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MPERA

Attorneys for Petitioner

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

| | | |
|--------------------------|---|-------------------------------------|
| BRADLEY LINS, |) | Cause No. BDV-25-0000873-JR |
| |) | Hon. Jeffrey M. Sherlock |
| |) | |
| Petitioner, |) | BRIEF IN SUPPORT OF PETITION |
| |) | FOR JUDICIAL REVIEW OF |
| MONTANA PUBLIC EMPLOYEES |) | DECLARATORY RULING |
| RETIREMENT BOARD, |) | |
| |) | |
| Respondent. |) | |

INTRODUCTION

Petitioner, Bradley Lins, by and through his counsel of record and pursuant to the Court's November 19, 2015 Briefing Schedule hereby submits his brief in support of his Petition for Judicial Review of the Declaratory Ruling of the Montana Public Employees Retirement Board (PERB).

The Public Employee Retirement System (PERS) allows a person "who again becomes a member of a defined benefit plan" to reinstate previously refunded membership service by redepositing the sum of the refunded contributions, plus interest. § 19-2-603, MCA. Despite being a statutorily eligible "member" of a defined benefit plan, the PERB issued a declaratory ruling denying Lins the ability to reinstate previously withdrawn contributions. In so ruling, the PERB committed an error of law in its 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.

FACTUAL BACKGROUND

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' initial 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. 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.

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.

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.

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. See Service Summary attached hereto as Exhibit B.

PROCEDURAL HISTORY

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 C.

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 D.

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. Lins' primary 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.

Petition for Declaratory Ruling, p. 6.

Mr. Holahan responded on behalf of the MPERA on September 23, 2015. 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 Lins moved for a hearing to address the PERB's factual and legal inquiries. After seeking counsel from 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 consistently with her recommendation and declined the declaratory ruling sought by 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. The Declaratory Ruling was signed and issued by the PERB on October 19, 2015.

Lins filed his Petition for Judicial Review on November 3, 2015. The PERB provided the Court with a copy of the record, including all of the aforementioned pleadings, on November 17, 2015.

STANDARD OF REVIEW

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. § 2-4-501, MCA. A declaratory ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases. *Id.* Judicial review must be conducted by the court without a jury and must be confined to the record. § 2-4-704(1), MCA. The Court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decisions are:
 - (i) in violation of constitutional or statutory provisions;
 - (ii) in excess of the statutory authority of the agency;
 - (iii) made upon unlawful procedure;
 - (iv) affected by other error of law;
 - (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
 - (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (b) findings of fact, upon issues essential to the decision, were not made although requested.

§ 2-4-704(2), MCA.

Under the statutory standards of § 2-4-704, MCA, conclusions of law will be reversed if they are incorrect. See *Steer, Inc. v. Department of Revenue*, 245 Mont. 470, 474–75, 803 P.2d 601, 603 (1990).

The sole issue before this Court is the propriety of the PERB's interpretation of § 19-2-603, MCA, in light of the binding rules of statutory construction. The 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. Whenever the meaning of a word or phrase is defined in any part of this code (see e.g. “member” at § 19-2-303(32), MCA), that definition is applicable to the same word or phrase whenever it occurs, except where a contrary intention plainly appears. § 1-2-107, MCA.

A cardinal principle of statutory construction is that the intent of the legislature must first be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, the courts may not go further and apply any other means of interpretation. *Montana Ass’n of Underwriters v. State, By and Through Dept. of Administration*, 172 Mont. 211, 215, 563 P.2d 577, 579-580 (1977). The PERB erred as a matter of law by going beyond the plain language of § 19-2-603, MCA in precluding Lins the opportunity to reinstate his prior membership service when he again became a defined “member” of the PERS.

ARGUMENT

Lins’ sole remedy for the present matter is 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. Because the PERB erred to Lins' prejudice, reversal is required.

I. The PERB erred by going beyond the plain language of § 19-2-603, MCA, in interpreting Lins' right to redeposit prior contributions.

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. Defined terms are to be applied uniformly, wherever they occur. See § 1-2-107, MCA. Where the statute can be interpreted by plain meaning of the words used, or through application of definitions supplied, the courts may not go further and apply any other means of interpretation. See *Montana Ass'n of Underwriters*, *supra*; § 1-2-107, MCA.

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.* (emphasis added). 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 § 1-2-107, MCA, and 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). Because § 19-2-603, MCA can be construed according to its plain language and the defined terms contained therein, no further interpretation is permitted. *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, ¶ 46, 14 P.3d 487, ¶ 46.

