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Yes, You Can Purchase State Public Employee Retirement Credit for Service Academy Time, at Least in California

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.3.2.3—Pension credit for military service time

1.8—Relationship between USERRA and other laws/policies

Lanquist v. Ventura County Employees Retirement Association, 235 Cal. App. 4th 186 (California Court of Appeal, Second District, March 16, 2015), reversing Lanquist v. Ventura County Employees Retirement Association, 2013 WL 4397836 (Superior Court of Ventura County, April 19, 2013).

Timothy S. Landquist is a deputy sheriff of Ventura County, California. Before he began his county employment, he served on active duty in the United States Navy as a commissioned officer. He attended the United States Naval Academy (USNA) as a midshipman from July 1991 until May 1995, when he graduated and was commissioned an Ensign in the Navy. He remained on active duty as an officer until October 2001, when he was honorably separated. He will not receive military retirement (active or reserve) because he did not perform any additional military service after October 2001.

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find almost 1,400 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997.

² Captain Wright is the author or co-author of more than 1,200 of the more than 1,400 "Law Review" articles available at www.servicemembers-lawcenter.org. He has been dealing with the federal reemployment statute for 33 years and has made it the focus of his legal career. He developed the interest and expertise in this law during the decade (1982-92) that he worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), he largely drafted the interagency task force work product that President George H.W. Bush presented to Congress (as his proposal) in February 1991. On October 13, 1994, President Bill Clinton signed into law the Uniformed Services Employment and Reemployment Rights Act (USERRA), Public Law 103-353. The version that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. Wright has also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), and as an attorney in private practice, at Tully Rinckey PLLC. For the last six years (June 2009 through May 2015), he was the Director of ROA's Service Members Law Center (SMLC), as a full-time employee of ROA. In June 2015, he returned to Tully Rinckey PLLC, this time in an "of counsel" relationship. To schedule a consultation with Samuel F. Wright or another Tully Rinckey PLLC attorney concerning USERRA or other legal issues, please call Mr. Zachary Merriman of the firm's Client Relations Department at (518) 640-3538. Please mention Captain Wright when you call.

Thomas W. Temple is an assistant county counsel for Ventura County. He served on active duty as an enlisted member and then attended the USNA as a midshipman from July 1984 until May 1988, when he was commissioned an Ensign. He remained on active duty as a commissioned officer until September 1992, when he was honorably separated. Like Landquist, Temple will not receive military retirement because he performed no further military service after he left active duty.

As Ventura County employees, both Temple and Landquist requested the opportunity to purchase county retirement credit for their active military service prior to becoming county employees. Each was permitted to purchase the retirement credit for the active duty as commissioned officers³ but was denied the opportunity to purchase credit for the Midshipman time of almost four years. In this lawsuit, they challenged the denial of that opportunity.⁴

California's County Employees Retirement Law of 1937⁵ permits, under certain circumstances, and when authorized by a resolution of the county's governing board, "a member [of a county public employee retirement system] who has public service before becoming a member [of that particular county's public employee retirement system]" to request "to receive credit in the retirement system for all allowed public service time."⁶ The term "public service" has been construed to include active military service.

In 1974, the Ventura County Board of Supervisors adopted a resolution "authorizing the purchase of retirement credit for previous military service." The resolution did not define "military service." Under an unwritten interpretation dating from 1979, the county denied employees the opportunity to purchase retirement credit for time spent as a midshipman at the USNA or as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy. Based on that unwritten policy, Temple and Landquist were denied the opportunity to purchase retirement credit for their time as USNA midshipmen.

Landquist and Temple challenged the lawfulness of the unwritten policy, as applied to them, in the Superior Court of Ventura County. After losing in that court, they appealed to California's intermediate appellate court for the Second District, the part of California that includes Ventura

³ Temple was also permitted to purchase retirement credit for his active duty enlisted service, before he attended the USNA as a midshipman.

⁴ The Uniformed Services Employment and Reemployment Rights Act (USERRA) does not apply here because neither Temple nor Landquist worked for Ventura County before they served in the military. USERRA did not require the county to let these gentlemen purchase county retirement credit for their pre-employment military service, but they were entitled to that opportunity under state law and a county resolution. Under section 4302(a) of USERRA, this federal law does not supersede or override a state or local law that provides *greater or additional rights* to persons who have served in our nation's uniformed services.

⁵ California Government Code, sections 31450 and following.

⁶ California Government Code, sections 31641.1 and 31641.95.

County. They won in the appellate court, which held that service academy time was “military service” for which a county employee should be permitted to purchase retirement credit.⁷

Ventura County requested that the intermediate appellate court rehear and reconsider its decision, and that request was denied on April 9, 2015. It is unclear whether the county has made a timely request for the California Supreme Court to hear this case. This case is probably over, but it is conceivable that the state’s high court could still decide to hear this case. We will keep the readers informed of further developments (if any) in this case.

⁷ In its decision, the appellate court cited appellate decisions in other states wherein public employees had been denied the opportunity to purchase retirement credit for service academy time. The court held that those other-state cases were inapposite because the statutory language in those other states was different from the California language. *Lanquist* can conceivably be cited as a persuasive precedent in other states, but it will be necessary to make specific comparison of the California language with the statutory language in the other state.