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Legislative Report

Membership Criteria and the Transfer of
Part-Time Service Credit in the
Ohio Police and Fire Pension Fund and
the Public Employees Retirement System,
as Required by Sub. H.B. 648 of
the 122nd Ohio General Assembly

May 24, 2000

BACKGROUND

This study is submitted pursuant to Section 9 of H.B. 648 (eff. 9-16-98), which requires the Ohio Retirement Study Council to report on the following with regard to the law enforcement officers and firefighters covered by the Ohio Police and Fire Pension Fund (OP&F) and the Public Employees Retirement System (PERS):

- (1) The criteria used to determine membership in the OP&F and PERS;
- (2) The extent to which service credit earned in one of the retirement systems can be transferred and used in the calculation of benefits from the other system; and
- (3) Any other matter related to these subjects.

This report focuses on three key issues: (1) membership criteria for the law enforcement division of PERS (PERS-LE), (2) membership criteria in OP&F, and (3) the portability of service credit between OP&F and PERS. These issues came to light during discussions concerning H.B. 648.

Membership eligibility in OP&F and PERS is based upon the position in which an individual is employed and whether the position is considered part-time or full-time. Although "member" is defined for OP&F and PERS, membership eligibility is not always readily discernible because there is no statutory definition of "full-time" employment, which is a prerequisite for membership in OP&F. This has resulted in both confusion among employers regarding which retirement system is the proper one in which to enroll an employee and inequitable treatment among employees across the state.

Portability of service credit between OP&F and PERS is the final issue focused on in this report. OP&F members who have earned service credit in another Ohio public retirement system may purchase that service only if it is deemed to be full-time service. Even if the part-time service was rendered in a law enforcement or firefighter position, OP&F cannot accept it because under current law, only full-time service can be purchased or transferred. Two recent incidents illustrate the problems associated with this issue.

Because OP&F does not have the statutory authority to accept part-time service credit, problems have occurred when part-time fire departments become full-time fire departments. Firefighters who become full-time employees must become members of OP&F, however, if they had been members of PERS prior to changing to full-time status, none of their part-time service credit transfers to OP&F because OP&F can accept the transfer or purchase of full-time service credit only. The General Assembly addressed this issue in H.B. 648 by allowing employees who became members of OP&F as a result of the member's employer changing from a primarily part-time to a primarily full-time fire

department or who elected to transfer from PERS to OP&F pursuant to changes made in H.B. 789¹ (eff.11-8-90), to make an irrevocable election to transfer to PERS no later than 90 days after the effective date of H.B. 648. This allowed those members who elected to transfer to use their part-time service credit to qualify for retirement benefits in PERS, although the PERS benefit formula is lower and the retirement age is higher than the formula for OP&F members. While this action helped a number of members, it did not remedy the problem. Because the law requires the department to change to a primarily full-time fire department, those members who became full-time employees in a department that is not considered primarily full-time were not eligible to move back to PERS coverage and cannot transfer their part-time service to OP&F.

Another example of the problems caused by OP&F's inability to accept part-time credit occurred when a number of OP&F members were erroneously allowed to purchase part-time non-uniformed service credit after the fund told them their service was eligible to be purchased. When the fund discovered the error, the credit was rescinded and the members' purchase money was refunded. Last year the General Assembly allowed those members to receive full credit as part of H.B. 648, which, among other things, corrected this problem by allowing OP&F members to receive full credit for that service if they (1) had received written notice from OP&F that the member could purchase their non-uniformed part-time service credit and (2) had changed or ceased employment with the understanding that the credit would be used in computing the member's benefit.

The correct determination of membership is important because the systems have different eligibility requirements, benefits, and contribution rates. The following chart provides a comparison of OP&F, the law enforcement division of PERS, and the regular division of PERS:

¹H.B. 789 required all full-time firefighters to be members of OP&F and also permitted certain other full-time firefighters to transfer to OP&F from PERS.

