

INDIANA PUBLIC RETIREMENT SYSTEM

MAYOR ANTHONY COPELAND and	)	1977 POLICE OFFICERS' AND
CITY OF EAST CHICAGO,	)	FIREFIGHTERS' PENSION AND
	)	DISABILITY FUND
Petitioners,)	
	)	and
V.)	
	)	PUBLIC EMPLOYEES' RETIREMENT
INDIANA PUBLIC RETIREMENT	)	FUND
SYSTEM,)	
)	
Respondent,)	

FINAL ORDER

The Board of Trustees ("Board") of the Indiana Public Retirement System ("INPRS") is the ultimate authority in administrative appeals brought by 1977 Fund members under IC 4-21.5-3-28 and 35 IAC 2-5-5(a)(7). In INPRS' Board Governance Manual, the Board delegated to INPRS' Executive Director the duty to conduct a final authority proceeding and review of decisions by the administrative law judge ("ALJ"), to issue a final order in this matter.

1. The Administrative Law Judge issued an Order On Cross-Motions For Summary Judgment ("Order") in this matter on February 26, 2013 granting Petitioners' motion for summary judgment and denying summary judgment filed by Respondent.
2. Copies of the Order were served to the parties.
3. On March 12, 2013, Respondent filed with the ultimate authority Respondent's Objection To Order on Cross-Motions For Summary Judgment ("Objection").
4. On April 19, 2013, Petitioners filed with the ultimate authority a draft modification of the Order ("Modified Order").
5. A hearing on the Objection and Modified Order was held via teleconference on May 13, 2013 by the ultimate authority.

NOW THEREFORE, INPRS' Executive Director, acting in his delegated capacity as ultimate authority, hereby modifies the Order as set forth herein.

Findings of Undisputed, Material Facts¹

The parties stipulated to the Findings of Undisputed, Material Facts set forth in the Order and such facts are expressly incorporated herein by reference. Additionally, any finding of fact inadvertently set forth in the Conclusions of Law below is incorporated herein.

Conclusions of Law

The following sections of the Order are hereby incorporated herein by reference, "Legal Standard", "Issue", "Evidence", and "Timeliness". Additionally, the "Discussion" is modified as set forth in detail below to clarify that an appointment to office by a precinct committee caucus process in accordance with I.C. §§ 3-13-8-1, 3-13-11-1 *et seq.*, is not deemed a "rehire" as that term is used in I.C. §36-8-8-11.5.

Discussion

A member of the 1977 Fund is eligible for an unreduced retirement benefit after completion of 20 years of service and becoming 52 years old, and benefits begin the month after the member reaches age 52 or "retires," whichever is later. I.C. § 36-8-8-10(a) and (b). If a member is elected to office, the member may be granted a leave during elected service, and is considered to be a member of the department during that time. I.C. § 36-8-5-2(e).¹

Reemployment after retirement affects the member's eligibility to receive (or continue to receive) the benefit. By administrative rule, if the member returns to a position covered by the 1977 Fund, benefits are terminated until the member has re-terminated service. 35 IAC 2- 3-1. In addition, the member's benefit is subject to Indiana Code § 36-8-8-11.5:

Reemployment after retirement

Sec. 11.5. (a) Not less than thirty (30) days after a fund member retires from a position covered by this chapter, the fund member may:

- (1) be rehired by the same unit that employed the fund member in a position covered by this chapter for a position not covered by this chapter; and
- (2) continue to receive the fund member's retirement benefit under this chapter.

(b) This section may be implemented unless the system board receives from the Internal Revenue Service a determination that prohibits the implementation.

As added by P.L.130-2008, SEC.7. Amended by P.L.35-2012, SEC.125.

¹ Effective January 1, 2013, however, a firefighter is prohibited from serving in an elected position of the same unit while a member of the department, and if elected is deemed to have resigned. I.C. §§ 3-5-9-4 and -5.

By October 2010, Petitioner Copeland had [REDACTED] of service and was [REDACTED], so he was eligible to receive unreduced benefits, but he had not yet retired. On October 16, 2010, Petitioner Copeland took office as mayor of East Chicago. However, he also maintained his position as a firefighter, taking a leave of absence and remaining a member of the fire department pursuant to Indiana Code § 36-8-5-2(e). After being elected to a full term as mayor beginning on January 1, 2012, Mayor Copeland fully resigned from the fire department on [REDACTED]

Mayor Copeland now wishes to be deemed to have “retired” from the fire department on [REDACTED] and to receive retirement benefits from the 1977 Fund while also serving as mayor and as a member of PERF. INPRS denied this request, concluding that Mayor Copeland cannot receive benefits because he was “rehired by the same unit” less than 30 days after he retired. Indeed, he was serving as mayor *before* he resigned.

