BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
K M	)	OAH No. 14-0032-PER
	)	Agency File No. PERS 2013-007

DECISION ON SUMMARY ADJUDICATION

I. INTRODUCTION

This is an appeal of a decision by the Administrator of the Public Employees Retirement System (PERS).

Mr. M appeals two aspects of the Administrator's calculation of his retirement benefit.[1] First, Mr. M appeals the determination that he cannot benefit from higher multipliers if he chooses a retirement system that combines his two periods of PERS employment into a single pension account. Second, Mr. M challenges that survivor benefits must be calculated using pre-1977 actuarial tables if Mr. M chooses to combine his periods of PERS employment into a single pension account. The parties agree that there are no material facts in dispute, making the case appropriate for a decision on summary adjudication. Both parties filed motions for summary adjudication.

Because the Administrator's determinations deny Mr. M access to benefits he is entitled to under regulation, Division practice, and case law, they are reversed.

II. FACTS AND PROCEEDINGS

A. Mr. M's Retirement

Mr. M began working for the State of Alaska and entered into PERS on May 8, 1972.[2] He first retired on June 1, 2005. Mr. M returned to work on July 11, 2005, as part of a retiree rehire program.[3] From July 11, 2005 through June 30, 2009, when the retiree rehire program expired, Mr. M did not contribute to PERS. He also did not accrue years of credited service while working under the retiree rehire program. Mr. M continued to work for the state after the

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1 M's Amended Statement of Points on Appeal, (February 14, 2014).

Mr. M's original appeal requested remedies outside the scope of the administrative appeals process. Mr. M dropped the requested remedies beyond OAH's jurisdiction and amended his appeal points to challenge the monthly benefit calculation and the choice of actuarial table to determine survivor benefits.

2 Exhibit 9. It appears Mr. M had a break in service from September 2, 1975 through June 6, 1976.

3 The program was authorized under HB 161 and expired on June 30, 2009. Under the program, retiree rehires did not contribute to PERS, did not accumulate credited service, and were able to collect retirement benefits during the period of reemployment.

retiree rehire program ended and began contributing to PERS again on July 1, 2009. Mr. M's second retirement began on January 1, 2014. Mr. M retired with a total of 34.95069 years of credited service, 30.44658 years of service from his first period of employment, and 4.50411 years of service from July 1, 2009 through December 31, 2013.[4]

During Mr. M's first period of retirement, his benefits were calculated using the multipliers found in current AS 39.35.370(c), in effect since 1986. For those employees eligible for regular employment, credited service is multiplied by 2% of average monthly income for years worked prior to 1986, 2.25% for between 10 - 20 years of total service, and 2.5% for years 20 and beyond.[5] (Prior to 1986, benefits were calculated using a 2% multiplier for all years of service.[6])

Mr. M's average monthly salary, based on his three highest paid years, was multiplied by 2% for years prior to 1986, 2.25% for between 10 – 20 years of service, and 2.5% for all years of service over 20 years of service to calculate his normal monthly retirement benefit, $5,045.78.[7] This was based on an average monthly salary of $7,748.91.[8] Mr. M elected the 66-2/3% survivor option for his first period of retirement.[9]

For Mr. M's second retirement, he elected a 75% survivor benefit.[10] His highest salary years, used to calculate average monthly compensation, came during his post-retirement rehire. His average monthly salary for his retirement commencing January 1, 2014, is $11,564.28.[11]

The Division's position is that Mr. M may choose to have his monthly retirement benefits calculated either under "Pre-July 1, 1977 statutes," or "Post-July 1, 1977 statutes."[12] Under the pre-July 1, 1977 statutes, Mr. M's two periods of PERS employment will be combined into a single pension. Under the post-July 1, 1977 statute, Mr. M's two periods of PERS employment will be in two separate pensions. Mr. M chose the pre-July 1, 1977 statutes, but challenges the Division's choice of multipliers used to determine base monthly benefits. According to the

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4 Exhibit 9.
5 AS 39.35.4370(3).
6 Former AS 39.35.370(c). Peace officer and firefighter benefits are calculated differently under both versions of the statute. Member contribution amounts also increased in 1986.
7 R. 79.
8 R. 79.
9 R. 79.
10 R. 60. Mr. M originally elected a 66-2/3% survivor benefit, but changed it to a 75% survivor benefit once he was notified that changing his survivor benefit election was an option
11 R. 50.
12 R. 50.

