

The specific facts were these:

While the employee, a motor vehicle examiner, was on military leave from September 18, 1950 to August 16, 1953, a competitive promotion test for "Supervisor, Testing Division, Motor Vehicle" was announced under Civil Service Rule 24 and was held on May 2, 1952. A list of 53 eligibles was promulgated in October, 1952, and expired after the statutory maximum of three years had run in October, 1955. Eight of the fifty-three eligibles on the list were actually promoted during these three years. The list was not extended, and under R.S. 11:9-10 it can no longer be extended. On May 26, 1956, approximately nine months following the expiration of the list of eligibles, and almost three years following his return from the military to State employ, this employee made application to take the promotion test held on May 2, 1952.

It is our opinion that the Civil Service Commission has no authority to grant this request and that, if granted, it would constitute unauthorized preferential treatment for the employee in question.

N.J.S.A. 38:23-4 does not grant the employee greater rights than he would have had by taking the May 1952 test. Had this employee passed that test he would have been placed on the list of eligibles which was promulgated in October 1952. Since this list has now expired, and can no longer be reopened, a right to be placed on such list, or a test to acquire that right is meaningless.

Thus, if this employee were to pass a special test, such as that suggested, he would necessarily be the sole eligible on a new list, because the previous list has expired. This would do more than grant him equality with his fellow employees who took the May 1952 exam. It would place him in a preferred position with respect to the forty-five eligibles who remained on the previous list when it expired.

If any right existed, it is clear that it expired along with the eligible list in October 1955. There was ample opportunity to make application before expiration of the list.

For the above reasons, we must advise you that the Department of Civil Service should not authorize this promotional test.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID LANDAU
Deputy Attorney General

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AUGUST 24, 1956

HON. ROBERT L. FINLEY
Deputy State Treasurer
State House
Trenton 7, New Jersey

MEMORANDUM OPINION—P-26

DEAR MR. FINLEY:

You have requested our opinion as to whether war veteran members of the Teachers' Pension & Annuity Fund who are entitled to the refund of their accumulated deductions pursuant to P. L. 1955, c. 37, §70 are entitled to receive, as part of their

refunds, amounts paid as contributions in their behalf by their public employers pursuant to N.J.S.A. 38:23-6.

Section 70 provides, inter alia:

"a. Each veteran member shall have returned to him, except as provided in subsection 'd' of this section, his accumulated deductions as of January 1, 1956, less contributions based on his compensation for the year 1955 at the rate of contribution provided in subsection 'b'. All service rendered in office, position, or employment of this State or of a county, municipality, or school district, board of education or other employer by such veteran member previous to January 1, 1955, for which evidence satisfactory to the board of trustees is presented within 1 year of the effective date of this section, shall be credited to him as a 'Class B' member and the accrued liability for such credit shall be paid by the employer as provided in section 33."

Several things are quite clear from an examination of this and related sections of the act. First, veteran members are given free prior service credit for their prior employment. Second, their respective employers are to be charged with the accrued liability for such credit. See §§ 18 & 33. Third, accumulated deductions standing to their credit are to be returned to veteran members.

Section 2 of the act states:

"As used in this act:

a. 'Accumulated deductions' means the sum of all the amounts, deducted from the compensation of a member or contributed by him, including interest credited prior to January 1, 1956, standing to the credit of his individual account in the annuity savings fund."

The instant question is whether the term "accumulated deductions" as used in the act includes the amounts paid in wartime by the employers of persons in military service as contributions in their behalf pursuant to N.J.S.A. 38:23-6.

N.J.S.A. 38-23-6 provides:

"During the period beginning with the time of the entry of such person into such service and ending at the earliest of (a) three months after the time of such person's discharge from such service or (b) the time such person resumes such office, position or employment or (c) the time of such person's death or disability while in such service, the proper officer of the State, county, municipality, school district, political subdivision, board, body, agency or commission shall contribute or cause to be contributed to such fund the amount required by the terms of the statute governing such fund based upon the amount of compensation received by such person prior to his entry into such service and during the period first mentioned in this section any such person receiving compensation from the State, county, municipality, school district, political subdivision, board, body, agency or commission, shall continue to contribute the amount required by statute to be paid by members of such fund *and during the period first mentioned in this section any such person not receiving compensation from the State, county, municipality, school district, political subdivision, board, body, agency or commission shall not be*

required to contribute the amount required by statute to be paid by members of such fund, but said amount shall be contributed for such person by the State, county, municipality, school district, political subdivision, board, body, agency or commission." (Italics supplied).

