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AUG 24 2015
MPERA

Tom L. Lewis
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Ross T. Johnson

August 21, 2015

Montana Public Employees' Retirement Board
P. O. Box 200131
Helena, MT 59620-0131

RE: Brad Lins
Our File No. 14-050

Dear Members of the Board:

Enclosed for filing before the Montana Public Employees' Retirement Board please find the original and a first-page copy of a Petition for Declaratory Ruling. Please file the original and conform the copy, returning the copy to our office in the self-addressed, stamped envelope provided.

Thank you.

Sincerely,

Ben A. Snipes

BAS/sb
Encls.
c: Brad Lins

Ben A. Snipes
LEWIS, SLOVAK, KOVACICH & SNIPES, P.C.
P.O. Box 2325
Great Falls, MT 59403
(406) 761-5595

Attorneys for Petitioner

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

IN THE MATTER OF:	)
BRADLEY LINS,	)
	)
Petitioner.	)

PETITION FOR DECLARATORY RULING

COMES NOW THE PETITIONER, Bradley Lins, by and through the undersigned counsel, and petitions the Public Employees' Retirement Board (hereafter Board) for a declaratory ruling pursuant to Mont. Code Ann. § 2-4-501. The Petitioner alleges as follows:

NATURE OF ACTION

1. This is an action for declaratory ruling filed pursuant to § 2-4-501, MCA.

2. Petitioner seeks the Board's declaration that Petitioner is entitled to reinstate his membership service for the months of March and April of 1999, per § 19-2-603, MCA, by redepositing the sum of the accumulated contributions that were refunded to Petitioner plus the interest that would have been credited to Petitioner's accumulated contributions had they not been refunded.

PETITIONER'S ALLEGATIONS OF FACT

3. Petitioner was at all times relevant to this matter a resident of Great Falls, Cascade County, Montana.

4. Petitioner was an employee of Cascade County from 1991 to 1999. § 19-2-303(25), MCA. During that time Petitioner occupied a covered position and was a member of the Public Employees' Retirement System (hereafter PERS). § 19-2-303(14), MCA; § 19-2-303(32), MCA. Petitioner's employment and service with Cascade County terminated in April of 1999. § 19-2-303(52), MCA; § 19-2-303(53), MCA. During this tenure, Petitioner accumulated seven (7) years and nine (9) months of membership service credit. § 19-2-303(33), MCA.

5. Upon the termination of his service with Cascade County, Petitioner's accumulated contributions with the PERS were refunded.

6. Petitioner was subsequently hired by Cascade County on November 16, 2009. On that date, Petitioner chose to voluntarily decline membership with the PERS.

7. In February of 2010, pursuant to §§ 19-3-401 and 19-3-412, MCA, Petitioner again became a member of PERS when the total hours he worked exceeded nine hundred and sixty (960) hours for the fiscal year he was employed by Cascade County. Accordingly, Petitioner again began accumulating PERS membership service in February of 2010.

8. Petitioner suffered work-related injuries to his shoulders in March of 2014, in the course of his employment. Petitioner's injuries required two surgeries in 2014. Petitioner received workers' compensation temporary total disability benefits from April to November of 2014. Upon being released to return to work by his surgeon, Petitioner was informed by Cascade County that it could not accommodate his shoulder limitations and terminated his employment.

9. At the time of his termination, Petitioner had accumulated four (4) years and ten (10) months of membership service credit.

10. On July 31, 2015, Petitioner sought to reinstate two (2) months of the membership service (March and April 1999) that was refunded to him in 1999, pursuant to § 19-2-603, MCA. See Petitioner's July 31, 2015 correspondence attached hereto as Exhibit A.

11. It is Petitioner's intention to reinstate the March and April 1999 membership service by redepositing the sum of the March and April 1999 accumulated contributions that were refunded to him at the termination of his membership in 1999 plus the interest that would have been credited to his accumulated contributions had the 1999 refund not taken place. § 19-2-603, MCA. Petitioner's request for reinstating his membership service was denied by the Montana Public Employee Retirement Administration (hereafter MPERA), on August 7, 2015. See PERS correspondence attached hereto as Exhibit B. The MPERA based the denial upon its interpretation that § 19-2-704(2), MCA requires a person to be an active or vested inactive member to reinstate membership service credit under § 19-2-603, MCA. Petitioner seeks a declaration regarding his ability to reinstate his withdrawn contributions per § 19-2-603, MCA.

