

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
Christine Domhoff et. al.,	:	
	:	
Relators,	:	
	:	
v.	:	No. 12AP-245
	:	
Ohio Public Employees Retirement	:	(REGULAR CALENDAR)
System Board,	:	
	:	
Respondent.	:	

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D E C I S I O N

Rendered on June 18, 2013

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*Green Haines Sgambati Co., LPA, Stanley J. Okusewsky III,*  
*and Ira J. Mirkin, for relators.*

*Michael DeWine, Attorney General, and Dennis P. Smith,*  
*Jr., for respondent.*

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IN MANDAMUS  
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

KLATT, P.J.

{¶ 1} Relators, Christine Domhoff, Bernice M. Hamrock, Gregory Gulas, Richard Sweany, and Roman Swerdan, commenced this original action in mandamus seeking an order compelling respondent, Ohio Public Employees Retirement System ("OPERS"), to vacate its decision that the service of the relators was exempt, and to enter decisions finding that the service was not exempt from the OPERS contribution requirement.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings

of fact and conclusions of law, which is appended hereto. The magistrate determined that: (1) relators were continuously employed by Youngstown State University within the meaning of R.C. 145.03; (2) the absence of an OPERS approval stamp on the exemption forms did not invalidate the exemptions; and (3) the exemption forms were not invalid if signed prior to the commencement of employment. For these reasons, the magistrate has recommended that we deny relators' request for a writ of mandamus.

{¶ 3} Relators have filed objections to the magistrate's decision challenging all three of the magistrate's determinations. First, relators contend that the magistrate erred in finding that relators were continuously employed by Youngstown State University for purposes of R.C. 145.03. Relators argue that the cases cited by the magistrate are factually distinguishable and do not support the magistrate's decision. We disagree.

{¶ 4} In *Brown v. Pub. Emps. Retirement Bd.*, 10th Dist. No. 93AP-290 (Sept. 30, 1993), this court specifically interpreted the meaning of the phrase "continuously employed" as used in R.C. 145.03 in the context of student employment at a university. The facts in *Brown* are very similar to those presented in the case at bar. Brown first worked at The Ohio State University beginning in September 1960, and worked each month thereafter through June 1961. Like the present case, Brown signed a request for an optional exemption from OPERS membership when he commenced employment in September 1960. University records indicated that relator was not employed at the university during July, August, and September 1961. Brown resumed employment at the university in the same department in October 1961. Holding that Brown's September 1960 request for exemption applied to the period of service beginning October 1961, even though there was a two or three month break in service, the *Brown* court stated:

This court has previously construed this language [the phrase "continuous employment" in R.C. 145.03] to mean that a new exemption need not be signed for each year of employment, when any temporary interruptions in employment can reasonably be interpreted as the result of the normal cycle of student employment through the school year [citing *State of Ohio ex rel. Palmer v. State Teachers Retirement Bd.*, 90 Ohio App.3d 497 (10th Dist.1993)]. \* \* \* The two, or possibly three, month break in employment through July, August and September 1961 can be reasonably interpreted as a normal summer break in student employment, which would not

constitute a break in continuous employment for purposes of R.C. 145.03.

{¶ 5} Relator tries to distinguish *Brown* by arguing that Brown's employment was never terminated. Relator is mistaken. The opinion makes clear that Brown was not employed at the university during most of the summer of 1961. Therefore, by definition, his prior school term employment had been terminated. The fact that *Brown* does not indicate that the university had a formal termination policy like the policy in effect at Youngstown State University is of no significance. Therefore, based upon *Brown*, we overrule relator's first objection.

{¶ 6} In their second objection, relators principally contend that the absence of an OPERS approval stamp on the exemption application forms invalidate the exemptions. We disagree. Although R.C. 145.03 requires OPERS to approve an exemption for it to be effective, it does not require a stamp of approval on the face of the exemption application. We agree with the magistrate's determination that the absence of an approval stamp on the face of the exemption application does not automatically invalidate the exemption and there is nothing in the record suggesting that the exemptions at issue were not approved by OPERS.

{¶ 7} Relators also argue in their second objection that the magistrate failed to address their argument that a NC-1 form does not satisfy the requirements of R.C. 145.03.<sup>1</sup> We agree with relators that the magistrate did not address this argument. However, relators' argument is unpersuasive.

{¶ 8} We note that our standard of review is abuse of discretion. *State ex rel. Lucas Cty. Bd. of Mental of Retardation & Dev. Disabilities v. Pub. Emps. Retirement Bd.*, 123 Ohio St.3d 146, 2009-Ohio-4694, ¶ 16. There is no abuse of discretion as long as there is some evidence to support the OPERS' determination. *State ex rel. Marchiano v. School Emps. Retirement Sys.*, 121 Ohio St.3d 139, 2009-Ohio-307, ¶ 21.