At the outset, some issues raised in the initial determination and briefs are no longer in dispute. The parties agree that Mayor Copeland could not be deemed to have retired and treated as a member of PERF while he was on the leave of absence and still a member of the 1977 Fund. *See* I.C. § 5-10.3-7-2. This impediment was removed when he resigned from the fire department on [REDACTED]. Therefore, he can be deemed a member of PERF as of that date.²

The parties also now agree that the Internal Revenue Code does not impose an *independent* requirement of separation from service before Mayor Copeland can receive a benefit from the 1977 Fund. The 1977 Fund is required to satisfy the qualification requirements of Section 401 of the Internal Revenue Code, 26 U.S.C. § 401. I.C. § 36-8-8- 2.5(b). The parties agree that Section 401 as amended and as interpreted by the Internal Revenue Service permits in-service benefits if the member has attained normal retirement age, which Mayor Copeland has. Section 401 still requires the plan to distribute benefits only “in accordance with such plan,” 26 U.S.C. § 401(a)(1), but this requirement is satisfied if the statutes and regulations that govern the 1977 fund permit the benefit.

Whether Mayor Copeland can be deemed to have “retired” from the fire department and receive benefits from the 1977 Fund turns on the meaning of Indiana Code § 36-8-8-11.5. Both parties cite “rules of statutory construction,” although as the Supreme Court has candidly cautioned, they are not so much rules as they are guidelines. *Brownsburg Community School Corp. v. Natore Corp.*, 824 N.E.2d 336, 344 (Ind. 2005) (“Although we recognize the maxims of statutory construction involved here, we find them at best suggestions, and not directives.”).

If the statute is clear and unambiguous, no construction is necessary except to give effect to the plain, ordinary and usual meaning of the language. Reference to legislative intent is unnecessary. *D.C. v. State*, 958 N.E.2d 757, 762 (Ind. 2011). A statute is ambiguous when “it is

² In their Petition for Review filed on [REDACTED] Petitioners asserted that Mayor Copeland was *then* entitled to receive a benefit even though he was still on leave of absence from the fire department. On summary judgment, however, they acknowledge that Mayor Copeland could not be deemed retired until he terminated his firefighter employment on [REDACTED] (Pet. Mem. at 20-21; Pet. Jt. Reply at 10.)

susceptible to more than one interpretation.” *Rheem Mfg. Co. v. Phelps Heating & Air Conditioning, Inc.*, 746 N.E.2d 941, 947 (Ind. 2001).

Faced with an ambiguous statute, the courts turn next to other tools of construction. The “cardinal rule” and “main objective” is to determine and implement the intent of the legislature. In ascertaining this intent, the courts presume that the legislature did not enact a useless provision, so no part of a statute should be rendered meaningless, but rather should be reconciled with the rest of the statute. The statute must be considered in its entirety, and the ambiguity construed to be consistent with the entirety of the enactment, allowing the court to better understand the reasons and policies underlying the act. *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828-29 (Ind. 2011) (citing many cases); *Rheem Mfg.*, 746 N.E.2d at 948. When construing a statute, the reviewing court may look to the titles and the headings of the statute. *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 653 (Ind. Ct. App. 1996), *trans. denied*.

The courts will refrain from deciding the constitutionality of a statute unless alternative grounds for resolving the question, such as construction of the statute, make it necessary to do so. Similarly, when the validity of a statute is drawn in question, the courts will first ascertain whether a construction is fairly possible by which the question can be avoided. *Indiana Wholesale Wine & Liquor Co., Inc. v. State*, 695 N.E.2d 99, 106-08 (Ind. 1998).

In addition to these general principles, the parties cite the application of principles more specific to this context. *See Fraternal Order of Police, Lodge No. 73 v. City of Evansville*, 829 N.E.2d 494, 496 (Ind. 2005) (“The parties remind us of principles of statutory construction and, as parties often do, cite opposing maxims.”).

One of these principles is deference to the interpretation of an administrative agency charged with enforcing the statute under review. The agency’s interpretation of a statute

is entitled to great weight, and the reviewing court should accept the agency’s reasonable interpretation of such statutes and regulations, unless the agency’s interpretation would be inconsistent with the law itself. Indeed, when a court determines that an administrative agency’s interpretation is reasonable, it should terminate its analysis and not address the reasonableness of the other party’s interpretation. Terminating the analysis recognizes the general policies of acknowledging the expertise of agencies empowered to interpret and enforce statutes and increasing public reliance on agency interpretations.

Indiana Dep’t of Environmental Mgmt. v. Steel Dynamics, Inc., 894 N.E.2d 271, 274 (Ind. Ct. App. 2008), *trans. denied* (citations, quote marks and footnote omitted), cited and quoted with approval in *Ghosh v. Indiana State Ethics Comm’n*, 930 N.E.2d 23, 29 (Ind. 2010).

