

Opinion No. 89-05

February 15, 1989

OPINION OF: HAL STRATTON, Attorney General

BY: Andrea R. Buzzard, Assistant Attorney General

TO: Carlos A. Gallegos, Executive Secretary, Public Employees Retirement Association, P.O. Box 2123, Santa Fe, New Mexico 87504-2123

QUESTIONS

May Mr. Eluid Martinez receive free service credit under the Public Employees' Retirement Act ("PERA"), Sections 10-11-1 to 10-11-140 NMSA 1978, for the period when, as a participant in the Highway Department's cooperative work study training program established with New Mexico State University, Mr. Martinez was in "school phases."

CONCLUSIONS

No.

ANALYSIS

Mr. Eluid Martinez claims approximately two years and seven months free service credit under PERA during which period he rendered no service to the State and received no salary from the State. Therefore, no employer and employee contributions were paid to the Public Employees' Retirement Association ("Association") during this period. Mr. Martinez' claim arises out of his employment by the State Highway Department on June 24, 1963 as an Aide I under the Department's cooperative work study training program established with New Mexico State University. Mr. Martinez resigned from the program on April 1, 1968. Under this program, Mr. Martinez worked intermittently for the Department from June 24, 1963 to April 1, 1968 as Aide I, Aide II and student trainee. The dates Mr. Martinez worked for the Department were:

1. From June 24, 1963 to January 18, 1964;
2. From July 27, 1964 to January 29, 1965;
3. From August 9, 1965 to January 28, 1966;
4. From August 15, 1966 to January 24, 1967;
5. From July 17, 1967 to September 15, 1967.

Mr. Martinez's monthly salary during the times he worked was \$300 initially and was \$420 on September 15, 1967.

Mr. Martinez was a member of the Association during the times he worked for the Department and, therefore, has service credit for the periods during which he worked. Mr. Martinez was a student during the times he did not work, and the Department transferred him to the "school phase" when each work period concluded. The Department did not pay him a salary during these "school phases." Mr. Martinez claims free PERA service credit for these "school phases."

Under PERA, an individual must render personal service to an affiliated public employer to receive credited service. Subsection 10-11-4(A) provides: "Personal service rendered an affiliated public employer by a member shall be credited to the member's credited service account...." Subsections 10-11-4(C) and (D) reinforce the "personal service" requirement. Subsection 10-11-4(C) provides: "Personal service rendered an affiliated public employer prior to August 1, 1947 shall be credited...." Subsection 10-11-4(D) provides: "Personal service rendered an affiliated public employer after July 31, 1947 but prior to the date the public employer became an affiliated public employer is prior service and shall be credited...."

Mr. Martinez did not render personal service to the Highway Department during the months for which he claims service and, therefore, the Association may not grant him credited service for this period. And Subsection 10-11-4(A) prohibits granting more than one month's service for one month's work. That Subsection provides: "In no case shall any member be credited with a year of service for less than twelve months of service in any calendar year or more than a month of service for all service in any calendar month...." To receive a month's service, a member must work at least fifteen days in that month. PERA Rule 600.10(A). Having not worked at all during the months claimed, Mr. Martinez may receive no service credit for those months.¹

Moreover, Subsection 10-11-7(C) specifically addresses cooperative work study training and provides:

A member who was appointed to participate in a cooperative work study training program established jointly by the state highway department and the university of New Mexico or New Mexico state university may purchase credited service for the period of participation subject to the following conditions:

- (1) the member pays the association the purchase cost determined according to Subsection D of this section;
- (2) the member has five or more years of credited service acquired as a result of personal service rendered in the employ of an affiliated public employer; and
- (3) the aggregate amount of credited service purchased under this subsection does not exceed five years.

Subsection 10-11-7(D) specifies the cost: "[T]he purchase cost for each year of credited service purchased under the provisions of this section is equal to the member's final average salary multiplied by the sum of the member contribution rate and employer contribution rate, determined in accordance with the coverage plan applicable to the member at the time payment is made..." To receive service credit under PERA for the period a member participated in a cooperative work study training program that Subsection 10-11-7(C) describes, a member must pay for it; the service is not free. We also note that in only two instances is service under PERA free: (1) service rendered to an affiliated public employer before August 1, 1947; and (2) military service, if a member has left public employment to enter the armed services on active duty status, becomes reemployed by an affiliated public employer within ninety days of his discharge, and satisfies other conditions.

Accordingly, we conclude that Mr. Martinez may not obtain free service under PERA for the period of time he was in "school phases" under the Highway Department's cooperative work study training program.

ATTORNEY GENERAL

HAL STRATTON Attorney General

GENERAL FOOTNOTES

[n1](#) Mr. Martinez incorrectly compares his situation to that of teachers covered under the Educational Retirement Act ("ERA"), Sections 22-11-1 to 22-11-45 NMSA 1978 (Repl. 1986), who may not work in the summer. ERA grants service credit in quarters and ERA requires earnings within a quarter to receive a quarter's service. See ERB rule IV (A)(2): "Earned service credit shall be granted...on a quarterly basis and a member shall receive one quarter of credit for each calendar quarter in which he has earnings from regular employment." Thus, a teacher who works in May will receive a quarter's service from April through June; a teacher who works in September will receive a quarter's service from July through September. But PERA does not grant service in quarters. PERA service is credited in months and years and requires that personal service be rendered during such time to receive service credit.