

JULY 8, 2016
by: Steve Durden

MEMORANDUM.

To: Police and Fire Pension Fund Board of Trustees

**CC: Jason Gabriel, General Counsel
Beth McCague, Interim Executive Director, PFPF
Legal Opinion file**

From: Stephen M. Durden, Chief Assistant General Counsel

Re: Time-Service Credits, Community Service Officers

Date: July 8, 2016

Discussion

Section 121.107, Ordinance Code. Subsequent to the enactment of Ordinance 2105-304-E a number of questions have arisen as to the obtaining time-service credits by members who once served as community service officers, but were not in any pension plan when transferring over to become members. That Ordinance did not make significant modifications to Section 121.107 of the Ordinance Code, and the options that section makes available for the obtaining of time-service credits. Below is the relevant portion of the current Section 121.107:

Sec. 121.107. - Credit for broken-service, continuous service, partial years transferability, and service as a Florida State Certified Police Officer or Firefighter.

(a) A person who becomes a member of the Police and Fire Pension Fund who is not a retiree of any current or former pension plan of the City of Jacksonville or Duval County, or is not a retiree nor has attained vested status under the Florida Retirement System or the City of Atlantic Beach, shall be entitled to receive time-service credit for any previous period of full-time employment either continuous or broken with the City or its independent agencies, authorities or boards, or the City of Atlantic Beach Fire Department, provided such service has not been used for entitlement to benefits under any other pension system with such entitlement resulting from the attainment of vested status under such other pension system. For purposes of applying these provisions, a member who has previously attained vested status and accordingly has previously secured a legal claim to an entitlement to benefits under another pension plan shall not be entitled to time service credit for such periods of full time employment notwithstanding the fact that the member may have abandoned or rejected such vested status or legal claim to the receipt of future benefits by requesting a refund of contributions or otherwise. However, such general prohibitions shall not preclude a former member of the Fund from

purchasing previous vested service with the Fund for which a refund of contributions was previously received and for which the former member has not otherwise used for entitlement to benefits under any other pension system. To be entitled to credit, a member shall make application for credit to the Board at any time prior to retirement. Furthermore, the employee shall pay into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine.

(c) For purposes of applying this Section, "full-time employment" shall mean regular employment as permanent, probationary, provisional, grant or appointed employees involving a regular work week of at least 40 hours. Employment in such eligible positions are generally represented by positions that are included in the maximum authorized number of employees set forth in the annual City budget ordinance. As such, "full-time employment" specifically does not include forms of employment represented by temporary employees (described in 106.404), part-time employees, or seasonal employees. The following types of employment are considered to be in the category of temporary, part-time, or seasonal employees and accordingly, such specifically named categories of employment do not qualify as "full-time employment" for purposes of this Section:

- (1) Court Bailiffs,
- (2) Volunteer Firefighters,
- (3) Auxiliary law enforcement officers,
- (4) Elections workers,
- (5) Student positions and summer help,
- (6) Contract employees, and
- (7) Positions filled through employment agencies.

The above listing is not intended to represent an exhaustive compilation of all of the forms of temporary, part-time, and seasonal employment which are excluded from the definition of "full-time employment."

Persons Entitled to Obtain Credits. Subsection(a). This subsection(a) provides that: "A person who becomes a member of the Police and Fire Pension Fund . . . shall be entitled to receive time-service credit for any previous period of full-time employment either continuous or broken with the City or its independent agencies, authorities or boards, or the City of Atlantic Beach Fire Department, . . ." This subsection first creates this category of persons with previous employment with particular governmental agencies, i.e., service with any part of the entire consolidated government, including independent agencies, as well as the City of Atlantic Beach Fire Department. Subsection(a) then removes the entitlement from:

1. "[any] retiree of any current or former pension plan of the City of Jacksonville or Duval County." (emphasis added); and
2. "[any] retiree . . . under the Florida Retirement System or the City of Atlantic Beach;"

3. “[any person who] has attained vested status under the Florida Retirement System or the City of Atlantic Beach.”