	OP&F	PERS-LE	PERS
Normal Age and Service Retirement	Age 48 with 25 or more years of service (YOS), age 62 with 15 or more YOS	Age 52 with 25 or more YOS, age 62 with 15 or more YOS	Age 65 with 5 or more YOS, any age with 30 or more YOS
Early Retirement	Not applicable	Age 48 with 25 or more YOS	Age 60 with 5 or more YOS
Benefit Formula	2.5% x final average salary (FAS) x 20 YOS; 2% x FAS x next 5 YOS; 1.5% x FAS x YOS over 25	2.5% x FAS x 20 YOS; 2.1% x FAS x YOS over 20	2.1% x FAS x 30 years; 2.5% x FAS x YOS over 30
Employee Contribution	Police: 10.00% Fire: 10.00%	9.00%	State: 8.50% Local: 8.50%
Employer Contribution	Police: 19.50% Fire: 24.00%	16.70%	State: 13.31% Local: 13.55%

CRITERIA USED TO DETERMINE MEMBERSHIP IN PERS-LE

Membership in PERS-LE is established by statute. It is restricted to law enforcement officers as listed in R.C. §§145.01(SS). Covered individuals include sheriffs, deputy sheriffs, township constables and police officers, drug agents, department of public safety enforcement agents, park officers, forest officers, game protectors, state watercraft officers, preserve officers, natural resources law enforcement staff officers, park district police officers, conservancy district officers, municipal police officers not in OP&F, Ohio veterans' home police officers, special police officers for mental health institutions, and special police officers for institutions for the mentally retarded and developmentally disabled, state university law enforcement officers, and Hamilton County Municipal Court bailiffs.²

All members except Ohio veterans' home police officers, special police officers for mental health institutions, and for institutions for the mentally retarded and

²The requirements for eligibility in PERS-LE for all of these positions except "sheriff" are defined in R.C. §§145.01(AA)-(RR). The requirements and general powers and duties of sheriffs are defined in R.C. §311.01 *et seq.*

developmentally disabled are required by statute to be employed on a full-time basis in order to be eligible for PERS-LE membership³. There is no clear reason why these three groups of employees are exempted from the full-time employment requirement that is required of all other members of the law enforcement division.

The law enforcement division of PERS was created by the Ohio General Assembly in 1975 (H.B. 1312, eff. 3-4-75). The General Assembly recognized that certain law enforcement officers deserved special retirement benefits due to the nature of their employment. At that time only sheriffs and deputy sheriffs were included in the law enforcement division, which allowed them to remain members of PERS, but to retire with benefits similar to those provided by OP&F and the Highway Patrol Retirement System (HPRS). The primary duties of sheriffs are defined in R.C. §311.01 *et seq.* To be eligible for PERS-LE membership, R.C. §145.01(AA) requires deputy sheriffs (1) to be employed as full-time peace officers, (2) to possess a peace officer training certificate, and (3) to have primary duties of preserving the peace, protecting life and property, and enforcing the laws of the state.

One rationale for creating a separate program for sheriffs and deputy sheriffs rather than moving them to OP&F or HPRS was the concern that they might not have the career security that would enable them to attain the required number of years of law enforcement service needed to receive an age and service benefit due to the fact sheriffs are elected officials and, at that time, few sheriff departments had civil service protection. Although only employment as a law enforcement officer may be counted for purposes of retirement under the law enforcement division, the division has a special “back up” provision for members who do not have enough years of law enforcement service to qualify for law enforcement benefits. If law enforcement personnel do not have enough years of law enforcement service to qualify for PERS-LE benefits, they are eligible to retire under the regular PERS program, which requires only five years of service to qualify for a benefit.

Township constables and police officers were the second group of employees to be moved to the law enforcement division of PERS (H.B. 509, eff. 12-27-79). Prior to their move, the ORSC studied whether they should be transferred to PERS-LE or OP&F. The study concluded there were “no sufficiently important distinctions between the work of members of [OP&F] and the Sheriffs/Deputy Sheriffs program to justify one program or the other as more appropriate for township police. Municipal police, deputy sheriffs, and township police are all peace officers. They are required to have the same basic training; their powers and duties are similar. (*Pension Benefits for Township Police, May 1979, p. 7*) The study concluded that township constables and police officers should be included in PERS-LE rather than OP&F because a large number of them may need regular PERS

³Employees working in the other specified law enforcement positions on a part-time basis contribute to the regular division of PERS, rather than the law enforcement division.

coverage to qualify for a benefit and the benefits (with the exception of survivor and disability coverage) in PERS-LE were better than those in OP&F at that time. Like deputy sheriffs, township constables and police officers are also required to (1) be employed as full-time peace officers, (2) possess a peace officer training certificate, and (3) have primary duties of preserving the peace, protecting life and property, and enforcing the laws of the state to be eligible for membership in PERS-LE.