This “terminate the analysis” standard appears to be more deferential than stated in earlier cases, which stressed that while the agency’s interpretation is given “some weight” or even “great weight,” the courts are not bound by the agency’s interpretation and the courts must resolve

questions of statutory interpretation. *E.g.*, *Indiana Civil Rights Comm'n v. Alder*, 714 N.E.2d 632, 636 (Ind. 1999); *Miller Brewing Co. v. Bartholomew County Beverage Co., Inc.*, 674 N.E.2d 193, 200 (Ind. Ct. App. 1996). This is best seen not as a different standard, but an emphasis on the courts' exclusive authority to ultimately decide legal questions.³

Another more specific principle is that ambiguous pension laws should be liberally construed in favor of the intended beneficiaries. *Fraternal Order of Police No. 73*, 829 N.E.2d at 496 (citing *Schock v. Chappell*, 231 Ind. 480, 484, 109 N.E.2d 423, 424 (1952), and *State ex rel. Clemens v. Kern*, 215 Ind. 515, 523, 20 N.E.2d 514 (1939)). But “the underlying goal of construing the pension laws to favor beneficiaries ‘is not a license to read into the act obligations against the pension trust funds and the taxpayers which the legislature did not intend.’ ” *Id.* at 498 (quoting *City of Ft. Wayne v. Ramsey*, 578 N.E.2d 725, 728 (Ind. Ct. App. 1991) (citing *Hilligoss v. LaDow*, 174 Ind. App. 520, 528, 368 N.E.2d 1365, 1370 (1977))).

The liberal construction rule is not to be applied indiscriminately, but must be considered in light of the purpose underlying the pension program. That purpose is not to reward police officers and firefighters *per se*—although that is a byproduct—but to attract competent persons and induce their loyal and continued service. This goal is ultimately directed to the general welfare of the taxpaying public. *Hilligoss*, 174 Ind. App. at 529, 368 N.E.2d at 1370. *See also Klamm*, 235 Ind. at 291, 126 N.E.2d at 489 (primary object of pension is “public, not private”); *Clemens*, 215 Ind. at 523, 20 N.E.2d at 518 (“Notwithstanding the generous purposes of the police pension system, the Legislature took care to make the burdens placed upon the tax-paying public as light as it deemed practicable.”).

Indiana Code § 36-8-8-11.5 is ambiguous when applied to the unusual scenario presented by this matter. Petitioners argue, and the ultimate authority finds persuasive, the fact that Mayor Copeland was *selected by a caucus process* means that he was not *hired* and therefore not “rehired” as that term is used in Indiana Code § 36-8-8-11.5.

It is important to recognize that this decision neither calls into question the overall validity of Indiana Code § 36-8-8-11.5 nor does it suggest that the statute, as a general matter, is ambiguous. Rather, this decision holds only that in the very limited circumstance where an official is appointed to office by the precinct committee caucus process outlined in I.C. §§ 3-13-8-1, 3-13-11-1 *et seq.*, there is ambiguity. Further, based on this ambiguity, Mayor Copeland is deemed to be eligible for his 1977 Fund benefit as of [REDACTED]. On the facts presented by this case and considering the intent of the legislature in enacting such statute and the goals of the statute, Mayor Copeland was not “rehired” as that term is used in Indiana Code § 36-8-8-11.5 when he was appointed to serve as Mayor by a caucus process.

³ The tension is transparent in cases holding that an agency’s reasonable interpretation must be accepted by the courts, unless it is “incorrect.” *Pierce v. State Dep’t of Correction*, 885 N.E.2d 77, 89 (Ind. Ct. App. 2008) (citing *Peabody Coal Co. v. Indiana Dep’t of Natural Resources*, 606 N.E.2d 1306, 1308 (Ind. Ct. App. 1992)). In other words, the agency is right unless it’s wrong.

Therefore, Indiana Code § 36-8-8-11.5 is not an impediment to Mayor Copeland receiving his 1977 Fund benefit after he fully resigned as a firefighter on [REDACTED] and continuing to receive that benefit while still employed in the PERF-covered position of mayor.

In light of the finding that Indiana Code § 36-8-8-11.5 is ambiguous when applied to this limited circumstance, this decision need not address whether the East Chicago Fire Department is the same or different employer than the City of East Chicago.

Conclusion and Order

Petitioners' motion for summary judgment is granted and INPRS's motion for summary judgment is denied. The initial determination of INPRS is reversed. Mayor Copeland shall be treated as having retired from the East Chicago Fire Department effective [REDACTED] and shall be permitted to begin receiving a benefit from the 1977 Fund accordingly.

ORDERED on May 31, 2013.