LEGAL ANALYSIS

12. The Board "shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision. . . ." § 2-4-501, MCA (2013). "A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases." *Id.*; Admin. R. Mont. 1.3.229(2) (2014).

13. The statutory provisions at issue must be interpreted in accordance with the rules of statutory construction, § 1-2-101, *et seq.*, MCA. General rules of statutory construction require the tribunal to interpret the statutory language before it, without

adding to, or subtracting from, it. § 1–2–101, MCA. The tribunal may not insert what has been omitted or omit what has been inserted. *Id.* Words and phrases used in statutes of Montana are construed according to the context and the approved usage of the language. § 1–2–106, MCA. Therefore, when interpreting statutes, this Court will use the plain and ordinary meaning of a word. *Carroll v. W.R. Grace & Co.*, 252 Mont. 485, 487, 830 P.2d 1253, 1254 (1992).

14. The statute allowing for reinstatement of PERS membership service after termination of a previous membership, § 19-2-603, MCA, provides:

> Except as otherwise provided in chapter 3, part 21, of this title and this section, **a person who again becomes a member** of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated.

(Emphasis added)

15. In relevant part, § 19-2-603, MCA unambiguously grants the ability to reinstate prior membership service to a person who again becomes a member of a defined benefits plan. *Id.* There is no reasonable dispute that Mr. Lins is a person. Or, that he is a member of a defined benefit plan. "Member," for purposes of interpreting title 19, chapter 2, is defined as:

> (32) "Member" means either:
>
> (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

§ 19-2-303(32), MCA.

By virtue of his accumulated contributions in the PERS, Mr. Lins is a "member." As a defined "member" of the PERS, he is entitled to reinstate his prior membership service by redepositing his prior accumulated contributions plus the interest that would have accrued. § 19-2-603, MCA. To find otherwise is to render the term "member" meaningless and is expressly prohibited by the controlling case law. "Statutes must be so construed that no word therein is to be considered meaningless, if such a construction can be reasonably found that will give it effect." *State v. Heath*, 2004 MT 126, ¶ 31, 321 Mont. 280, ¶ 31, 90 P.3d 426, ¶ 31 citing *In re Wilson's Estate,* 102 Mont. 178, 193, 56 P.2d 733, 736 (1936). "We are required to avoid any statutory interpretation that renders any sections of the statute superfluous and does not give effect to all of the words used." *Id.* citing *State v. Berger*, 259 Mont. 364, 367, 856 P.2d 552, 554 (1993).

16. Because § 19-2-603, MCA can be construed according to its plain meaning, and its language is clear and unambiguous, no further interpretation is required. *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, ¶ 46, 14 P.3d 487, ¶ 46. As such, it would be injudicious to interject limiting language from another statute or advocate policy arguments concerning legislative intent in order to alter the intent of the statute. *Id.*

17. Contrary to the August 7, 2015 finding of the PERS, § 19-2-704(2), MCA has no bearing on the construction or interpretation of § 19-2-603, MCA. § 19-2-704(2) states:

> (2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to **purchase or transfer**

service credit, membership service, or contributions.

(Emphasis added).

§ 19-2-704(2), MCA limits only the purchase or transfer of service. The purchase of service is contemplated under § 19-2-715, MCA, allowing for the purchase of public service concerning another public retirement entity and/or previous employment with the state or a political subdivision of the state. See § 19-2-715(1)-(2), MCA. § 19-2-709, MCA permits the transfer of service and contributions from other Montana public employee retirement systems. Petitioner is seeking to neither purchase nor transfer membership service. Rather, Petitioner's request is limited to reinstating withdrawn contributions by redepositing refunded sums, plus interest, per § 19-2-603, MCA. The process of reinstating withdrawn contributions is entirely distinct from that of the processes to purchase or transfer service and is not limited by § 19-2-704(2), MCA. According to the plain language of the statutes, § 19-2-603, MCA is neither subordinate to nor modified by § 19-2-704(2), MCA.