Since then the law enforcement division has grown to include not only sheriffs, deputy sheriffs, and township constables and police officers, but also drug agents, department of public safety enforcement agents, park officers, forest officers, game protectors, state watercraft officers, preserve officers, natural resources law enforcement staff officers, park district police officers, conservancy district officers, municipal police officers, Ohio veterans' home police officers, special police officers for mental health institutions, and for institutions for the mentally retarded and developmentally disabled, state university law enforcement officers, and Hamilton County Municipal Court bailiffs (R.C. §§145.01(SS)). These various law enforcement officers have been included based upon the similar nature of their training and duties to that of sheriffs and deputy sheriffs. All are required to have completed the Ohio Peace Officer Training course, are commissioned to make arrests, execute warrants and preserve the peace upon lands under the control of the governmental entity granting the commission, and are employed in potentially life-threatening occupations. However, only Hamilton County municipal court bailiffs are required to have primary duties of preserving the peace, protecting life and property, and enforcing the laws of the state in order to be eligible for membership in PERS-LE, and as noted above, not all are required to be full-time employees.

The original intent of the law enforcement program was to provide benefits for law enforcement officers whose duties and training were similar to those of police officers, but who, at that time, did not have the career security needed to receive a retirement benefit from OP&F. The first groups of employees eligible for benefits under the law enforcement division (sheriffs, deputy sheriffs, and township constables and police) were required to have as primary duties preserving the peace, protecting life and property, and enforcing the laws of the state. As later groups have been added to the division, the emphasis for eligibility has shifted from the primary duties of the employee to the type of training the employee has received. While the training of a member of the law enforcement division is important, it is the duties of the officer that justify a higher benefit formula and lower retirement age.

All law enforcement officers and police officers are required to obtain a certificate from the executive director of the Ohio Peace Officer Training Commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program prior to being commissioned pursuant to R.C. §109.77. The Peace Officer Training Commission establishes the minimum requirements, however, police departments are free to require additional training. For

example, the Cincinnati police department requires a total of 880 hours of training at the Cincinnati Police Academy.

The requirements for the peace officer training program are adopted by the Peace Officer Training Commission and delineated in section 109:2-1-16 of the Ohio Administrative Code. Effective January 1, 2000, the peace officer training requirements were increased from a minimum of 445 hours to a minimum of 550 hours. The current training includes the following:

Peace Officer Training

Topic	Required Hours
Administration	21
Legal	77
Human Relations	76
Firearms	60
Driving	24
Subject Control	34
First Aid	16
Patrol	49
Civil Disorders	17
Traffic	91
Investigation	55
Physical Conditioning	30
Total	550

By way of comparison, the training requirements for Ohio State Troopers, who are members of the Highway Patrol Retirement System, are more stringent than those required in order to receive a peace officer training certificate. State Trooper Cadets are required to complete a 37 week course at the Ohio State Highway Patrol Academy. The training is separated into three parts: (1) cadet training (24 weeks), (2) on-the-job field training (12 weeks), and (3) post graduate training (1 week). The cadet training consists of the following:⁴

Highway Patrol Training

Topic	Required Hours
Administration	210
Legal	57
Human Relations	71
Firearms	103
Driving	48
Investigations	45
Crash Investigation	71
Patrol	105
Traffic Enforcement	97
Civil Disorders	25
Unarmed Self-Defense/Officer	95
Safety	
Prisoner Booking and Handling	2
First Aid	16
Physical Conditioning	72
Total	1017

⁴Topics and required hours are taken from the April 20, 1998 - October 30, 1998 Cadet Syllabus .