Despite the binding rules of statutory interpretation, the PERB interjects the limiting language from § 19-2-704(2), MCA, pertaining to the "purchase or transfer of service credit," to preclude Lins' from redepositing prior contributions under § 19-2-603, MCA. The Supreme Court, addressing this exact practice, held it was injudicious to interject limiting language from another statute or advocate policy arguments concerning legislative intent in order to alter the interpretation of an otherwise unambiguous statute. See *Infinity*, at ¶ 46. In so holding, the PERB committed error and is, thus, proceeding under a mistake of law. See e.g. *Alkire v. Municipal Court*, 2008 MT 223, ¶ 15, 344 Mont. 260, 186 P.3d 1288.

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).

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.

The PERB's holding 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 Declaratory Ruling, ¶ 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 redundant and 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 §§ 19-2-603, MCA and 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.

II. The PERB's reliance on invalid administrative rules, contrary to the plain language of § 19-2-603, MCA, constitutes an error of law.

The Declaratory Ruling cites to rules promulgated by the PERB which classify redepositing refunded service as tantamount to purchasing service. Declaratory Ruling, ¶¶ 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.

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 standard 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); § 19-2-303(32), MCA. 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.

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 PERB’s 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. This Court’s contra-declaration, allowing a “member” to redeposit refunded service, is required.

CONCLUSION

Lins is a “member” of the PERS seeking to reinstate prior contributions per § 19-2-603, MCA. § 19-2-303(32), MCA. This reinstatement process is distinct from the purchase or transfer of service identified in § 19-2-704(2), MCA. This distinction is expressly revealed at § 19-2-704(3), MCA. As such, Lins seeks issuance of a declaration, upon this Court’s judicial review of the Declaratory Ruling, confirming his entitlement, as a “member” to reinstate his previously accumulated membership service, per § 19-2-603, MCA.

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DATED this 2nd day of December, 2015.

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

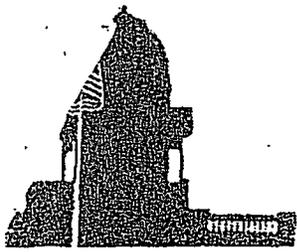
BY: 
Ben A. Snipes
P.O. Box 2325
Great Falls, MT 59403
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on the 2nd day of December, 2015, I served by first class mail, postage prepaid, a true and legible copy of the foregoing **Brief in Support of Petition for Judicial Review** upon the following:

Katherine E. Talley
Staff Attorney
Public Employee Retirement Administration
P.O. 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 6th 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

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Ben A. Snipes
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July 31, 2015

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

**RE: Brad Lins
Our File No. 14-050**

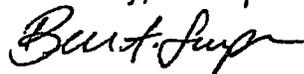
Dear Ms. Harnden:

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 C

MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION



STEVE BULLOCK
GOVERNOR

DORE SCHWINDEN
EXECUTIVE DIRECTOR

STATE OF MONTANA



HELENA (406) 444-3154
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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 "Will Holahan".

William J. Holahan
MPERA Legal Counsel

Katherine E. Talley
Special Assistant Attorney General
100 North Park Avenue, Suite 200
Helena, MT 59620-0131
(406) 444-2714

Attorney for the State of Montana
Public Employees' Retirement Board

NANCY SWEENEY
CLERK DISTRICT COURT

2016 JAN -4 PM 2: 27

FILED

BY

C. Potuzak

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

IN RE THE MATTER OF BRADLEY LINS,

Cause No. BDV-25-873

Hon. Deeann Cooney

Petitioner

vs.

ANSWER BRIEF

MONTANA PUBLIC EMPLOYEES'
RETIREMENT BOARD,

Respondent.

The Montana Public Employees' Retirement Board (Board) submits this brief in answer to Bradley Lins (Lins) Petition for Judicial Review of the Board's October 19, 2015 Declaratory Ruling determining that as an inactive, nonvested member of Public Employees' Retirement System (PERS), he is not eligible to reinstate or purchase previously refunded service.

Following Lins' termination of PERS covered service in November 2014, he became an inactive PERS member as defined in § 19-2-303(30), MCA; because he has less than 5 years of membership service he is not a vested member of PERS as defined in § 19-2-303(56), MCA. As an inactive, nonvested member of PERS, he is eligible for a refund of his account, but nothing more. Section 19-3-401(3), MCA.

