

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

Attorneys for Petitioner

RECEIVED

NOV 05 2015

MPERA

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

IN RE THE MATTER OF BRADLEY LINS,) Cause No. _____
)
)
)
Petitioner.) **PETITION FOR JUDICIAL REVIEW**
) **OF DECLARATORY RULING**
)
)

Petitioner, Bradley Lins, by and through his counsel of record and pursuant to MCA §§ 2-4-501 and 2-4-702, hereby petitions for judicial review of the Declaratory Ruling of the Montana Public Employees Retirement Board (PERB) regarding his entitlement to reinstate Public Employees Retirement Service (PERS) membership service and alleges as follows:

PARTIES

1.

At all times relevant hereto, Petitioner Bradley Lins was a citizen and resident of Great Falls, Cascade County, Montana.

2.

PERB is a seven member board, tasked with administering the various public employee retirement funds, including the PERS. The PERS is administered by the PERB as provided in § 2-15-1009, MCA.

JURISDICTION AND VENUE

3.

This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties. Venue is proper in the Montana First Judicial District Court in Helena, Lewis and Clark County, Montana.

GENERAL ALLEGATIONS

4.

Lins was hired by Cascade County as a union painter in 1991. He was an employee of Cascade County from 1991 to 1999. § 19-2-303(25), MCA. During that time Lins occupied a covered position and was a member of the PERS. § 19-2-303(14), MCA; § 19-2-303(32), MCA. Lins' employment and service with Cascade County ended in April of 1999. § 19-2-303(52), MCA; § 19-2-303(53), MCA. During this tenure, Lins accumulated seven (7) years and nine (9) months of membership service credit. § 19-2-303(33), MCA.

5.

During his more than 7 years of service to Cascade County, Lins paid a portion of his salary to and maintained membership in the PERS. Upon the termination of his service with Cascade County, Lins' accumulated contributions with the PERS were refunded per § 19-2-602, MCA.

6.

After some time in the private sector, Lins was rehired on a temporary basis by Cascade County on November 16, 2009. In February of 2010 Lins' work proved permanent and, pursuant to §§ 19-3-401 and 19-3-412, MCA, he again became a member of PERS when his total hours worked exceeded nine hundred and sixty (960)

hours for the fiscal year he was employed by Cascade County. Accordingly, Lins again began accumulating PERS membership service in February of 2010.

7.

From 2010 through 2014, Lins was continuously employed by Cascade County. Lins suffered work-related injuries to his shoulders in March of 2014. His injuries required two surgeries in 2014. As a result, Lins received workers' compensation temporary total disability benefits from April to November of 2014.

8.

Upon being released to return to modified-duty work by his shoulder surgeon, Lins was asked to come to the County offices to discuss his position. Immediately upon reporting to County offices, Lins was informed by Cascade County that it could not accommodate his shoulder limitations and presented him with a letter of termination. See letter attached as Exhibit A. On November 17, 2014, Mr. Lins' employment with Cascade County terminated, without any advanced notice. During that meeting, Mr. Lins was not given the opportunity to make any elections regarding his PERS service or retirement benefits. As of November 17, 2014, Lins had re-accumulated four (4) years and ten (10) months of membership service credit.

9.

On July 31, 2015, Lins sought to reinstate two (2) months of the membership service (March and April 1999) that was refunded in 1999, pursuant to § 19-2-603, MCA ("a person who again becomes a member of a defined benefit plan... may reinstate [prior] membership service or service credit by redepositing the sum of the accumulated contributions that were refunded... plus interest)(emphasis added). See July 31, 2015 correspondence attached hereto as Exhibit B.

10.

On August 7, 2015, William Holahan, counsel for the MPERA, sent a response letter stating that Lins was not eligible to reinstate refunded service credit because he did not meet the "active or vested inactive" status requirement of a member to purchase service under § 19-2-704(2), MCA. Attached hereto as Exhibit C.

11.

On August 21, 2015, Lins presented his Petition for Declaratory Ruling to the PERB, pursuant to § 2-4-501, MCA. By his Petition, Lins sought a declaratory ruling that reinstating refunded service under § 19-2-603, MCA is distinct from the "purchase or transfer" of service credit contemplated in § 19-2-704(2), MCA. See Petition attached as Exhibit D. The crux of Mr. Lins' argument was that:

§ 19-2-704(2), MCA limits only the purchase or transfer of service.

* * *

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.

Ex. D, p. 6.

12.

Mr. Holahan responded on behalf of the MPERA on September 23, 2015. See Exhibit E. The Petition was set for determination by the PERB in the closed portion of its October 8, 2015 meeting. Mr. Holahan represented the MPERA at the meeting and his co-worker Kate Talley was tasked with advising the PERB. During the meeting, the PERB presented questions to Ms. Talley regarding the facts and circumstances of Mr. Lins' employment and Petition. Counsel for Mr. Lins moved for a hearing to address

the PERB's factual and legal inquiries. At the recommendation of Ms. Talley, the PERB denied Mr. Lins' request for a hearing. Following Ms. Talley's presentation of the facts and legal recommendations, the PERB voted to decline the declaratory ruling sought by Mr. Lins. Ms. Talley was asked to prepare a final written decision on behalf of the PERB. The PERB agreed to review and finalize the Declaratory Ruling among its members telephonically so as to not create any additional record of its deliberations or input into the final written order. The Declaratory Ruling was signed and issued by the PERB on October 19, 2015. See Exhibit F.

GROUND UPON WHICH RELIEF IS SOUGHT

13.

Lins hereby requests judicial review of the PERB's October 19, 2015 Declaratory Ruling. Lins' substantial rights have been prejudiced by an error of law in the PERB's interpretation of the statutes at issue. § 2-4-704(2)(a)(iv), MCA. Specifically, the PERB erred as a matter of law by failing to interpret the statutory provisions at issue in accordance with the rules of statutory construction, § 1-2-101, *et seq.*, MCA. Further error occurred when the PERB relied upon invalid administrative rules in interpreting the statutes at issue. § 2-4-704(2)(a)(i)-(ii), MCA; § 2-4-704(2)(a)(iv)-(v), MCA.

