

STATE OF INDIANA) SS:

BEFORE THE STATE BOARD OF THE
PUBLIC EMPLOYEES' RETIREMENT
FUND FOR THE 1977 POLICE AND
FIREFIGHTERS' PENSION AND
DISABILITY FUND

IN THE MATTER OF ELMER EMOND AND ROBERT F. SHAFFER, CAUSE NO. [REDACTED]

ADMINISTRATIVE ADJUDICATION

The above referenced matter came on to be heard in accordance with I.C. 4-22-1-1 by the duly appointed hearing officer, Burton L. Garten, on the 19th day of January, 1983 in the offices of the Public Employees' Retirement Fund, Room 800 Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by Frank Baldwin and the petitioners, Elmer Emond and Robert F. Shaffer, were represented by Ronald D. Gifford.

Briefs were submitted to the hearing officer.

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.

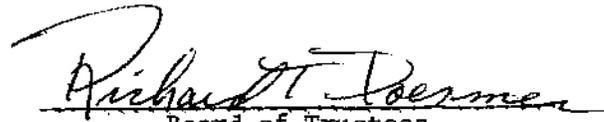
FINDINGS OF FACT AND DECISION AND CONCLUSIONS
OF LAW ARE FOUND IN THE ATTACHED REPORT
OF THE HEARING DATED JANUARY 19, 1983

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby deny regular retirement benefits to Elmer Emond and Robert F. Shaffer under I.C. 36-8-8-1, I.C. 36-8-8-9, and I.C. 36-8-8-10 and does hereby order the cessation of payment of any regular retirement benefits.

All of which is ordered this 17th day of may, 1983.

Richard T. Doermer, Chairman
J. Dwight Peterson, Vice Chairman
Myrl W. Deitch, Jr., Trustee
Herschell J. Umbaugh, Trustee
Marie T. Lauck, 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 ruling that regular retirement benefits are not authorized for Elmer Emond and Robert F. Shaffer under I.C. 36-8-8.

Reason for Action: PERF initial determination ruling that Elmer Emond and Robert F. Shaffer are not entitled to regular retirement benefits

Briefs Submitted: January 19, 1983 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 as provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by Frank Baldwin. Elmer Emond and Robert F. Shaffer (petitioners) were represented by Ronald D. Gifford.

Exhibits

None

Facts:

Mr. Elmer B. Emond began employment with the City of Plymouth as a volunteer fireman prior to 1955 and became a fully paid member of the Plymouth Fire Department on March 1, 1965. He retired on May 31, 1981 at the age of 65 having service of 16 years and 2 months. Mr. Robert F. Shaffer began employment with the City of Plymouth as a volunteer fireman in approximately May 1955 and served in that capacity until approximately 1962 when he served two years as chief of the fire department, a fully paid position. From 1964 until January 6, 1969 Mr. Shaffer served as a volunteer fireman. On January 6, 1969 he once again became fire chief and served in that position, a fully paid position, until his retirement on September 30, 1980 at the age of 65 having service of 12 years and 9 months.

The City of Plymouth has had a full time, paid fire department since approximately 1920.

Mr. Emond was born on May 28, 1916. Mr. Shaffer was born on January 3, 1915. In 1965, when Mr. Emond became a full time member of the fire department, he was approximately 49 years old. When Mr. Shaffer became a full time member of the fire department in 1969, he was approximately 54 years old.

On October 11, 1971 the City of Plymouth adopted an ordinance electing to be covered by the 1937 Firefighters' Pension Fund then in effect under Indiana law. Mr. Emond and Mr. Shaffer elected to be covered by the "1937 Fund" and filed the necessary documentation. Mr. Emond and Mr. Shaffer made all the required contributions to the said fund and considered themselves covered by the provisions of the plan. The City of Plymouth also has made the necessary payments to the plan.

Mr. Emond converted under I.C. 19-1-36.5-7 to the 1977 Police and Firefighters' Pension and Disability Fund (the "1977 Fund") on February 18, 1980. Mr. Shaffer converted under I.C. 19-1-36.5-7 to the 1977 Fund on February 18, 1981. Both men received a payment of [REDACTED] as a result of the conversion.

Upon their retirement they filed the necessary documents with the local board who filed the same with all the necessary authorities. Both Emond and Shaffer have been receiving retirement benefits since the dates of their retirement from the 1937 Firefighters' Pension Fund adopted by the City of Plymouth on October 11, 1971.

The State Board of the 1977 Fund provides Pension Relief to the City of Plymouth for benefits paid out of the 1937 Fund. Due to that involvement, Mr. L. H. Earle II, Executive Secretary of the Public Employees' Retirement Fund, issued an initial determination letter dated October 15, 1982 finding any regular retirement benefit payments to Mr. Emond and Mr. Shaffer unauthorized and contrary to the current pension statutes. He suggested the payments should cease. It is this initial determination letter that has brought about this appeal.

Findings:

Indiana Code 36-8-8-1 reads in part:

Application of Chapter - This chapter applies to:

- (2) Full-time, fully paid firefighters hired or rehired after April 30, 1977, or who converted their benefits under I.C. 19-1-36.5-7, except as provided by section 7 of this chapter.

Indiana Code 36-8-8-9 reads in part:

Conversion From Other Funds

- (a) This section applies to all police officers and firefighters who converted their benefits under I.C. 19-1-17.8-7 or I.C. 19-1-36.5-7.
- (b) A police officer or firefighter who converted his benefits from a 1925, 1937, or 1953 fund to the benefits and conditions of this chapter is not entitled to receive any benefits from the original fund. However, he remains a member of that original fund but is entitled to receive only the benefits provided under this chapter and based on the eligibility requirements of this chapter.

Indiana Code 36-8-8-10 reads:

Retirement Benefits - Eligibility

- (a) A fund member is eligible for retirement after he has completed twenty (20) years of active service.
- (b) Benefit payments to a retired fund member begin on the first day of the month on or after the date he reaches fifty-five (55) years of age or on which he retires, whichever is later.

It has been established, pursuant to I.C. 36-8-8-1 that:

1. Mr. Emond and Mr. Shaffer converted their benefits under I.C. 19-1-36.5-7,
2. I.C. 36-8-8-1 through I.C. 36-8-8-18, the 1977 Police and Firefighters' Pension and Disability Fund, governs Mr. Emond and Mr. Shaffer's eligibility for regular retirement benefits.

It has been established, pursuant to I.C. 36-8-8-9 that:

-
1. Mr. Emond and Mr. Shaffer converted their benefits under I.C. 19-1-36.5-7.
 2. Mr. Emond and Mr. Shaffer are not entitled to receive any benefits from their original fund (the 1937 Fund).
 3. Mr. Emond and Mr. Shaffer must meet the eligibility requirements of the 1977 Fund.
-

It has been established, pursuant to I.C. 36-8-8-10 that:

1. Mr. Emond and Mr. Shaffer each have less than twenty (20) years of active service.
2. Neither Mr. Emond nor Mr. Shaffer are eligible for retirement benefits from the 1977 Fund because of the lack of required service time.

Decision and Conclusions of Law:

Based on the briefs submitted to me by Mr. Ronald D. Gifford and Mr. Frank Baldwin, 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 affirming the initial determination letter of the 1977 Police and Firefighters' Pension Fund.

February 21, 1983

Burton L. Garten

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