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NO. 67763-2-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON, DIVISION I

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GERALD B. ADAMS, ROGER H. AMUNDSON, KENNETH W. CROW, LARRY FARRAR, JERRY W. GERMEAU, JAMES R. "BOB" GILLESPIE, RON HAVILAND, WILLIAM E. HERBERT, DAVID F. HORTON, GENE C. HUNT, NORMAN D. JAMES, MARK E. KATZER, EMETT H. KELSIE, TOMMY B. KNIGHT, E.J. "NEIL" LOW, GARY J. McNULTY, LARRY NOLTING, DEAN QUAIL, DAVID C. RITTER, MICHAEL G. SEVERANCE, STEVEN R. SUNDSTROM, GORDON L. VANROOY, individuals, their spouses, and their marital communities, as applicable,

Appellants,

PHILIP R. FORSELL, STEPHEN M. MACOMBER, DALE A. MATSON, individuals, their spouses, and their marital communities, as applicable,

Plaintiffs,

v.

THE CITY OF SEATTLE

Defendant,

THE DEPARTMENT OF RETIREMENT SYSTEMS,

Respondent.

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**BRIEF OF APPELLANTS**

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## INTRODUCTION

This appeal concerns retirement benefits for current or retired Seattle Police Officers (the Officers) who previously served in non-commissioned (or “unsworn”) positions for Seattle, and then became sworn law enforcement officers, where they each served for more than 30 years. The Officers each made contributions into the City Employees’ Retirement System (CERS) during their unsworn service. After they became police officers, the Legislature permitted them to transfer their CERS contributions into Seattle’s Police Retirement Pension Fund (PRFP), and they each did so. The Legislature then required them to transfer their PRFP contributions – including their CERS contributions – into the Law Enforcement Officers’ and Fire Fighters’ Retirement System (LEOFF). The Department of Retirement Systems refuses to include their unsworn-service contributions when calculating the Officers’ retirement and pension benefits under LEOFF.

The trial court granted summary judgment to the Department, denied it to the Officers, and badly misconstrued the unambiguous language of the applicable statutes. The parties agreed that no genuine issues of material fact exist. This Court should reverse and grant summary judgment to the Officers.

## **ASSIGNMENTS OF ERROR**

1. The trial court erred in granting summary judgment to the Department and in denying summary judgment to the Officers. CP 619-22.
2. The trial court erred in concluding that the Department was not legally required to include the Officers' CERS contributions when calculating their retirement and pension benefits under LEOFF.

## **ISSUE PERTAINING TO ASSIGNMENTS OF ERROR**

The appellants were all unsworn Seattle employees who made contributions into CERS before they were commissioned as Seattle police officers, where they all served for more than 30 years. The Legislature permitted the Officers to transfer their CERS contributions into PRFP, and they each did so. The Legislature then required them to transfer their PRFP contributions – which then included their CERS contributions – into LEOFF. The City “caps” their benefits at 30 years, so it does not compensate them for their full contributions into CERS and PRFP. Must the Department include their CERS contributions when calculating their retirement and pension benefits under LEOFF in order to prevent the Officers from simply losing their CERS contributions?

## STATEMENT OF THE CASE

**A. The summary judgment standard of review is *de novo*.**

The Court reviews summary judgments *de novo*. ***Michael v. Mosquera-Lacy***, 165 Wn.2d 595, 601, 200 P.3d 695 (2009); ***Safeco Ins. Co. of Ill. v. Country Mut. Ins. Co.***, 165 Wn. App. 1, 4, 267 P.3d 540 (2011). “Summary judgment is appropriate when “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.”” *Id.* (alteration in original) (quoting ***Locke v. City of Seattle***, 162 Wn.2d 474, 483, 172 P.3d 705 (2007) (quoting CR 56(c))).

**B. The facts are undisputed: appellants are current or former Seattle police officers with over 30 years of service who have been denied retirement benefits for their prior “unsworn” service.**

As the parties agreed below, no genuine issues of material fact exist here. CP 457, 462, 481, 482, 575.<sup>1</sup> Appellants<sup>2</sup> are current or retired Seattle police officers with over 30 years’ of service to the City. See, e.g., CP 134-35, 457. Prior to becoming

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<sup>1</sup> Many factual citations are to the State’s Motion for Summary Judgment, reflecting the State’s straightforward agreement on the relevant facts.

