

MAINE STATE LEGISLATURE

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April 13, 1973

E. L. Walter, Executive Director

Retirement

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Millinocket Police Chief Resignation and later purchase of military service credit followed by Retirement

SYLLABUS:

A member of the Retirement System who has retained his membership but terminated his employment is entitled to purchase military service credit for retirement since it is clear that the legislature intended to make this benefit available to all persons in the span from "active service" through "retirement" who are otherwise eligible.

FACTS:

The town of Millinocket is a participating local district which has adopted the benefits under subsection 9 of Section 1121 of 5 M.R.S.A., specifying 22 years of service as a police officer as the eligibility for retirement period of service. The Police Chief now has 20 years of service and he intends to resign immediately, and, after the Town adopts the benefits under Subsection 13, Section 1094 on January 1, 1974, he will pay for two years of military service credit under that section, and request retirement at that time.

QUESTION:

Is a member of the Maine Retirement System, who has retained such membership but who has terminated his employment, entitled to purchase military service credit for retirement when he is otherwise eligible?

ANSWER:

Yes.

REASONS:

5 M.R.S.A. § 1094, subsection 13, provides, in pertinent part:

"Anything to the contrary notwithstanding, military service shall be credited to all state employees who are unable to otherwise qualify for military service credits. A state employee shall be entitled to this credit only if at point of

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"retirement he shall have at least 15 years of creditable service in the State Retirement System

"It is the intent that these provisions shall apply to all persons, active or retired, but that for those already retired the effective date of any adjustment shall be not earlier than that date on which such time or credit is certified to the Maine State Retirement System."

The question presented involves a determination as to the scope of the phrase "employee" as used in the above-quoted statute. Stated otherwise, can an "employee" who has resigned his employment be regarded as still an "employee" within the meaning of that statute so as to enable him to purchase the military service credit otherwise permitted under that statute? The above-quoted language indicates a clear legislative intent to make this particular benefit liberally available. Such a patently liberal policy militates against the adoption of a narrow construction of the specific terms in this section. See Middleton's case, 3 A. 2d 434, 136 Me. 108; Hanbro, Inc. v. Johnson, 181 A. 2d 249, 158 Me. 180; Hamilton v. Littlefield, 98 A. 2d 545, 149 Me. 48; Acheson v. Johnson, 86 A. 2d 628, 147 Me. 275; and Cushing v. Inhabitants of Town of Blue Hill, 92 A. 2d 330, 148 Me. 243.

The closing sentence of that subsection contains an explicit declaration of "intent that these provisions shall apply to all persons, active or retired" (Emphasis supplied) The subject individual would neither be "active" nor "retired" at the time he would seek to purchase the military service credit; he would then be in a hiatus between these two specified statuses. It does not seem likely that the legislature intended to limit availability of this benefit to a narrow definition of each of these terms viewed in distinct isolation, but rather that it intended to encompass the complete spectrum from "active" through "retired."

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