18. Confirmation that the process of redepositing accumulated contributions is distinct from the process of purchasing service is found at § 19-2-704(3), MCA. Therein, it is noted that either redepositing accumulated contributions or purchasing service credit can be done by lump sum or installment payments. See § 19-2-704(3), MCA. There would be no reason to distinguish the two processes in § 19-2-704(3), MCA, if the intent was to include redepositing accumulated contributions as part of the process of purchasing service credit. The distinction between redepositing prior contributions and purchasing service is unambiguous and explicit. See § 19-2-704(3), MCA.

CONCLUSION

Petitioner is a member of the PERS seeking to reinstate prior contributions per § 19-2-603, MCA. This reinstatement process is distinct from the purchase or transfer of service identified § 19-2-704(2), MCA. As such, Petitioner requests a declaration confirming his entitlement to reinstate his previously accumulated membership service for the months of March and April of 1999, per § 19-2-603, MCA, by redepositing the sum of the accumulated contributions that were refunded to Petitioner plus the interest that would have been credited to Petitioner's accumulated contributions had they not been refunded.

DATED this 21st day of August, 2015.

LEWIS, SLOVAK, KOVACICH & SNIPES, P.C.

BY: _____

Ben A. Snipes
P.O. Box 2325
Great Falls, MT 59403
Attorneys for Petitioner

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Tom L. Lewis
J. David Slovak
Mark M. Kovacich

Ben A. Snipes
Ross T. Johnson

July 31, 2015

Jennifer Harnden
Member Services Analyst
MPERA
P. O. Box 200131
Helena, MT 59620

RE: Brad Lins
Our File No. 14-050

Dear Ms. Harnden:

I am writing in response to your July 17, 2015 email wherein you advised that Mr. Lins has 4 years and 10 months of membership service. In reference to the service summary you provided to our office we have a few inquiries that will require your attention. First, we have been informed that Mr. Lins' hire date with Cascade County was November 16, 2009. Mr. Lins, by this service summary, did not receive membership service until February of 2010. Please confirm Mr. Lins' November 16, 2009 hire date and advise the basis for the withholding of membership service until February of 2010.

Second, if Mr. Lins is unable to obtain service credit dating back to November of 2009 he is interested in reinstating the membership service that was refunded to him in 1999. In particular Mr. Lins is seeking to reinstate his membership service for the months of March and April of 1999 to be included with his recognized 4 years and 10 months of membership service. Mr. Lins' request for reinstatement of membership service is presented pursuant to § 19-2-603 MCA. Please confirm Mr. Lins' eligibility for reinstatement of his refunded service from March and April of 1999 and confirm the sum of the contribution necessary to accomplish the same.

Best wishes.

Sincerely,

Ben A. Snipes

BAS/sb
c: Brad Lins

EXHIBIT A

MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

STEVE BULLOCK
GOVERNOR

DORE SCHWINDEN
EXECUTIVE DIRECTOR

STATE OF MONTANA

HELENA (406) 444-3154
TOLL FREE (877) 275-7372
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RECEIVED
AUG 11 2015
LEWIS, SLOVAK,
KOVACICH & SNIPES, PC

August 7, 2015

Mr. Ben A. Snipes
Lewis, Slovak, Kovacich & Snipes, P.C.
725 3rd Avenue North
P.O. Box 2325
Great Falls, MT 59403

Re: Bradley Lins

Dear Mr. Snipes:

The Montana Public Employee Retirement Administration (MPERA) is in receipt of your letter dated July 31, 2015. With regard to your first inquiry, Mr. Bradley Lins was hired by Cascade County on November 16, 2009. On that same date, pursuant to § 19-3-412(b), MCA, Mr. Lins chose to voluntarily decline membership with the Public Employees' Retirement System (PERS) on his PERS Optional Membership Election Form. This election by Mr. Lins prevented him from receiving any membership service credit in PERS for the period of November 16, 2009 to February of 2010.