Division, if he elects pre-July 1, 1977, Mr. M's PERS contributions are combined into one pension and his base monthly benefit amount is calculated by multiplying his average monthly compensation by 2%, which was the multiplier prior to July 1, 1977.[13] Mr. M believes he is entitled to a monthly benefit calculation using the graduated multipliers in effect since 1986.[14] In response to letters challenging the Division's survivor benefit calculation, the Division explained:

> A PERS member who was first hired into the PERS prior to July 1, 1977 may elect either the benefit calculation based on laws in effect prior to July 1, 1977 ("old law") or the laws after June 1, 1977 ("new law"). Since you were first hired into the PERS on May 8, 1972 you have this option. Electing the old law calculation means your benefit calculation can only use the laws in effect at that time. This means your benefit would be calculated using all your years of service, the 2% multiplier for each year of service, your average monthly salary, and the actuarial tables that were in effect at that time. The factors used prior to July 1, 1977 were based on sex-segregated actuarial tables. The unisex tables were not established until 1983.
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> By electing the old law calculation you are entitled to a benefit based on the calculative methodology in effect prior to July 1, 1977. You cannot pick between old law and new provisions. This practice has been upheld in the Alaska court. In addition, the division has consistently interpreted and applied the use of these factors when appointing retirees to benefits using the old law methodology.[15]

The parties agree that if Mr. M elects post-July 1, 1977 "new law," the statute requires that his periods of PERS employment be calculated separately.[16] Under the "new law," Mr. M's initial retirement, elected in 2005, remains unchanged. His second retirement would be calculated as a separate pension, with his average monthly compensation and years of credited service calculated during his post-retirement rehire, and his base monthly salary would be calculated using the graduated multipliers.[17] Mr. M did not choose this post-July 1, 1977 "new law" calculation because the pre-July 1, 1977 "old law" gives him greater monthly benefits.

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[13] R. 10; Administrator's Motion for Summary Adjudication; Division's oral argument position.

[14] Mr. M's Motion for Summary Adjudication; M's oral argument position. The graduated multipliers are 2%, 2.25%, and 2.5%.

[15] R. 10. As discussed later, the Division has not "consistently interpreted and applied" the use of "old law" multipliers when determining base salary.

[16] R. 20. There is no dispute regarding the Administrator's benefit calculation under the post-July 1977 law. The pre-July 1, 1977 law benefit calculation is the area of disagreement.

[17] In Mr. M's case all 4.5 years of credited service would be multiplied by 2.5%, because he already had over 20 years of service at his initial retirement.

The Division has been calculating retirement benefits for twice-retired retirees this way since April 2007.[18] In 2007, the Division determined it should reinterpret its benefit calculation regulation after analyzing a series of Alaska Supreme Court holdings.[19] Prior to 2007, the Division allowed retirees to choose between the pre-July 1, 1977, single pension benefit calculation or the post-July 1, 1977 two pension benefit calculation, but with one critical distinction.[20] Prior to 2007, the Division applied the graduated multipliers found in the post-1986 version of AS 39.35.370 when calculating benefits for retirees who chose the pre-July 1, 1977 single pension selection.[21] In the case of Mr. M, this distinction causes a $1,106.11 difference in his base monthly benefit, prior to survivor benefit adjustment.[22]

B. Survivor Benefit Calculation

The Division notified Mr. M that if he elects the pre-July 1, 1977 benefit calculation his survivor benefit would be calculated using the actuarial table in use "in effect at that time."[23] Prior to July 1, 1977, the Division used sex-segregated actuarial tables.[24] Mr. M wanted to take advantage of actuarial tables adopted in 1983, which would provide him with an additional $757 per month under a 66-2/3% survivor benefit calculation.[25] The Division denied Mr. M's request.[26]

III. DISCUSSION

A dispute may be resolved by summary adjudication when there are no material facts in dispute and a party is entitled to prevail as a matter of law.[27]

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18 Supplemental Affidavit of Kathy Lea.