Steve Russo, Executive Director
Indiana Public Retirement System
One North Capitol Avenue, Suite 001
Indianapolis, IN 46204

STATEMENT OF AVAILABLE PROCEDURES FOR JUDICIAL REVIEW

IC 4-21.5-5-4 provides that the Petitioner may file a petition for judicial review now that all administrative remedies have been exhausted. IC 4-21.5-5-5 states that the Petitioner must file a timely petition for review within thirty (30) days after the date of notice of the agency action that is the subject of the petition for judicial review was served. According to IC 4-21.5-5-6 and 7, the Petitioner must file its petition for review with the clerk of court in the judicial district of one of the following: the location where the petitioner resides or maintains a principal place of business; the location in which the agency action is to be carried out or enforced; or the location of the principal office of the agency taking the agency action.

CERTIFICATE OF SERVICE

I certify that on the 31st day of May, 2013, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

Distribution:

Anthony DeBonis, Jr.
SMITH & DeBONIS, LLC
214 Main Street
Hobart, IN 46342

Michael T. Bindner
Anthony W. Overholt
FROST BROWN TODD LLC
201 N. Illinois Street, Suite 1900
P.O. Box 44961
Indianapolis, IN 46344-0961

Lindsay Knowles
Thomas N. Davidson
INDIANA PUBLIC RETIREMENT SYSTEM
One North Capitol Avenue, Suite 001
Indianapolis, IN 46204

Wayne E. Uhl
Administrative Law Judge
8710 North Meridian St., #200
Indianapolis, IN 46260-5388



Steve Russo, Executive Director
Indiana Public Retirement System
One North Capitol Avenue, Suite 001
Indianapolis, IN 46204
317-232-3864

**BEFORE AN ADMINISTRATIVE LAW JUDGE
INDIANA PUBLIC RETIREMENT SYSTEM**

MAYOR ANTHONY COPELAND and )	)	1977 POLICE OFFICERS' AND
CITY OF EAST CHICAGO, )	)	FIREFIGHTERS' PENSION AND
	)	DISABILITY FUND
Petitioners,))	
	)	and
v.))	
	)	PUBLIC EMPLOYEES' RETIREMENT
INDIANA PUBLIC RETIREMENT )	)	FUND
SYSTEM,))	
)	
Respondent.))	

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Introduction

Petitioners Mayor Anthony Copeland and City of East Chicago appeal from an initial determination denying Mayor Copeland's request that he be deemed retired and paid benefits from the 1977 Fund while serving as mayor. Both parties filed summary judgment motions which are fully briefed. A hearing was held on January 22, 2013.

Findings of Undisputed, Material Facts¹

1. By resolution adopted on December 12, 1966, the City of East Chicago elected to join the Public Employees' Retirement Fund (PERF) effective January 1, 1967 (INPRS Ex. A).
2. By statute, the City is also a participant in the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Ind. Code § 36-8-8-3.
3. Anthony Copeland was born in [REDACTED] (INPRS Ex. C).
4. Copeland was hired by the City of East Chicago as a firefighter on [REDACTED] [REDACTED] (INPRS Ex. C). He automatically became a member of the 1977 Fund. I.C. § 36-8-8-1(2). The clerk-treasurer of the City certified firefighter Copeland's employment for the purposes of membership in the 1977 Fund (INPRS Ex. C).
5. The City has a fire department civil service system, originally created under 1972 Indiana Public Law 4 (formerly codified at I.C. §§ 19-1-37.5-1 *et seq.*) (Pet. Ex. B), and

¹ Some facts are asserted by the parties without affidavits, discovery responses, or other exhibits as contemplated by Trial Rule 56, but at the hearing they were stipulated.

re-adopted in 1982 as authorized by I.C. § 36-8-3.5-1(b) (Pet. Ex. C). Under that system, a fire department civil service commission tests candidates for appointment or promotion and forwards lists of eligible candidates to the appointing authority.

6. In 2010, the office of mayor of East Chicago became vacant. By statute, the vacancy was filled on a *pro tempore* basis, for the remainder of the unexpired term, by a caucus of Democratic precinct committeemen. See I.C. §§ 3-13-8-1, 3-13-11-1 *et seq.* As a result of that process, Copeland became mayor on October 16, 2010, to fill the remainder of the term expiring on [REDACTED]. (Stipulated.)

7. On [REDACTED] the City's Fire Civil Service Commission granted Mayor Copeland a leave of absence for one year (Pet. Ex. A). This leave of absence was retroactively effective on [REDACTED] (stipulated).

8. Upon taking office, Mayor Copeland was reported by the City to be a member of PERF and PERF contributions were made. See I.C. § 5-10.3-7-9.

9. In November 2011, Mayor Copeland ran for and was elected mayor for a four-year term commencing on January 1, 2012 (stipulated).