<sup>2</sup> The appellants are Gerald B. Adams, Roger H. Amundson, Kenneth W. Crow, Larry Farrar, Jerry W. Germeau, James R. “Bob” Gillespie, Ron Haviland, William E. Herbert, David F. Horton, Gene C. Hunt, Norman D. James, Mark E. Katzer, Emmett H. Kelsie, Tommy B. Knight, E.J. “Neil” Low, Gary J. McNulty, Larry Nolting, Dean Quail, David C. Ritter, Michael G. Severance, Steven R. Sundstrom, and Gordon L. Vanrooy, individuals, their spouses, and their marital communities. CP 626.

commissioned (or “sworn”) officers, the appellants each had some period of service in “unsworn” city employment (e.g., as a Cadet or a transportation worker). CP 134-35, 457-58 & nn. 5 & 6, 587.

In 1959, the Legislature adopted RCW ch. 41.20, the Police Relief and Pension Fund, or PRPF, under which Seattle established a retirement fund for its police officers. CP 458. Other Seattle employees were covered under the City Employees’ Retirement System, or CERS (see RCW ch. 41.44). *Id.* As discussed more fully below, PRPF permitted law enforcement officers who had made CERS contributions (during unsworn service) to transfer all CERS contributions into PRPF in 1973. RCW 41.20.170. It is undisputed that all of the appellants did so.

In 1969, the Legislature adopted RCW ch. 41.26, the Law Enforcement Officers’ and Fire Fighters Retirement System, or LEOFF. With the adoption of LEOFF, all police officers were required to transfer their PRPF memberships – which included their transferred CERS contributions – into LEOFF.<sup>3</sup> RCW 41.26.040. The appellants were all members of the initial LEOFF, or LEOFF I. CP 457 & 459 n.8.

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<sup>3</sup> The appellants who transferred into LEOFF on March 1, 1970 are identified at CP 460, n.13. The remaining appellants began in LEOFF during the following three years. See *id.* at n.14.

C. **The trial court granted the Department's summary judgment motion, and denied the Officers' cross-motion, permitting the Legislature to lessen the Officers' retirement benefits despite an undisputed legal prohibition against doing so.**

As relevant here,<sup>4</sup> the dispute concerns whether the Department is legally required to include the Officers' CERS contributions in its calculation of their retirement and pension benefits. The Department acknowledges that the Officers were permitted to transfer their CERS contributions into PRPF under Laws of 1973, ch. 143, § 2 (codified as RCW 41.20.170).<sup>5</sup> CP 458. It further acknowledges that the Officers' PRFP contributions were transferred into LEOFF. CP 460 & nn. 13 & 14. It also acknowledges that the Legislature is not permitted to lessen public employees' retirement benefits through LEOFF transfers. CP 459-60 & n.12 (citing Op. Att'y Gen. 17 (1970); ***Mullholland v. City of Tacoma***, 83 Wn.2d 782, 522 P.2d 1157 (1974)).

Nonetheless, the Department maintains, and the trial court agreed, that the Officers cannot receive any benefits under LEOFF arising from their CERS contributions. CP 461, 631. This ruling

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<sup>4</sup> The appellants also sued the City below, but have chosen to appeal only the order granting summary judgment to the Department. CP 626. The City argued that the Officers' cross motion for summary judgment was untimely, but the trial court considered it. CP 623.

<sup>5</sup> Copies of all cited statutes are appended per RAP 10.4(c).

permits the Department to pay these Officers less than they should receive under their pre-existing retirement plan, directly violating the prohibition against lowering their benefits through LEOFF. The Officers therefore timely appealed. CP 626-32.