19 Supplemental Affidavit of Kathy Lea; Administrator's Opposition to Mr. M's Motion for Summary Adjudication; Division's oral argument presentation.

20 For some retirees this may be a two or more pension system, but in Mr. M's case it is two, and the decision only addresses Mr. M's situation.

21 Supplemental Affidavit of Kathy Lea; Administrator's Opposition to Mr. M's Motion for Summary Adjudication.

22 $9,223.55 – $8,117.44 = $1,106.11. Taken from M's Motion for Summary Adjudication at 13 and JS 75% Retirement Benefit Computation, R. 72.

23 R. 10.

24 R. 10. Alaska began using gender neutral actuarial tables in 1983. 2 AAC 35.329(e).

25 R. 23. M letter to Jim Pucket, Division Director, October 21, 2013. Mr. M later elected the 75% survivor benefit. Under either 66-2/3% or 75%, Mr. M would receive higher monthly benefits using the gender neutral actuarial table.

26 R. 10.

27 2 AAC 64.250.

A. Controlling Authority

Mr. M's case turns on the interplay of AS 39.35.150, AS 39.35.370, 2 AAC 35.320 and case law.

1. Re-employment of Retired Employees, AS 39.35.150

AS 39.35.150(a), which controls reemployment of retired employees currently reads:

> If a retired employee subsequently becomes an active member, benefit payments may not be made during the period of re-employment. During the period of re-employment, deductions from the employee's salary shall be made in accordance with AS 39.35.160. *Upon subsequent retirement, the retired employee is entitled to receive an additional pension based on the credited service and the average monthly compensation earned during the period of re-employment in accordance with AS 39.35.370.*

Prior to July 1, 1977 it read:

> If a retired employee is re-employed on a regular full-time basis by an employer, no pension payments may be made during the period of re-employment. During the period of re-employment, deductions from salary may be made at the option of the retired employee for contributions to the retirement fund as provided in sec. 160 of this chapter. Upon the subsequent retirement of the retired employee, he is entitled to receive a pension based on his credited service and compensation before the date of his previous retirement. *If a previously retired employee makes contributions to the fund during his re-employment, his additional credited service and compensation during the period of re-employment shall be included to determine his final retirement benefit.*[28]

2. Retirement Benefits, AS 39.35.370

AS 39.35.370(c) which defines how monthly benefits are calculated currently reads:

> The monthly amount of a retirement benefit for a peace officer or firefighter is two percent of the average monthly compensation times the years of credited service through 10 years, plus two and one-half percent of the average monthly compensation times the years of service over 10 years. For all other employees it is
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> (1) two percent of the average monthly compensation times all years of service before July 1, 1986, and for years of service through a total of 10 years; plus
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> (2) two and one-quarter percent of the average monthly compensation times all years of service after June 30, 1986, over 10 years of total service through 20 years; plus
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> (3) two and one-half percent of the average monthly compensation times all years of service after June 30, 1986, over 20 years of total service.

[28] Former AS 39.35.150 (1974), emphasis added.

Prior to July 1, 1986, the multiplier for all years of service for members, except peace officers and firefighters was 2%.[29] When Mr. M was hired in 1972 up through July 1, 1986, his expectation would have been that his retirement benefit would be calculated by multiplying his average monthly compensation by 2%. When he chose to retire and reenter the workforce under the retiree rehire program, the Division was calculating benefits for rehired employees by multiplying members' average monthly compensation by the graduated multipliers that went into effect in 1986. By the time the retiree rehire program expired, the Division was calculating monthly benefits using 2% for those members who chose the pre-1977 system and the graduated multipliers for those choosing the post-1977 system.

3. Calculation of Retirement Benefits after Reemployment, 2 AAC 35.320

2 AAC 35.320 specifically addresses those in Mr. M's situation, PERS members hired before July 1, 1977 who are reemployed after a first retirement. It was adopted in 2001. Section (a), the section pertinent to this case, reads:

> Upon subsequent retirement after a period of reemployment in a PERS covered position, retirement benefits are recalculated under this section for those members who were first enrolled in PERS before July 1, 1977. The recalculation shall combine all periods of employment, and shall use the average of the highest three consecutive year's earnings over the member's entire career. The appropriate percentage specified under AS 39.35.370(c) are applied to the member's entire credited service for the calculation of the subsequent retirement benefit amount.

