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PENSIONS:
Concurrent Service Credit
Under the Retirement Systems
Reciprocal Act

Mr. Fred Husmann
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2815 West Washington
Springfield, Illinois 62794-9255

Dear Mr. Husmann:

I have your letter wherein you inquire regarding the interpretation of section 20-119 of the Retirement Systems Reciprocal Act (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 20-119), which relates to the treatment of pension credits earned by persons who are employed in two or more positions which are covered by two or more participating pension systems during the same period of time. For the reasons hereinafter stated, it is my opinion that under section 20-119 of the Act, when an individual earns credits in more than one system for concurrent employment during the same period of time, those

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credits must be reduced to a full-time equivalent before determining both eligibility for reciprocal benefits and the level of benefits, except as is otherwise specifically provided in that section.

Section 20-119 (with the amendatory language of Public Act 87-794 emphasized), provides:

> "Sec. 20-119. Concurrent employment. Any employee who is concurrently employed by employers under 2 or more participating systems is entitled to establish pension credit in accordance with the provisions of each system.
>
> If the concurrent employment results in duplication of credits, each of the systems shall reduce the service credit for the period of concurrent employment to its full-time equivalent, using as a basis for this adjustment, the earnings credited for each employment. <u>However, no such reduction in service credit shall be applied for the purpose of meeting the one-year minimum service requirement in item (1) of Section 20-109, except as provided in Section 20-120</u>.
>
> Combined earnings credits shall be limited to the earnings credits which would have been established by full-time employment with the employer from which the employee was receiving the highest salary.
>
> Seasonal employment covered by a retirement system during a period for which credit has been granted in another retirement system is concurrent employment within the meaning of this Section and no adjustment of the credits for seasonal employment is required, unless it results in a duplication of pension credits. If seasonal employment results in a duplication of credits, it shall be adjusted in accordance with Section 20-120."

In order to clarify the issue which has arisen among the several pension systems, it is also necessary to set out the

provisions of section 20-120 of the Retirement Systems Reciprocal Act (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 20-120), which provides:

> "Duplication of pension credits. In no event shall pension credit for the same service rendered by an employee be accredited in more than one participating system. If employment is covered by more than one participating system, pension credit shall be granted by that system which was first authorized to grant the credit, or if more than one participating system was authorized to grant credit at the same time the employee shall elect, prior to retirement, the system under which credit shall be granted. The participating system under which pension credit is forfeited because of the application of this section, shall refund to the employee, the contributions for the period of service forfeited."

Based upon sections 20-119 and 20-120, some participating public pension systems currently reduce pension credits earned during periods of concurrent employment to a full-time equivalent prior to determining eligibility for benefits, as well as in the calculation of benefits. This procedure will be referred to hereinafter as "Method A". Other systems do not reduce credits for purposes of determining eligibility, but do reduce credits to a full-time equivalent before calculating the amount of benefits payable. ("Method B".) More recently, it has been suggested that no reduction should be made either for determining eligibility or calculating benefits unless there is a "true duplication" of credits, i.e., when credit has been granted in more than one system for the same service rendered. ("Method C".) The disagreement among the systems concerns the

meaning of the term "duplication of credits" and the construction to be accorded to sections 20-119 and 20-120 of the Act.

The following hypothetical will illustrate the practical differences in applying the various formulae to the same set of facts:

An employee has earned 5 years of service credit in System X and 5 years of service credit in System Y. One year of the service credited in each system represents credit earned for concurrent employment. The longest minimum vesting requirement for either system is 10 years (for System X); System Y requires 8 years of service credit for vesting. In order to qualify for reciprocal benefits, the employee's combined pension credit must be at least equal to the longest minimum qualifying period prescribed by any of the systems in which credit has been earned. (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 20-115.)

