

Appeal by Joseph M. Perkins to purchase service credit in the Cincinnati Retirement System for the dates of July 9, 1972 through September 4, 1972, heard by the Benefits Committee of the Cincinnati Retirement System on January 31, 2008, Chairman Michael Rachford presiding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Mr. Joseph M. Perkins has been a City employee since 1980.
2. On August 23, 2007, Mr. Perkins submitted an application to participate in the City of Cincinnati's Early Retirement Incentive Program ("ERIP"). His ERIP application was denied by the staff of the Cincinnati Retirement System ("CRS") based on eligibility, based on the fact that Mr. Perkins had only 27 years and 10 months of service credit in CRS. Only persons with at least 28 years of service credit in CRS were eligible to participate in ERIP.
3. Mr. Perkins subsequently submitted information to CRS staff regarding part-time, temporary work that he performed for the Cincinnati Recreation Commission as a student from July 9, 1972 to September 4, 1972 (a period totaling one month and 28 days), at which time he was classified as a "municipal service aide". He was not enrolled in the Cincinnati Retirement System at that time.
4. CRS staff denied Mr. Perkins' application for service credit for that period due to the terms of Ordinance No.386-1952, which amended the definition of "employee" in Chapter 203 of the Cincinnati Municipal Code, "Cincinnati Retirement System". Under the definition of "employee" in Ordinance No. 386-1952, which was in effect during the relevant dates in 1972, an "employee" of the City of Cincinnati, with regard to eligibility for retirement, did not include any person who was "engaged in work of a temporary, casual or exceptional nature."
5. On September 10, 2007, in response to his inquiry to the Department of Human Resources of the City of Cincinnati, Mr. Perkins received a letter from Hilary Bohannon, Director of the Department of Human Resources, indicating that Mr. Perkins' 1972 work as a "municipal service aide" at the Cincinnati Recreation Commission was not eligible to be purchased as eligible service credit.
6. Mr. Perkins subsequently appealed that decision to the City of Cincinnati Civil Service Commission. His appeal was denied by the Commission on October 4, 2007, based on the fact that Mr. Perkins worked as an hourly employee during the time period requested. The Commission ruled that part-time hourly work did not count toward purchase for retirement eligibility.
7. Mr. Perkins did not appeal the decision of the Civil Service Commission as allowed by law.
8. On November 15, 2007, Mr. Perkins submitted a request to purchase service credit for the dates in 1972 to the Benefits Committee of CRS. His request was denied by the Benefits Committee on November 15, 2007. The Benefits Committee then submitted its denial recommendation to the full CRS Board

of Trustees (“Board”) on December 6, 2007. The Board approved the denial recommendation of the Benefits Committee on that date.

9. Mr. Perkins subsequently appealed the Board’s decision to the CRS Benefits Committee, pursuant to the Rules of the Cincinnati Retirement System Board of Trustees. A hearing was held on January 31, 2008 at which both Mr. Perkins and the City Administration were represented by counsel.
10. At the hearing, it was established that Mr. Perkins did not avail himself of the opportunity to purchase previously ineligible time pursuant to the terms contained in Ordinance No. 445-1997, which allowed City employees to purchase such previously ineligible time under certain conditions.
11. The City of Cincinnati’s 2001 “Transfer of Service Credit Agreement” (“Agreement”) with the Public Employees Retirement System (“PERS”) of Ohio allowed for the transfer of “eligible service credit” earned by an employee in CRS to be transferred to PERS, and vice versa. That Agreement provides in Section IV, “Service Credit Granted”, in relevant part, that “the Accepting System shall grant service credit to the Eligible Member for a specific period of Eligible Service Credit to be transferred from the Transferring System, as allowed by the Accepting System’s applicable service credit law...”
12. In Section II (E) of the “Agreement”, “Eligible Service Credit” is defined as “service credit earned under the Transferring System or purchased or obtained military service credit in the transferring system included in the Member’s total service credit in the Transferring System.”

CONCLUSIONS OF LAW

1. Mr. Perkins is not eligible to purchase service credit for the part-time, temporary work he did for the Cincinnati Recreation Commission from July 9, 1972 to September 4, 1972 because he was not eligible to participate in the Cincinnati Retirement System according to the terms of the Cincinnati Ordinance in effect during that period, Ordinance No. 386-1952. That ordinance provides, in relevant part, that an “employee” of the City of Cincinnati, with regard to eligibility for retirement, did not include any person who was “engaged in work of a temporary, casual or exceptional nature.” Mr. Perkins’ work for the Cincinnati Recreation Commission did constitute “work of a temporary, casual or exceptional nature” and was therefore ineligible for service credit in CRS.
2. In 1997, Mr. Perkins could have availed himself of the right to purchase previously ineligible time, which would have allowed him to purchase service credit for his work at the Cincinnati Recreation Commission in 1972, but he did not do so. He is now ineligible to purchase such service credit.
3. Mr. Perkins submitted a letter purporting to require that CRS accept service credit for his 1972 service from PERS pursuant to the 2001 “Transfer of Service Credit Agreement”. However, the City of Cincinnati’s 2001 “Transfer of Service Credit Agreement” with the Public Employees Retirement System (“PERS”) is not relevant in this case, because Mr. Perkins’ period of work for the Cincinnati

- Recreation Commission in 1972 does not meet the criteria for “Eligible Service Credit” under the Agreement. That term is defined in the Agreement as “service credit *earned under the Transferring System* or purchased or obtained military service credit in the transferring system included in the Member’s total service credit in the Transferring System.” (emphasis added) Mr. Perkins’ 1972 period of work for the Cincinnati Recreation Commission was not earned while he was a participant in PERS, and he therefore is not eligible to have such time transferred from PERS to CRS as “Eligible Service Credit” under the Agreement.
4. Further, the Agreement provides in Section IV, “Service Credit Granted”, in relevant part, that “the Accepting System shall grant service credit to the Eligible Member for a specific period of Eligible Service Credit to be transferred from the Transferring System, as allowed by the Accepting System’s applicable service credit law...” Likewise, the Agreement is not applicable to Mr. Perkins’ appeal because his 1972 period of work for the Cincinnati Recreation Commission does not constitute “Eligible Service Credit” pursuant to the Agreement.

SO DETERMINED:

**Michael Rachford, Chairman
Benefits Committee
Cincinnati Retirement System**

Date: _____