14.

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.

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.* By virtue of his accumulated contributions in the PERS, Lins is a "member." § 19-2-303(32), MCA. 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 language, 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.* To hold otherwise is error, thus, the PERB is proceeding under a mistake of law. See e.g. *Alkire v. Municipal Court*, 2008 MT 223, ¶ 15, 344 Mont. 260, 186 P.3d 1288.

17.

Contrary to the October 19, 2015 Declaratory Ruling, § 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).

18.

The interpretation of § 19-2-704(2), MCA presented in the Declaratory Ruling is contradicted by the plain language of the statutes. § 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. Lins is seeking to neither purchase nor transfer membership service. Rather, his 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 statutorily 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. The Declaratory Ruling finding otherwise is error. See § 2-4-704(2)(a)(iv), MCA.

19.

The interpretation in the Declaratory Ruling that “[r]einstating refunded membership service or service credit by redepositing the refunded amount and interest

as required under § 19-2-603, MCA constitutes a service purchase,” is erroneous and not supported by the plain language of the statute(s). See Ex. F, ¶ 20. Confirmation that the process of redepositing accumulated contributions is distinct from the process of purchasing service is found at § 19-2-704(3), MCA, which states:

A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit... may elect 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.

(Emphasis added)

Distinguishing the two processes in § 19-2-704(3), MCA, is unnecessary if redepositing accumulated contributions is part and parcel 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. The PERB’s holding otherwise abrogates the plain language of § 19-2-704(3), MCA. Such a holding constitutes an error of law, resulting in prejudice to Lins’ substantial rights. See § 2-4-704(2)(a)(iv), MCA.

20.

The Declaratory Ruling cites to rules promulgated by the Board which classify redepositing refunded service as tantamount to purchasing service. Ex. F, ¶ 20. Because the statutes at issue can be interpreted through the plain meaning of the words therein, the reviewing tribunal is not at liberty to add or detract from the statutory language through citation to administrative rules. See *Glendive Medical Center, Inc. v. Montana Dept. of Public Health and Human Services*, 2002 MT 131, ¶ 15, 310 Mont. 156, 49 P.3d 560. The reliance on extraneous rules, in the presence of clear, unambiguous statutory language, is erroneous. § 2-4-704(2)(a)(iv)-(v), MCA.

21.

The PERB is enabled to adopt rules necessary for the administration of the plans within its retirement system § 19-2-403(2), MCA. The definition of "rule" is provided in the Montana Administrative Procedure Act, § 2-4-102(11), MCA. That section provides in part:

"Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency.

[R]ules adopted by administrative agencies which conflict with statutory requirements or exceed authority provided by statute are invalid. *Haney v. Mahoney*, 2001 MT 201, ¶ 6, 306 Mont. 288, 32 P. 3d 1254; See § 2-4-305(6), MCA. Where § 19-2-603, MCA allows "a person who again becomes a member" to reinstate refunded contributions, any rules altering the interpretation of this clear eligibility statement are invalid and exceed the authority delegated to the administrative agency. See § 2-4-305(6), MCA; *Haney*, ¶ 6; *Taylor v. Taylor*, 272 Mont. 30, 35-36, 899 P.2d 523, 526 (1995). The administrative rules cited in the Declaratory Ruling are invalid and not competent evidence upon which to interpret the statutes at issue. The findings in the Declaratory Ruling based upon contradictory, invalid rules constitute error. § 2-4-704(2)(a)(i)-(ii), MCA; § 2-4-704(2)(a)(iv)-(v), MCA.

22.

Based on the foregoing, Lins as a "person who again becomes a member" is entitled to reinstate refunded contributions per § 19-2-603, MCA. The Declaratory Ruling interpreting this statute to the contrary is an error of law. § 2-4-704(2)(a)(iv), MCA. So too is the reliance on invalid administrative rules to reach that unwarranted

conclusion. See § 2-4-704(2)(a)(i)-(ii), MCA; § 2-4-704(2)(a)(iv)-(v), MCA.

PRAYER FOR RELIEF

Lins 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 in § 19-2-704(2), MCA. This distinction is clearly stated in § 19-2-704(3), MCA. As such, Lins requests judicial review of the October 19, 2015 Declaratory Ruling and issuance of a declaration confirming his entitlement to reinstate his previously accumulated membership service, per § 19-2-603, MCA.

DATED this 3rd day of November, 2015.

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

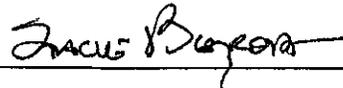
BY: 
Ben A. Snipes
P.O. Box 2325
Great Falls, MT 59403
Attorneys for Petitioner