Under Method A, the employee's service credit would be reduced to its full-time equivalent prior to determining eligibility for reciprocal benefits. The formula most commonly used to determine the full-time equivalent is:

$$\frac{\text{Earnings x Service Credit}}{\text{Combined Earnings}} = \text{Adjusted Service Credits.}$$

Thus, if the employee, during the one year of concurrent employment, earned $10,000 under System X and $15,000 under System Y, the adjusted service credits would be calculated as follows:

$$\text{System X} \quad \frac{\$10{,}000 \times 1.000}{25{,}000} = 0.4 \text{ years of credit}$$

$$\text{System Y} \quad \frac{\$15{,}000 \times 1.000}{25{,}000} = 0.6 \text{ years of credit}$$

Therefore, since the adjusted combined service credits equal only 9 years (4.4 years in System X plus 4.6 years in System Y), the employee would not be eligible for reciprocal benefits, because the combined service does not meet the longest vesting requirement of the two systems (10 years). Moreover, because the employee's service in System X or System Y also fails to meet the requisite minimum requirements for vesting in each system, the employee would not be eligible for pension benefits from either system.

Under Method B, no reduction of service credits is made in determining eligibility for reciprocal benefits. Therefore, the employee would be entitled to a total of 10 years combined service credit (5 years in System X and 5 years in System Y), and, having met the longest vesting requirement of the two systems, would be eligible for reciprocal benefits (even though he does not meet the vesting requirements for either System X or Y individually). The service credits would, however, be reduced to a full-time equivalent for purposes of determining the total benefits payable. Thus, the level of benefits would be based upon 9 years total service, rather than 10 years.

Under Method C, like Method B, no reduction in service credits would be made to determine eligibility for reciprocal benefits. In addition, unless credit had been granted in both systems for the same service, no reduction in service credits would be made in calculating the total benefits paid, either. Thus, the employee's benefits would be based upon 10 years service credit, rather than 9 years as under Method B.

Sections 1-102 and 1-103 of the Pension Code (Ill. Rev. Stat. 1991, ch. 108 1/2, pars. 1-102, 1-103) contain rules of construction which assist in resolving the question presented. Section 1-102 provides:

> "Continuation of prior statutes. The provisions of this Code insofar as they are the same or substantially the same as those of any prior statute, shall be construed as a continuation of such prior statute and not as a new enactment.
>
> * * *
>
> "

Section 1-103 provides:

> "Effect of headings. Article, Division and Section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any Article, Division or Section hereof."

A review of the history of sections 20-119 and 20-120 indicates that they are derived from the combination of similar provisions which previously appeared in two separate statutes. Sections 11 and 12 of the Retirement Systems Reciprocal Act (see Ill. Rev. Stat. 1961, ch. 127, pars. 246.11, 246.12), as

in form and effect immediately prior to the incorporation of that Act into the current Pension Code (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 1-101 et seq), provided:

> "§ 11. Any employee who is concurrently employed by employers under two or more of said systems shall be entitled to establish a pension credit in accordance with the provisions of each system, provided that if such concurrent employment results in a duplication of credits, each of the systems involved in such concurrent employment shall reduce the service credit for the period of concurrent employment to its full time equivalent, using as a basis for such adjustment the earnings credited for each employment."
>
> "§ 12. In no event shall pension credit for the same period of service rendered by an employee be accredited more than once in one or more retirement systems."

Sections 6 and 8 of "An Act to provide for the reciprocal allowance of credits for retirement * * * between the State Employees' Retirement System of Illinois, the University Retirement System of Illinois and the Teachers' Retirement System of the State of Illinois * * *" (see Ill. Rev. Stat. 1961, ch. 127, pars. 252, 254), however, provided:

> "§ 6. The rights and benefits of a person who is concurrently a contributor to two or more of said systems shall be based upon his total contributions to all of said systems but shall be limited and determined by the provisions of the Act from which said person receives the greatest portion of his compensation, or if such person receives the same amount of compensation and is a contributor to two or more systems, then by the Act elected by such person. The system liable to such person for the payment of benefits under this Section shall have a claim for the contributions of such person made to the other systems,

> and the other systems shall pay the amount of such contributions upon demand."
>
> "§ 8. Notwithstanding any provision in this Act to the contrary, in no event shall service of any person be accredited by any system more than once, nor shall concurrent credit be allowed for any of the purposes of this Act, under more than one system, for the same service rendered by any person covered by the provisions of this Act."