In February of 2010, pursuant to §§ 19-3-401 and 19-3-412, MCA, Mr. Lins became a mandatory member of PERS when the total hours worked by Mr. Lins exceeded nine hundred and sixty (960) hours for the fiscal year he was employed by Cascade County. Due to this, Mr. Lins began to receive PERS membership service credit this same month but not for any previous month when he had not yet become a mandatory member of PERS.

With regard to your second inquiry, Mr. Lins is not eligible to reinstate service credit refunded to him for the months of March and April of 1999 under § 19-2-603, MCA. As specified under § 19-2-704(2), MCA, only "active or vested inactive members" are eligible to purchase or transfer service credit. Since Mr. Lins was terminated from employment in November of 2014 before becoming vested, he does not meet the statutory criteria for reinstating service credit under § 19-2-603, MCA.

Should you have any further questions, you may contact me directly at (406) 444-5423.

Regards,

William J. Holahan
MPERA Legal Counsel

EXHIBIT B

William J. Holahan
100 N Park Suite 200
P.O. Box 200131
Helena, MT 59620-0131
Telephone: (406) 444-5423

Attorney for the Montana Public
Employee Retirement Administration

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

IN THE MATTER OF)
BRADLEY LINS)

MPERA'S RESPONSE TO PETITIONER'S PETITION FOR DECLARATORY RULING

COMES NOW the Montana Public Employee Retirement Administration ("MPERA"), by and through its attorney of record, William J. Holahan, to submit this brief in response to Petitioner's request for a declaratory ruling from the Public Employees' Retirement Board ("MPERB").

I. Factual Background

Mr. Bradley Lins, an inactive and nonvested member of the Public Employees' Retirement System ("PERS"), originally began working as a PERS covered employee for Cascade County in January of 1991. Mr. Lins continued working as an employee of Cascade County until his termination in April of 1999. Upon Mr. Lins's termination with Cascade County, he filed an Application for Lump-Sum Withdrawal of Contributions and on May 14, 1999 a lump-sum withdrawal of his accumulated contributions was paid to Mr. Lins in the amount of $14,782.82. This amount reflected seven (7) years and 6.95 months' worth of membership service in PERS.

On November 16, 2009, Mr. Lins was again hired into a PERS-covered position by Cascade County. However, since Mr. Lins was scheduled to work less than 960 hours in a fiscal year, participation in PERS was optional. Pursuant to § 19-3-412(b), MCA, Mr. Lins chose on November 16, 2009, to voluntarily decline membership with PERS on his PERS Optional Membership Election Form. In February of 2010, pursuant to §§ 19-3-401 and 19-3-412, MCA, Mr. Lins became a mandatory member of PERS when the total hours worked by Mr. Lins exceeded nine hundred and sixty (960) hours for the fiscal year he was employed by Cascade County.

In March of 2014, Mr. Lins suffered reported shoulder injuries and began to receive workers' compensation disability benefits that lasted from April of 2014 to November of 2014. On November 17th, 2014, Mr. Lins was terminated from his position with Cascade County. In addition to crediting Mr. Lins with all months of membership service he accrued from February 2010 to April of 2014, pursuant to § 19-3-504, MCA, MPERA also credited Mr. Lins with six (6) months of membership service for all of the months in which he did not work after his injury and was receiving workers' compensation disability benefits. Because of this, Mr. Lins had accumulated four (4) years and ten (10) months of PERS membership service when he was terminated by Cascade County in November of 2014.

On July 31, 2015, MPERA received a request by Mr. Lins's counsel to reinstate previously refunded membership service and service credit for the months of March and April of 1999 pursuant to § 19-2-603, MCA. On August 7, 2015, after a formal review of Mr. Lins's request, MPERA notified Mr. Lins's counsel that he was not entitled to reinstate membership service and service credit refunded to him for the months of March and April 1999. (Exhibit 1). In response to MPERA's August 7, 2015, decision, Mr. Lins has requested a declaratory ruling from the Board

with regard to his ability to reinstate membership service and service credit previously refunded to him pursuant to § 19-2-603, MCA.