At the time of adoption, the Division intended that a member's monthly benefits calculated under 2 AAC 35.320(a) would combine all periods of employment into a single pension and use the graduated multipliers in effect since 1986.[30] The Division calculated benefits in this manner until 2007.

B. 2 AAC 35.320 Requires the Division to Calculate Mr. M's Retirement Benefits Using the Graduated Multipliers Found in Current AS 39.35.370.

Relying on case law, the Division argues that it is prohibited from granting Mr. M his relief sought. Mr. M counters that the Division's retirement benefit calculation amounts to an unconstitutional diminution of benefits.[31]

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29 Former AS 39.35.370(c).

30 Supplemental Affidavit of Kathy Lea.

31 M's Motion for Summary Adjudication; oral argument presentation.

The Division claims that 2 AAC 35.320 should now be interpreted to read that for those who choose the pre-1977 system, which is the only group addressed by the regulation, the "appropriate percentage specified under AS 39.35.370(c)," actually refers to the statute as it was written prior to 1977. The Division's theory is basically this: it adopted a regulation that required the Division to calculate benefits exactly in line with Mr. M's request, later realized that it was not required to be so generous, and began reinterpreting its regulation to include the nonexistent phrase "as written prior to July 1, 1977," after AS 39.35.370(c).

The Division argues: 1) that it was misapplying 2 AAC 35.320, 2) that it is still a valid regulation, and 3) it does not have to repeal or amend the regulation. Mr. M argues that the Division's adoption of a new interpretation is contrary to the Administrative Procedure Act and requires revision or repeal of the regulation.

The Division is bound by the regulations it promulgates. [32] Here, the Division's current interpretation is at odds with the plain language of the regulation. The regulation, adopted in 2001, references AS 39.35.370(c), but there is no mention of the pre-1977 version of the statute. The plain language leads the reader to conclude that the current version of AS 39.35.370(c) controls.

The Division is also bound by the regulation's intent at the time of adoption.[33] Regulations are interpreted using the same principles as statutory interpretation. [34] The "goal when interpreting a statute or regulation 'is to ascertain and implement the intent of the legislature or agency that promulgated the statute or regulation.'"[35] Post-adoption interpretations of intent are not considered.[36] In this case, the intent at the time of adoption is not in dispute. The Division intended to apply the graduated multipliers to compute benefits and drafted 2 AAC 35.320 accordingly.

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[32] *See:* OAH No. 09-275-PFD, p. 4 (OAH 2009), "As the Alaska Supreme Court held in *Trustees for Alaska v. Gorsuch*, 835 P.2d 1239, 1243 (Alaska 1992): An agency is bound by the regulations it promulgates. See 2 Kenneth C. Davis, Administrative Law Treatise § 7:21 at 98 (2d Ed.1979). An agency has not acted in the manner required by law if its actions are not in compliance with its own regulations."

[33] *See Marlow v. Municipality of Anchorage,* 889 P.2d 599, n. 2 (1995).

[34] *See Wilson v. State, Dept. of Corrections,* 127 P.3d 826, 829 (Alaska 2006); *see also Highways v. Green,* 586 P.2d 595, 6013 n. 24 (Alaska 1978).

[35] *Boyd v. State,* 210 P.3d 1229 (Alaska App. 2009) (citing *Millman v. State,* 841 P.2d 190, 104 (Alaska App. 1992)).

[36] *See Marlow* at n.2 (statements of intent made after passage of statute are not considered).

The Division consistently used the graduated multipliers to determine monthly benefits until 2007. The Division may not reinterpret a statute in a manner contrary to initial intent, years of practice, and plain language.[37] The Division could have drafted 2 AAC 35.320 consistent with applying pre-1977 percentages, but did not.

The Division also claims it is simply interpreting the regulation in line with case law and the situation is analogous to the local hire issue.[38] The Division is incorrect. The Alaska Supreme Court held that AS 36.10.010, the local hire statute, was unconstitutional.[39] There is no such holding on the calculation of benefits after reemployment. The Alaska Supreme Court has not ruled 2 AAC 35.320 or its authorizing statutes unconstitutional. The Division conflates a finding that its regulation is perhaps more beneficial to retirees than need be with a prohibition on said regulation and practice.