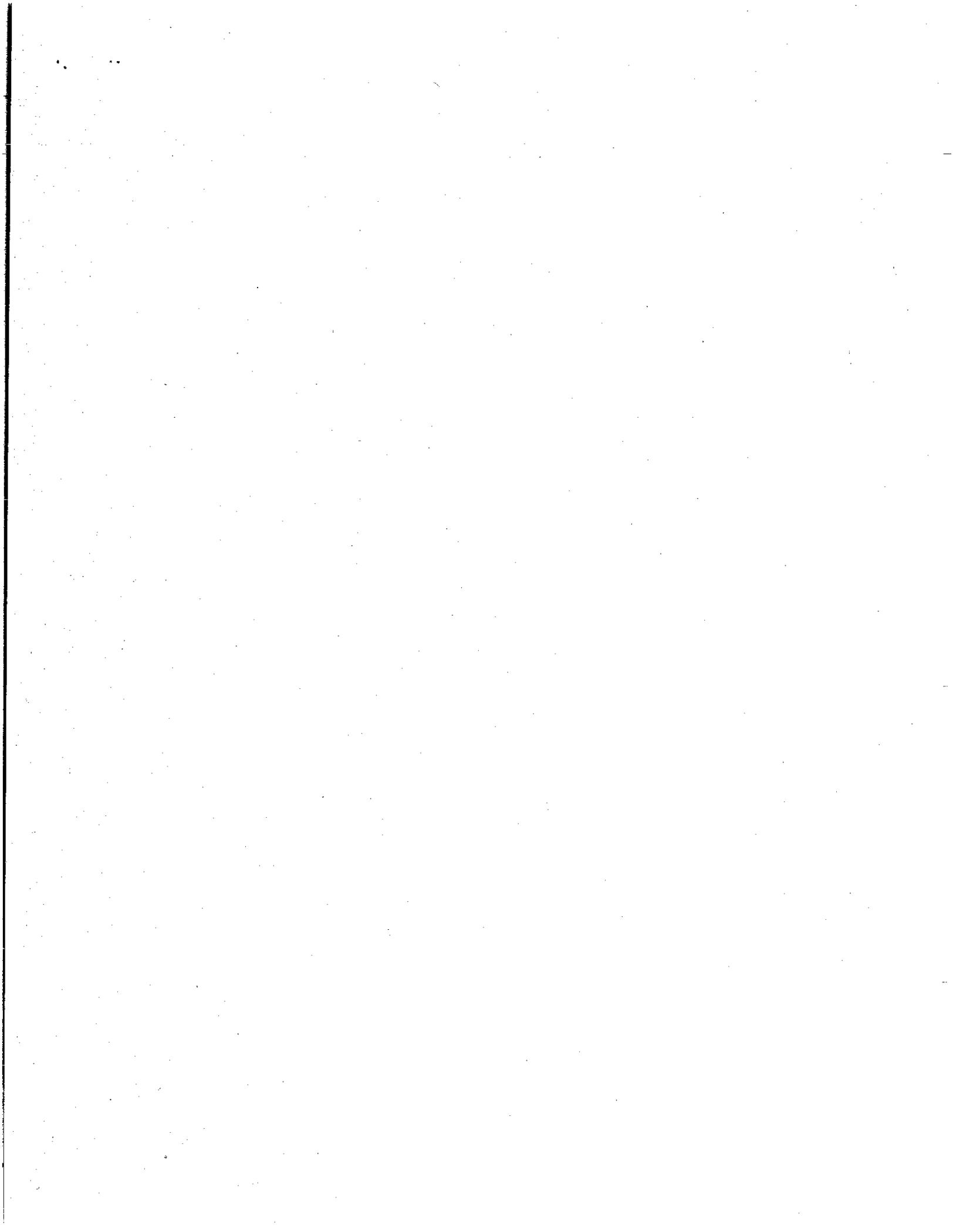
CERTIFICATE OF SERVICE

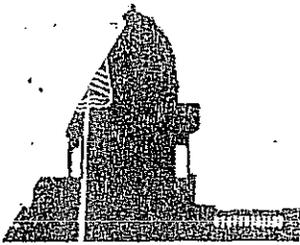
I hereby certify that, on the 3rd day of November, 2015, I served by first class mail, postage prepaid, a true and legible copy of the foregoing **Petition for Judicial Review** upon the following:

Katherine E. Talley
Staff Attorney
Public Employee Retirement Administration
P.O. Box 200131
Helena, MT 59620-0131

Public Employee Retirement Board
100 N Park Avenue Suite 200
PO Box 200131
Helena, MT 59620-0131







Human Resources Department
325 2nd Avenue North
Great Falls, MT 59401
Tel. (406) 454-6739
Fax (406) 454-6772
www.co.cascade.mt.us

CASCADE COUNTY

November 17, 2014

Mr. Brad Lins
305 40th Ave NE
Great Falls MT 59404

Dear Brad:

As you know, a letter was issued by the Montana State Fund that asked your provider about your physical abilities and whether you could return to your job as a painter. He stated no, not with the status of your left shoulder. He states that you cannot use your left shoulder at all.

Additionally, a letter was sent to you on September 11th 2014 informing you that you had exhausted your FMLA use for the rolling year. You have not been to work since March 5th 2014.

Due to the latest information from your doctor stating you cannot use your left shoulder, the decision was made to do an accommodation meeting with you to determine if there is anything else you can do (physically) that you are also qualified to do. Linda Cargill and I met with you today, November 17th 2014 to discuss just that. You stated you cannot move your arm above about chest level and cannot utilize your left arm at all. We then discussed if you are qualified for any other position and none could be found within the county.

It is not reasonable to hold your position open indefinitely when your primary medical provider has clearly stated that you cannot perform the essential functions of your position with or without an accommodation, with no estimation of when you will be able to return to work. Further, holding your position open has also caused undue hardship to the County.

Therefore, effective November 17th 2014 at 5pm you are being terminated from your position as a Painter. In accordance with MCA 39-71-317 (2) should you be released to return to work, you will be provided with a 2 year hiring preference for your time of injury job, from the original date of injury. You are also welcome to apply at any time for any other Cascade County job that are qualified for and can perform with or without a reasonable accommodation.

