

OREGON SUPREME COURT

Eugene Water & Elec. Bd. v. Pub. Emps. Ret. Bd. & John T. Wigle,
365 Or. 59

442 P.3d 596 (2019) · Decided June 6, 2019

SUMMARY

The Oregon Supreme Court considered whether a worker employed by a public employer through a temporary-staffing company was entitled to Public Employees Retirement System membership after six months of service. The court held that the phrase "in the service of a public employer" most likely required the worker to be on the public employer's payroll, rather than merely having a common-law employment relationship with that employer. The court reversed the Court of Appeals and the Public Employees Retirement Board and remanded the matter to the board.

CASE DETAILS

COURT	Oregon Supreme Court
WRITING FOR THE COURT	Nakamoto, J.
JURISDICTION	Oregon
DECIDED	June 6, 2019
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	EWEB sought judicial review of a Public Employees Retirement Board final order determining that John Wigle became eligible for PERS membership based on temporary work performed for EWEB through a staffing company. The Oregon Court of Appeals affirmed, and the Oregon Supreme Court granted review.
STANDARD OF REVIEW	Judicial review of a contested case is confined to the record, and the court does not substitute its judgment for the agency's on factual issues or agency discretion. The statutory interpretation issue was reviewed as a question of law.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential.
PARTIES	Eugene Water and Electric Board v. Public Employees Retirement Board, John T. Wigle

TOPICS

statutory interpretation

judicial review of agency action

administrative law

employee benefits

municipal law

PRACTICE AREAS

administrative law

public employee benefits

statutory interpretation

municipal law

employment law

QUESTIONS PRESENTED

1. Whether a common-law employee who performs work for a public employer through a temporary-staffing company and is paid by that company is "in the service of a public employer" and eligible for PERS membership under former ORS 237.011 (1981).
2. Whether PERS eligibility under former ORS 237.011 (1981) requires the employee to be on the public employer's payroll.

HOLDINGS

1. A worker who performs services for a public employer through a temporary-staffing company and is paid by that company is not PERS-eligible under former ORS 237.011 (1981) merely because the worker may have a common-law employment relationship with the public employer.
2. Wigle became eligible for PERS membership after six months of service beginning with his regular employment on EWEB's payroll, rather than based on his earlier temporary positions paid through Kelly Services.

KEY QUOTATIONS

"We conclude that the legislature likely intended a person "in the service of a public employer" to mean an employee of the public employer on that employer's payroll-not someone who, in hindsight, was determined to have a common-law employment relationship with the public employer." (365 Or. at 61)

"In sum, we conclude from the text and context of former ORS 237.011 (1981) that the legislature most likely intended a PERS-eligible employee to be on the public employer's payroll with a known salary for purposes of computing PERS contribution amounts." (365 Or. at 78)

FACTUAL BACKGROUND

John Wigle worked for EWEB in temporary positions through Kelly Services, including a position beginning November 1, 1982. Although EWEB selected and supervised him and supplied his work equipment, Kelly Services paid him, and Wigle was not on EWEB's payroll, did not receive EWEB employment benefits, and neither Wigle nor EWEB made PERS contributions for the temporary work. EWEB hired Wigle as a regular employee effective February 1, 1986, and he became a recognized PERS member six months later. After initially adjusting his PERS records to credit the temporary work, EWEB later challenged that adjustment.

PROCEDURAL HISTORY

An administrative law judge ruled in Wigle's favor, and the Public Employees Retirement Board affirmed, ordering PERS to recognize Wigle's membership date as May 1, 1983. EWEB petitioned for judicial review. The Court of Appeals affirmed the board's order. The Oregon Supreme Court reversed both the Court of Appeals and the board and remanded to the board.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals decision and the Public Employees Retirement Board's final order were reversed, and the case was remanded to the Public Employees Retirement Board for further proceedings consistent with the court's interpretation of former ORS 237.011 (1981).

CASES CITED

- Eugene Water and Electric Board v. PERB, 289 Or. App. 302, 410 P.3d 1026 (2017)
- Moro v. State of Oregon, 357 Or. 167, 351 P.3d 1 (2015)
- State v. Gaines, 346 Or. 160, 206 P.3d 1042 (2009)
- DCBS v. Muliro, 359 Or. 736, 380 P.3d 270 (2016)
- Comcast Corp. v. Dept. of Rev., 356 Or. 282, 337 P.3d 768 (2014)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 859 P.2d 1143 (1993)
- State v. McNally, 361 Or. 314, 392 P.3d 721 (2017)
- Brown v. SAIF, 361 Or. 241, 391 P.3d 773 (2017)
- Health Net, Inc. v. Dept. of Rev., 362 Or. 700, 415 P.3d 1034 (2018)
- Halperin v. Pitts, 352 Or. 482, 287 P.3d 1069 (2012)
- State v. Cloutier, 351 Or. 68, 261 P.3d 1234 (2011)
- Hughes v. State of Oregon, 314 Or. 1, 838 P.2d 1018 (1992)
- Engweiler v. Persson/Dept. of Corrections, 354 Or. 549, 316 P.3d 264 (2013)

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