

MAINE STATE LEGISLATURE

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80-158

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 18, 1980

W. G. Blodgett, Executive Director
Maine State Retirement System
State House
Augusta, Maine 04333

Dear Bill:

The question you pose to this office is based on the following facts: A teacher was a contributing member of the Maine State Retirement System when she was wrongfully discharged by her employer. She took a refund of her contributions at that time. She later instituted legal action which culminated in a judgment in the Maine Superior Court confirming an arbitrator's decision that the teacher be reinstated. A "Stipulation for Satisfaction of Judgment" was entered into between the parties at a much later date,^{1/} by the terms of which the former teacher was to receive \$42,800, \$22,800 of which was stipulated to represent "back wages and attorney's fees." That stipulation additionally provided as follows:

It being mutually understood that
[the teacher] shall make retirement
contributions based upon her compensa-
tion with the District having no respons-
ibility therefor.

On the same day the stipulation was executed, the teacher was formally reinstated, effective on that day, on the condition that she was to be "responsible for any contributions or costs arising out of such reinstatement and will hold the District

^{1/} The teacher was discharged in 1972 and the stipulation was entered into in 1979. We are unaware of the precise reasons for this delay, although it appears that further action was taken in Federal Court in an attempt by the teacher to force the employer to honor the prior judgment.

harmless therefrom." (Letter of Reinstatement.) Finally, also on the same day as the execution of the stipulation and the reinstatement, the teacher resigned, effective September 1, 1972.

The question posed by your request is whether, as a result of the stipulation and surrounding circumstances, the teacher may redeposit the contributions which she withdrew in 1972, together with interest, and deposit a sufficient amount to cover her own contributions for the period from her discharge until the date of her reinstatement and thereby receive creditable service for that period. An additional question is what salary basis is to be used to develop the amount of contribution she must make, if the answer to the primary question is in the affirmative.

The effect of judicial decrees or judgments or settlements arrived at between the parties upon the status of the litigants under the retirement statute is problematic because that law does not specifically address the situation.^{2/} Therefore, in order to determine whether a particular judgment or settlement purporting to grant rights in the Retirement System is to be given effect, we must construe the statute to see whether the rights or benefits conferred are available.^{3/} In the present case a reasonable construction of the relevant statute supports the conclusion that the teacher here should be afforded the opportunity to rejoin the System and make contributions as apparently intended by the stipulation for satisfaction of the judgment.

The operative statute is § 1094(2) [all references to sections in this opinion are to Title 5 of the Maine Revised Statutes Annotated.] That section provides as follows:

2/ We understand that the traditional policy of the Retirement System has been to give effect to judgments and settlements conferring rights or benefits under the System if those rights or benefits are clearly and specifically spelled out in the decree or settlement document, and if such rights or benefits are available under the Retirement System statute.

3/ Since we find that the settlement in issue is compatible with the retirement statute, we need not address the more complex questions which would arise were the terms of the settlement or decree in conflict with the specific terms of the statute.

All service of a member on account of which contributions are made shall be credited as membership service and none other.

§ 1094(2).

We must look to § 1001(23) for the definition of "service:"

"Service" shall mean service as an employee, as defined in this section, for which compensation was paid.

§ 1001(23).

"Employee" is defined in § 1001(10), which provides, in relevant part:

"Employee" shall mean any regular classified or unclassified officer or employee in a department, including, for the purposes of this chapter, teachers in the public schools.

§ 1001(10).

"Member" is defined in § 1001(12) as follows:

"Member" shall mean any employee included in the membership of the retirement system, as provided in section 1091.

§ 1001(12).

Section 1091 sets out the classes of persons to whom membership in the System is available. In subsection (b), it deals with the question of when a person is no longer a member:

Should any member withdraw his contributions, or should he become a beneficiary as the result of his own retirement, or die, he shall thereupon cease to be a member.

§ 1091(b).

This is the only section in the retirement statute defining the conditions under which membership ceases. Finally, "membership service" is defined in § 1001(13) as follows:

"Membership service" shall mean service rendered while a member of the retirement system for which credit is allowable under section 1094.

§ 1001(13).

All of these provisions must be applied in order to determine whether the person in question is entitled to rejoin the System and make contributions for the time period in question.

The first question is whether the time for which the teacher seeks to make contributions is "service" under the statute. We think it is, even though the teacher did not actually work as a teacher during the relevant period. "Service" is defined in terms of whether the person involved was an "employee" and received compensation. While the person here involved clearly did not render service as an employee in the ordinary meaning of those terms, the clear meaning of the arbitrator's decision and the Stipulation for Satisfaction of the Judgment is that the teacher was wrongfully discharged and therefore could have continued, and should have been allowed to continue, to serve as an "employee," as that term is statutorily defined. In addition, as a result of the settlement in this case, the teacher received monies which took the place of the compensation she would have earned. Thus, in the context of the circumstances of this case, the time during which this suit was being resolved can be defined as "service," notwithstanding the teacher's failure actually to serve.^{4/}

^{4/} We understand that, for at least part of this period, the teacher has been re-employed in a job where she was not entitled to be a member of the Retirement System but was covered by Social Security. Of course, under § 1221, the person in question was not entitled to Social Security coverage when she was a teacher. Thus, there is the problem of giving her a windfall if all of the time during which the suit was being resolved is credited as membership service. But this problem is unavoidable if she is to receive any credit in the System for her lost time. In any event, we do not view the possibility of a windfall to the teacher as sufficient to preclude her rejoining the System.