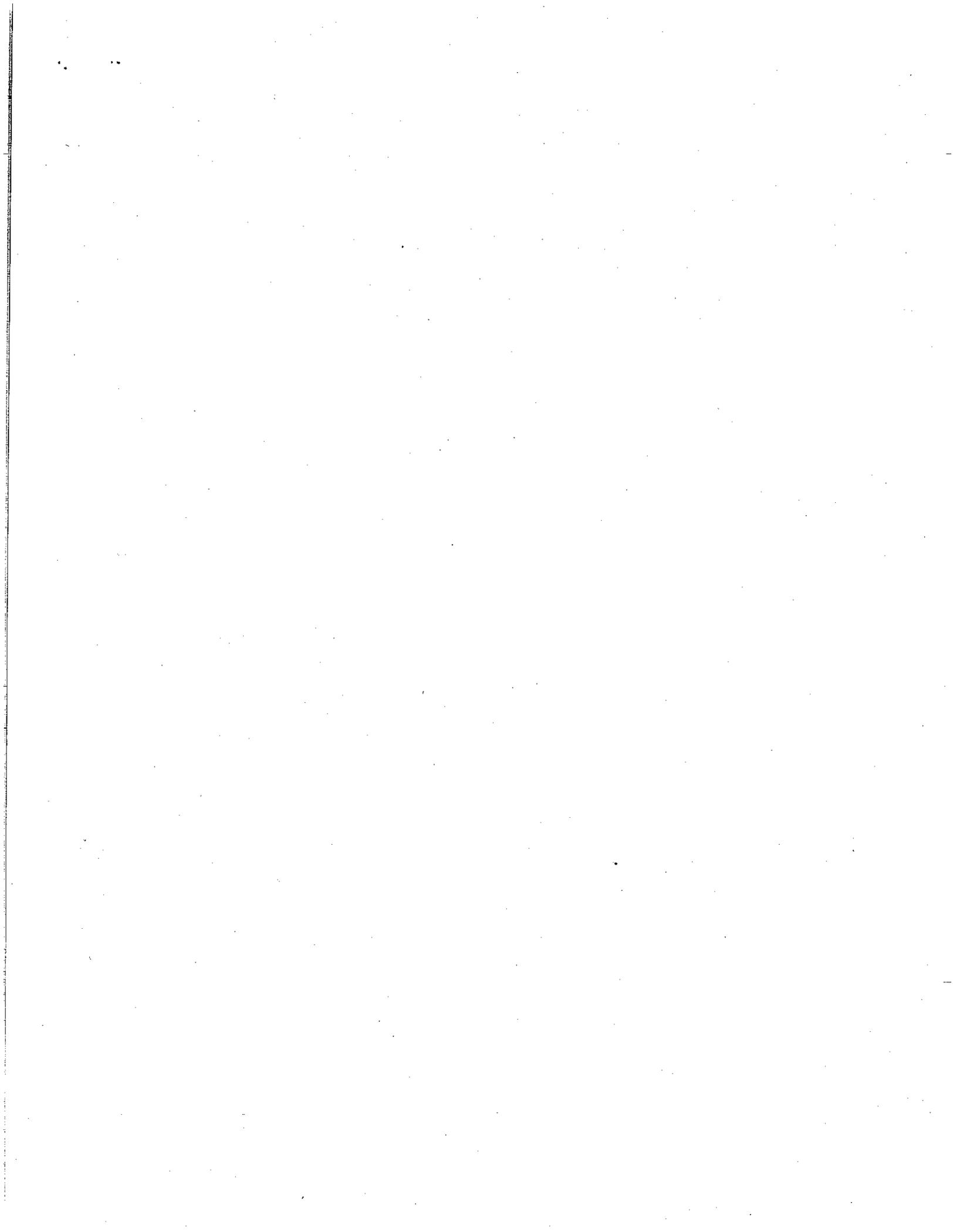
We sincerely wish you the best and hope that your medical conditions improve so you have an improved quality of life.

Please contact Brian Clifton at 454-6720 to make arrangements to pick up or have your personal belongings delivered. At that time please return your County i.d. badge, keys and any other county equipment you may have in your possession.

Sincerely,

Dewey D. Goering
Cascade County
Human Resource Director

EXHIBIT A



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

ATTORNEYS AT LAW

P. O. BOX 2325
725 - 3rd AVENUE NORTH
GREAT FALLS, MONTANA 59403
(406) 761-5595 - (406) 761-5805 (Fax)
www.lsklaw.net

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**

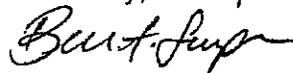
Dear Ms. Harnden:

