

INFORMAL CONSIDERATION

October 8, 2015

Issue: Application to Purchase Service Credit and Membership Service for Declined Optional Service in PERS

Petitioner: Bradley Lins
Ben Snipes, Esq.

Retirement System: PERS

Request for Board Consideration: Bradley Lins, through his attorney, Ben Snipes, requests the Board to reverse the August 7th, 2015 Staff Determination that Bradley Lins, as an inactive and nonvested member of PERS, is ineligible to purchase service credit and membership service.

Case Summary: Mr. Bradley Lins, is an inactive and nonvested member of the Public Employees' Retirement System (PERS), who was hired on November 16, 2009 as a PERS covered employee by Cascade County. On that same date, pursuant to § 19-3-412(b), MCA, Mr. Lins chose to voluntarily decline membership with PERS on his PERS Optional Membership Election Form. This selection by Mr. Lins prevented him from receiving any membership service 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, member and employer contributions were paid into PERS and Mr. Lins began to receive his PERS membership service and service credit this same month but not for any previous month when he had not yet become a mandatory member of PERS.

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.

Mr. Lins now petitions the Board pursuant to § 19-3-505, MCA, (attached) to be granted the opportunity to purchase the service credit and membership service for the time when his optional membership was declined (November 2009-January 2010). This purchase would result in Mr. Lins becoming vested (5 years of membership service) and thus eligible to apply for PERS disability benefits.

Discussion of the Law: 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. § 19-3-505 explains when a PERS member is able to purchase service credit and membership service credit for the time when optional service was declined and states:

(1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to **purchase** all or a portion of the employment for service credit and membership service.

§ 19-3-505, MCA, (emphasis added).

However, to be eligible to purchase service credit and membership service under § 19-3-505, 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." § 19-2-303(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. As such, Mr. Lins does not meet the statutory criteria for purchasing membership service and service credit under §§ 19-2-704(2) and 19-3-505, MCA.

Correspondence and Exhibits:

November 16, 2009 Bradley Lins PERS Optional Membership Election Form

July 31, 2015 Letter from Ben Snipes to MPERA Staff Member, Jennifer Harnden

August 7, 2015 MPERA Staff Determination Letter to Ben Snipes

August 21, 2015 Letter from Ben Snipes to the Board

September 9, 2015 Letter from MPERA Executive Director, Dore Schwinden, to Ben Snipes

Relevant Law:

19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(56) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, except as provided in subsection (56)(b), a member or the status of a member who has at least 5 years of membership service;

19-2-704. Purchasing service credits allowed -- payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service credits as provided by the statutes governing the retirement system.

(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.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment by personal check or rollover of funds from another eligible plan, to make installment payments, or to make a combination of a lump-sum payment and installment payments.

(4) Installment payments must be made by personal check paid directly to the board unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

- (a) must be signed by the member and the member's employer;
- (b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;
- (c) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and
- (d) must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional

contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction agreement without terminating employment, except when a member becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715.

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

19-3-505. Purchase of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit and membership service. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay all contributions that the member would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment.

(c) The employer shall establish a policy as to the payment of retroactive employer contributions or retroactive employer contributions and regular interest and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(d) If the employer establishes a policy under subsection (2)(c) of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service for the period of employment.

CURRENT STAFF RECOMMENDATION ON REQUEST:

Deny Bradley Lins's request pursuant to 19-3-505, MCA, to purchase service credit and membership service for the time period when optional service was declined by him.

Moved by

Seconded by

Vote

MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION



STIVE BULLOCK
GOVERNOR

DOR SCHWINDEN
EXECUTIVE DIRECTOR

STATE OF MONTANA

HELENA (406) 444-9154
TOLL FREE (877) 275-7372
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PO BOX 200131
HELENA MT 59620-0131
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September 9, 2015

Mr. Ben 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) has received your August 21, 2015 letter regarding your client, Bradley Lins' desire to appeal the decision contained in William Holahan's August 7, 2015 letter. That decision explains why Mr. Lins is not entitled to purchase previously declined optional membership service as service credit. Specifically, Mr. Lins is neither an active nor vested member of the Public Employees' Retirement System (PERS) as required by 19-2-704(2), MCA.

Since Mr. Holahan's letter was not the official administrative decision in this matter, I am now reaffirming Mr. Holahan's position. Bradley Lins terminated from employment in November of 2014 before becoming vested. Therefore, he is an inactive, non-vested PERS member and does not meet the statutory criteria for purchasing service credit under 19-2-704(2), MCA.