BACKGROUND

The relevant facts to this matter are not in dispute. 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 and an account balance of \$14,782.82. Mr. Lins was not required to withdraw his account when he terminated this employment. Although he was not yet retirement age, he had more than the required 5 years of service necessary to be vested in PERS and if he had left his retirement account intact, upon attaining retirement age he would have become eligible for a monthly benefit (based on his credited service, including additional service, if any, earned in a subsequent PERS covered position). However, Mr. Lins chose not to remain a member of PERS, instead requesting and receiving a refund of his PERS accumulated contributions, and relinquishing his claim to any benefits payable from PERS. Section 19-2-601, MCA.

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. 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.

Lins received membership service for all months of service he accrued from February 2010 through April 2014. The Montana Public Employee Retirement Administration (MPERA),

which is the staff arm of the Board, also granted him 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 pursuant to § 19-3-504, MCA. Accordingly, when he terminated his PERS covered employment in November 2014, Lins had 4 years and 10 months of membership service. At this point, he became an inactive PERS member and because his membership service was two months short of the 5 years required to be vested in PERS, his status was nonvested.

PROCEDURAL HISTORY

On July 31, 2015, Lins' counsel sent MPERA inquiries about Lins' eligibility to acquire vested status, including a request to reinstate two months of his previously refunded membership service from the PERS covered position he held with Cascade County from 1991 to 1999. Counsel for MPERA, William Holahan, 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. On August 21, 2015, Lins filed a Petition for Declaratory Ruling (Petition) with the Board pursuant to § 2-4-501, MCA, which requires the prompt disposition and filing of a petition for declaratory ruling regarding the applicability of any statutory provision, rule or order of the agency. Lins' Petition requested a ruling declaring that he is entitled, pursuant to § 19-2-603, MCA, to reinstate prior membership service in the PERS.

While attorney Holahan represented MPERA in this matter, the undersigned independently represents the Board¹ and on September 4, 2015, jointly notified Lins' counsel and

¹ Due Process prohibits the MPERA attorney and Board attorney from discussing the case with each other and prohibits the MPERA attorney from discussing the case with the Board prior to the conclusion of the matter before the Board unless the appealing party is given notice and is present. Section 2-4-613, MCA.

MPERA's counsel that the Board would address the Petition at their next regularly scheduled meeting on October 8, 2015, and that unless good cause was shown, there would not be a hearing on the matter. Lins' counsel responded, but did not request a hearing. MPERA's counsel filed a Response to Petitioner's Petition for Declaratory Ruling on September 23, 2015 and did not request a hearing. 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 good cause for a hearing had not been established and no request for a hearing had been made. On October 8, 2015, during their open meeting, 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. 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 until their next meeting would not result in a prompt disposition of the Petition. The Board's counsel distributed a draft ruling which was approved in writing, separately and independently by each Board member with no further meeting. The Petition, MPERA's Response and the Board's Declaratory Ruling constitute the record in this proceeding.

STANDARD OF REVIEW

An agency declaratory ruling is subject to judicial review as a final written decision of the agency. Section 2-4-501, MCA. Judicial review of a final agency decision is governed by § 2-4-704, MCA. Review is confined to the record and a court may only reverse or modify the agency's decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decisions are:
 - (i) in violation of constitutional or statutory provisions;
 - (ii) in excess of the statutory authority of the agency;
 - (iii) made upon unlawful procedure;

- (iv) affected by other error of law;
 - (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
 - (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (b) findings of fact, upon issues essential to the decision, were not made although requested.

Section 2-4-704(2), MCA. The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *Id.* In reviewing conclusions of law, the court must determine whether the agency's interpretation and application of law are correct and must afford the agency's interpretation great weight, deferring to that interpretation unless it is plainly inconsistent with the governing authority. *Knowles v. State ex rel. Lindeen*, 2009 MT 415, ¶ 22, 353 Mont. 507, 222 P.3d 595. The agency's interpretation "will be sustained so long as it lies within the range of reasonable interpretation permitted by the wording." *Id.* (citing *State Personnel Division v. Child Support Investigators*, 2002 MT 46, ¶ 63, 308 Mont. 365, 43 P.3d 305.)