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,

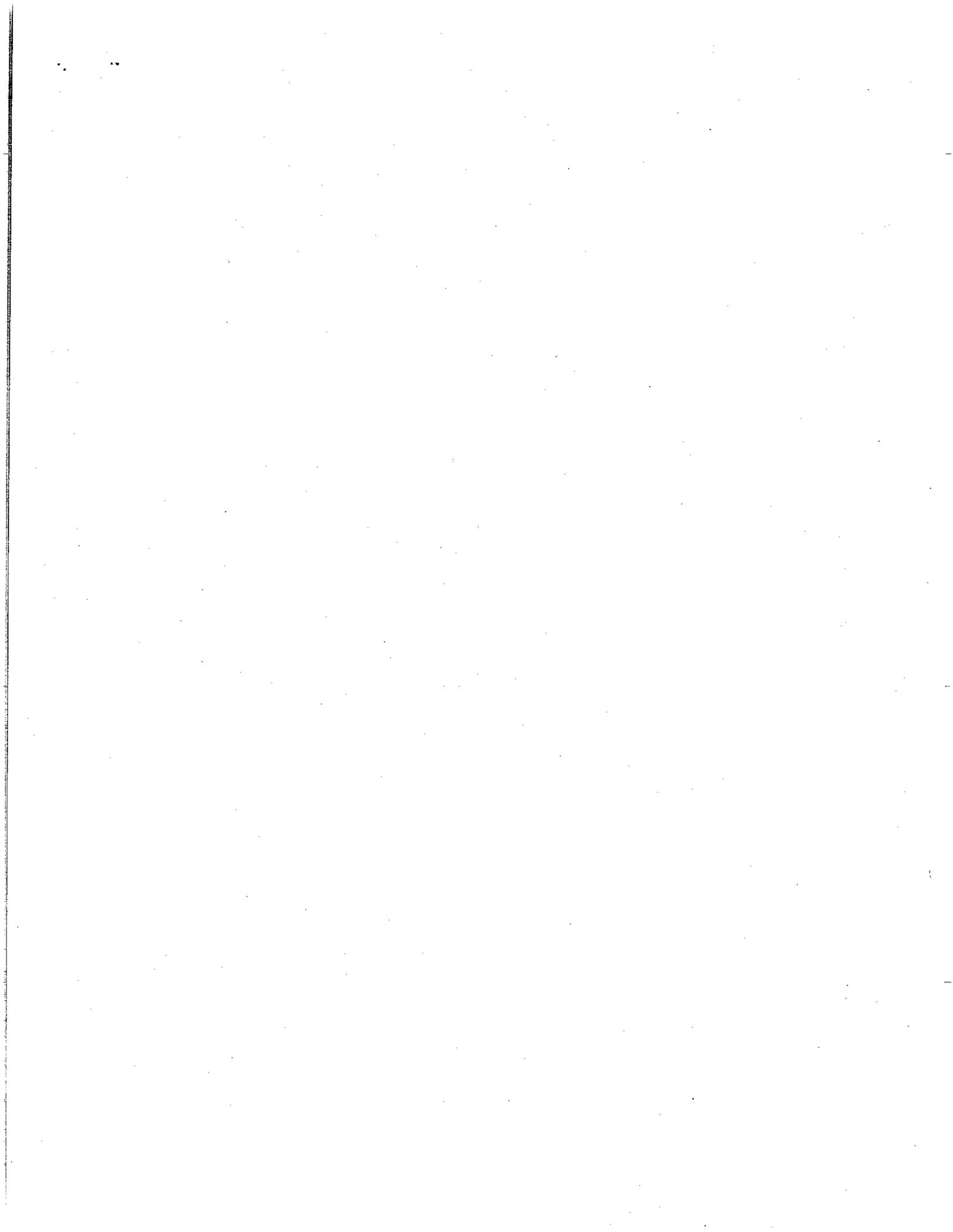


Ben A. Snipes

BAS/sb

c: Brad Lins

EXHIBIT B



MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION



STEVE BULLOCK
GOVERNOR

DORE SCHWINDEN
EXECUTIVE DIRECTOR

STATE OF MONTANA

HELENA (406) 444-3154
TOLL FREE (877) 275-7372
FAX (406) 444-5428

100 N PARK, STE 200
PO BOX 200131
HELENA MT 59620-0131



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.

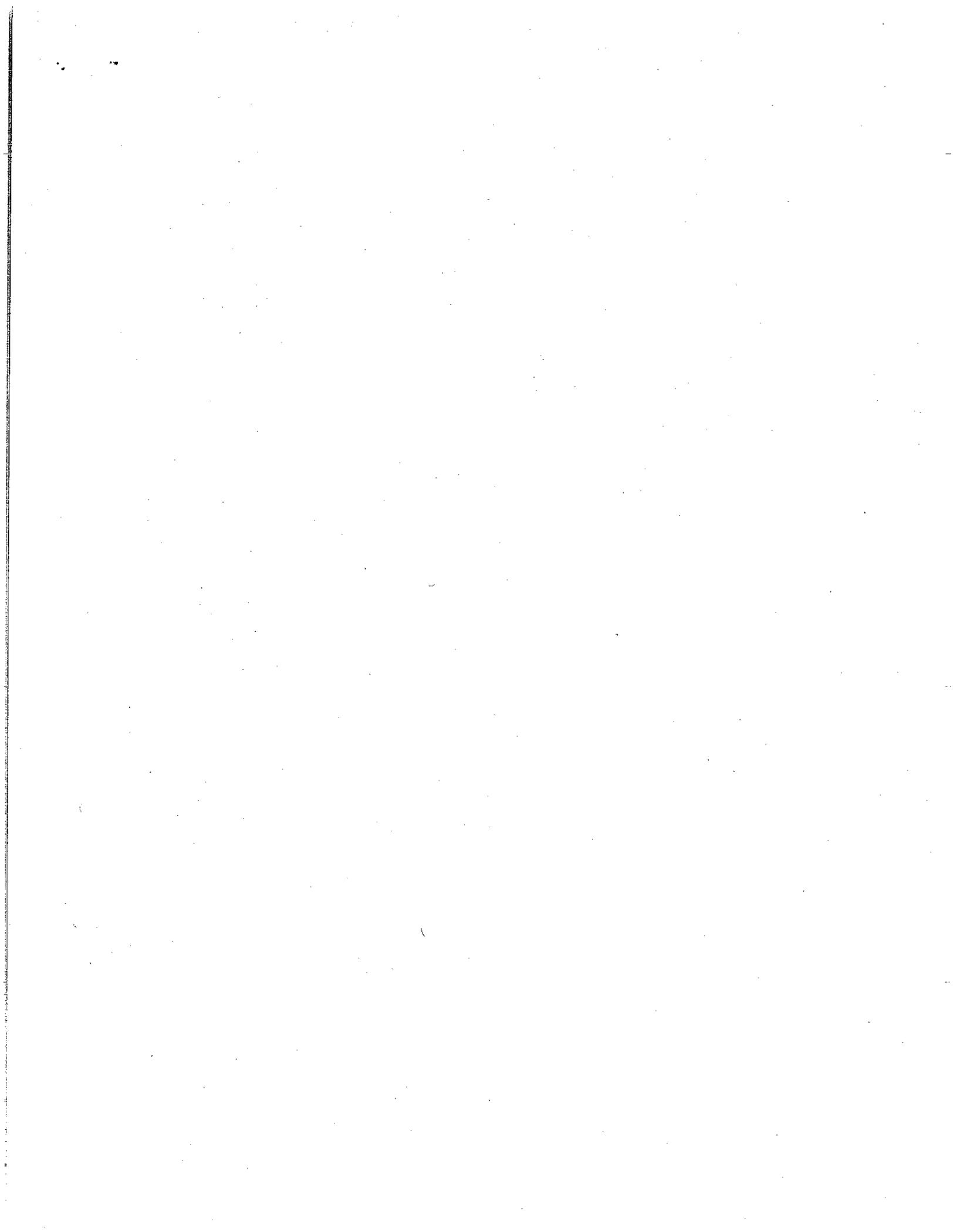
With regard to your second inquiry, Mr. Lins is not eligible to reinstate service credit refunded to him for the months of March and April of 1999 under § 19-2-603, MCA. As specified under § 19-2-704(2), MCA, only "active or vested inactive members" are eligible to purchase or transfer service credit. 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,

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

William J. Holahan
MPERA Legal Counsel



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.