The expression "such person" relates back to N.J.S.A. 38:23-5 and means, generally speaking, a public employee who was a member of a pension system or fund and entered military service in wartime.

Thus, as seen from the underlined portion of N.J.S.A. 38:23-6 a public employee in military service during wartime was not required to contribute to his pension fund or system, but such contribution was made for him by his employer.

Should such contributions be considered "accumulated deductions" as defined in Section 2 of P. L. 1955, c. 37 so as to include them in the refund to be made to veteran members of the Teachers' Pension & Annuity Fund pursuant to Section 70 of that act? In our opinion, they should not be so considered.

The definition of accumulated deductions set forth in Section 2, *supra*, bars such inclusion. The contributions made by the employer pursuant to N.J.S.A. 38:23-6 were not amounts "deducted from the compensation of a member", nor were they amounts "contributed by him". The specific nature of the statutory definition resolves the question with clarity. In this circumstance, no further observations would ordinarily be made by us. However, we consider it worthwhile in the present instance to point out the essential soundness of the result.

First, it should be observed that the result reached in no way deprives the veteran member of anything to which he is entitled. He receives free prior service credit for his prior employment, including free credit for the time spent by him in the military service during wartime. The accrued liability for all of such credit is charged to the employer. The employer has, in a very real sense, already prepaid the fund for that period of time during the war while the employee was in military service, and is entitled to the benefit thereof. To hold otherwise would be to require the employer not only to pay for all of the free prior service credit granted the employee by the act, but also to pay the same doubly for part of that time. See section 18d of P. L. 1955, c. 37.

We are likewise cognizant of that portion of § 34 of P. L. 1955, c. 37, which states:

"****. No veteran member shall be entitled to withdraw the amount of his accumulated deductions contributed by his employer covering his military leave unless he shall have returned to the payroll and contributed to the retirement system for a period of 90 days."

This provision specifically permits payment to an employee of the accumulated deductions "contributed by" his employer while he was on military leave in the event of his subsequent withdrawal from employment (provided he returns to the payroll and contributes to the retirement system for at least 90 days). It is noteworthy that no such language is employed in section 70 of the act and section 34 involves no double charge against the employer.

Accordingly, it is our opinion that war veteran members of the Teachers' Pen-

sion & Annuity Fund are not entitled to receive, as part of their refunds, amounts paid as contributions in their behalf by their public employers pursuant to N.J.S.A. 38:23-6.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: LAWRENCE E. STERN
Deputy Attorney General

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AUGUST 30, 1956

HON. JOSEPH E. MCLEAN, *Commissioner*
Department of Conservation and Economic Development
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-27

DEAR COMMISSIONER MCLEAN:

You have requested our opinion on the status of Fish and Game Wardens as peace officers. We understand that you are concerned with the powers of arrest of Fish and Game Wardens both under the fish and game laws and under the criminal laws generally.

Fish and Game Wardens are statutory officers with limited powers as peace officers to enforce the provisions of the fish and game laws. The appointment is by the Division of Fish and Game in the Department of Conservation and Economic Development pursuant to R.S. 23:2-4. The principal powers and duties of the Fish and Game Wardens are set forth as follows:

R.S. 23:2-6. Powers and duties of protector and wardens.

"The wardens shall enforce all the laws of this state for the protection of fish, birds and game animals, and may execute all processes issued for the violation of these laws and serve subpoenas issued for the examination, investigation or trial of all offenses against these laws."

R.S. 23:2-8. Summary arrest; aid by peace officers.

"The council, the wardens, the deputy wardens and the protector shall have the power of summary arrest in cases of flagrant violation of this Title, or of the provisions of the State Fish and Game Code, and may, in the discharge of their duties, call in the aid of a constable, sheriff, or other peace officer when deemed necessary."

R.S. 23:10-5. Arrest on view without warrant; interference with or resisting officer.

"Any constable, police officer, fish and game warden, protector, or deputy warden, or any officer or member of any incorporated game protective society