The next question presented, whether the teacher is a "member" of the System for purposes of § 1094(2), can also be answered in the affirmative. The teacher was a member of the System before she was dismissed and until she withdrew her contributions. See § 1091(6). After her dismissal, she could have remained a member if she had left her contributions on deposit. Had she remained a teacher, she would have been required to continue as a member of the Retirement System. Further, upon being reinstated, the teacher had the right to redeposit her earlier contributions and get credit for that earlier period of service. § 1094(10). To allow her to deposit them now will not damage the statutory scheme or its underlying intent. When she deposits her original contributions, she would again become a member, and her deposit of contributions for the questioned period would be for service of a "member," under subsection (2) of § 1094. Once such contributions are made, the service in question will be "service of a member on account of which contributions [have been] made," § 1092(2), and it should be credited as membership service pursuant to § 1092(2).

The next question is how much creditable service she should receive and what amount should be used to calculate the amount of contributions due. Because this is not entirely a legal question and is not addressed specifically in the statute, we think that the Retirement System has some discretion in resolving it. That discretion, however, is limited in two ways. First, because this is a settlement agreed upon by adverse parties to a judicial dispute, the System ought to attempt to give effect to the intent of the parties to the extent that such intent can be discerned from the Stipulation.^{5/} Second, the decision of the arbitrator, which was ultimately confirmed by the Superior Court, provided for the teacher's reinstatement and said she should receive back pay. In other words, the arbitrator sought to make the wrongfully discharged person whole. This, too, should be a goal of the System in resolving this matter. Finally, the System is entitled to take into account the cost to the employer (in this case, the State) of various alternative approaches to effectuating a given settlement.

^{5/} We do not think that the System is under a legal obligation to give effect to this settlement since it was not itself a party to the underlying suit. In this particular case, however, the System's interests are not infringed if the settlement is effectuated.

There is little question that the teacher should get creditable service for the time which elapsed between her discharge and her reinstatement.^{6/} The real question is what salary basis should be used to calculate her contributions and her "average final compensation" upon retirement. The language of the Stipulation, which speaks in general terms of "compensation," is of little help on this issue. There appear to be two alternatives, each of which requires some speculation.^{7/} The first is to figure the person's contributions on the basis of a projected percentage increase in salary during the lost years. While it involves a certain amount of speculation, this approach is more realistic from the standpoint of the amount of contributions and the ultimate retirement benefit. The second approach is to calculate contributions based on the amount earmarked in the Stipulation as representing back wages (less the attorney's fee, if it can be determined with certainty). This approach would seem more precisely to give effect to the parties' intent, including

6/ We assume the litigation which caused the delay was undertaken by her in good faith and not to secure any particular benefit from the Retirement System. The fact that the additional approximately 7 years of creditable service which the teacher will receive gives her a total of approximately 13 years of service, some three more than the number needed to receive a minimum benefit, strongly supports this assumption.

7/ The fact that we decide creditable service is to be granted as a result of this very general Stipulation should not be taken as approving the practice of settling cases involving retirement benefits without specifying in detail the benefits to be afforded. Indeed, it is our hope that, in future, the Retirement System will be able to review settlements granting benefits on rights under the Retirement System prior to their finalization. An attempt to get prior review was made by one of the lawyers in this case but was never carried through by the System.

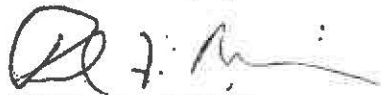
any possible setoff for wages earned while the litigation proceeded. It also results in a lower benefit and a lesser contribution, as well as probably being less costly to the employer, over the long run. Because neither of these alternatives would appear to exceed the limits on the System's discretion, as described above, the Retirement System could adopt either one.

We would note two problems raised by this case. First, in order for the Retirement System to give effect to settlements or court orders involving the granting of membership service for periods during which the member did not actually work for the State or a participating district but was litigating the question of the validity of his or her discharge, it is critical at the least that such orders or settlements spell out very specifically their intent with regard to this issue. Thus, the present practice of the System should continue. What should ultimately be developed is a procedure for notifying the Retirement System of suits raising issues dealing with creditable service so proposed settlements may be reviewed and approved by the System in advance, or so that the System may be a party, if necessary. Situations such as this, where two parties attempt to confer rights and benefits in the System in the absence of any input from the System, should be avoided in the future.

Second, the statute is silent as regards the general question of whether and to what extent settlements or court orders may determine rights in the Retirement System. It may be advisable to propose specific legislation to address this problem.

If you have any further questions with regard to this matter, please feel free to contact this office.

Very truly yours,



PAUL F. MACRI
Assistant Attorney General

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