{¶ 9} The NC-1 form at issue indicates that an application for exemption had been filed. The NC-1 form also states that relator is not entitled to service credit for her time as

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<sup>1</sup> It appears that this argument relates only to relator Christine Domhoff. The record contains F-3 forms from the remaining four relators.

a student employee. The NC-1 form is some evidence supporting OPERS' decision and OPERS did not abuse its discretion by applying the exemption.

{¶ 10} For the foregoing reasons, we overrule relators' second objection.

{¶ 11} In their third objection, relators contend that R.C. 145.03 does not allow a student employee to sign the exemption form prior to the commencement of employment. According to relators, the application form is effective only if the employee signs within the first month after being employed. We disagree.

{¶ 12} When considering the extraordinary writ of mandamus, a court must defer to the retirement system's interpretation of its own rules and statutes so long as the interpretation is reasonable. *State ex rel. Gill v. School Emps. Retirement Sys. of Ohio*, 121 Ohio St.3d 567, 2009-Ohio-1358, ¶ 28-29. OPERS asserts that statutes requiring the application for exemption be executed and submitted for approval by OPERS simply establishes a cutoff date for when the student exemptions must be submitted. It does not prohibit a student employee from signing the form prior to the commencement of employment. We agree with the magistrate that OPERS' interpretation of this statute is reasonable. Therefore, we overrule relators' third objection.

{¶ 13} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we deny relators' request for a writ of mandamus.

*Objections overruled; writ of mandamus denied.*

BRYANT and TYACK, JJ., concur.

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**APPENDIX****IN THE COURT OF APPEALS OF OHIO****TENTH APPELLATE DISTRICT**

State of Ohio ex rel.	:	
Christine Domhoff et. al,	:	
	:	
Relators,	:	
	:	
v.	:	No. 12AP-245
	:	
Ohio Public Employees Retirement	:	(REGULAR CALENDAR)
System Board,	:	
	:	
Respondent.	:	

**MAGISTRATE'S DECISION**

Rendered on February 27, 2013

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*Green Haines Sgambati Co., LPA, Stanley J. Okusewsky III,  
and Ira J. Mirkin, for relator.*

*Michael DeWine, Attorney General, and Dennis P. Smith,  
Jr., for respondent.*

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**IN MANDAMUS**

{¶ 14} R.C. 145.03 permits a university-employed student to elect an exemption from contribution to the Ohio Public Employees Retirement System ("OPERS"). Relators were students employed by Youngstown State University ("YSU") during various periods during the 1970's and 1980's. They were treated at those times by YSU as exempt student employees.

{¶ 15} During 2003 through 2005, pursuant to information submitted by YSU, OPERS determined that relators' service during specified periods during the 1970's and

1980's was not exempt. Consequently, pursuant to R.C. 145.483, OPERS billed YSU for the non-contributing service.

{¶ 16} In 2010, after a YSU audit produced previously undiscovered documents, OPERS reversed its R.C. 145.483 billing on grounds that the service was exempt as initially treated.

{¶ 17} In this original action, relators, Christine Domhoff, Gregory Gulas, Bernice Hamrock, Richard Sweany, and Roman Swerdan, request writs of mandamus ordering respondent OPERS to vacate its decisions that the service of the relators was exempt, and to enter decisions finding that the service was not exempt from the OPERS contribution requirement.

**Findings of Fact:**

**Christine Domhoff**

{¶ 18} 1. Relator, Christine Domhoff, was a student employee at YSU from January 1, 1982 through June 9, 1984. Domhoff's job title was "administrative assistant 3."

{¶ 19} 2. By letter dated April 18, 2003, YSU, through its administrative assistant/payroll office, Ivan Maldonado, informed OPERS that Domhoff "was hired and then terminated at the end of each academic year." He also stated "[n]o new or additional exemption forms were ever completed and membership was not established."

{¶ 20} 3. On April 23, 2003, Muldonado completed an OPERS form captioned "Supplemental History Record." On the form, Domhoff applied for additional service credit, and Muldonado certified the dates of Domhoff's student employment. By his mark, Muldonado certified the accuracy of the preprinted statement "[a] written exemption from membership is not on file. Retirement deductions were not made on this service because: \* \* \* ."

{¶ 21} 4. Muldonado's certification of information on Domhoff's "Supplemental History Record" prompted OPERS to generate, pursuant to R.C. 145.483, an "Employer Billing Statement For Delinquent Contributions" for the period of Domhoff's student employment from June 13, 1982 to June 14, 1984. Apparently, YSU paid the amount that OPERS claimed was due on the billing statement.

{¶ 22} 5. By letter dated June 10, 2003, OPERS informed Domhoff that YSU had been billed pursuant to R.C. 145.483 on her behalf and that service credit of 1.927 years would be credited to her account.