It appears that the current Method A construction is derived from the language of sections 11 and 12 of the former Reciprocal Act, while Method B is derived from the language of sections 6 and 8 of "An Act to provide for the reciprocal allowance of credits * * *". Although section 11 of the former Reciprocal Act used the term "duplication of credit" without defining it, section 12 of that Act clearly prohibited the granting of service credit for the same period of service in one or more systems, apparently without regard to whether the credit was for the same services rendered. Sections 6 and 8 of "An Act to provide for the reciprocal allowance of credits * * *" did not use the term "duplication of credit", but rather, section 8 used the term "concurrent credit" in much the same way that the term "duplication of credit" is used by those now suggesting the application of Method C.

In my opinion, section 20-119 is substantially the same as section 11 of the Reciprocal Act, and, in accordance with section 1-102 of the Pension Code, should be viewed as a continuation thereof. In the context of sections 11 and 12 of

the former Act, the term "duplication of credits" referred to the establishment of service credit more than once for the same period of time, whether the credit was established due to a single employment which was covered by more than one system or by concurrent employment under two or more systems.

Viewed from a historical perspective, limiting the term "duplication of credits" in section 20-119 of the Code to the situation described in section 20-120 of the Code, which involves the earning of credit in two or more pension systems for the same services rendered, unduly narrows the circumstances apparently intended to be addressed. There is certainly no basis for such a narrow construction in the prior statute, and, moreover, that construction places great weight upon the use of the term "duplication of credits" as a section heading, contrary to section 1-103 of the Pension Code, since nowhere in section 20-120 is there a clear statement that its provisions are intended to define that term.

Both the prior and current statutes require that when there is a "duplication of credit", the service credits must be reduced to their full-time equivalent, indicating that the term "duplication" is related to the period of employment, and not to the nature of the services rendered. The legislative intent, is, in my opinion, to preclude an individual from obtaining, for example, twenty years of service credit when fewer than twenty years have actually been worked. When an

individual is concurrently employed less than full-time by each of two or more employers covered by two or more systems, however, the accrual of service credits in each system sufficient to accumulate to a full-time equivalent in one system is permitted under section 20-119. Section 20-120 addresses another, related aspect of concurrent service, by prohibiting the accrediting of service in more than one system for the same services rendered. Such accreditation would result in a true duplication of credit in every instance, so that a total prohibition is appropriate. No formula for a reduction of credit is needed.

Moreover, the recent amendment to section 2-119 can only be given effect if the term "duplication of credit" is construed to refer to the establishment of credit in two systems during the same period of time. The amendment provides that no reduction for concurrent service is to be applied for the sole purpose of meeting the one year minimum service requirement for application of the Reciprocal Act, except where credit has accrued in two systems for the same service rendered. The apparent intent of the General Assembly was to permit the duplication of credits (in this case, the granting of full credit in each system for the same period of time) for that single purpose only. The amendatory language also indicates that neither Method B nor Method C reflects the true intent of the section. Method B recognizes all service credits

in determining eligibility, thus making the amendment superfluous. The amendment would also be unnecessary under Method C, because that method would apply no reduction except as provided in section 20-120, an exception which was specifically incorporated in the amendment. It cannot be presumed that the General Assembly engaged in a meaningless act. Maiter v. Chicago Board of Education (1980), 82 Ill. 2d 373, cert. denied 451 U.S. 921.

In conclusion, it is my opinion that when a participant accrues credit in more than one retirement system for services performed during the same period of time, the credits should be reduced to a full-time equivalent before determining eligibility for reciprocal benefits, as well as the level of those benefits, if any. Credit earned in two systems may, however, be aggregated without reduction to a full-time equivalent for the limited purpose of meeting the one year minimum service requirement for application of the Retirement Systems Reciprocal Act.

Respectfully yours,

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