time; (b) a *pension* of equivalent amount; (c) an additional pension, if such member could qualify for prior service, equal to two per cent of his final average

salary multiplied by the number of years of such prior and military service credit. There was no provision for multiplication of years of *contributing* service times dollars in order to arrive at a pension. Thus, until 1951, credit for service rendered *after* 1935 did not mean too much, except in computing a member's *eligibility* to retire, he must have had five or more years of total service credit to retire at age sixty, or thirty-six years of total service to retire at any age less than sixty.

In 1951 the legislature provided for a *minimum* basic pension for members over sixty-five years of age, which equaled \$48.00 annually for each of ten or more years of credit for services. Hence, years of service credit became increasingly important in 1951, by reason of the new formula written into the law at that time. Whether Mr. A made his redeposit in 1952 or any year prior to 1952, did he thereby restore service credit for the previously cancelled years of service so that he need not make an additional payment at this time to gain credit for the years in question? I believe the legislative intention was that once the member made his redeposit, he restored *everything* he had forfeited by reason of his previous withdrawal of funds.

Although, prior to 1951 it was not too meaningful, from the standpoint of a retirement allowance, to establish service credit for years of service subsequent to January 1, 1935, nevertheless the gaining of service credit was a right which existed and which entered into the calculation of years required in order for a member to be *eligible* for a pension.

Section 145.01(H), Revised Code, contained a definition of "total service" which embraced *all* service credited to a member of the system *since* January 1, 1935, and, in addition, all his *prior* service.

At first glance, and from an examination of the first part of former Section 145.31, quoted in your letter of request, it would appear that Mr. A restored *only* his forfeited "annuity rights" and that if he is to restore "credit" for the years 1938 to 1948 (taken from the example) he can do so only by making the additional payment clearly required of those who made or make their redeposit on or after June 29, 1955. However, I believe that another part of the former statute disclosed a legislative intent that forfeited service credit was also restored.

In 1947 the legislature, see 122 Ohio Laws, 192, made one of its many amendments to Section 486-57, General Code, now Section 145.31,

Revised Code, and the following words were inserted near the end of that section:

“* * * Provided further, however, *forfeited service credit* either *for service* before or after *January 1, 1935*, may not be restored as provided herein more than one time. * * *”

(Emphasis added.)

The same provision was in the law until 1955, except that the words “subsequent to December 31, 1949” were tacked on the end of the above-quoted provision after 1947.

The portion of the statute quoted above is a *definite* indication that the legislature considered forfeited service credit, earned subsequent to 1935, to have been restored upon the member's making his redeposit. The statute forbade a member from restoring more than one time forfeited service credit “either for service before or after January 1, 1935.” Hence, a member who sometime after 1935 made a redeposit of his previously withdrawn contributions did thereby restore something more than mere “annuity rights,” although it may be granted that the restoration of service credit did not weigh very heavily in the total retirement law picture.

In making this point I am fortified by certain indications that the retirement system itself interpreted the so-called “restoration” section as embracing something more than a restoration of annuity rights and *prior* service credit, even prior to the most recent amendment. Thus, in a pamphlet published in 1945 entitled “A Snap Shot of Your Retirement System” at page 20, the following statement:

“* * * *Credit* formerly forfeited by refund of contributions can be re-established by re-depositing, with interest, the amount refunded providing you returned to public service within five (5) years after the refund.” (Emphasis added.)

More recently in a handbook entitled “Your Retirement Protection” dated March 31, 1954, at page 12, I find a paragraph entitled “What is a ‘Redeposit of Contributions Withdrawn?’” That paragraph reads in material part as follows:

“If a member terminated his employment, and withdrew his accumulated contribution, and has now returned to membership, he may within 7 years from the date of withdrawal, restore his

annuity right (*his previous period of contributing service*) by re-depositing the contributions which he withdrew, plus interest.
* * *"
(Emphasis added.)

The retirement system, through the literature it has distributed in the past years to its members has placed an interpretation upon the "restoration" section. Of course, a statutory interpretation by an administrative agency of a law governing its operations is not conclusive nor determinative of the true legislative intent, but such an interpretation is accorded much weight in the event an ambiguity exists in the statute. However this may be, I do not believe the law is or was ambiguous on the question of what is or was restored by the making of a redeposit. I believe the retirement system properly interpreted the law so as to provide for a restoration of service credit as well as a restoration of annuity rights. It is also obvious that many members of the system must have relied upon the construction given to Section 145.31, Revised Code, in the handbook.

In passing, I should return to the point stressed earlier that the recent amendment of the retirement law in 1955 was not the first time that total years of contributing service credit figured in the calculation of a minimum retirement allowance. I mentioned the guarantee written into the law in 1951, which in effect would require a multiplication of years of service credit by dollars to compute the minimum allowance.

I have been informed by subsequent communication with your office that the system has recognized for retirement purposes the years of service credit earned since 1935 in computing the minimum benefit under the 1951-1955 law, and that the system has done so even where there had been a withdrawal of contributions and a restoration of funds at some time after 1935. If the retirement system recognized the years previously forfeited by a withdrawal as restored upon making a redeposit for purposes of the *old* minimum allowance, I cannot see upon what theory it can be said that the person who *didn't* retire under the old law, but made the redeposit prior to June 29, 1955, has not restored his years of service credit. If the years' credit were recognized as restored in the one instance, then they must of necessity be recognized as having already been restored in the other instance, where the member made his redeposit prior to June 29, 1955.

The net effect of what I have said is that our hypothetical Mr. B, having delayed making his redeposit so long, and having taken his chance that new legislation might result and impose additional restoration requirements or penalties, must now pay a fifty per cent penalty for waiting. He must not only pay into the employees' savings fund, but also into the employers' accumulation fund. But Mr. A, having made his redeposit *prior* to June 29, 1955, and having complied fully with the requirements of the "restoration" section at that time, had *already* gained "service credit" for the years previously forfeited before the most recent amendment went into effect, and hence, he does not have to pay the penalty sum into the employers' accumulation fund. He *has* the credit with no further payment required of him.

Accordingly, it is my opinion that :

1. A member of the public employees retirement system, who, prior to June 29, 1955, redeposited in the employees' savings fund accumulated contributions previously withdrawn, with interest, pursuant to former Section 145.31, Revised Code, or Section 486-57, General Code, thereby made restoration of the "annuity rights" and contributing "service credit" formerly forfeited by him.

2. A member of the public employees retirement system, who, on or after June 29, 1955, the effective date of the latest amendment to Section 145.31, Revised Code, seeks to restore contributing "service credit" previously forfeited by an earlier withdrawal of accumulated contributions, must redeposit in the employees' savings fund the amount withdrawn with interest at the rate to be credited to his accumulated contributions at retirement, compounded annually, from the first of the month of withdrawal to and including the month of deposit, and must deposit in the *employers'* accumulation fund one-half of such amount so redeposited.

Respectfully,

C. WILLIAM O'NEILL

Attorney General