C. Case Law Does Not Prohibit the Use of the Graduated Multipliers Found in Current As 39.35.370(c).

The Alaska Supreme Court has issued a number of PERS benefits decisions fleshing out the Alaska Constitution's prohibition on the diminution of accrued benefits.[40] *Hammond v. Hoffbeck* established the principle that benefits may be reasonably modified if disadvantageous changes are offset by advantageous changes.[41] If not offset, members must be allowed to select which system he or she comes under.[42] *McMullen v. Bell* held that in order for members to take advantage of benefits afforded by a system, the member must have actually been entitled to those benefits.[43]

In this case, Mr. M not only expected the benefit of higher multipliers, he actually received the benefit of the higher multipliers during his initial retirement. Mr. M was in the class of members, those hired prior to July 1, 1977, entitled to the higher multipliers from 1986

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37 *See State of Alaska, Dep't of Revenue v. Atlantic Richfield Co.*¸858 P.2d 307, 310 (Alaska 1993); *see also* "An agency is not allowed to change a legislative rule retroactively through the process of disingenuous interpretation of the rule to mean something other than its original meaning." 1 Kenneth Culp Davis and Richard J. Pierce, Jr., Administrative Law Treatise § 6. 10 at 283 (1994). While an agency has some discretion to reinterpret a regulation, it may not wholly change the effect of an unambiguous regulation without notice and opportunity to be heard.

38 Oral argument.

39 *Robinson v. Francis*, 713 P2d 259, 261 (Alaska 1986).

40 *See.* Article XII, section 7, Alaska Constitution.

41 627 P.2d 1052, 1059 (Alaska 1981).

42 *Hoffbeck*, 627 P.2d 1052, 1059 (Alaska 1981).

43 128 P.3d 186, 192 (Alaska 2006).

through 2007, when the Division changed its regulatory interpretation. Mr. M was entitled to choose a single combined pension calculated with the graduated multipliers and would have had an expectation of their use when he began reemployment in 2005.

Alford v. Division of Retirement and Benefits clarified that while members may choose the most advantageous system, a member may not "sever statutory provisions from one another and mix and match some or all of a statutory provision from one era with that of another."[44] In *Alford*, twice-retired members sought to reap the benefits of pre-July 1, 1977 AS 39.35.150(a), which provided for a single PERS pension with all years of service included, while avoiding the recapture provision of AS 39.35.150(b), in effect at the same time. The members wanted the Division to apply one subsection of the statute and disregard another subsection of the same statute. The Court determined this attempt to mix and match statutory provisions was impermissible.

Two prior administrative decisions, *N.A.* and *F.N.*, expanded on *Alford.* "To allow the employee to cherry-pick features of different systems would go beyond guarding against diminution, and would risk creating a hybrid structure superior to any in which the employee was actually enrolled.[45] In these cases, employees wanted the Division to consider cashed in leave as compensation when calculating retirement benefits. Prior to July 1, 1977, the statute that defined "compensation" was silent as to whether cashed in leave was considered compensation. As of July 1, 1977, cashed in leave was explicitly excluded from compensation. *N.A.* and *F.N.* concluded that members who chose the pre-1977 system were entitled to calculations using several days[46] of cashed in leave, but would then be required to use the pre-1977 2% multiplier, resulting in a lower monthly benefit. The decisions affirmed the Division's benefit calculation. *N.A.* and *F.N.* are distinguishable from the present case. In Mr. M's case there is a regulation drafted by the Division requiring a specific benefit calculation. No such regulation was in play for N.A. and F.N.

Similarly, the Division argues that retirees do not have a vested right in the mistaken interpretation of a regulation under *Flisock v. Division of Retirement and Benefits.*[47] *Flisock,*

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44 195 P.3d 118, 124 (Alaska 2008).