## ARGUMENT

### A. The standard of review for statutory construction is *de novo*.

The sole issue concerns statutory construction, which is reviewed *de novo*. ***Olympic Tug & Barge, Inc. v. Dep't of Revenue***, 163 Wn. App. 298, 306, 259 P.3d 338 (2011) (citing ***Dot Foods, Inc. v. Dep't of Revenue***, 166 Wn.2d 912, 919, 215 P.3d 185 (2009)). The Court's key "objective is to ascertain and carry out the legislature's intent." *Id.* (also citing ***Lake v. Woodcreek Homeowners Ass'n***, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)). The Court looks to the plain meaning of the words used, both in their immediate statutory context, and in the context of the whole statutory scheme. *Id.*

If a statute is unambiguous (*i.e.*, has only one reasonable interpretation), the Court simply enforces the language. *Id.* at 306-07 & n.4. Similarly, the Court need not defer to an agency interpretation of an unambiguous statute. *Id.* at n.4. And courts will

not add words to or subtract words from statutes. *Id.* at 306 (also citing **Rest. Dev., Inc. v. Cananwill, Inc.**, 150 Wn.2d 674, 682, 80 P.3d 598 (2003)).

**B. Statutory context: protecting the Officers' retirement.**

As this Court has noted:

In 1969, the Legislature enacted a comprehensive benefits plan for police officers . . . titled the "Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act," commonly referred to as LEOFF. This system of benefits was codified as RCW 41.26. . . .

**Locke v. City of Seattle**, 133 Wn. App. 696, 702, 137 P.3d 52 (2006), *aff'd*, 162 Wn.2d 474 (2007). LEOFF's overarching legislative purpose is stated (in relevant part) in RCW 41.26.020:

The purpose of this chapter is to provide for an actuarial reserve system for the payment of . . . retirement benefits to law enforcement officers . . . effecting a system of retirement from active duty.

In light of this purpose, this remedial pension act is liberally construed to protect the Officers' retirement contributions. See, e.g., **Hunter v. Dep't of Labor & Indus.**, 19 Wn. App. 473, 475, 576 P.2d 69 (1978) ("The fundamental objective of LEOFF is to provide benefits to police officers and fire fighters upon their disability or retirement and to their dependents upon their disability or death"); **Newlun v. Dep't of Ret. Sys.**, 53 Wn. App. 809, 826,

770 P.2d 1071 (liberal construction) (citing *Hanson v. Seattle*, 80 Wn.2d 242, 247, 493 P.2d 775 (1972) (same)), *rev. denied*, 113 Wn.2d 1014 (1989).

For instance, this Court in *Locke* rejected an argument (much like the fundamental premise of the Department's argument here) that fire-fighter trainees (like the police cadets in this case) were not really fire fighters under LEOFF. 133 Wn. App. at 711-12, *aff'd*, 162 Wn.2d at 483-85. The Court noted that LEOFF was "established to provide retirement and other benefits to those who engage in the inordinately hazardous occupations of law enforcement" and that this "plainly extends to fire fighters while they are in training academies." *Id.* at 712. The same principle of liberal construction should also extend to law enforcement officers engaged in training academies as cadets. As discussed below, the statutes require a reading and result consistent with *Locke*.

**C. The statutes unambiguously require the Department to pay the Officers their full retirement benefits.**

As discussed *infra*, the Legislature has unambiguously provided that all of the Officers' contributions – including for unsworn time accrued prior to their employment as police officers –

must be accounted for under LEOFF. The trial court erred in ruling otherwise. This Court should reverse and remand.

1. **RCW 41.20.170 unambiguously permitted the Officers to transfer all of their CERS contributions – including for unsworn service – into their PRPF memberships.**

To avoid a potential conflict between CERS and PRPF, the Legislature unambiguously permitted Seattle employees who later became Seattle police officers to transfer their CERS contributions into their PRPF memberships under Laws of 1973, ch. 143, § 2 (codified as RCW 41.20.170, **Transfer of membership**):

Any former employee of a department of a city of the first class who (1) was a member of the employees' retirement system of such city [e.g., CERS], and (2) is now employed within the police department of such city, may transfer his membership from . . . [CERS] to . . . [PRPF]. . . .

The Legislature also specifically stated that these transfers include “all accumulated contributions,” which “shall be computed and credited” as within the period of their employment under PRPF:

[T]he transfer of membership to [PRPF] . . . shall be made, together with a transfer of **all accumulated contributions** credited to such member. The board of administration of [CERS] . . . shall transmit to the board of trustees of the . . . [PRPF] system a record of service credited to such member **which shall be computed and credited to such member as a part of his period of employment in [PRPF]** . . . .