ARGUMENT

The Board's interpretation and application of law regarding Lins' limited rights as an inactive, nonvested PERS member is correct and must be sustained as plainly consistent with the governing authority. *Knowles*, ¶ 22. This authority is the PERS plan document, which includes applicable provisions of the Montana constitution and Title 19 of the Montana Code Annotated, along with the administrative rules, policies and other documents adopted by the Board. The Board's Declaratory Ruling satisfies the standards of review contained in § 2-4-704, MCA; it is consistent with required due process, does not prejudice Lins' rights and is neither affected by error of law, nor clearly erroneous in view of the whole record, but in conformity to applicable constitutional and statutory provisions.

- I. **The Board correctly determined that Lins is not entitled to reinstate or purchase service in PERS because he is not eligible under § 19-3-401, MCA as an inactive, nonvested PERS member for any benefits from PERS other than a refund.**

The PERS membership statute, § 19-3-401, MCA, establishes limits on the rights of inactive members – distinguishing between both inactive vested members and inactive nonvested members, providing in relevant part with emphasis added:

19-3-401. Membership -- inactive vested members -- inactive nonvested members.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) **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.**

(b) **An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.**

(Sections 1, 4 and 5 omitted). By way of context, an inactive member is one who terminates service and does not retire or take a refund of the member's account (accumulated contributions), while a nonvested member is one who has less than 5 years of membership service. Sections 19-2-303(30) and (56), MCA. Lins does not dispute that he is an inactive, nonvested PERS member. Accordingly, § 19-3-401, MCA, applies to him and specifically provides that as a member with inactive, nonvested status, he is “not eligible for any benefits from the retirement plan”; and that a member with his status “is eligible only for a refund”. Lins requests more than a refund. He asks to reinstate previously refunded service which would result in him immediately attaining vested status and qualifying for a pension. This type of adverse selection is not permitted in PERS.

A. The PERS plan document must be read together to collectively govern Lins' rights as a PERS member.

No one section of the PERS plan document can stand alone; the Board is required to follow the entire plan document and may not apply single provisions in isolation. While Lins' Petition asserts that his rights hinge exclusively on § 19-2-603, MCA, Montana law requires that statutes be interpreted in their proper context. "We must read a whole act together and where possible we must give full effect to all statutes involved." *Big Sky Colony, Inc. v. Mont. Dep't of Labor & Indus.*, 2012 MT 320, ¶ 70, 368 Mont. 66, 291 P.3d 1231 (citing *Delaney & Co. v. City of Bozeman*, 2009 MT 441, ¶ 22, 354 Mont. 181, 222 P.3d 618).

The context of PERS is well defined. As a qualified governmental plan under Section 401(a) of the Internal Revenue Code, PERS must meet many Internal Revenue Code requirements. These are contained in the PERS plan document, composed of the applicable provisions of the Montana constitution and Title 19 of the Montana Code Annotated, along with applicable rules, policies and documents adopted by the Board. Section 19-2-1010, MCA. Chapter 2 of Title 19, the Public Employees' Retirement Act, applies to each of the 7 distinct defined benefit retirement systems that the Board administers. Section 19-2-302, MCA. The subsequent chapters independently authorize and govern each of those distinct retirement systems, from the Public Employees' Retirement System in chapter 3, which is in question here, to the Firefighters' Unified Retirement System in chapter 13.

The Board is charged with administering the PERS pension trust fund subject to the provisions of Title 19, chapters 2 and 3 of the Montana Code Annotated as well as the rules that the Board is authorized to establish for the administration, operation, and enforcement of PERS. Sections 19-2-403 and 19-2-502, MCA. All PERS members, including Lins, are subject to those provisions.

B. Lins' request is a request to purchase service, for which he is not eligible.

Reinstating refunded "membership service" and "service credit"² by redepositing or paying to PERS the refunded amount and interest as required under § 19-2-603, MCA in exchange for receiving additional membership service and service credit in PERS constitutes a service purchase under the several statutes and rules that apply to the situation.

1. Statute reflects that the redeposit or reinstatement of refunded service constitutes a service purchase.

There are various types of service purchases in PERS but each is authorized with the same purpose of allowing a member to pay additional contributions upfront in exchange for receiving a greater benefit upon retirement than he or she would otherwise be eligible to receive. Paying additional contributions or "redepositing" money into the PERS trust fund outside of the "regular contributions" required from members actively participating in PERS is only allowed as specifically authorized. Sections 19-2-303(39), 19-3-315, MCA. Section 19-2-704(1), MCA specifically authorizes making additional contributions to purchase service credits. This statute is titled "Purchasing service credits allowed – payroll deduction" and is codified in Title 19, chapter 2, part 7, which is titled "Service Credit and Additional Contributions". Notably, the titles of sections within an act are presumed to indicate the legislature's intent. *Orr v. State*, 2004 MT 354, ¶ 29, 324 Mont. 391, 106 P.3d 100. The title of this part and section and the underlying authorization for the "redeposit of amounts withdrawn under 19-2-602" to be made using the same payment methods and processes as other types of service purchases indicate that a redeposit or reinstatement is in fact, a service purchase. Section 19-2-704(3)-(7), MCA.