II. Legal Analysis

A. Membership Service and Service Credit, Generally

The Montana public employee retirement systems have two different ways of measuring service, membership service and service credit. These two measurements are used for different purposes.

"'Membership service' means the periods of **service** that are used to determine eligibility for retirement or other benefits." § 19-2-303(33), MCA, (bold added for emphasis) (Chapter 2 of Title 19 applies to PERS by the terms of § 19-2-302, MCA). Similarly, § 19-2-702, MCA, requires service, although the amount of service isn't significant.

> A member who is not retired must receive membership service for all periods of **service**, regardless of hours worked or compensation received during that **service**. The membership service must be used to determine:
> (1) whether a member is vested;
> (2) when the member is eligible for service retirement, early retirement, or disability retirement; or
> (3) the eligibility of beneficiaries for survivorship benefits.

§ 19-2-702, MCA (bold added for emphasis).

"'Service credit' means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan." § 19-2-303(47), MCA.

The distinction between "membership service" and "service credit" can most easily be seen with a simple example. If a member works 10 hours a month every month for 5 years, the member will have 5 years of membership service, but the member will only have 1¼ years of service credit (one quarter time for 5 years). Because the member has 5 years of membership

service, the member is vested, and therefore, for example, is eligible to receive a disability benefit within PERS.

"'**Service**' means **employment** of an **employee** in a position covered by a retirement system." § 19-2-303(46), MCA (bold added for emphasis). The administrative rules provide a basic definition of "employment", which "will be applied to the statutes unless a contrary meaning clearly appears." A.R.M. 2.43.1302. "'Employment' or 'reemployment' means the **performance of services** for an employer by a person other than an independent contractor." A.R.M. 2.43.1302(6) (bold added for emphasis). "'Employee' means a person who is employed by an employer in any capacity and whose **salary** is being paid by the employer...." § 19-2-303(25), MCA (bold added for emphasis).

In summary, service can be attained by a member in a retirement system by the performance of services for a salary. In the matter at hand, the issue is membership service and therefore, eligibility to reinstate membership service.

B. Mr. Lins's Status as an Inactive, Nonvested Member of PERS Prevents Him From Reinstating Membership Service Under Montana Law

1. Inactive and Nonvested PERS Members Cannot Purchase Membership Service

Chapter 2 of Title 19 is applicable to all Board administered retirement systems, including PERS. § 19-2-302, MCA. The statutory framework of PERS is otherwise contained in Chapter 3 of Title 19.

Montana Code Ann. § 19-2-603 explains when a member is able to reinstate membership service under this section of the code and states:

> . . . a person who again becomes a member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person may reinstate that membership service or service credit

> by **redepositing** the sum of accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place.

§ 19-2-603, MCA, (emphasis added).

To be eligible to reinstate membership service under § 19-2-603, MCA, a PERS member must either be an active or vested member of PERS. § 19-2-704, MCA. This requirement is set forth clearly in § 19-2-704(2), MCA, which explains "only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions." For purposes of this statute, a vested member of PERS is one "who has at least 5 years of membership service." § 19-2-401(56), MCA. Mr. Lins became an inactive member of PERS when he was terminated in November of 2014. In addition, at Mr. Lins's termination he had not yet accrued 5 years of membership service and was not fully vested.

2. A Redeposit of Accumulated Contributions is a Purchase of Membership Service

In Mr. Lins' petition he contends that he is "seeking to neither purchase nor transfer membership service," and further contends that the "process of reinstating withdrawn contributions is entirely distinct from that of the processes to purchase or transfer service," (Lins Petition for Declaratory Ruling, p. 6). Though this is Mr. Lins's contention, it becomes readily apparent that this argument is incorrect when examining both the process of reinstating and purchasing membership service.

