

## **Opinion No. 89-17**

May 16, 1989

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Andrea R. Buzzard, Assistant Attorney General

**TO:** Natalie Babcock, Ed. D., Director, State Personnel Office, 810 W. San Mateo Road, Santa Fe, New Mexico 87503. Jacki Riggs, Acting Secretary, New Mexico Youth Authority, 1422 Paseo de Peralta, Santa Fe, New Mexico 87501

### **QUESTIONS**

Do employees who have been transferred to the New Mexico Youth Authority retain annual leave and sick leave accrual rates of the judicial branch's personnel rules pursuant to 1988 N.M. Laws, ch. 101, § 47(C)?

### **CONCLUSIONS**

No.

### **ANALYSIS**

Several employees who were employed by the judicial branch of government and thus covered under the personnel rules of that branch have been transferred to the New Mexico Youth Authority, a state agency covered by the state personnel rules. A bill passed during the 1988 legislative session provides that the transferred employees shall not forfeit "accrued benefits" but shall otherwise be subject to state personnel rules. We are asked whether 1988 N.M. Laws, ch. 101, § 47(C) "grandfathers" the judicial branch's benefit accrual rate, as well as accrued benefits, for the employees transferred. We conclude that it does not.

1988 N.M. Laws, ch. 101, § 47(C) provides:

At the time of transfer, the juvenile probation officers, support staff and chiefs shall retain their current classification and salary. Benefits including but not limited to annual leave, sick leave, pension and insurance benefits shall be established in accordance with the Personnel Act, provided no accrued benefits shall be forfeited. Those juvenile probation officers and chiefs employed after July 1, 1988 shall be subject to a classification plan that will be established in accordance with the Personnel Act.

(Emphasis added.) This legislation directs that: (1) transferees will retain their existing classification and salary; (2) the benefit package of transferees will be established by the State Personnel Office under the Personnel Act; (3) transferees will not lose any

"accrued benefits;" and (4) juvenile probation officers and chiefs hired after July 1, 1988 will be hired in accordance with state personnel's classification plan.

In determining the extent of rights retained by the transferred employees, it is important to determine the meaning of "accrued benefits" as that term is used in § 47(C). If "accrued benefits" refers to those benefits already earned and not to the right to receive benefits at a particular rate then the transferred employees cannot continue to accrue benefits as provided under the judicial branch's personnel rules. On the other hand, if "accrued benefits" refers to the rate of accrual as well as to the benefits accrued then the transferred employees are entitled to continue to accrue benefits at the rate provided under the judicial system's rules.

Our review of cases and other authorities defining "accrued" convinces us that "accrued benefits" refers only to the benefits actually earned by the transferred employees and not to the right to accrue future benefits at a particular rate. In common usage, "accrued" means "accumulated." *Evo v. Jomac, Inc.*, 119 N.J. Super. 7, 18-19, 289 A.2d 551, 556-57 (1972) (amendment to a pension plan would not deprive participant of such benefits which had accrued to him before amendment; clause protecting accrued benefits prevented forfeiture of all accumulations which were credited to participant at time of amendment). "Accrue" is synonymous with "accumulate" and means "to be periodically accumulated." *Websters Third New International Dictionary* at 13 (1961). When the New Mexico Judicial Branch Personnel Rules (JBPR) use the terms "accumulated sick leave" or "accrued annual leave," those terms mean unused, accumulated leave. See Rule 29(B)(6) ("Forfeiture of accrued annual leave as a disciplinary action shall not be authorized"); Rule 29(B)(7) ("No employee shall lose accrued annual leave because of a promotion, demotion or transfer within the judicial branch"); Rule 30(C)(5) ("No employee shall lose accumulated sick leave because of a promotion...within the judicial branch.... The accumulated sick leave of an employee transferring within the judicial branch shall be accepted by the administrative authority to whom that employee is transferring"); Rule 33(A) ("Upon separation from service...an eligible employee shall be compensated for all his unused accrued annual leave, subject to the maximum permitted"); Rule 33(B) ("[A]n employee...who has accumulated 600 hours of unused sick leave shall be entitled [to a certain payment]").

We also believe that the intent of the legislature is clear from the language of the statute. Section 47(C) clearly provides that the transferred employees shall be subject to state personnel rules except in limited areas, one of which is the matter of "accrued benefits." Had the legislature intended to preserve old accrual rates as well as those benefits actually accrued, it would have provided in Section 47(C) that the transferred employees retain the right to accrue benefits at the rate they enjoyed under the judicial system's personnel rules.

Thus, Section 47(C) does not "grandfather" accrual rates, but rather protects employees from forfeiture of unused, accumulated sick or annual leave.<sup>1</sup> Accordingly, while the transferred employees retain their accrued benefits, they do not retain the annual leave and sick leave accrual rates of the judicial branch's personnel rules.

## **ATTORNEY GENERAL**

HAL STRATTON Attorney General

### **GENERAL FOOTNOTES**

[n1](#) We make the following comparison of State Personnel Rules for classified employees and JBPR regarding accrual rates of sick and annual leave:

1. Judicial branch employees earn annual leave, depending on length of service, at the rate of 120 hours per year to 192 hours per year. JBPR Rule 29(A).
2. Classified employees earn 4.61 hours of annual leave per pay period (119.86 hours per 26-pay period year). SPB Rule 13.1(A).
3. Judicial branch and classified employees may accumulate no more than 240 hours of annual leave each year, and the excess is forfeited. JBPR Rule 29(A) and (B)(3); SPB Rule 13.1(F).
4. Judicial branch employees earn sick leave at the rate of 12 days (96 hours) per year.
5. Classified employees earn sick leave at the rate of 3.69 hours per pay period (95.94 hours per 26-pay period year). SPB Rule 13.2(A).