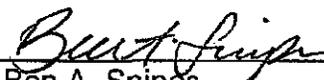
18. Confirmation that the process of redepositing accumulated contributions is distinct from the process of purchasing service is found at § 19-2-704(3), MCA. Therein, it is noted that either redepositing accumulated contributions or purchasing service credit can be done by lump sum or installment payments. 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

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

ATTORNEYS AT LAW
P. O. BOX 2325
725 - 3rd AVENUE NORTH
GREAT FALLS, MONTANA 59403
(406) 761-5595 - (406) 761-5805 (Fax)
www.lsklaw.net

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

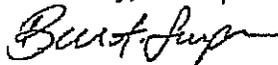
Dear Ms. Harnden:

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

EXHIBIT D-8

MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION



STEVE BULLOCK
GOVERNOR

DORE SCHWINDEN
EXECUTIVE DIRECTOR

STATE OF MONTANA



HELENA (406) 444-3154
TOLL FREE (877) 275-7372
FAX (406) 444-5423

100 N PARK, STE 200
PO BOX 200131
HELENA MT 59620-0131

mpera.mt.gov

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.

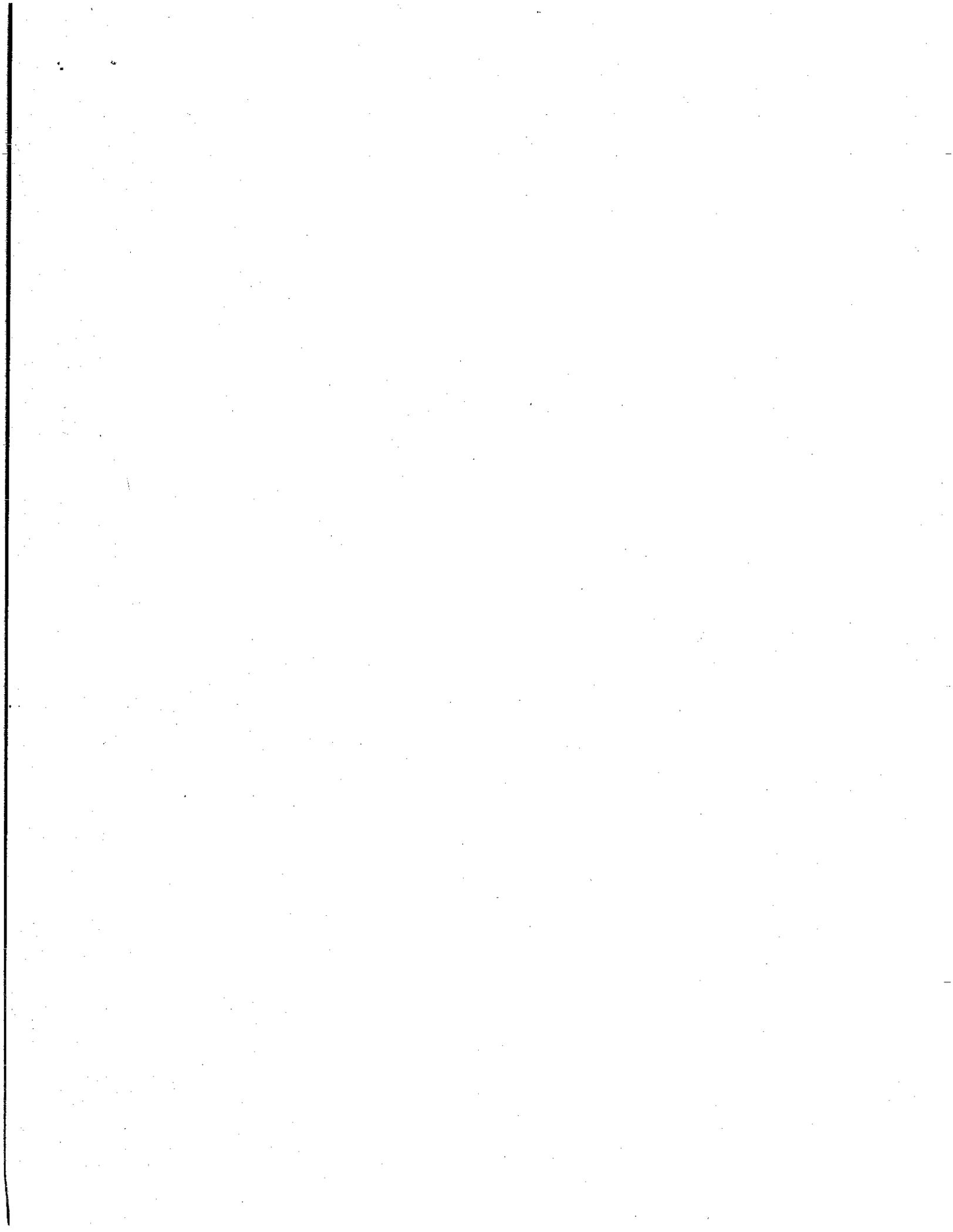
In February of 2010, pursuant to §§ 19-3-401 and 19-3-412, MCA, Mr. Lins became a mandatory member of PERS when the total hours worked by Mr. Lins exceeded nine hundred and sixty (960) hours for the fiscal year he was employed by Cascade County. Due to this, Mr. Lins began to receive PERS membership 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



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



STEVE BULLOCK
GOVERNOR

DORISCHWINDEN
EXECUTIVE DIRECTOR

STATE OF MONTANA

HELENA (406) 444-3154
TOLL FREE (877) 275-7372
FAX (406) 444-5428

100 N PARK, STE 200
PO BOX 200131
HELENA MT 59620-0131



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.

