Retirement: Service credits with more than one employer
Retirement: Eligibility for statutory minimum benefit amount
5 MRSA §§ 1121(2)(A)(4)

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

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To: W. G. Blodgett, Executive Director

From: Kay R. H. Evans, Assistant Attorney General

Re: Benefit Entitlement of Individuals with Creditable Service under More than One Employer.

This responds to your request for an opinion on the operation with respect to participating local districts of those provisions of the retirement law granting a specified minimum benefit on retirement after 10 years of service. You have pointed out that participating local districts may have benefit plans which provide for no minimum benefit amount, for an $80 per month minimum (Chapter 415, P.L. 1969) or for a $100 per month minimum [Chapter 542, P.L. 1973, presently § 1121(2)(A)(4)], and that members in the course of their employment history may work for more than one participating local district or for a district and for the State. You have asked how the minimum benefit is to be computed in the situation where a retiring member has worked a total of 10 years at age 60 for two or more employers with differing plans, and you have postulated four specific examples for our response.

I conclude that, in order to be eligible for a statutory minimum benefit amount at 60 years of age after 10 years of service, a member must have worked for a total of 10 years in employment covered at the time of his employment by a plan having a minimum benefit provision. Only that amount of time served while such a provision was in effect counts toward the 10 years. Thus, service with an employer whose retirement plan had no minimum benefit provision then in effect does not count toward the 10-year accummulation required for eligibility for a minimum benefit.[1/] Where a member has worked for a total of

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1/ See fns. 3 and 4, infra.

10 years for more than one employer, each of whom had a minimum benefit plan in effect at the time the member worked there, the benefit is generally to be figured pro rata on the basis of the amount of time worked for each employer and the benefit provision in effect at the time the member worked there.[2]

OPINION:

Since participating local districts are bound only by those provisions of the retirement law which they accept, 5 M.R.S.A. §§ 1033(3), 1092(12), their employee-members cannot claim the benefit of provisions not adopted by the district for which they work.[3] Thus, 10 years of work for a participating local district with no minimum benefit plan will not yield a statutory minimum benefit for the employee who works the entire 10 years for that employer.[4] Logic and fairness do not permit a reading of the

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2/ Except, of course, for those provisions which must apply to all members regardless of their employer in order to maintain System-wide fairness and equity or to facilitate administration. Of course if a district changes its retirement plan by adopting a minimum benefit provision, the provision applies to all of its then employees and time worked prior to the adoption of the provision counts toward the 10 years.

3/ See fn. 4, infra.

4/ This is not to say, of course, that the retiring 10-year employee of a district with no minimum benefit plan receives no retirement benefit at all; rather, that benefit may be less than the statutory minimum amount. Similarly, the retiring employee with 10 years of service of which only some portion has been served in employment covered by a minimum benefit provision does not retire without any benefit; rather, that benefit may be less than the statutory minimum. In each of these cases, the benefit is that computed on the basis of compensation and service, according to applicable statutory directives. See 5 M.R.S.A. § 1121(2).

statute which would allow a member who worked for some number of years less than 10 for an employer with no minimum benefit provision then in effect to count those years toward the 10 needed for a minimum benefit provided under the plan of a prior or subsequent employer. Only service covered by a minimum benefit provision at the time it is rendered counts toward satisfaction of the 10-year criterion.[5/]

Viewed in terms of reasonable expectations, a member who works for a no-minimum-benefit district can have no reasonable expectation that the time worked will count towards eligibility for a minimum benefit; such a district, not having elected a minimum benefit provision, of course cannot be held to provide such a benefit. Where there is a minimum benefit provision, the member can expect to receive and the district to pay such a benefit on retirement at age 60 after 10 years of service. Each can also expect that eligibility and liability are incremental; that is, each year worked in employment covered by a minimum benefit moves the member one step closer to eligibility and the district one step closer to liability for the statutory minimum amount.

Applying these principles to the situation where a member works for a total of 10 years for two or more employers each of whom has a retirement plan with a minimum benefit provision in effect at the time the service is rendered, it is my opinion that the minimum benefit to be paid is to be computed pro rata on the basis of the

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5/ The exceptions to this rule would be in cases where the subsequent employer-district with a minimum benefit provision agreed to "purchase" an employee's prior years of service worked for another employer whose retirement plan had the smaller minimum amount or no minimum provision. 5 M.R.S.A. § 1092(11).

amount of time worked for each employer and the benefit provision in effect at that time.[6/] To so compute the benefit is consistent with the legitimate expectation of the employer and the member and with the actual facts of the employment history.

To the four examples you provided, the above conclusions yield these results:

Example 1: Individual transfers from Employe A, which has Chapter 415, after 5 years of membership service to Employer B, which has Chapter 542, and is a member there for 5 years. At age 60, he applies for a retirement benefit. He has a 3-year average salary of $1000.00

Answer: Benefit computed pro rata on the basis of the number of years worked for each employer and the minimum benefit amount of each employer's plan, annualized. (e.g., $80 minimum earned over 10 years = $8/year). Amount earned under each employer then added to obtain total minimum benefit.

Example 2: An individual transfers from Employer A, which does not have a minimum, after 5 years of service, to Employer B, which has Chapter 542. After working for Employer B for 5 years, he applies for a retirement allowance at age 60. His 3-year average if $1000.00.

Answer: No minimum benefit at this time; member has worked only 5 years in employment covered by a minimum benefit provision. Benefit is that computed according to compensation and service, without regard to minimum amount.

Example 3: An individual transfers from Employer A, which has Chapter 542, after 5 years of service, to Employer B, which does not have a minimum benefit after 10 years of service. After working for Employer B for 5 years, he applies for a retirement allowance at age 60. His 3-year average is $1000.00. His 5-year average is $900.00.

Answer: Same as Example 2.

6/ Where the subsequent employer provides a higher minimum benefit and "purchases" earlier time worked under a lower minimum, making up the difference, the benefit would be computed solely on the basis of the subsequent employer's provision. 5 MR.S.A. § 1092(11).

Example 4: An individual transfers from Employer A, which has Chapter 542, to Employer B, which has no minimum benefit, after 5 years of service. After working for Employer B for 2 years, he transfers to Employer C which has Chapter 415. He works for Employer C for 3 years and at age 60 he applies for a retirement allowance. His 3-year average is $1000.00

Answer: Same as Examples 2 and 3, except that member has worked 8 years in covered employment.

Kay R. H. Evans

KAY R. H. EVANS
Assistant Attorney General

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