{¶ 23} 6. Following an YSU audit that produced previously undiscovered documents, OPERS, reversed the charges to YSU in August 2010.

{¶ 24} 7. The record contains an OPERS form captioned "Acknowledgement of Non-Contributing Status" ("NC-1"). The NC-1 form was signed by Domhoff on January 5, 1982 and is also certified by the YSU payroll officer. The NC-1 form asks the employee to select or mark a box next to preprinted statements that are applicable to the employee. Domhoff marked the second box indicating "[s]tudent, employed less then 1500 hours per year — Exemption filed." OPERS received this document on January 21, 1982. The NC-1 form signed by Domhoff also contains a stamp stating "Employer's Permanent Record Approved - PERS Keep This Copy In Your Files[.]"

{¶ 25} 8. The record also contains an NC-1 form signed by Domhoff on July 13, 1982 and certified by the YSU payroll officer. Domhoff marked the second box. The document was received by OPERS on September 10, 1982. It does not contain a stamp indicating OPERS approval.

{¶ 26} 9. The record also contains an NC-1 form signed by Domhoff on June 7, 1983 and certified by the YSU payroll officer. Domhoff marked the second box. The document was received by OPERS on September 7, 1983. It does not contain a stamp indicating OPERS approval.

**Bernice M. Hamrock**

{¶ 27} 10. Relator, Bernice M. Hamrock, was a student employee at YSU from December 28, 1980 through June 17, 1984. Hamrock's job title was "payroll specialist."

{¶ 28} 11. By letter dated June 29, 2000, Muldonado informed OPERS:

The first exemption form which was signed by Ms. Hamrock on December 5, 1980 and received by P.E.R.S. on January 5, 1981, states that her date of service began on December 28, 1980. Our payroll records indicate that her first day of work was January 5, 1981 which covered the pay period December 28, 1980 through January 10, 1981 and she was paid for this service on January 23, 1981.

{¶ 29} 12. On October 27, 2003, OPERS generated, pursuant to R.C. 145.483, an "Employer Billing Statement For Delinquent Contributions" covering the period of Hamrock's student employment from July 1, 1981 to June 14, 1984. Apparently, YSU paid the amount that OPERS claimed was due on the billing statement.

{¶ 30} 13. By letter dated October 29, 2003, OPERS informed Hamrock that YSU had been billed pursuant to R.C. 145.483 on her behalf and that service credit of 2.942 years would be credited to her account.

{¶ 31} 14. Following a YSU audit that produced previously undiscovered documents, OPERS, in June 2010, reversed the charges to YSU for Hamrock's claimed service credit.

{¶ 32} 15. The record contains an OPERS form captioned "Request for Optional Exemption." OPERS designated this form as "F-3 (Rev. 12/1/76)." Hamrock signed this form on December 5, 1980.

{¶ 33} 16. The F-3 form contains the following preprinted statement of the applicant:

In accordance with the provisions of Section 145.03, Revised Code of Ohio (amended 8/20/76) concerning regular membership in the Public Employees Retirement System, I hereby request optional exemption from membership as indicated in the appropriate block below[.]

{¶ 34} 17. Below the above-preprinted statement, Hamrock marked a box beside the following preprinted statement: "Student working 1,500 hours or less per calendar year."

{¶ 35} 18. Following the boxes to be selected, the F-3 form contains the following advisory to the applicant:

An application, when approved by the Public Employees Retirement Board and filed with the employer, shall be irrevocable while the employee continuously is employed in such part-time capacity and the employee shall forever be barred from claiming or purchasing membership rights or credit for the particular period covered by the exemption. I UNDERSTAND THAT BY EXEMPTING MYSELF I SHALL NEVER BE ABLE TO CLAIM CREDIT FOR THIS PERIOD OF SERVICE.



(Emphasis sic.)

{¶ 36} 19. The upper right hand corner of the F-3 form contains the following preprinted advisory:

This form must be signed within the first month after being employed.

{¶ 37} 20. Near the bottom of the F-3 form, the following preprinted advisory states:

**Note By Payroll Officer**

It is understood that if this request is approved by the Retirement Board, this application will be stamped "APPROVED" and will be returned to me. After the certification of approval is received, no deductions need be taken from the applicant's salary. Membership will be established if employment exceeds the limitations outlined.

{¶ 38} 21 The F-3 form signed by Hamrock on December 5, 1980 contains the signature of the YSU payroll officer. The F-3 was received by OPERS on January 5, 1981. The F-3 form apparently contains an "Approved - PERS" stamp that is illegible on the copy of record.

{¶ 39} 22. The record contains another F-3 form signed by Hamrock on September 9, 1981. The F-3 form contains an OPERS received stamp, but the date is illegible.