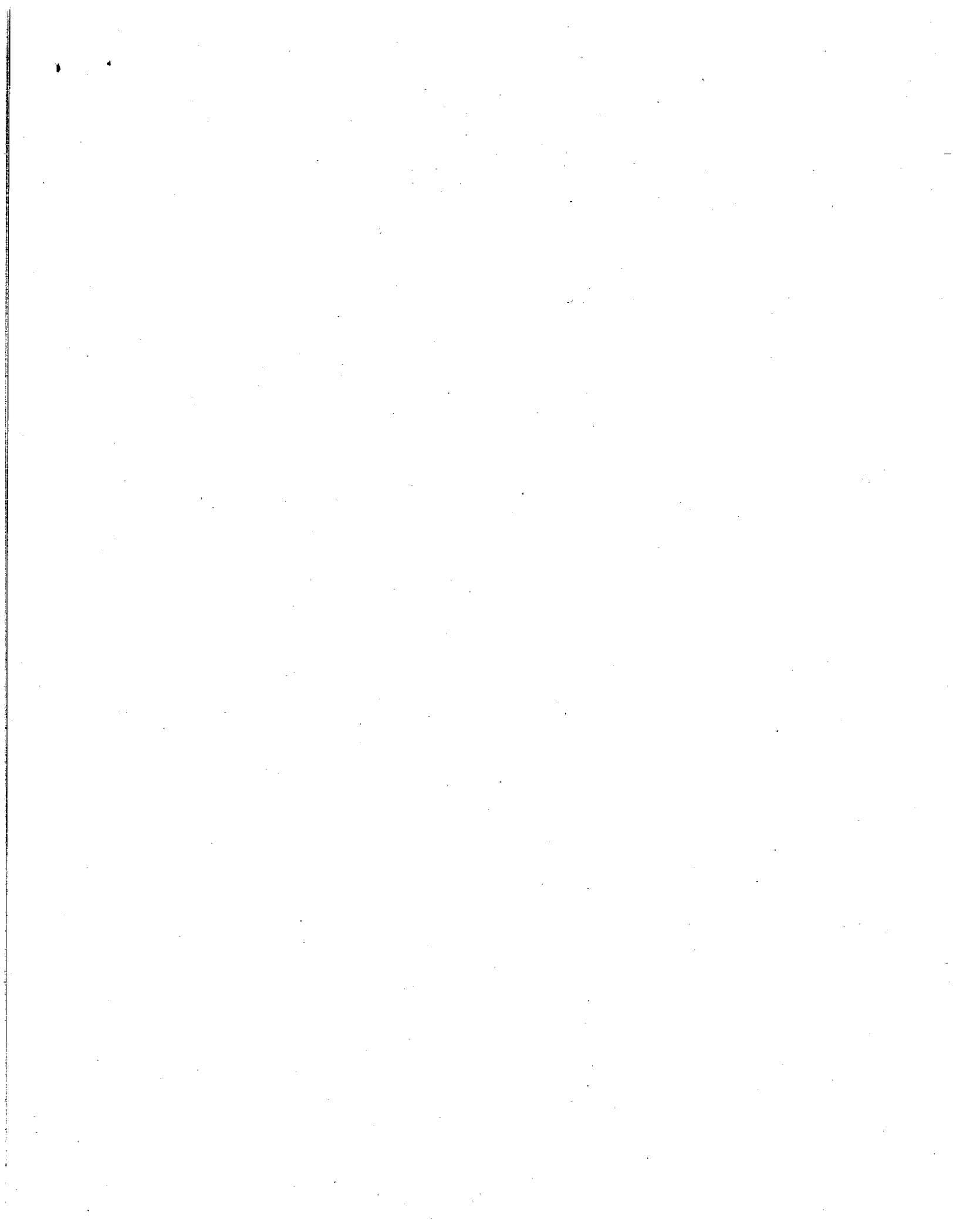
In February of 2010, pursuant to §§ 19-3-401 and 19-3-412, MCA, Mr. Lins became a mandatory member of PERS when the total hours worked by Mr. Lins exceeded nine hundred and sixty (960) hours for the fiscal year he was employed by Cascade County. Due to this, Mr. Lins began to receive PERS membership 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



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

In the matter of the of Bradley Lins') Docket No. DO 2015-1
Petition for Declaratory Ruling that he)
is statutorily entitled to reinstate PERS)
membership service) DECLARATORY RULING

INTRODUCTION

1. On August 21, 2015, Bradley Lins (Lins) filed a Petition for Declaratory Ruling (Petition) with the Montana Public Employees' Retirement Board (Board) requesting a ruling confirming that he is entitled, pursuant to § 19-2-603, MCA, to reinstate prior membership service in the Public Employees' Retirement System (PERS). The Petition and the Montana Public Employee Retirement Administration (MPERA) Response (Response) constitute the record in this declaratory ruling proceeding.

BACKGROUND

2. On September 4, 2015, counsel for the Board notified Lins' counsel and counsel for MPERA that the Board would address the Petition at their October 8, 2015 meeting and that unless good cause was shown, there would be not be a hearing on the matter. Lins' counsel responded, but did not request a hearing.

3. MPERA filed a Response to Petitioner's Petition for Declaratory Ruling (Response) on September 23, 2015 and did not request a hearing.

4. On October 2, 2015 the Board issued a public meeting notice with an agenda for their October 8, 2015 meeting, including Lins' requested ruling with copies of Lins' Petition and MPERA's Response. The Board did not schedule a formal hearing for the matter because there was no good cause shown to hold a hearing, or even a request for a hearing.

5. On October 8, 2015, the Board reviewed the Petition and Response and requested public comment on the matter. There was no public comment. Lins' counsel then requested a hearing but the Board determined the request was not timely, good cause was not established and the delay that would result from postponing a determination of the matter would not result in a prompt disposition of the Petition.

FACTS

6. Lins was an employee of Cascade County working in a PERS covered position from January 1991 to April 1999, during which time he accumulated 7 years and 6.95 months of membership service. When he terminated this employment, he requested and received a refund of his PERS accumulated contributions.

7. Lins was subsequently hired by Cascade County on November 16, 2009 but voluntarily declined optional PERS membership as allowed under § 19-3-412, MCA for employees in a PERS covered position who work less than 960 hours in a fiscal year.

8. In February 2010, Lins became a PERS member under the terms of §§ 19-3-401 and 19-3-412, MCA, when he had worked over 960 hours in the fiscal year in his PERS covered position with Cascade County. Lins incurred work related shoulder injuries in March 2014 and subsequently received workers' compensation disability benefits from April 2014 through November 2014. Upon being released to return to work, Lins was informed that Cascade County could not accommodate his shoulder limitations and was terminated on November 17, 2014.

