

STATE OF INDIANA) SS:

BEFORE THE STATE BOARD OF THE PUBLIC
EMPLOYEES' RETIREMENT FUND

IN THE MATTER OF MRS. JOSEPH J. NAGY, CAUSE NO. 86-01.

ADMINISTRATIVE ADJUDICATION

In the above referenced matter came on to be heard in accordance with IC 4-22-1-1 by the duly appointed hearing officer, Burton L. Garten, on the 25th day of April, 1986 in the offices of the Public Employees' Retirement Fund, Suite 800, Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by H. Dudley Miller and the petitioner, Mrs. Joseph J. Nagy was represented by Harry Zerbe. Witnesses were sworn and testimony and exhibits were heard and received into evidence.

Burton L. Garten now recommends transfer of the hearing findings of fact and decision to the State Board for its final decision and disposition of said matter.

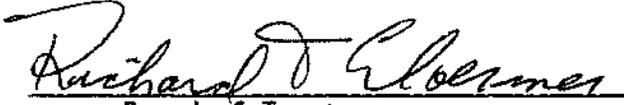
FINDINGS OF FACT AND DECISION AND CONCLUSIONS
OF LAW ARE FOUND IN THE ATTACHED REPORT
OF THE HEARING DATED APRIL 25, 1986.

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby deny survivor benefits to Mrs. Joseph J. Nagy, under IC 5-10.2-3-7 and IC 5-10.2-4-1.

All of which is ordered this 16th day of May, 1986.

Richard T. Doermer, Chairman
Al H. Harding, Jr., Vice Chairman
Myrl W. Deltch, Jr., Trustee
Marie T. Lauck, Trustee
Marjorie Meyer, Trustee


Board of Trustees
Public Employees' Retirement Fund

STATE OF INDIANA
PUBLIC EMPLOYEES' RETIREMENT FUND
143 WEST MARKET STREET, SUITE 800
INDIANAPOLIS, INDIANA 46204

In the matter of receiving additional evidence for the review of the findings of fact and the initial determination of the Public Employees' Retirement Fund on the application for survivor benefits by Mrs. Joseph J. Nagy

Reason for Action: PERF Initial Determination Letter dated December 9, 1985 denying survivor benefits to Mrs. Joseph J. Nagy

Hearing Date: April 25, 1986 Place: Public Employees' Retirement Fund
Suite 800 Harrison Building
143 West Market Street
Indianapolis, Indiana 46204

FINDING OF FACT AND DETERMINATION

The above matter coming to be heard before Burton L. Garten, duly appointed to conduct administrative hearings, are provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by H. Dudley Miller. Mrs. Joseph J. Nagy (petitioner) was represented by Harry Zerbe.

JOINT EXHIBITS

A Copy of:

1. The birth certificate of Joseph James Nagy.
2. The PERF Membership Record of Joseph J. Nagy.
3. 35 IAC 1.1-1-7 Unused vacation or sick leave excluded.
4. Page 1366 of Webster's Ninth New College Dictionary (1985) containing definitions of the word "year".
5. One of the front pages and page 1406 of The American Heritage Dictionary, Second College Edition, containing definition of the word "year".

6. A letter from Robert W. Buechner to the Public Employees' Retirement Fund dated June 20, 1985.
7. A letter from Robert W. Buechner to Dudley Miller, dated July 15, 1985.

FACTS:

Joseph James Nagy was born January 24, 1920 in Harrisburg, Pennsylvania. On March 16, 1975 he began full-time employment with the South Dearborn Regional Sewer District. His position was covered by PERF.

Mr. Nagy died on February 6, 1985 while in the employ of the City of Lawrenceburg in a PERF covered position. He was planning to go on vacation February 14, 1986 and then return to work. His 10th anniversary date would have been March 16, 1986. Upon his death his creditable service was 9 years, 10 months, and 20 days.

Mrs. Nagy testified that from records of the South Dearborn Regional Sewer District Mr. Nagy had worked at least 56 1/2 days of overtime from 1980 through 1985.

Mrs. Nagy made a request for survivorship benefits through her counsel in letters of June 10, 1985 and July 15, 1985.

Her requests for survivorship benefits were denied by letter of December 9, 1985 by L. H. Earle, II, Executive Secretary of PERF.

FINDINGS:

Indiana Code 5-10.2-3-7 reads in part.....

"Survivor Benefits-Death in Service-(a) If a member, other than a member of the legislature, with fifteen (15) or more years of creditable service..., designates a beneficiary under this article..., he may elect, or his spouse may elect upon his death in service, to provide survivor benefits as follows:....."

Indiana Code 5-10.2-4-1 reads in part.....

"Eligibility for Normal and Early Retirement-(a) A member who has reached age sixth-five (65) and has at least ten (10) years of creditable service is eligible for normal retirement."

Indiana Code 1-1-4-1 reads in part.....

Statutes, how Construed.-The construction of all Statutes of this State shall be by the following rules, unless such construction is plainly repugnant to the intent of the legislature or of the context of the same statute. "(1) words and phrases shall be taken in their plain, or ordinary and usual, sense....(5) The word 'month' means a calendar month, and the word 'year' means a calendar year, unless otherwise expressed...."

It has been established, pursuant to IC 5-10.2-3-7, that:

1. Joseph J. Nagy died in service.
2. Joseph J. Nagy did not have fifteen (15) years of creditable service.

It has further been established, pursuant to IC 5-10.2-4-1, that:

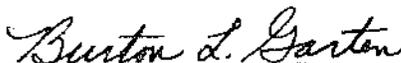
1. Joseph J. Nagy had reached his sixty-fifth birthday on January 24, 1985.
2. Joseph J. Nagy did not have at least ten (10) years of creditable service, having only 9 years, 10 months, and 20 days.
3. Joseph J. Nagy cannot be given credit for more days in a year than there are in a calendar year. A year includes all days worked in that year including overtime days.

It is further been established, pursuant to IC 1-1-4-1, that:

1. The word "year" means a calendar year.
2. Black's Law Dictionary, Webster's Ninth New College Dictionary, and The American Heritage Dictionary define a calendar year as 365 days except in leap year, when it is 366 days.

DECISION AND CONCLUSIONS OF LAW

Based on the evidence and testimony presented, and in view of the above facts and findings, I, Burton L. Garten, duly appointed hearing officer for the State Board of the Public Employees' Retirement Fund, would recommend denial of survivorship benefits to Mrs. Joseph J. Nagy, pursuant to IC 5-10.2-3-7, IC 5-10.2-4-1. She is eligible to receive the sum of Mr. Nagy's contributions and accumulated interest available at his death.



Burton L. Garten, Hearing Officer
Public Employees' Retirement Fund

April 28, 1986