This subsection(a) also prohibits the entitlement if “such service [within entire consolidated government or the Atlantic Beach Fire Department] has been used for entitlement to benefits under any other pension system with such entitlement resulting from the attainment of vested status under such other pension system.” This sentence seems to prevent a person who has attained vested status in a pension plan based on service within some part of the entire consolidated government from purchasing this time service after becoming a member of the PFPF. Subsection(b) (discussed below) creates an exception to this prohibition for those who directly transfer from service which earns a retirement within the GEPF.

The rest of subsection(a) discusses definition of terms and implementation of the provisions. One prerequisite to entitlement to receipt of time-service credit is that the “member shall make application for credit to the Board at any time prior to retirement.” In other words, the transfer is not automatic. Second, the member “shall pay into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine.”

In sum, subsection(a) permits members who once worked for some portion of the entire consolidated government (plus those who worked for the Atlantic Beach Fire Department) to receive time-service credit for any and all service as employee of the entire consolidated government with a few provisos. (1) The member applies. (2) The member pays the amount required by the ordinance or such amount determined by the Board. (3) The member is not a retiree of a consolidated City pension plan. (4) The member is not retiree under FRS or the Atlantic Beach pension plan. (5) The member is not vested under FRS or the Atlantic Beach pension plan. (6) Finally, “a member who has previously attained vested status and accordingly has previously secured a legal claim to an entitlement to benefits under another pension plan shall not be entitled to time service credit for such periods of full time employment notwithstanding the fact that the member may have abandoned or rejected such vested status or legal claim to the receipt of future benefits by requesting a refund of contributions or otherwise.”

Oversimplified, the time service rules are as follows: (1) Those members who become members of the PFPF directly from service with an agency of the entire consolidated government within the GEPF may transfer all of that time into the PFPF. (2) Those members who become members of the PFPF with a break in service from service with an agency of the entire consolidated government within the GEPF, or with an agency of the entire consolidated government, but not within GEPF, may transfer all of that time into the PFPF, so long as the member “has [not] previously secured a legal claim to an entitlement to benefits under another pension plan.”

The last two sentences of subsection(a) provide the prerequisites for those members seeking previous time service credits while working for the City, but who were not part of a City pension plan:

To be entitled to credit, a member shall make application for credit to the Board at any time prior to retirement. Furthermore, the employee shall pay into the fund a sum of money equal to the percentage of his current monthly salary required to be contributed by the fund of which he is a member multiplied by the number of months and fractional parts thereof for the entire period of time for which credit is being sought or on such other terms as the Board shall determine.

As explained in the attached memorandum of August 4, 2015, Community Service Officers were and are full-time employees of the City of Jacksonville (and they are now entitled to be in the General Employees Pension Plan). The authority to purchase or obtain time-service credits is not conditioned on previous membership in a City Pension Plan (or any other pension plan). It is conditioned on the type of previous employment, e.g., full-time employment with the City. Previous enrollment in a pension affects the cost of time-service credits, not their availability.

Community Service Officers who were not in GEPP are entitled to purchase time-service credits for previous full-time employment. Community Service Officers who were in GEPP are entitled to transfer time-service credits for previous full-time employment and time in GEPP. The provision of the ordinance code prohibiting Community Service Officers from *being* in the PFPF is irrelevant to their eligibility for time-service credits. The prohibition on membership remains. Community Service Officers may not be in the PFPF but are allowed in GEPP.

Conclusion.

If I can be of further assistance or you have further questions, please do not hesitate to contact me.