However, the training required for completion of peace officer training is more rigorous than is required by employees working as corrections officers. Corrections officers, who are members of the regular division of PERS, are required to complete training established by the Department of Rehabilitation and Corrections (DRC). The DRC requires all staff at state facilities (including corrections officers) to complete a three week training course at the Corrections Training Academy, one week at the institution where they will be working for orientation and two weeks at the institution for on-the-job-training. In addition, corrections officers spend an additional week at the Academy receiving training in unarmed self-defense and firearms certification. According to officials at the Corrections Training Academy, corrections officers receive approximately 120 hours of training during that time period. The training for corrections officers consists of the following major areas:

Corrections Officer Training

Topic	Required Hours (approx.)
Administration	19
Safety and Health	7
Mental Health	8
Communications and Relations	12
Physical Skills	55
Security	27
TOTAL	128

Recommendations

- Membership in the law enforcement division of PERS should be limited to those employees whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of the state. Employers should be required to certify to the system that the member's primary duties are to preserve the peace, to protect life and property, and to enforce the laws of the state.

Rationale: It is the duties of the law enforcement officers that justify a higher benefit formula for membership in PERS-LE. Therefore, the duties should be part of any criteria for membership.

- All members of the law enforcement division of PERS should be required to be full-time employees.

Rationale: It appears to be an oversight that Ohio veterans' home police officers, special police officers for mental health institutions, and for institutions for the mentally retarded and developmentally disabled are not currently required to be employed on a full-time basis. This change would make the eligibility requirements consistent in that all members of PERS-LE must be employed on a full-time basis.

- All members of the law enforcement division of PERS should be required to obtain a certificate from the executive director of the Ohio Peace Officer Training Commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program prior to being commissioned.

Rationale: This is currently required of all members of PERS-LE and should be continued because of the nature of the jobs covered by the law enforcement division.

CRITERIA USED TO DETERMINE MEMBERSHIP IN OP&F

Membership in OP&F is determined by the position in which a member is employed and whether that position is full-time or part-time. The fund covers two groups of employees: (1) full-time municipal police officers and (2) full-time firefighters.

Membership for police officers in OP&F is limited to full-time members of municipal police departments. A member of a police department is defined in Revised Code section 742.01(A) as:

(a) Any person who receives an original appointment as a full-time regular police officer in a police department from a duly established civil service eligible list or pursuant to section 124.411 of the Revised Code, (appointment of officer from annexed territory) or who is described in section 742.511 (transfer of officer from new municipality) of the Revised Code, or who transfers from the public employees retirement system to the police and firemen's disability and pension fund pursuant to section 742.513 (officer of township assuming municipal status), or who is appointed pursuant to section 737.15 (appointment of village marshal) or 737.16 (deputy marshals and police officers) of the Revised Code as a full-time regular police officer and is paid solely out of public funds of the employing municipal corporation;

(b) Any person who, on October 1, 1965, was contributing four per cent of the person's annual salary to a police relief and pension fund established under former section 741.32 of the Revised Code;

(c) Any person who commences employment on or after [September 16, 1998] as a full-time police officer with a police department in a position in which the person is required to satisfactorily complete a peace officer training course in compliance with section 109.77 (peace officer training certificate necessary for appointment) of the Revised Code.

A member of a fire department currently is defined in Revised Code section 742.01(B) as:

(a) Any person who commences employment after November 8, 1990, as a full-time firefighter with a fire department, in a position in which the person is required to satisfactorily complete or have satisfactorily completed a firefighter training course approved under former section 3303.07 or section 4765.55 (firefighter and fire safety inspector training programs) or conducted under section 3737.33 of the Revised Code (Ohio Fire Academy);

(b) Any person who has elected under section 742.515 of the Revised Code to be transferred from the public employees retirement system to the police and firemen's disability and pension fund;

(c) Any full-time firefighter who, on November 8, 1990, is a member of the police and firemen's disability and pension fund. Prior to 1990 firefighters' membership in OP&F was limited to full-time firefighters employed by a municipal fire department who had received an original appointment from a civil service eligibility list. Part-time firefighters in a municipal fire department were members of PERS; if they later became full-time employees, they continued membership in PERS rather than transfer to OP&F since they did not meet the requirement of a full-time original appointment. In 1990, all full-time firefighters who satisfactorily completed an approved firefighters' training course, including those working for an employer other than a municipality, were required to be members of OP&F, regardless of whether they received a full-time original appointment (H.B. 789, eff. 11-8-90).