10. An attorney acting on behalf of Mayor Copeland inquired of INPRS whether Mayor Copeland could "retire" from the 1977 Fund and "continue" to be a member of PERF (Letter to Joe Allegretti from Lindsay Knowles, July 12, 2012). No formal application for retirement benefits was filed, but the attorney's inquiry was treated as an application (stipulated).²

11. On [REDACTED] INPRS made its initial determination that Mayor Copeland could not receive retirement benefits from the 1977 Fund because he had been rehired by the same unit less than 30 days after separation from his firefighting employment (Letter to Allegretti from Knowles). INPRS noted that Mayor Copeland could receive 1977 Fund service credit for the time he was on leave if he (or the City on his behalf) made contributions to the Fund that would have been made had he been fully employed as a firefighter, citing Indiana Code § 36-8-5-10(c) (*id.*).

12. INPRS also determined that Mayor Copeland could not be a member of PERF while on leave of absence from the fire department, citing Indiana Code § 5-10.3-7-2(4), and that PERF contributions made since October 2010 would be refunded (*id.*).

13. The letter gave notice of the right to seek administrative review within 15 days. It was served by certified mail delivered on July 13, 2012 (USPS Track & Confirm Web site).

² The parties stipulated at the hearing that this matter is ripe for adjudication notwithstanding that Mayor Copeland has not formally applied for retirement benefits.

14. Petitioners filed their Petition for Administrative Review by overnight courier on July 30, 2012, and received by INPRS on July 31, 2012.

15. On [REDACTED] attorney Anthony DeBonis, Jr., acting as Special Counsel to the City of East Chicago for Public Safety Affairs, informed the Fire Civil Service Commission that Mayor Copeland had informed him that he had applied for retirement benefits from the 1977 Fund; that he had sought administrative review; and that he “has no intention of returning to employment or active duty of any kind with the East Chicago Fire Department.” (Letter to Alan Abascal from Anthony DeBonis, Jr., [REDACTED]). Based on the Mayor’s “irrevocable intention” not to return to employment with the Fire Department, attorney DeBonis advised that another firefighter, who had been serving in a temporary capacity, could be permanently appointed to the position vacated by Mayor Copeland (*id.*).

16. Any finding of fact inadvertently set forth in the Conclusions of Law below is incorporated herein.

Conclusions of Law

Legal standard

Any party to an administrative proceeding may move for summary judgment, and the motion is considered by the ALJ as a court would consider a motion under Trial Rule 56. I.C. § 4-21.5-3-23. Trial Rule 56(C) provides that summary judgment “shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

The grant of summary judgment is appropriate only when the moving party affirmatively shows that there are no genuine issues of material fact with regard to a particular issue or claim. If this burden has been met, the non-moving party must come forward with designated evidence showing that a genuine issue of material fact does exist. All designated evidence and reasonable inferences are viewed in a light most favorable to the non-moving party; any doubts are resolved against the moving party. *Haegert v. Univ. of Evansville*, 977 N.E.2d 924, 936-37 (Ind. 2012) (citing *Town of Avon v. West Central Conservancy Dist.*, 957 N.E.2d 598, 602 (Ind. 2011)).

When the parties have filed cross-motions for summary judgment, each motion is considered separately to determine whether the moving party is entitled to judgment as a matter of law, construing the facts most favorably to the non-moving party in each instance. *Keaton and Keaton v. Keaton*, 842 N.E.2d 816, 819 (Ind. 2006); *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 160 (Ind. 2005).

An ALJ’s review of an agency’s initial determination is *de novo*, without deference to the initial determination. I.C. § 4-21.5-3-14(d) (codifying prior law, see *Indiana Dep’t of Natural Resources v. United Refuse Company, Inc.*, 615 N.E.2d 100, 103-04 (Ind. 1993); *Branson v. Public Employees’ Retirement Fund*, 538 N.E.2d 11, 13 (Ind. Ct. App. 1989)).

Issue

Is Mayor Copeland, who was serving as a firefighter for the City of East Chicago when he was elected to fill a vacancy and immediately took office as mayor of the same city, eligible to collect retirement benefits from the 1977 Fund while serving as mayor?

Evidence

Neither party seeks exclusion of any evidence submitted by the other, nor does either party argue that there are disputes of material fact precluding summary judgment.

Timeliness

A petition for review of an administrative order must be "filed" within 15 days after the petitioner is "given notice of the order." I.C. § 4-21.5-3-7(A)(3)(a). If a notice is served by U.S. mail, three days are added to any period that commences upon service of that notice. I.C. § 4-21.5-3-2(e).