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*BOARD CERTIFIED CITY, COUNTY
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August 4, 2015

Patrick Greive, Treasurer
Kelli O'Leary, Employee Services Director
117 West Duval St.
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Re: Pension Eligibility for Community Service Officers

I. Background.

Pursuant to Chapter 67-1320, *Laws of Florida*, the Florida Legislature adopted (and approved by local referendum) the Consolidated Jacksonville Charter (Jacksonville Charter) which provides for the existence of an unclassified employment category of employees who are designed to conduct inquiries, surveys and special services while being exempt from the civil service system. See Section 17.06(e), *Jacksonville Charter*. In 1989, the City of Jacksonville's Human Resource Division established the Special Purpose Employee Administration Plan (1989 Plan) which codified the employment scope of Special Purpose Employees (SPEs) as being "to conduct special purpose inquiries or surveys or to perform special services". In addition, the 1989 Plan further prescribes application to "all full-time employees in special purpose positions exempt from the civil service system as provided by the City Charter." *Special Purpose Employee Administrative Plan*, Section(s) 1 and 4 (1989). However, Section 8 of the 1989 Plan prohibits special purpose employees from joining "any City Pension Fund." *Special Purpose Employee Administrative Plan*, Section 8 (1989).

Conversely, Section 16.04, *Jacksonville Charter* provides in pertinent part "any noncivil service employee or elected or appointed officer may elect to become a member of the retirement and pension system of the City of Jacksonville..." Section 16.04(a), *Jacksonville Charter*. The Jacksonville City Council has further enacted legislation to administrate membership eligibility for the General Employees

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Pension Plan (Pension Plan) stating "[a]ppointed and elected officials and *permanent employees not in the civil service system* may opt to become members of the [Pension] Plan, consistent with Section 16.04 of the City Charter". Section 120.202(b), *Jacksonville Ordinance*.

In 2004, the Jacksonville Sheriff's Office (Sheriff's Office) officially designated a sub-group of SPEs to be known as Community Service Officers (CSOs). See 2004 *HR Authorization*. The Sheriff's Office designed the CSOs to be full-time, special purpose employees who work in the uninterrupted, continuous positions for a five (5) year maximum duration. See *Operational Order 15.15.03* (Subject: Community Service Officers). All CSOs who were hired before 2010 were precluded from joining any City pension plan. However, some CSOs hired after 2010 were apparently allowed to join the General Employees Pension Plan. All CSOs were separated from employment in 2013 as a result of JSO budget cuts; none of the CSOs attained vested status in the GEPP.

In anticipation of re-establishing the sub-group of Community Service Officers as SPEs, the following question has been raised and is address below:

II. Question.

Are Community Service Officers eligible to participate in the City retirement and pension plan?

III. Answer.

Community Service Officers, as Special Purpose Employees, are exempt from the civil service system and eligible to participate in the City retirement and pension plan, or they may elect not to participate in the City retirement plan and instead receive Social Security benefits pursuant to Section 120.202(b), *Jacksonville Ordinance*.

IV. Discussion.

This analysis begins with the *Jacksonville Charter*, Article 16 Section 16.04(a) of the Consolidated City of Jacksonville as follows:

Any employee of the City of Jacksonville who is not in the civil service system of the city nor any elected or appointed officer of the city shall be required to become a member of the retirement and pension system of the City of Jacksonville, but *any noncivil service employee or elected or appointed officer may elect to become a member of the retirement and pension system of the City of Jacksonville* by filing a written notice of election with the trustees of the pension funds of the city retirement and pension system. Upon the filing of the notice of election, the membership of the officer or employee in any other public pension fund of which he may be a member shall terminate. {emphasis added}

Section 16.04, *Jacksonville Charter* specifies that *noncivil service employees* may elect to join the City's retirement and pension system. In conjunction with Section 16.04, the Jacksonville City Council (City Council) further clarified membership eligibility of the General Employees Pension Plan (Pension Plan) within Section 120.202(b) which provides:

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Appointed and elected officials and *permanent employees not in the civil service system* may opt to become members of the Plan, consistent with Section 16.04 of the City Charter...

Section 120.202(b), *Jacksonville Ordinance*.

While the term "permanent" is undefined, its meaning under conventional labor law connotes *regular* employment on a long term and continuous basis. Black's Law Dictionary states that "permanent employment" is "employment done on a *regular*, continuous basis, rather than hiring on a contractual basis." *thelawdictionary.org*. The Law Dictionary, 2015. Web. 29 July 2015. Although utilizing "*Regular Full-time*" in 2005, City Council similarly established the expression to mean "a budget allocated position requiring 40 hour of work per week *on a regular and recurring basis*". See Sec. 116.1501(a), *Jacksonville Ordinance*.