² 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.

“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). Similar to the relevant provision in PERS, 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.

Lins is not eligible to purchase service or make additional contributions. His claim that he is entitled to reinstate PERS refunded service is based on § 19-2-603, MCA, which is a part of Title 19, chapter 2, part 6 “Termination of Membership and Refunds”. This part applies to all 7 defined benefit retirement plans administered by the Board and broadly governs termination of membership and refunds, as the title indicates. It clearly does not provide eligibility limits for reinstating previously refunded service for PERS, or for any of the other plans the Board administers. Common eligibility requirements for reinstating refunded service and purchasing service generally are found within § 19-2-704, MCA. Plan specific limits are found within each of the 7 chapters of Title 19 that individually govern those plans and the administrative rules implementing them. In PERS, the relevant statute is § 19-3-401, MCA, which, as noted previously also limits service purchases by inactive PERS members to those who are vested.

2. Administrative rules reflect that the redeposit or reinstatement of refunded service constitutes a service purchase.

The Board’s rules addressing service purchases clearly include reinstating refunded service as a type of service purchase. Specifically, Administrative Rule of Montana (ARM) 2.43.2303, titled “Documentation of amount of service eligible to be purchased” 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, titled “Most recent service purchased first”

provides both that when a member who has refunded more than once must “purchase the most recent refund first” and when purchasing only a portion of a member's refunded service, the member must first purchase the most recent refund. ARM 2.43.2309, titled “Service purchases by inactive vested members” provides that the most recent termination date will be considered the purchase request date for all service purchases other than purchases of refunded service. Finally, 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. All of these rules indicate that reinstating refunded service is a service purchase.

C. The Board correctly interpreted the PERS plan document.

Lins attempts to rely both on the mischaracterization of the applicable administrative rules as invalid and fragments of statutory construction principles to support his claim. Neither argument is persuasive.

1. The Board correctly applied the rules of statutory construction.

“Statutory construction is a holistic endeavor and must account for the statute’s text, language, structure and object. A court’s purpose in construing a statute is to ascertain the legislative intent and give effect to the legislative will.” *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426 (citations omitted). The Montana Supreme Court has directed again and again that “statutes must be read and considered in their entirety and the legislative intent many not be gained from the wording of any particular section or sentence, but only from a consideration of the whole.” *Id.* at ¶ 27 (citing *Home Bldg. & Loan Ass’n of Helena v. Fulton*

(1962), 141 Mont. 113, 115, 375 P.2d 312, 313 and *State ex. rel. Holt v. District Court*, 2000 MT 142, ¶ 7, 300 Mont. 35, 3 P.3d 608). Following this directive, the Board and this court must look beyond the single statute in question here to the broader act authorizing PERS to avoid the absurd outcome that would result from administering single provisions of the plan in isolation.

Lins argument against looking at the broader plan document governing PERS overstates the plain meaning principle of statutory construction, limiting interpretation of the “plain meaning of the words used” to those words used in a single statute. (Brief in Support, p.6) However, this principle is not so narrow as to require turning a blind eye to related statutes. Indeed, the very case Lins cites to support his argument looks beyond a single statute in the act implementing the State’s deferred compensation plan, to the broader act authorizing that plan. *Montana Ass’n of Underwriters v. State* (1977), 172 Mont. 211, 215-217, 563 P.2d 577-580. Lins further reliance on *Infinity Ins. Co. v. Dodson*, 2000 MT 287, 302 Mont. 209, 14 P.3d 487 (Brief in Support, p. 8) is misplaced. The *Infinity* decision does not prohibit recognition or review of more than a single statute. To the contrary, that decision included a review of the plain language of the Motor Vehicle Safety-Responsibility Act, not just a single statute contained therein. That court determined, “in construing a statute, this Court must also read and construe **each** statute as a whole so as to avoid an absurd result.” *Infinity* at ¶ 46 (emphasis added).