All firefighters hired on or after August 3, 1992 have been excluded from membership in PERS pursuant to R.C. §145.012. However, firefighters who had been members of PERS were given the option to elect membership in PERS rather than in OP&F. Those firefighters who are currently covered by PERS include any firefighter (1) who elected to remain a member of PERS under Revised Code section 145.013 (election by firefighter to remain in system); (2) who was eligible to transfer from PERS to OP&F under Revised

Code section 145.013 and did not elect to transfer; and (3) who elected to transfer from OP&F to PERS pursuant to Revised Code section 742.516 (election by firefighter to transfer to PERS). Firefighters who do not meet these criteria are excluded from membership in a public retirement system and are required to contribute to Social Security. These include part-time and volunteer firefighters.

Membership in OP&F is limited to full-time employees, but the term “full-time” is not defined in the Revised Code. It is up to the employer to determine whether a law enforcement officer or firefighter should be enrolled in OP&F, PERS, or Social Security because there is no statutory definition of full-time. Because membership eligibility hinges on how the employer defines full-time employment rather than on a statutory definition applied uniformly to all police officers and firefighters statewide, this can result in inequitable treatment for the members involved because only full-time police officers and firefighters are eligible for membership in OP&F.

In order to determine how employers decide which retirement system is the proper one in which to enroll their employees, the ORSC asked OP&F to survey their employers to find out how they define full-time service. The survey results revealed there is no consensus among employers regarding the definition of full-time. The same number of hours worked may be considered full-time in one jurisdiction but only part-time in another. For example, a police officer in Green Camp Village is considered full-time by working only 37.5 hours per week; whereas a police officer in the Village of St. Louisville must work 40 hours per week to be considered a full-time employee.

OP&F sent surveys to 970 OP&F employers and 411 responded to the survey. The majority of those employers define full-time for both police officers and firefighters as a full-time appointment, which means the appointing authority (e.g., Council, Mayor) has deemed the employment to be full-time. According to OP&F officials, it is assumed that those employees are working at least 37.5 hours per week because that is the number of hours per week the Fund requires to be worked in order to purchase or transfer service credit from another Ohio retirement system. There were, however, a few employers reporting full-time service to be less than 37.5 hours per week.

Recommendation

- A statutory definition of “full-time” service as 37.5 hours per week should be adopted for purposes of membership in OP&F in order to ensure equitable treatment of all police officers and firefighters throughout the state.⁵

Rationale: Because OP&F currently accepts the purchase or transfer of service credit where the member worked at least 37.5 hours per week, it would be consistent to define “full-time” service for purposes of membership in OP&F as at least 37.5 hours per week.

TRANSFER OF SERVICE CREDIT BETWEEN OP&F AND PERS

The portability of service credit between OP&F and PERS has become an issue because OP&F can accept the purchase or transfer of only full-time service credit. OP&F members who have accrued part-time service credit in another public retirement system cannot use any of that credit toward a retirement benefit in OP&F. This has created problems when part-time fire departments become full-time departments and employees must transfer from PERS to OP&F. This issue was addressed last year when employees who became members of OP&F as a result of the member’s employer changing from a primarily part-time to a primarily full-time fire department or who elected to transfer from PERS to OP&F pursuant to changes made in H.B. 789, were allowed to make an irrevocable election to transfer to PERS. However, there were still members who were unable to take advantage of this election because their employer did not change to a primarily full-time fire department. Those members are still unable to use any of their part-time service credit toward a retirement benefit in OP&F.