9. Lins received membership service for all months of service he accrued from February 2010 through April 2014. Pursuant to § 19-3-504, MCA, he was also credited six months of membership service for the months when he did not work because of his injury and during which he was receiving workers' compensation disability benefits. Consequently, upon termination in November 2014, Lins had accumulated 4 years and 10 months of membership service.

10. On July 31, 2015, Lins' counsel sent MPERA a request to confirm Lins' eligibility to reinstate refunded membership service pursuant to § 19-2-603, MCA, for March and April of 1999 and the cost to do the same. MPERA sent a response letter on August 7, 2015 stating that Lins was not eligible to reinstate service credit because he did not meet the "active or vested inactive" status requirement of a member to purchase service under § 19-2-704(2), MCA.

11. Lins' Petition asserts that a reinstatement of refunded service pursuant to § 19-2-603, MCA is distinct from a service purchase or transfer as provided in § 19-2-704(2) and that a member wishing to reinstate service is not subject to the "active or vested and inactive" eligibility requirement of a member electing to purchase or transfer service.

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..." Section 2-4-501, MCA. The ruling shall be published pursuant to § 2-4-501, MCA, and is subject to judicial review in the same manner as decisions or orders in contested cases. *Id.*

13. The Board has adopted the Attorney General's Model Procedural Rules governing declaratory rulings as provided in ARM 1.3.226 through 1.3.229. ARM 2.43.1401. "A party may seek a declaratory ruling from the agency when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights." ARM 1.3.226.

14. A pension trust fund is established and maintained for PERS. Section 19-2-501, MCA. The Board must administer that trust fund as provided in Article VIII, section 15 of the Montana Constitution and subject to the provisions of Title 19, chapters 2 and 3 of the Montana Code Annotated. Sections 19-2-302, 19-2-502, MCA. PERS members are subject to the provisions of these chapters and the rules

that the Board is authorized to establish for the administration, operation and enforcement of PERS. Section 19-2-403, MCA.

15. "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. Raccicot* (1992), 253 Mont. 204, 208-209, 832 P.2d 767, 770.

16. When a member's accumulated contributions in PERS are refunded, "the person ceases to be a member of that system, all the person's service is canceled, and the person relinquishes claim to any benefits payable to members of the retirement system." Section 19-2-601, MCA.

17. Following a refund of a member's contributions upon termination of service, if the person again becomes a member of PERS, 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." Section 19-2-603, MCA.

18. Membership service means the periods of service that are used to determine eligibility for retirement benefits. Section 19-2-303(33), MCA. 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 benefits. Section 19-2-303(47), MCA.

19. Reinstating refunded membership service or service credit by redepositing the refunded amount and interest as required under § 19-2-603, MCA constitutes a service purchase under several statutes and rules that apply to the situation. "Subject to [1] the rules promulgated by the board, an **eligible** member may elect to make additional contributions to purchase service credits as provided by [2] the statutes governing the retirement system." Section 19-2-704(1) (emphasis added).

20. The rules promulgated by the Board reflect that the redeposit or payment of accumulated contributions and interest in exchange for reinstating refunded service constitutes a type of service purchase. ARM 2.43.2303(2)(b) lists the documentation required to prove the amount of service eligible to be purchased including the date and amount of a refund. ARM 2.43.2308 provides that when purchasing a portion of a member's refunded service, the member must first purchase the most recent refund first. ARM 2.43.2309 provides the "purchase request date for all service purchases other than refunded service". ARM 2.43.2317, titled "Purchase of Refunded Service or Service From another MPERA-Administered Retirement" provides that a "member who is statutorily **eligible** to do so may elect to purchase into their current retirement system all or any portion of their previously refunded service in that system" (emphasis added) after filing a request and then receiving a notice from MPERA of the amount of service the member is eligible to purchase and the cost of that service.

21. The statute authorizing service purchases, titled "Purchasing service credits allowed – payroll deduction," reflects that reinstating refunded service

constitutes a type of service purchase by including the "redeposit of amounts withdrawn under 19-2-602" in the statute and allowing the same payment methods and process for redeposits as other types of service purchases. Section 19-2-704(3)-(7), MCA. This statute also provides: "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." Section 19-2-704(2), MCA.

22. The PERS membership statute further establishes limits on the rights of members – distinguishing between active members and both inactive vested members and inactive nonvested members, providing in relevant part: "An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan. An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions." Section 19-3-401(3), MCA.

23. An "active member" is "a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period." Section 19-2-303(2), MCA. An "inactive member" is "a member who terminates service and does not retire or take a refund of the member's accumulated contributions." Section 19-2-303(30), MCA

RULING

24. The Board declines to issue the declaratory ruling sought by Lins that he is entitled to reinstate previously refunded service because he is not an active or vested inactive member and is therefore not eligible to purchase previously refunded service. Section 19-2-704, MCA. As long as he remains an inactive, nonvested member of PERS he is eligible only for a refund of his accumulated contributions. Section 19-3-401(3), MCA.

DATED this 19th day of October, 2015.

MONTANA PUBLIC EMPLOYEES'
RETIREMENT BOARD

/s/ Sheena Wilson
SHEENA WILSON, PRESIDENT

/s/ Mike McGinley
MIKE MCGINLEY, VICE PRESIDENT

/s/ Timm Twardoski
TIMM TWARDOSKI

/s/ Maggie Peterson
MAGGIE PETERSON

/s/ Marty Tuttle
MARTY TUTTLE

/s/ Julie McKenna
JULIE MCKENNA

/s/ Pepper Valdez
PEPPER VALDEZ

NOTICE: Petitioner has the right to appeal this ruling by filing a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to § 2-4-702, MCA.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 19th day of October 2015, a true and correct copy of the foregoing was served by placing same in the U.S. mail, postage prepaid, addressed as follows:

Ben A. Snipes
LEWIS, SLOVAK, KOVACICH & SNIPES, P.C.
P.O. Box 2325
Great Falls, MT 59403

/s/ Kris Vladic
KRIS VLADIC
Program Specialist