The initial determination was mailed on July 12, 2012, and delivered on July 13, 2012, although Petitioners assert in their Petition for Review that it was actually received on July 16, 2012. Regardless of which of these dates constitutes "notice of the order," the Petition was "filed" on July 30, 2012, the date when it was mailed or deposited with a private carrier for overnight delivery. I.C. § 4-21.5-3-1(h). Because July 30 was within 18 days of any of the dates on which notice could have been deemed to have been given, the Petition for Review is timely.

Discussion

A member of the 1977 Fund is eligible for an unreduced retirement benefit after completion of 20 years of service and becoming 52 years old, and benefits begin the month after the member reaches age 52 or "retires," whichever is later. I.C. § 36-8-8-10(a) and (b). If a member is elected to office, the member may be granted a leave during elected service, and is considered to be a member of the department during that time. I.C. § 36-8-5-2(e).³

Reemployment after retirement affects the member's eligibility to receive (or continue to receive) the benefit. By administrative rule, if the member returns to a position covered by the 1977 Fund, benefits are terminated until the member has re-terminated service. 35 IAC 2-3-1. In addition, the member's benefit is subject to Indiana Code § 36-8-8-11.5:

Reemployment after retirement

³ Effective January 1, 2013, however, a firefighter is prohibited from serving in an elected position of the same unit while a member of the department, and if elected is deemed to have resigned. I.C. §§ 3-5-9-4 and -5.

Sec. 11.5. (a) Not less than thirty (30) days after a fund member retires from a position covered by this chapter, the fund member may:

(1) be rehired by the same unit that employed the fund member in a position covered by this chapter for a position not covered by this chapter; and

(2) continue to receive the fund member's retirement benefit under this chapter.

(b) This section may be implemented unless the system board receives from the Internal Revenue Service a determination that prohibits the implementation.

As added by P.L.130-2008, SEC.7. Amended by P.L.35-2012, SEC.125.

By [REDACTED], Petitioner Copeland had [REDACTED] of service and was [REDACTED], so he was eligible to receive unreduced benefits, but he had not yet retired. On October 16, 2010, Petitioner Copeland took office as mayor of East Chicago. However, he also maintained his position as a firefighter, taking a leave of absence and remaining a member of the fire department pursuant to Indiana Code § 36-8-5-2(e). After being elected to a full term as mayor beginning on January 1, 2012, Mayor Copeland fully resigned from the fire department on [REDACTED].

Mayor Copeland now wishes to be deemed to have "retired" from the fire department on [REDACTED], and to receive retirement benefits from the 1977 Fund while also serving as mayor and as a member of PERF. INPRS denied this request, concluding that Mayor Copeland cannot receive benefits because he was "rehired by the same unit" less than 30 days after he retired. Indeed, he was serving as mayor *before* he resigned.

At the outset, some issues raised in the initial determination and briefs are no longer in dispute. The parties agree that Mayor Copeland could not be deemed to have retired and treated as a member of PERF while he was on the leave of absence and still a member of the 1977 Fund. *See* I.C. § 5-10.3-7-2. This impediment was removed when he resigned from the fire department on August 8, 2012. Therefore, he can be deemed a member of PERF as of that date.⁴

⁴ In their Petition for Review filed on [REDACTED] Petitioners asserted that Mayor Copeland was *then* entitled to receive a benefit even though he was still on leave of absence from the fire department. On summary judgment, however, they acknowledge that Mayor Copeland could not be deemed retired until he terminated his firefighter employment on [REDACTED] (Pet. Mem. at 20-21; Pet. Jt. Reply at 10.)

The parties also now agree that the Internal Revenue Code does not impose an *independent* requirement of separation from service before Mayor Copeland can receive a benefit from the 1977 Fund. The 1977 Fund is required to satisfy the qualification requirements of Section 401 of the Internal Revenue Code, 26 U.S.C. § 401. I.C. § 36-8-8-2.5(b). The parties agree that Section 401 as amended and as interpreted by the Internal Revenue Service permits in-service benefits if the member has attained normal retirement age, which Mayor Copeland has. Section 401 still requires the plan to distribute benefits only “in accordance with such plan,” 26 U.S.C. § 401(a)(1), but this requirement is satisfied if the statutes and regulations that govern the 1977 fund permit the benefit.

Whether Mayor Copeland can be deemed to have “retired” from the fire department and receive benefits from the 1977 Fund turns on the meaning of Indiana Code § 36-8-8-11.5. Both parties cite “rules of statutory construction,” although as the Supreme Court has candidly cautioned, they are not so much rules as they are guidelines. *Brownsburg Community School Corp. v. Natate Corp.*, 824 N.E.2d 336, 344 (Ind. 2005) (“Although we recognize the maxims of statutory construction involved here, we find them at best suggestions, and not directives.”).

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N.E.2d 494, 496 (Ind. 2005) (“The parties remind us of principles of statutory construction and, as parties often do, cite opposing maxims.”).