This is a final administrative decision. You may appeal this decision by notifying the Public Employees' Retirement Board in writing at the address above within 90 days from the date of this letter. Since you have already indicated by separate communication on September 4, 2015, that you would like the Board to address this appeal at its October 8, 2015 meeting, the Board will make a preliminary decision on this matter on the basis of material properly submitted 21 days in advance of this meeting (September 17, 2015). The Board will then notify you of its preliminary decision. If the decision is adverse to your position, you will be given two options, either of which must be exercised within 30 days if you wish to further appeal the issue:

1. You can submit a request in writing for reconsideration by the Board. If the Board decides adversely to your position, you can appeal that decision to an administrative hearing; or
2. You can submit a request to proceed directly to an administrative hearing. A proposed decision by the hearings examiner is subject to Board approval. You can appeal an adverse decision to District Court.

You may send any additional materials to the address in the letterhead. Since you have already indicated that you want the Board to consider your request at its October 8, 2015 meeting, the additional material must be filed by September 17th. Please contact our office if you have any questions about this.

Sincerely,

A handwritten signature in black ink, appearing to read "Dore Schwinden".

Dore Schwinden
MPERA Executive Director

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

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RECEIVED

AUG 24 2015

MPERA

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

Ben A. Snipes
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

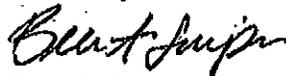
Dear Members of the Board:

Mr. Brad Lins is a member of the PERS. He was hired by Cascade County on November 16, 2009. On that date, he chose to voluntarily decline membership with the PERS. In February of 2010, pursuant to §§ 19-3-401 and 19-3-412, MCA, Mr. Lins became a member of the 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, Mr. Lins began accumulating PERS membership service in February of 2010. Mr. Lins was terminated as a result of his physical capacity in November of 2014.

Herein, Mr. Lins is applying for the Board's approval to purchase the service credit and membership service for the time when his optional membership was declined (November 2009-January 2010). Mr. Lins submits this application pursuant to § 19-3-505, MCA. Included herein is Mr. Lins' salary information certified by his former employer, Cascade County.

Your consideration of this application is much appreciated.

Sincerely,



Ben A. Snipes

BAS/sp
Encls.

Brad Lins

MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION



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GOVERNOR

DORISCHWINDEN
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August 7, 2015

Mr. Ben A. Snipes
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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,

A handwritten signature in black ink, appearing to read "William J. Holahan".

William J. Holahan
MPERA Legal Counsel

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

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Tom L. Lewis
J. David Slovak
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Ben A. Snipes
Ross T. Johnson

July 31, 2015

Jennifer Harnden
Member Services Analyst
MPERA
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Helena, MT 59620

RECEIVED
AUG 03 2015
MPERA

RE: Brad Lins
Our File No. 14-050

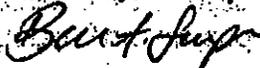
Dear Ms. Harnden:

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



**PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS)
 OPTIONAL MEMBERSHIP ELECTION**

This election must be completed legibly in ink, signed by both employee and employer, and received by MPERA within 90 days of hire date if hired on or after July 1, 2009.

To be completed by employer:

Brad Lins 11/16/09
 Employee Name (Print) Hire Date (Latest date employee started in this position)

Membership is optional for certain new employees; check the category that applies to this covered position.

- Non-member working 960 hours or less per fiscal year.
- Employee directly appointed by the Governor.
- Legislative branch employee working 10 months or less to perform work related to the legislative session.
- Chief administrative officer of a city or county.
- New employee of a county hospital or rest home.

Ticki L. Clark 11/16/09 406-454-6762
 Signature of Employer (required) Date Telephone Number

Cascade County 0207
 Agency Agency No.

To be completed by employee:

Only non-members have an election. If you are currently an ACTIVE or INACTIVE member of PERS (anyone with contributions in PERS through this or any other agency), you may not elect out of PERS. If you are a RETIRED member of PERS, other restrictions apply. Contact your payroll clerk for appropriate forms.

The following restrictions apply:

- If I decline membership, I may not become a member while still employed in this position. However, if I ultimately work more than 960 hours in a fiscal year, cumulative of all PERS employers, membership becomes mandatory and I must begin making retirement contributions starting with hour 961.
- If I decline membership, terminate employment, and become employed in another optional position within 30 days of termination, I may not become a member in the second optional position.
- If I decline membership, terminate employment, and become employed in another optional position 30 days or more after my termination, I am allowed a new election.
- If I decline membership, I will not receive membership service or service credit for employment for which membership was declined.
- If I subsequently accept employment in a position for which retirement is mandatory, I must become a member regardless of this election.
- If any information in this form conflicts with statute or rule, the statute or rule will apply.

I am not an active, inactive or retired member of PERS. I understand that I have the option to choose PERS membership due to employment with this agency.

I decline PERS membership

I elect PERS membership
 (Complete a membership card and attach)

Bradley Lins 11-16-09 517-92-0364 9-6-60
 Signature of Employee (required) Date Social Security Number* Date of Birth

Return original to MPERA at above address. Give yellow copy to employer.

*Mandatory for ID purposes § 19-2-403(7), MCA

MPERA Use: Entered by <u>[Signature]</u>
Date <u>12-4-09</u>