*Id.* (emphases added). Any officer making such a transfer “shall have all the rights, benefits and privileges that he would have been

entitled to had he been a member of the [PRPF] from the beginning of his employment with the city.” *Id.*

Consistent with this statutory language, this Court has held that officers who previously made contributions into CERS as Cadets could transfer them into PRFP. ***Fann v. Smith***, 62 Wn. App. 239, 814 P.2d 214 (1991). There, seven Seattle police officers sought a declaratory judgment that they were entitled to retirement and pension benefits under PRPF in addition to their membership in LEOFF. ***Fann***, 62 Wn. App. at 239-40. The City there argued that because the officers were previously employed as police Cadets, they were not former City employees, so RCW 41.20.170 did not apply. *Id.* at 241-42. But this Court determined that the Cadets, while technically police department employees, were plainly City employees, as they paid contributions into CERS. *Id.* at 242-43. They were thus permitted to transfer their CERS contributions into PRFP.

In sum, the 1973 amendments plainly provided that the Officers could transfer their CERS contributions into PRPF, which was originally solely for police retirements. It is undisputed that these Officers made these transfers. They thus had a vested right to benefits from all of their prior City service under PRFP.

2. **Since the CERS contributions were “then creditable” under PRFP, the Legislature unambiguously treated them as “service” under LEOFF per RCW 41.26.030(28)(a)(i)(B).**

The Department argued below (*e.g.*, at CP 463) that the “plain language” of LEOFF limits contributions to sworn service, which is seemingly consistent with the primary definition of “service” for LEOFF I under RCW 41.26.030(28)(a):

“Service” for plan 1 members, means all periods of employment for an employer as a . . . law enforcement officer. . . .

But this argument simply ignored the key proviso in this definition’s subsection (i)(B), specifically adding “other periods of service . . . then creditable . . . under RCW . . . 41.20.170”:

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, “service” shall also include . . . (B) such other periods of service **as were then creditable** to a particular member under the provisions of RCW . . . 41.20.170. . . .

RCW 41.26.030(28)(a)(i)(B) (emphasis added). As discussed immediately above, RCW 41.20.170 made the CERS contributions “then creditable” under PRFP.

The Department did discuss the “then creditable” language in its Reply, arguing that the phrase “then creditable” referred to March 1, 1970. CP 578. But that makes no sense, as the relevant portion of RCW 41.20.170 permitting transfers from CERS into

PRFP was first adopted in 1973. See Laws of 1973, ch. 143, § 2. One cannot reasonably argue that the phrase “such other periods of service as were then creditable to a particular member under the provisions of RCW . . . 41.20.170” refers to a period before the relevant portion of RCW 41.20.170 was adopted. Rather, “then creditable” plainly must refer to when the officer retired “after May 21, 1971” – otherwise, the Court would be removing the key portion of RCW 41.20.170 from the statute.

This is also the only reading that is consistent with the RCW ch. 41.20’s “Construction” provision, RCW 41.20.900: “The provisions of this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of this act.” As noted above, such remedial pension statutes are liberally construed. The plain language of the statutes unambiguously transfers all PRPF contributions (including the previously transferred CERS contributions) into LEOFF.

Moreover, RCW 41.20.170 itself says that contributions prior to March 1, 1970 were “then creditable” because “all accumulated contributions” “shall be computed and credited to such member as ***a part of his period of employment in***” PRPF (emphasis added).

The only reasonable reading of this language is that because PRPF includes all accumulations – including for unsworn service – LEOFF also includes the prior contributions transferred as part of (*i.e.*, “computed and credited” within) PRPF.

In sum, the Legislature specifically and unambiguously included CERS/PRPF contributions in LEOFF. The trial court erred in ruling otherwise. This Court should reverse and remand.

