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MEMORANDUM

TO: Phoenix Police Pension Board Members  
FROM: David L. Niederdeppe  
RE: Benefit Suspension  
DATE: October 16, 2006

At the last meeting, I was asked to comment on what I call the pension suspension provisions of the Public Safety Personnel Retirement System statute. No concrete circumstances of any particular individual have been shared with me, so I can only describe generally what the statute, as amended in 2006, says and how its language might be construed.

A.R.S. § 38-849(D) provides that if a retired member is re-employed by an employer, no contributions are due on behalf of that member during the period of re-employment nor is any further benefit credit earned. In addition, the same section notes that if a retired member is re-employed "in the same position" by the employer from which that individual retired, the individual's pension payments are withheld ("suspended", in the vernacular of the private pension law) during the period of such re-employment.

Apparently because of confusion about what the legislature might have originally intended with this language, A.R.S. § 38-849(D) was amended during the most recent legislative session to define the term "same position". As it now reads, the section concludes as follows:

"For purposes of this subsection, "same position" means the member is in a position where the member performs duties and exercises authority that are the same duties that were performed and the same authority that was exercised by the member before retirement."

I assume that the duties and authority contemplated are those performed/exercised immediately before retirement, and not at any time before retirement, because the latter construction would require an examination of



every position that might have been filled by a member during his/her career, something that I think would be very difficult to accomplish.

The Fund Manager's attorney has indicated that each local board will have the authority (and the duty) to review these cases as they come up. Obviously, each circumstance would have to be reviewed on its individual merits. At this time, I can only suggest that the closer a retired member's duties/authorities come to those exercised before retirement, the more legal risk there is to the local board in refusing to order suspension.

I look forward to discussing this matter with the Board.

DLN