

Date Issued: April 14, 1982 (AGO 82-28)

Requested by: Alan Person, Executive Director,
Public Employees Retirement System

- QUESTION PRESENTED -

Whether individuals who are employed by a participating school district as support staff (e.g., clerical personnel, janitorial workers, cooks, etc.) rather than as teachers, and whose employment is only during the school term which is nine or ten months are eligible to receive service credit under the Public Employees Retirement System (PERS) for those months of the year outside of the school term.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that individuals who are employed by a participating school district as support staff (e.g., clerical personnel, janitorial workers, cooks, etc.) rather than as teachers and whose employment is only during the school term which is nine or ten months are not eligible to receive service credit under the Public Employment Retirement System (PERS) for those months outside of the school term, during which time the support staff is not employed by or providing service to the participating school district.

- ANALYSIS -

Section 54-52-17 of the North Dakota Century Code states in part as follows:

54-52-17. FORMULATION OF PLAN. Participating members shall receive benefits according to this section and according to the rules and regulations promulgated by the retirement board. . .

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date or postponed retirement date. . . Part-time employment will be recognized as full-time employment on such prorated basis as the board may prescribe.

In accordance with the authority stated in section 54-52-17, N.D.C.C., the retirement board has promulgated a general rule for the determination of service credit. Section 71-02-03-01 of the North Dakota Administrative Code states in part as follows:

A member shall receive a month of service credit during each month in which the member works at least twenty hours per week . . .

It is clear from these provisions that an individual must be employed and rendering service during months for which service credit is granted. Individuals who are employed by a

participating school district as support staff, rather than as teachers, and who render service and receive compensation for only the nine or ten months of the school term receive service credit for each month of the school term. During each of the school term months, these individuals pay an assessment to PERS in accordance with section 54-52-05, N.D.C.C. Since these individuals are not employed by or providing service to a participating school district during the months outside of the school term, however, the individuals are not compensated during the months outside of the school term and are not subject to the payment of the assessment for those months which are outside of the school term. PERS benefits are based on several factors, including the months of service credit obtained. If the support staff of a participating school district were allowed to receive service credit and benefits in PERS based on twelve months employment, although the support staff is only employed and rendering service during the nine or ten months of the school year, such employees would receive a greater benefit as a result of each month of their actual employment and service than would be received by an individual who was employed and rendered service to a participating school district during twelve full months of the year. By allowing individuals to accrue service credits on the basis of each month of actual employment and service each participating member in PERS accrues service credit on an equal basis and no participating member receives service credit or benefits for months during which he or she was not employed and providing service.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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