Compare Section 116.1501, *Jacksonville Ordinance* which defines "temporary" and "part-time" employment as employment with limited or abbreviated durations. "Temporary" employment is initially limited to no more than a six-month duration. See Section 116.1501(b), *Jacksonville Ordinance*. "Part-time" employment also limits employment within the City to be merely hourly-based. See Section 116.1501(c), *Jacksonville Ordinance*. The Florida Public Employees Relations Commission (PERC) similarly recognized "temporary" employees to "have no reasonable expectation of continued employment and who usually receive no benefits other than an hourly wage". See *In Re Petition of Palm Beach County*, 19 FPER ¶ 24507 (1993). The Commission further distinguished "temporary" employees as limited in employment duration to a particular project or limited funding for mere weeks, inhibiting the employment from having a reasonable expectation of continuance. See *Id.*

In 1987, the Commission specifically considered the employment status of Jacksonville's SPEs in *Florida Public Employees Council 79, AFSCME v. City of Jacksonville*, 13 FPER ¶ 18273 (1978). The Commission ordered that the SPEs be admitted in the AFSCME bargaining unit despite the fact they were referenced as "temporary" employees. The Commission found that due to their employment status existing for a "long-term uninterrupted" duration, the SPEs were not "temporary employees." *Id.*

Notwithstanding other SPEs whose employment status may vary, CSOs are anticipated to remain regular, full-time employees within the SPE employment category for the Sheriff's Office. See *Operational Order 15.15.03* (Subject: Community Service Officers). As such, CSOs would remain exempt from the civil service system and will have continuous, uninterrupted budgeted employment for up to five years (well in excess of the six month duration for City "temporary" employees). Section 116.1501, *Jacksonville Ordinance*.

It is at this point that the 1989 Plan runs afoul of the authority of its drafter. As the 1989 Plan was created by the Human Resources Division of the City of Jacksonville, its authority as the personnel department is codified with *Charter*, Section 17.05 and states, in pertinent part that the personnel department, or its successor shall:

- (a) Alter, amend, modify, or adopt in total or in part the job classification plan for the consolidated government, including job specifications for positions under civil service.

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Section 17.05(a), *Jacksonville Charter*. Without question, the divisional lead is certainly within her jurisdictional scope to determine the classification orientation of SPEs within the consolidated government. See *State Board of Administration v. Huberty*, 46 So3d 1144, 1146 (Fla. 1st DCA 2010).

However, Section 8 of the 1989 Plan is unsupported. Understanding the application of Section 16.04, *Jacksonville Charter* with Section 120.202., *Jacksonville Ordinance*, the plain meaning of this legislative authority suggests that SPEs are eligible to participate in the City retirement and pension plan. The clear and unambiguous plain meaning of "permanent employee not in the civil service system" does not support the Section 8 prohibition on SPEs joining any City pension plan. Section 120.2020(b), *Jacksonville Ordinance*. As such, the same principal which serves to support Section 4 of the 1989 Plan, undermines Section 8 as being contrary to the clear and unambiguous terms of Section 16.04, *Jacksonville Charter* and Section 120.202(b), *Jacksonville Ordinance*. See *Kessler v. Department of Management Service, Division of State Group Insurance*, 17 So.3d 759, 762 (Fla. 1st DCA 2009).

V. Conclusion.

Therefore, Section 120.202(b), *Jacksonville Ordinance* appropriately directs permanent, noncivil service employees to be afforded the option of participating in the City Pension Plan. Those regular, fulltime individuals anticipated to occupy Community Service Officer (CSO) subgroup positions within the Special Purpose Employees (SPE) employment category are entitled to the option to join the General Employees Pension Plan as provided by Section 16.04, *Jacksonville Charter*.

Sincerely,



DERREL Q. CHATMON
Chief Deputy General Counsel

DQC/dlb
Attachments

Copy to:
Jason R. Gabriel, General Counsel
Mike Weinstein, Chief Financial Officer