One of these principles is deference to the interpretation of an administrative agency charged with enforcing the statute under review. The agency’s interpretation of a statute

is entitled to great weight, and the reviewing court should accept the agency’s reasonable interpretation of such statutes and regulations, unless the agency’s interpretation would be inconsistent with the law itself. Indeed, when a court determines that an administrative agency’s interpretation is reasonable, it should terminate its analysis and not address the reasonableness of the other party’s interpretation. Terminating the analysis recognizes the general policies of acknowledging the expertise of agencies empowered to interpret and enforce statutes and increasing public reliance on agency interpretations.

Indiana Dep’t of Environmental Mgmt. v. Steel Dynamics, Inc., 894 N.E.2d 271, 274 (Ind. Ct. App. 2008), *trans. denied* (citations, quote marks and footnote omitted), cited and quoted with approval in *Ghosh v. Indiana State Ethics Comm’n*, 930 N.E.2d 23, 29 (Ind. 2010).

This “terminate the analysis” standard appears to be more deferential than stated in earlier cases, which stressed that while the agency’s interpretation is given “some weight” or even “great weight,” the courts are not bound by the agency’s interpretation and the courts must resolve questions of statutory interpretation. *E.g.*, *Indiana Civil Rights Comm’n v. Alder*, 714 N.E.2d 632, 636 (Ind. 1999); *Miller Brewing Co. v. Bartholomew County Beverage Co., Inc.*, 674 N.E.2d 193, 200 (Ind. Ct. App. 1996). This is best seen not as a different standard, but an emphasis on the courts’ exclusive authority to ultimately decide legal questions.⁵

Another more specific principle is that ambiguous pension laws should be liberally construed in favor of the intended beneficiaries. *Fraternal Order of Police No. 73*, 829 N.E.2d at 496 (citing *Schock v. Chappell*, 231 Ind. 480, 484, 109 N.E.2d 423, 424 (1952), and *State ex rel. Clemens v. Kern*, 215 Ind. 515, 523, 20 N.E.2d 514 (1939)). But “the underlying goal of construing the pension laws to favor beneficiaries ‘is not a license to read into the act obligations against the pension trust funds and the taxpayers which the legislature did not intend.’ ” *Id.* at 498 (quoting *City of Ft. Wayne v. Ramsey*, 578 N.E.2d 725, 728 (Ind. Ct. App. 1991) (citing *Hilligoss v. LaDow*, 174 Ind. App. 520, 528, 368 N.E.2d 1365, 1370 (1977))).

The liberal construction rule is not to be applied indiscriminately, but must be considered in light of the purpose underlying the pension program. That purpose is not to

⁵ The tension is transparent in cases holding that an agency’s reasonable interpretation must be accepted by the courts, unless it is “incorrect.” *Pierce v. State Dep’t of Correction*, 885 N.E.2d 77, 89 (Ind. Ct. App. 2008) (citing *Peabody Coal Co. v. Indiana Dep’t of Natural Resources*, 606 N.E.2d 1306, 1308 (Ind. Ct. App. 1992)). In other words, the agency is right unless it’s wrong.

reward police officers and firefighters *per se*—although that is a byproduct—but to attract competent persons and induce their loyal and continued service. This goal is ultimately directed to the general welfare of the taxpaying public. *Hilligoss*, 174 Ind. App. at 529, 368 N.E.2d at 1370. *See also Klam*, 235 Ind. at 291, 126 N.E.2d at 489 (primary object of pension is “public, not private”); *Clemens*, 215 Ind. at 523, 20 N.E.2d at 518 (“Notwithstanding the generous purposes of the police pension system, the Legislature took care to make the burdens placed upon the tax-paying public as light as it deemed practicable.”).

It must first be determined whether Indiana Code § 36-8-8-11.5 is ambiguous. The ALJ concludes that the statute is ambiguous, at least as applied to the unusual scenario presented by this matter. Petitioners’ arguments that the statute by its terms simply does not apply here are not persuasive.

Petitioners suggest that the fact that Mayor Copeland was *elected* means that he was not *hired* and therefore not “rehired.” Regardless of how the appointment was made, however, he became an employee of the City of East Chicago, at least for retirement fund purposes. Otherwise, he would not be a member of PERF today. I.C. § 5-10.3-7-1 (providing that an “employee” of a participating political subdivision becomes a member of the fund).

Nor does the sequence of events control the application of the statute. Otherwise, the 30-day waiting period contemplated by the statute could be easily avoided by “hiring” a current employee into one position the day before he resigns from another. So the fact that Mayor Copeland assumed office *before* he formally resigned as a firefighter does not defeat a finding that he was “rehired.”