Lins also argues that the Board erred by looking beyond § 19-2-603, MCA, based on the principle of statutory construction prohibiting a court from “adding to or subtracting from” a statute as provided in the first sentence of § 1-2-101. (Brief in Support, p.6). However, he fails to acknowledge the second sentence of that section, which directs the court to look beyond a single provision. “Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.” Section 1-2-101, MCA. Following the

Montana legislature's codification of this statutory construction preference of giving meaning to multiple applicable provisions, the Montana Supreme Court has applied this harmonizing principle to situations specifically involving multiple statutes many times, finding that the same rules that apply to harmonizing real or apparent conflicts within the internal language of a statute also apply to real or apparent conflicts between different portions of the code touching the same subject and harmonizing or reading together multiple parts 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". *Schuman v. Bestrom* (1985), 214 Mont. 410, 415, 693 P.2d 536, 539. See also *City of Bozeman v. Racicot* (1992), 253 Mont. 204, 208-209, 832 P.2d 767, 770 ("Where several statutes may apply to a given situation, such a construction, if possible is to be adopted as will give effect to all.") and *State v. Heath*, supra. The Board urges the court to do the same here and look to the several provisions that apply to the situation.

2. The Board correctly relied on valid administrative rules.

The Board seeks to honor the primary rule of construction, to give meaning to each statute or provision where several apply. Here, the administrative rules governing service purchases in ARM 2.43.2301 – 2.43.2324 apply as part of the PERS plan document promulgated by the Board pursuant to their authority under §§ 19-2-403(2) and 19-2-704, MCA and in accord with the requisites for validity of administrative rules provided in § 2-4-395, MCA. The rules are neither extraneous, nor invalid but are lawfully enacted provisions which were established to aid in the administration of service purchases within the retirement systems, specifying among other things the process, required documentation, cost, and timing of service purchases, specifically including purchases of previously refunded service.

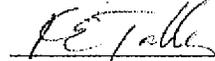
Lins claims that the court may not add to or subtract from statutory language through citation to administrative rules citing *Glendive Medical Center, Inc. v. Montana Dept. of Public Health and Human Services*, 2002 MT 131, 310 Mont. 156, 49 P.3d 560 (Brief in Support, p. 10); however, that case actually explains that the same principles apply in construing administrative rules as statutes, and that absent ambiguity in a statute or rule the court may not consider legislative history or any other means of statutory construction. *Glendive* at ¶ 15. The Board is not seeking to look beyond the plain meaning of the administrative rules here, but to rely on them as relevant, valid provisions of the PERS plan document which apply to the situation and specifically implement the statutes in question.

CONCLUSION

As an inactive, non-vested PERS member, Lins is not entitled to reinstate or purchase previously refunded service and is eligible only for a refund of his accumulated contributions. The Board's Declaratory Ruling is based on a correct interpretation and application of the law and should be upheld.

Respectfully submitted this 4th day of January, 2016.

State of Montana Public Employees' Retirement Board

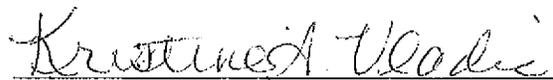


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Special Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Answer Brief was served upon the following by first-class U.S. mail on January 4, 2016.

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RECEIVED
JAN 13 2016
MPERA

RE: Bradley Lins v. Montana Public Employees' Retirement Board
Lewis & Clark County Cause No. BDV-25-2015-0000873-JR
Our File No. 14-050

Dear Ms. Sweeney:

Enclosed please find in the above-referenced case, Reply Brief in Support of Petition for Judicial Review of Declaratory Rule; Request for Hearing; and a proposed Order Setting Hearing for Judge Cooney's consideration. Additionally enclosed is a 1st-page copy of the documents for conformation of filing and return to this office in the enclosed envelope. Thank you.

Best wishes.

Sincerely,



Ben A. Snipes

BAS:dak
Enclosures

cc: Katherine E. Talley ✓

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Attorneys for Petitioner

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

| | | |
|---------------------------|---|-------------------------------------|
| BRADLEY LINS, |) | CAUSE NO. BDV-25-2015-0000873-JR |
| |) | |
| Petitioner, |) | |
| |) | REPLY BRIEF IN SUPPORT OF |
| v. |) | PETITION FOR JUDICIAL REVIEW |
| |) | OF DECLARATORY RULING |
| MONTANA PUBLIC EMPLOYEES' |) | |
| RETIREMENT BOARD, |) | |
| |) | |
| Respondent. |) | |