More specifically, a comparison of these two terms clearly shows they do indeed have the same meaning. In each instance, for both a purchase and a reinstatement of membership service, an individual must initiate a monetary transaction in which they pay funds to MPERA's accounting department in order to receive membership service. For example, under § 19-3-503,

MCA, a PERS member can purchase service credit and membership service for up to five (5) years of the members' active service in the armed forces of the United States. This process allows for the member to complete this purchase by making a lump-sum payment in cash or personal check made out to MPERA. ARM 2.43.2301. This is the same exact process that must be effectuated when an eligible member of PERS begins the process of reinstating previously refunded service. In simple terms, money must flow from the member's possession to MPERA in exchange for membership service. As such, there is absolutely no distinction between a "reinstatement" or a "purchase" of membership service in terms of what is required of a PERS member to do in order to receive such credit. Though two different words are used, the processes they reflect are synonymous with one another.

Further, as Mr. Lins's counsel points out, the Montana Supreme Court will use the "plain and ordinary meaning of a word" when interpreting a statute. Carroll v. W.R. Grace & Co., 252 Mont. 485, 487, 830 P.2d 1253, 1254 (1992). (Lins Petition for Declaratory Ruling, p. 4). Section 19-2-603, MCA, specifically uses the term "redepositing" when describing the process of reinstating membership service and service credit. The plain and ordinary meaning of a "redeposit" is a repayment of funds to the retirement system trust fund by a PERS member in exchange for membership service and service credit. This is a purchase or buyback of previously refunded membership service and service credit and not a process that is distinct from another type of membership service and service credit purchase. As such, there can be no mistaking the fact that the word "redeposit" means a purchase when describing the process that must be followed under § 19-2-603, MCA.

Though Mr. Lins's counsel attempts to make a distinction between a "reinstatement" and a "purchase" of membership service and service credit in his petition, and points to § 19-2-

704(3), MCA, as proof of legislative intent for such a distinction, there is absolutely no practical difference between the two processes within PERS. In fact, Mr. Lins's counsel readily concedes this point in his petition when he states, " . . . it is noted that either redepositing accumulated contributions or purchasing service credit can be done by lump sum or installment payments." (Lins Petition for Declaratory Ruling, p. 6). Though Mr. Lins's counsel contends that the two processes were intended to be distinct and that evidence of this intent lies within § 19-2-704(3), where the two terms appear separately, the much clearer legislative intent can be derived from the way in which § 19-2-704(3) describes the way in which the process of payments are to be made under both terms. More specifically, the statutory language of § 19-2-704(3), MCA, states that both a redeposit or a purchase of membership service and service credit can be made by "lump-sum payment by personal check or rollover of funds from another eligible plan, . . . installment payments, or . . . a combination of a lump-sum payment and installment payments." As noted above, a clear reading of the statute demonstrates that a "reinstatement" and a "purchase" are the same exact process.

Furthermore, pursuant to § 1-2-107, MCA, by describing the term "member" as an inactive or vested member in § 19-2-704(2), clear legislative intent can also be inferred that the term "member" in § 19-2-704(3) is synonymous with the previous description appearing directly before it within the same statute. Legal authority for this position is contained in § 1-2-107, MCA, which states that "whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where contrary intention plainly appears." As such, the Montana Supreme Court has held that where the plain intent of the legislature does not show that a particular definition is to be applied to only one particular portion of the code, the general use of the definition can be applied to other parts

of the code without limitation. Department of Revenue v. Gallatin Outpatient Clinic, 234 Mont. 425, 430 (Mont. 1988).

C. MPERA's Interpretation of the Law Must Be Given Deference

The MPERA Board has constitutional and statutory authority to administer the PERS. Montana Constitution, Article VIII, Section 15(2), Mont. Code Ann. § 19-2-403(1). Further, under Mont. Code Ann. § 19-2-403(2), the PER Board is charged with the duty to "establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established." The Board is also "the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems." Mont. Code Ann. § 19-2-403(4). In addition, under Mont. Code Ann. § 19-2-403(6), "benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to benefits." The above mentioned sections grant the Board the authority to interpret the statutes which they are to enforce through either rulemaking or the contested case process. Such agency interpretation of a statute is granted deference by the courts of Montana. Burlington Res. Oil & Gas Co., LP v. Lang & Sons Inc., 2011 MT 199 ¶ 36, 361 Mont. 407, 259 P.3d 766 (holding that "[t]his Court generally grants deference to an agency's interpretation of a statute."). Further, "an administrative agency's interpretation of a statute under its domain is presumed to be controlling" and "the construction of a statute by the agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong." Christenot v. State, Dep't of Commerce, 272 Mont. 396, 401, 901 P.2d 545 (1995). It has been MPERA's longstanding interpretation and application of Mont. Code Ann. §§ 19-2-603 and 19-2-704(2) that only "active

or vested inactive members" are able to engage in a transaction with MPERA to receive service credit.