Petitioners are incorrect that the statute has no application because firefighter Copeland was not employed by the “same unit” as Mayor Copeland. Both employments were by the City of East Chicago. A department of a city is not a separate legal entity. *Slay v. Marion County Sheriff’s Dep’t*, 603 N.E.2d 877, 887 (Ind. Ct. App. 1992) (citing *Jones v. Bowman*, 694 F.Supp. 538, 544 (N.D. Ind. 1988)). Furthermore, neither the fire department nor the fire civil service commission is a “unit” as that term is statutorily defined. I.C. §§ 36-1-2-23 (“unit” means county, municipality or township); 36-1-2-11 (“municipality” means city or town). The fire merit system statute and ordinance do not change this result, and if anything confirm it by providing that the civil service commission provides lists to the appointing authority (the mayor) to make the actual appointment.⁶

Apart from those possibilities, the plain language of the statute does not clearly dictate a result here. The statute was written on the assumption that the member had “retired,” began receiving benefits, was “rehired” by the same unit, and may “continue” to receive benefits. It

⁶ 1972 Ind. Pub. L. 4, § 20 (former I.C. §§ 19-1-37.5-1 *et seq.*) (Pet. Ex. B); East Chicago Ordinance 3339, § 35-132(6) (Pet. Ex. C) (retaining the former civil service system as permitted by the later version, I.C. § 36-8-3.5-1(b)).

is also clear from the statute that the legislature intended that there be a gap of at least 30 days between employments. So the next question is whether legislative intent can be inferred as applied to a situation in which a 30-day gap was not feasible or practical, and where there is no evidence of an intent to subvert the goals of the statute.

As INPRS counsel candidly explained at the hearing, the intent of the statute—hinted at by subsection (b)—was to ensure that the 1977 Fund would maintain its tax-favored status as a qualified pension plan under the Internal Revenue Code. At the time, federal law required a *bona fide* separation from service, so our General Assembly required a 30-day separation from service. Federal law subsequently changed to soften this requirement.

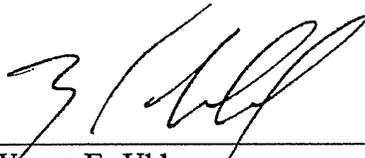
The state continues to have an interest in preventing sham retirements, that is, an employee simply moving from a 1977 Fund-covered position to a PERF-covered position in order to begin receiving benefits while still fully employed. But a sham retirement is very unlikely to be the motivation where, as here, the employee is unexpectedly elected to serve the balance of an uncompleted term of office. This would not be the case where an employee is elected and has more than 30 days to resign from his or her position before assuming office.⁷

Therefore, on the narrow facts presented by this case, Indiana Code § 36-8-8-11.5 is not an impediment to Mayor Copeland receiving his 1977 Fund benefit after he fully resigned as a firefighter on [REDACTED] and continuing to receive that benefit while still employed in the PERF-covered position of mayor.

Conclusion and Order

Petitioners' motion for summary judgment is granted and INPRS's motion for summary judgment is denied. The initial determination of INPRS is reversed. Mayor Copeland shall be treated as having retired from the East Chicago Fire Department effective [REDACTED] and shall be permitted to begin receiving a benefit from the 1977 Fund accordingly.

ORDERED on February 26, 2013.



Wayne E. Uhl
Administrative Law Judge
3077 East 98th Street, Suite 240
Indianapolis, Indiana 46280
Email: wuhl@stephlaw.com

⁷ Given this construction of the statute, it is unnecessary to consider Petitioners' argument that the statute, either on its face or as applied to Mayor Copeland, is unconstitutional, or the extent to which an administrative agency is authorized to make such a determination.

STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW

The undersigned administrative law judge is not the ultimate authority, but was designated by the INPRS Board to hear this matter pursuant to I.C. § 4-21.5-3-9(a). Under I.C. § 4-21.5-3-27(a), this order becomes a final order when affirmed under I.C. § 4-21.5-3-29, which provides, in pertinent part:

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

- (1) affirming;
- (2) modifying; or
- (3) dissolving;

the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

- (1) identifies the basis of the objection with reasonable particularity; and
- (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document on the following persons, by U.S. Postal Service first-class mail, **certified mail, return receipt requested**, postage prepaid, on February 26, 2013, with a courtesy copy by email on the same date:

Anthony DeBonis, Jr.
SMITH & DeBONIS, LLC
214 Main St.
Hobart, IN 46342

Michael T. Bindner
Anthony W. Overholt
FROST BROWN TODD LLC
201 N. Illinois St., Suite 1900
P.O. Box 44961
Indianapolis, IN 46344-0961

Thomas Davidson, General Counsel
Lindsay Knowles, Attorney
INPRS
1 N. Capitol Ave., Ste. 001
Indianapolis IN 46204



Wayne E. Uhl
Administrative Law Judge