45 *Itmo: N.A.*, OAH No. 06-0801-PER, at 11 (OAH December 2007); *Itmo: F.N.*, OAH No. 07-0012-PER, at 8 (OAH December 2007)

46 F.N. was entitled to eight days of cashed in leave. N.A. was entitled to 5 days of cashed in leave.

47 818 P.2d 640, n 5 (Alaska 1991).

contrary to the Division's argument, supports Mr. M's position. A member does not have a vested right in a mistaken application of the retirement system. Flisock was a member in the teacher's retirement system that sought to have cashed in leave, accumulated over six years, included in his monthly benefit calculation. The definition of compensation included remuneration for services rendered during any school year, but not the leave value accumulated in other years.[48] Contrary to the statute's compensation definition, which only allowed inclusion of earning for services rendered in a specific school year, the Division had allowed calculations based on cashed in leave that was earned over many years. The Court held that Flisock was entitled to a benefit calculation which included the cashed in leave for the three years used in calculating his average base salary.[49] Because it was contrary to the statutory language, Flisock could not rely on the Division's practice of including all cashed in leave. In this case, the Division's interpretation since 2007 is contrary to the unambiguous language of the regulation it promulgated.

What the case law has established is that in the absence of a specifically granted right, by statute or regulation, retirees are not able to mix and match statutory provisions or systems to establish benefits where none were ever granted or intended.

Case law does not prohibit the Division from granting or clarifying members' benefits for a specific class of employees, which is the case here. Here, the Division enacted a regulation with the purpose and intent of allowing monthly benefit calculation for twice-retired, pre-1977 hired members to have the advantage of a single pension and higher multipliers. Nothing in the line of PERS cases prevents the Division from doing so. In fact, the Division's own regulation, by its plain language, requires the use of graduated multipliers when determining Mr. M's benefits.

D. Mr. M May Elect the Most Advantageous Actuarial Table Adopted During his Employment

Actuarial adjustments are not intended to change benefits, only offer a formula to offset or equalize value. "Actuarial adjustment" is defined as, "the adjustment necessary to obtain equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of assumptions,

[48] 818 P.2d 640, 643.
[49] 818 P.2d 640, 644.

factors, and methods specified in regulations issued under this plan that are formally adopted by the board that clearly preclude employer discretion in the determination of the amount of any member's benefit."[50] It was with the definition and purpose of actuarial adjustments in mind that the Alaska Supreme Court's decided *Sheffield v. Alaska Public Employees' Association.*[51]

Sheffield held that a member may elect any actuarial table that was in use during the member's employment.[52] *Sheffield,* decided after the prohibition on mixing systems was established, still allowed a retiree to choose among actuarial tables. The Division clarified that is still the case today, for any employee not in Mr. M's situation.[53]

Though "system" is not yet well-defined, we know it includes the statutes, regulations, and Division practice.[54] *Sheffield* implies that election of an actuarial table from one period or another does not conflict with the prohibition against mixing and matching systems. *Sheffield* has never been overturned and under its holding, Mr. M is not required to have his retirement benefits calculated with pre-July 1, 1977 sex-based actuarial tables.

IV. CONCLUSION

Mr. M has established that pursuant to 2 AAC 35.320(a) he is entitled to a benefits calculation using the pre-July 1, 1977, single pension with the higher multipliers of current AS 39.35.370(c). According to *Sheffield,* Mr. M is also entitled to choose any of the actuarial tables adopted during his employment to determine survivor benefit. The Administrator's decision is reversed.

DATED this 17th day of July 2014.

By: *Signed*
Bride Seifert
Administrative Law Judge

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50 AS 39.35.680(2).

51 732 P.2d 1083 (Alaska 1987).

52 732 P.2d 1083, n 13 (Alaska 1987). "If the PERS board repeatedly revises the tables during the course of an employee's employment, we think the employee should be permitted to elect which of those tables will apply to the computation of his or her PERS early retirement benefits." The members in *Sheffield* did not appear to fall into the same class of twice-retired employees as Mr. M, but this does not affect the analysis. If those members were free to elect any of the actuarial tables adopted during their employment, it would be consistent to offer Mr. M the same, regardless of which "system" he chose.

53 Oral argument, response from James Davis.

54 *McMullen*, 128 P.3d 186, 191 (Alaska 2006). *Sheffield* even notes that the 1986 PERS amendments affect employee's benefits, but that this was immaterial to the issue presented, n1.

Adoption

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the distribution date of this decision.

DATED August 15, 2014.

By: *Signed*
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]