Transfer of OP&F Credit to PERS - Members of PERS can transfer or purchase service credit earned in OP&F pursuant to R.C. §145.295. To do so, the member must pay to PERS the member’s accumulated contributions to OP&F and the employer contributions that were made or would have been made under the lesser of the contribution rates of the systems involved, plus annual compound interest. Members receive one year of service credit for each year transferred or purchased in which earnable salary was at least \$250 for twelve months.⁶

⁵Please note, the definition of full-time employment recommended here is for purposes of membership in OP&F only. It does not affect an employee’s classification for purposes of other benefits offered by the employer (e.g., vacation, health insurance, etc.).

⁶PERS also accepts part-time service credit earned in one of the other Ohio public retirement systems. Service credit for service when the member’s earnable was less than \$250 is considered part-time and is prorated.

Service earned in OP&F as a police officer is considered law enforcement service for retirement purposes in PERS-LE. Transferred or purchased service credit earned as a firefighter is treated as regular PERS service credit.

Transfer of PERS Credit to OP&F - Members of OP&F can transfer or purchase full-time service credit earned in PERS pursuant to R.C. §742.379; OP&F does not accept part-time service credit. Board Rule 742-5-07 requires the service credit to have been rendered while employed in a full-time public position and the employee must have worked at least 37.5 hours per week. Therefore, a member who contributed to PERS based on a full-time position, whereby full-time was defined as 32 hours per week, could not purchase that credit as a member of OP&F because it does not meet the requirement of 37.5 hours per week established by board rule.

In order to purchase service credit, the member must pay OP&F the contributions transferred or refunded and the employer contributions that were made or would have been made under the lesser of the contribution rates of the systems involved, plus annual compound interest. For employees who established membership in OP&F after September 16, 1998, the member must also pay the difference between the employee contributions for the system involved, as well as the difference between the employer contributions for the systems involved. They earn one year of service credit for each year of full-time service.

The ORSC actuary, Milliman & Robertson, Inc., completed an actuarial analysis on the transfer of part-time service credit to OP&F. The actuary estimated the increase in the actuarial accrued liabilities under OP&F if OP&F granted service credit for either the number of years of service credit earned while a member of PERS working in a part-time capacity and the estimated full-time equivalent years of service worked by the member while on a part-time work schedule in PERS. The analysis was based on a group of 25 employees, 24 of whom were reported with part-time PERS service. The results were as follows:

(\$ amounts in thousands)

	If credited service were granted by OP&F based on PERS credited service	If credited service were granted by OP&F based on estimated full-time equivalent service
Increase in actuarial liabilities	\$940	\$151
Assets transferred	\$261	\$261
Increase in unfunded liabilities	\$679	(\$110)
% of actuarial liabilities covered by transferred assets	28%	173%
Increase in UAL/(surplus) per employee	\$28	(\$5)

As indicated, based on the sample group of employees, OP&F would be made whole by the transfer of accumulated member and employer contributions if service was credited on a pro-rated basis. However, if credit was granted for the total number of years of credited service in PERS rather than on a pro-rated basis, there would be a significant loss to OP&F.

Although the analysis was based only on PERS transfers to OP&F, the actuary presumes the results would be similar for transfers from the State Teachers Retirement System (STRS) and the School Employees Retirement System (SERS).

(See attached report for further detail of the analysis.)

Recommendations

- Allow members of OP&F to purchase part-time service credit earned in PERS, SERS, and STRS on a pro-rated basis.

Rationale: Based on the estimate provided by Milliman & Robertson, OP&F would not accrue any additional unfunded liability if the credited service were granted based on full-time equivalent service. Although this report concerns the purchase of credit in PERS only, it is logical to extend the purchase of part-time service credit to the other two non-uniformed retirement systems because OP&F currently allows members to purchase full-time service from STRS and SERS as well and the purchase price is calculated in the same manner as it is for PERS service credit.

- Allow all firefighters who had been members of PERS based on part-time employment as a firefighter and who later became members of OP&F as a result of the member's employer changing from a part-time to a full-time fire department to make an irrevocable election to transfer to back to PERS, even if the member's employer is not primarily a full-time fire department.

Rationale: This would allow those members to receive a retirement benefit from PERS for which they might not otherwise be eligible. It applies to a small number of members and will not be a problem in the future because all part-time firefighters employed after August 3, 1992 are excluded from PERS.