As the Montana Supreme Court has stated "whether the agency correctly interpreted its own rules, procedures, or policies, the agency's interpretation should be afforded great weight, and the court should defer to this interpretation unless it is plainly inconsistent with the spirit of the rule." Knowles v. State ex rel. Lindeen, 2009 MT 415, ¶ 22. The Montana Supreme Court has also routinely stated that the interpretation by administrative boards over statutes under their respective domains should be given deference. Montana Power Co. v. Public Service Com'n, 2001 MT 102, ¶¶ 23-25, 305 Mont. 260, ¶¶ 23-25, 26 P.3d 91, ¶¶ 23-25; Sleath v. West Mont Home Health Services, 2000 MT 381, ¶ 37, 304 Mont. 1, ¶ 37, 16 P.3d 1042, ¶ 37, cert denied by Dow AgroSciences LLC v. Sleath, 534 U.S. 814, 122 S. Ct. 40, 151 L. Ed. 2d 13 (2001); Dept. of Revenue v. Kaiser Cement Corp., 245 Mont. 502, 507, 803 P.2d 1061, 1064 (1990). Further, as explained by the Montana Supreme Court, "reasonable construction must be adopted if possible, with deference shown to the interpretation given to the statutes by the officers or agencies charged with its administration." Montana Dep't of Revenue v. Kaiser Cement Corp., 245 Mont. 502, 803 P.2d 1061, 1064 (1990).

D. The Rules of Statutory Construction Make Clear That Mr. Lins Is Also Not Entitled to a Reinstatement of Membership Service and Service Credit

Petitioner's counsel invokes § 1-2-101, MCA, for the principle that MPERA is not to insert what has been omitted or omit what has been inserted when it comes to interpreting and applying a statute. However, when it comes to applying both §§ 19-2-603 and 19-2-704(2), MCA, MPERA is neither adding to nor subtracting from these statutes. Rather, MPERA's interpretation of these two statutes is directly in line with the law of statutory construction developed by the Montana Supreme Court.

More specifically, under the rules of statutory construction laid out by the Montana Supreme Court, "where one part of the law deals with a subject in general and comprehensive terms, while another part of it deals in a more minute and definite way, the two parts should be read together, and, if possible, harmonized, with a view to giving effect to a consistent legislative policy." E.H. Oftedal & Sons v. State, 2002 MT 1, ¶ 19 (2002). Additionally, the Montana Supreme Court has held that "where several statutes may apply to a given situation, such a construction, if possible, is to be adopted as will give effect to all." City of Bozeman v. Racicot, 253 Mont. 204, 208-209 (Mont. 1992).

MPERA's position that § 19-2-704(2), MCA, prevents Mr. Lins from utilizing § 19-2-603, MCA, to reinstate membership service and service credit is directly in line with the above statutory construction tenet established by the Montana Supreme Court. Section § 19-2-603, MCA, speaks generally to a "member" engaging in a transaction to "redeposit" funds in order receive membership service and service credit previously refunded to the member. Section 19-2-704(2), MCA, speaks to member transactions for membership service and service credit in a more definite and minute way. More specifically, during the 1997 legislative session the Montana Legislature enacted legislation which inserted language into § 19-2-704(2), MCA, allowing "only active or vested inactive members" to purchase or transfer service credit. This amendment became effective on April 23rd, 1997. The clear intent of the legislature in enacting this change to § 19-2-704, MCA, was to ensure that only active or vested inactive members would be permitted to enter into a transaction with MPERA in exchange for membership service and service credit. In order to achieve this goal, it has been MPERA's longstanding interpretation and position that § 19-2-603, MCA, be read together with § 19-2-704, MCA, and that the specific parameters laid out for