INTRODUCTION

Petitioner, Bradley Lins, was denied the ability to reinstate previously withdrawn PERB contributions despite being a person "who again becomes a **member** of a defined benefit plan." § 19-2-603, MCA (emphasis added). In reaching this conclusion, the Montana Public Employees' Retirement Board (PERB) found that reinstating prior service is tantamount to purchasing service and is likewise limited by § 19-2-704(2), MCA. This finding is expressly contradicted at § 19-2-704(3), MCA, which draws a distinction between the reinstatement process and the purchase of service. By failing to give deference to this statutory distinction, the PERB committed an error of law in its 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. Lins' substantial rights have been prejudiced by the

PERB's error, requiring reversal of the PERB's declaratory finding and an order allowing Lins to reinstate his prior service. § 2-4-704(2)(a)(iv), MCA.

ARGUMENT

I. The PERB's finding that Lins is ineligible for service reinstatement is contradicted by numerous statutory provisions of the Public Employees' Retirement Act.

Within the statutory makeup of the Public Employees' Retirement Act (Title 19, Chapter 2), there are only a few provisions applicable to the interpretation of a member's eligibility to reinstate previously refunded service. Of those few provisions, none require that a person be a "vested member" to be eligible to reinstate such service. As a "member," Lins is entitled to reinstate his withdrawn contributions under § 19-2-603, MCA.

A. Lins is a defined "member" of the PERS and is entitled to redeposit prior contributions per § 19-2-603, MCA.

A member's statutory right to reinstate membership service that was previously withdrawn is devised within the Public Employees' Retirement Act at § 19-2-603, MCA. Section 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* (emphasis added).

The term "member" as used in § 19-2-603, MCA, and throughout the Public Employees' Retirement Act is defined at § 19-2-303(32), MCA. In relevant part, a "member" is "a person with accumulated contributions and service credited with a defined benefit retirement plan." § 19-2-303(32)(a), MCA. The principles of statutory interpretation mandate that defined terms are to be applied uniformly, wherever they occur. See § 1-2-107, MCA.

The PERB does not dispute that by virtue of his accumulated contributions in the PERS, Lins is in fact a defined "member" of the PERS. Aside from being a "member," § 19-2-603, MCA, provides no further restrictions on a person's entitlement to reinstate their prior membership service by redepositing their 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 § 1-2-107, MCA, and 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). Because § 19-2-603, MCA, can be construed according to its plain language and the defined terms contained therein, no further interpretation is permitted. *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, ¶ 46, 14 P.3d 487, ¶ 46.

Simply put, any "member" can reinstate previously refunded service. All parties agree that Lins is a "member" of the PERS.

B. § 19-2-704, MCA, confirms that the process of redepositing retirement funds previously withdrawn is entirely distinct from that of purchasing service.

Assuming arguendo that further interpretation of these otherwise unambiguous statutes is permitted, § 19-2-704, MCA, does not support the PERB's finding that reinstatement of prior service is a service purchase limited to vested members. See ¶ 20, Declaratory Ruling ("[r]einstitating refunded membership service or service credit by

redepositing the refunded amount and interest as required under § 19-2-603, MCA constitutes a service purchase”). The PERB’s sole statutory basis for denying Lins’ request rests upon the PERB’s narrow interpretation of § 19-2-704(2), MCA. This provision limits the “purchase or transfer of service credit” to “vested members.” However, the PERB’s interpretation of § 19-2-704(2), MCA, is contradicted by numerous statutes within Title 19, Chapter 2, including § 19-2-704(3), MCA, in such a direct and express manner that it cannot serve as the basis to find Lins ineligible for reinstatement of his prior service. Because the PERB’s findings are built on a statutory foundation that is directly contradicted by numerous other provisions of the Public Employees’ Retirement Act, its declaratory ruling must be reversed.

By its plain language, § 19-2-704(2), MCA, has no bearing on the construction or interpretation of § 19-2-603, MCA. § 19-2-704(2), MCA, 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).

It is undisputed that § 19-2-704(2), MCA, limits only the “purchase or transfer of service.” *Id.* The PERB’s misinterpretation of the breadth of § 19-2-704(2), MCA, is revealed through the numerous provisions of the Public Employees’ Retirement Act that precipitate the processes of purchasing and transferring credit, none of which have any mention or relation to the § 19-2-603, MCA, reinstatement provision.

Within the Public Employees’ Retirement Act there are distinct codifications which reveal the process of purchasing and/or transferring 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. Likewise, § 19-2-709, MCA, permits the transfer of service and contributions from other Montana public employee retirement systems. These processes are limited to “vested members” per § 19-2-704(2), MCA.