**3. The Department cannot simply point at the City.**

As noted *supra*, the Officers also sued the City below, anticipating that the Department and the City would simply point at each other and disclaim responsibility for the Officers’ lost contributions. To some extent, that is what happened. But as explained immediately above, the Department’s position simply failed to acknowledge (and then misread) the proviso in RCW 41.26.030(28)(a)(i)(B) defining LEOFF “service” to include CERS contributions that were “then creditable” under PRFP.

Similarly, the Department also argued that the Officers’ “real complaint” is that the City “caps” the amount of service credit at 30 years. CP 577. But the City’s cap is irrelevant. The Officers’ CERS contributions – in their entirety – were first transferred into PRFP, and then into LEOFF, as properly allocated “service” time.

The Department's attempt to torture subsection (i)(B) is unavailing against the unambiguous language of the statute.

Finally on this point, the Department suggested (repeatedly) that LEOFF's coordination of benefits provisions (RCW 41.26.040) mean that if anyone must pay for the lost contributions, it is the City. See, e.g., CP 459 & n.12 (citing *Bakenhus v. City of Seattle*, 48 Wn.2d 695, 296 P.2d 536 (1956), Op. Att'y Gen. 17 (1970), and *Mulholland*, *supra*). But those provisions do not apply here because no coordination is necessary: RCW 41.26.030(28)(a)(i)(B) says contributions "then creditable" under PRFP – including the CERS contributions duly transferred under RCW 41.20.170 – are included as "service" under LEOFF, so they are payable under LEOFF.

The Department's arguments are inconsistent with the fundamental purpose of LEOFF – to preserve these Officers' contributions. The Court should reverse and remand.

**CONCLUSION**

For the reasons stated, this Court should reverse, grant summary judgment to the Officers, and remand to the trial court for further proceedings.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of March  
2012.

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**CERTIFICATE OF SERVICE BY MAIL**

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 15<sup>th</sup> day of March 2012, to the following counsel of record at the following addresses:

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## **RCW 41.20.170**

### **Transfer of membership.**

Any former employee of a department of a city of the first class who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the police department of such city, may transfer his membership from the city employees' retirement system to the city's police relief and pension fund system by filing a written request with the board of administration and the board of trustees, respectively, of the two systems.

Upon the receipt of such request, the transfer of membership to the city's police relief and pension fund system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration of the city's employees' retirement system shall transmit to the board of trustees of the city's police relief and pension fund system a record of service credited to such member which shall be computed and credited to such member as a part of his period of employment in the city's police relief and pension fund system. For the purpose of the transfer contemplated by this section, the affected individuals shall be allowed to restore withdrawn contributions to the city employees' retirement system and reinstate their membership service records.

Any employee so transferring shall have all the rights, benefits and privileges that he would have been entitled to had he been a member of the city's police relief and pension fund system from the beginning of his employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon service with the city.

The right of any employee to file a written request for transfer of membership as set forth herein shall expire December 31, 1973.

[1973 c 143 § 2; 1969 ex.s. c 209 § 27; 1963 c 82 § 1.]

**RCW 41.20.900**

**Construction — 1959 c 6 — Benefits  
retroactively authorized.**

The provisions of \*this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of \*this act.

[1959 c 6 § 4.]

**Notes:**

**\*Reviser's note:** "this act" appears in chapter 6, Laws of 1959, which reenacted RCW 41.20.050, 41.20.060, and 41.20.080. These sections were subsequently amended by chapter 78, Laws of 1959.

## **RCW 41.26.020**

### **Purpose of chapter.**

The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and firefighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.

[1969 ex.s. c 209 § 2.]

## **RCW 41.26.030**

### **Definitions.**

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(2) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(4)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by

the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(7) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(10) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(12) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.020.

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (16) and (18) of this section.

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(15)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(c) In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government employer during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(16) "Firefighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (16)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (16)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for firefighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(17) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(18) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (18)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(19) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(20) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsections (16) or (18) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(21) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(22) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(23) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(24) "Regular interest" means such rate as the director may determine.

(25) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(26) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(27) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive

one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(29) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(32) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(33) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

[2011 1st sp.s. c 5 § 1; 2010 2nd sp.s. c 1 § 903; 2010 1st sp.s. c 32 § 6. Prior: 2009 c 523 § 3; 2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3; prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]