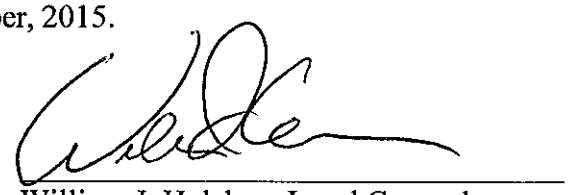
membership service purchases in § 19-2-704, MCA, must be applied to § 19-2-603, MCA, in order to properly administer these sections and carryout the policy of the legislature.

Mr. Lins's counsel cites to the Montana Supreme Court's holding in Infinity Ins. Co. v. Dodson, 2000 MT 287, ¶ 46, 302 Mont. 209, ¶ 46, 14, P.3d 487, ¶ 46 to support the notion that it would be "injudicious to interject limiting language from another statute or advocate policy arguments concerning legislative intent in order to alter the intent of the statute." (Lins Petition for Declaratory Ruling, p. 5). However, the holding of the Montana Supreme Court in this case does not say this, and in actuality the court states that, "it would be injudicious for this Court to follow jurisdictions where the intent of an entire statute turns on the word "and" or its intent is construed by what it 'seems' to mean." Infinity Ins. Co. at ¶ 46. This misquote has a significant impact on counsel's argument as the Montana Court Supreme Court never stated it would be "injudicious" to "interject limiting language from another statute" in it's holding in this case as counsel contends.

III. Conclusion

As explained above, since Mr. Lins was terminated from employment in November of 2014 before becoming vested, he does not meet the statutory criteria for reinstating membership service and service credit under § 19-2-603, MCA. MPERA's current interpretation and application of §§ 19-2-603 and 19-2-704(2), MCA, is directly in line with rules of statutory construction promulgated by the Montana Supreme Court and deference must be given to MPERA's interpretation of these two statutory provisions.

DATED this 23rd day of September, 2015.



William J. Holahan, Legal Counsel
Montana Public Employee Retirement Administration

Exhibit 1

MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

STEVE BULLOCK
GOVERNOR

DORE SCHWINDEN
EXECUTIVE DIRECTOR

STATE OF MONTANA

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August 7, 2015

Mr. Ben A. Snipes
Lewis, Slovak, Kovacich & Snipes, P.C.
725 3rd Avenue North
P.O. Box 2325
Great Falls, MT 59403

Re: Bradley Lins

Dear Mr. Snipes:

The Montana Public Employee Retirement Administration (MPERA) is in receipt of your letter dated July 31, 2015. With regard to your first inquiry, Mr. Bradley Lins was hired by Cascade County on November 16, 2009. On that same date, pursuant to § 19-3-412(b), MCA, Mr. Lins chose to voluntarily decline membership with the Public Employees' Retirement System (PERS) on his PERS Optional Membership Election Form. This election by Mr. Lins prevented him from receiving any membership service credit in PERS for the period of November 16, 2009 to February of 2010.

In February of 2010, pursuant to §§ 19-3-401 and 19-3-412, MCA, Mr. Lins became a mandatory member of PERS when the total hours worked by Mr. Lins exceeded nine hundred and sixty (960) hours for the fiscal year he was employed by Cascade County. Due to this, Mr. Lins began to receive PERS membership service credit this same month but not for any previous month when he had not yet become a mandatory member of PERS.

With regard to your second inquiry, Mr. Lins is not eligible to reinstate service credit refunded to him for the months of March and April of 1999 under § 19-2-603, MCA. As specified under § 19-2-704(2), MCA, only "active or vested inactive members" are eligible to purchase or transfer service credit. Since Mr. Lins was terminated from employment in November of 2014 before becoming vested, he does not meet the statutory criteria for reinstating service credit under § 19-2-603, MCA.

Should you have any further questions, you may contact me directly at (406) 444-5423.

Regards,

William J. Holahan
MPERA Legal Counsel