However, Lins is seeking to neither purchase nor transfer membership service. His request is limited to reinstating withdrawn contributions by redepositing refunded sums, plus interest, per § 19-2-603, MCA. The only provision within the Public Employees’ Retirement Act codifying this reinstatement process is § 19-2-603, MCA. Because § 19-2-603, MCA, is specifically limited to the process of reinstating prior service, it cannot be reasonably lumped in to the statutorily distinct processes of purchasing (§ 19-2-715, MCA) and/or transferring (§ 19-2-715(1)-(2), MCA) service. By any reasonable reading, the multiple independent provisions of the Public Employees’ Retirement Act confirm that redepositing prior contributions is neither a purchase nor transfer of service.

Further and more direct confirmation that reinstating withdrawn contributions is statutorily distinct from the process of purchasing or transferring 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 redundant and 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 § 19-2-603, MCA, § 19-2-704(3), MCA, and the pertinent provisions of the Public Employees' Retirement Act. To so hold constitutes an error of law, resulting in prejudice to Lins' substantial rights under the Public Employees' Retirement Act. See § 2-4-704(2)(a)(iv), MCA.

II. The PERB's citation to administrative rules contrary to the plain language of § 19-2-603, MCA, constitutes an error of law.

In an attempt to bolster the credibility of its Declaratory Ruling, the PERB cites to a variety of administrative rules purporting to classify the process of redepositing refunded service as tantamount to purchasing service. Declaratory Ruling, ¶ 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 PERB's reliance on extraneous, self-created rules, in the presence of clear, unambiguous statutory language, is erroneous. § 2-4-704(2)(a)(iv)-(v), MCA.

III. The PERB's citation to § 19-3-401, MCA, has no bearing on the evaluation of Lins' entitlement to reinstate prior service.

The PERB cites to § 19-3-401, MCA, in an attempt to alter the plain requirements of § 19-2-603, MCA. Much like its citation to inapplicable administrative rules, *supra* Section II, § 19-3-401, MCA, is superfluous to the analysis of Lins' eligibility to reinstate prior service. Section 19-3-401, MCA, deals specifically with the eligibility requirements for the purchase of service credit or the receipt of retirement benefits. It has been exhaustively covered that Lins is not seeking such action, but rather to reinstate prior membership service. *Supra*, Section I. Because the right to reinstate service credit is governed under § 19-2-603, MCA, and is entirely distinct from the right to purchase service

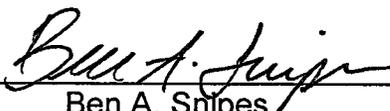
or receive retirement benefits, Lins' ability to reinstate previously refunded service is not affected by § 19-3-401, MCA.

CONCLUSION

Lins is a "member" of the PERS seeking to reinstate prior contributions per § 19-2-603, MCA. § 19-2-303(32), MCA. This reinstatement process is distinct from the purchase of service identified in § 19-2-704(2), MCA. This distinction is expressed in § 19-2-704(3), MCA, and the provisions within the Public Employees' Retirement Act addressing purchasing service (e.g. § 19-2-715, MCA). As such, Lins seeks issuance of a declaration, upon this Court's judicial review of the Declaratory Ruling, confirming his entitlement as a "member," to reinstate his previously accumulated membership service per § 19-2-603, MCA.

DATED this 11th day of January, 2016.

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

BY: 
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on the 11th day of January, 2016, I served by first class mail, postage prepaid, a true and legible copy of the foregoing **Reply Brief in Support of Petition for Judicial Review of Declaratory Ruling** upon the following:

Katherine E. Talley
Special Assistant Attorney General
100 North Park Avenue, Suite 200
Helena, MT 59620-0131

A handwritten signature in black ink, appearing to read "Katherine E. Talley", is written over a horizontal line.

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Attorneys for Petitioner

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

| | | |
|---------------------------|---|----------------------------------|
| BRADLEY LINS, |) | CAUSE NO. BDV-25-2015-0000873-JR |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | REQUEST FOR HEARING |
| |) | |
| MONTANA PUBLIC EMPLOYEES' |) | |
| RETIREMENT BOARD, |) | |
| |) | |
| Respondent. |) | |

Petitioner respectfully requests a hearing on his Petition for Judicial Review of Declaratory Ruling which has been fully briefed.

DATED this 11th day of January, 2016.

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

BY: 
Ben A. Snipes
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