{¶ 40} 23. The record contains another F-3 form signed by Hamrock on June 30, 1982. The F-3 form was received by OPERS on December 2, 1982.

{¶ 41} 24. The record contains another F-3 form signed by Hamrock on May 23, 1983 and received by OPERS on June 29, 1983.

**Gregory Gulas**

{¶ 42} 25. Relator, Gregory Gulas, was a student employee at YSU from January 3, 1974 through June 6, 1975. Gulas' job title was "[a]ssistant [d]irector." On an OPERS form captioned "Certification of Unreported Public Service" dated September 7, 2005, Maldonado suggests that there was an exemption on file for the period January 3, 1974 to June 12, 1974, but there is no exemption on file for the period January 1, 1975 to June 14, 1975.

{¶ 43} 26. On October 11, 2005, OPERS generated an "Employer Billing Statement For Delinquent Contributions" covering the period of Gulas' student employment from October 1, 1974 to June 14, 1975. Apparently, YSU paid the amount that OPERS claimed was due on the billing statement.

{¶ 44} 27. By OPERS letter dated October 25, 2005, Gulas was informed that YSU had been billed on his behalf covering the period October 1, 1974 to June 14, 1975 and that service credit of .395 years was being credited to his account.

{¶ 45} 28. Following a YSU audit, OPERS, in June 2010, reversed the charges to YSU for Gulas' claimed service credit.

{¶ 46} 29. The record contains a document captioned "Request for Optional Exemption as Student." OPERS designated this form as "F-4 (Revised 8-27-70)." On December 10, 1973, Gulas signed this form. The F-4 form is similar to the F-3 form earlier described. On the F-4 form, Gulas indicated that January 3, 1974 is the date that his service at YSU will begin. The date on the OPERS date received stamp is illegible on the copy of the record before this court.

{¶ 47} 30. The word "Approved" is stamped on the F-4 copy of record.

{¶ 48} 31. In the right-hand corner of the F-4 form, the following preprinted advisory states:

This form must be filed within one month of date of employment.

**Richard Sweany**

{¶ 49} 32. Relator, Richard Sweany, was a student employee at YSU from October 29, 1973 through July 25, 1976. Sweany's job title was "administrative assistant 4." By letter dated December 23, 2003, Muldonado informed OPERS:

Enclosed you will find a Supplemental History Record form that has been completed by our office for certification. Enclosed is [a] copy of the exemption form for the 1972-73 academic year. At no time was this exemption ever exceeded. No exemptions for the 1973-74, 1974-75 and 1975-76 academic years could be located.

An extensive review of our policy and procedures on student employment shows the following:

[One] Mr. Sweany was hired and then terminated at the end of each academic year. Below is a listing of dates that each academic year ended;

June 12, 1974                  June 14, 1975                  June 12, 1976

[Two] No new or additional exemption forms were completed and membership was not established.

Your prompt attention to this request is appreciated.

{¶ 50} 33. The information from Maldonado prompted OPERS to generate an "Employer Billing Statement for Delinquent Contributions" for the period of Sweany's employment from September 17, 1974 to July 30, 1976. Apparently, YSU paid the amount that OPERS claimed was due on the billing statement.

{¶ 51} 34 By letter dated March 1, 2004, OPERS informed Sweany that YSU had been billed on his behalf for the period September 17, 1974 to July 30, 1976 and that service credit of 1.487 years would be credited to Sweany's account.

{¶ 52} 35 Following a YSU audit, OPERS, in June 2010, reversed the charges to YSU for Sweany's claimed service credit.

{¶ 53} 36 The record contains an F-4 "Request for Optional Exemption as Student" signed by Sweany on October 3, 1973. On the form, Sweany elected the R.C. 145.03 exemption. Sweany indicated on the F-4 form that his service began October 29, 1973. The OPERS date received stamp is illegible on the copy of record. However, the F-4 form is stamped "Approved."

**Roman Swerdan**

{¶ 54} 37. Relator, Roman Swerdan, was a student employee at YSU from June 14, 1979 through January 20, 1982. Swerdan's job title was "student employee."

{¶ 55} 38. Pursuant to information forwarded to OPERS by Maldonado, OPERS generated an "Employer Billing Statement For Delinquent Contributions" covering the period of Swerdan's employment from June 15, 1980 to January 20, 1982. Apparently, YSU paid the amount that OPERS claimed was due on the billing statement.

{¶ 56} 39. By letter dated July 29, 2005, OPERS informed Swerdan that YSU had been billed on his behalf covering the period June 15, 1980 to January 20, 1982 and that service credit of 1.667 years would be credited to Swerdan's account.

{¶ 57} 40. Following an YSU audit, OPERS, in June 2010, reversed the charges to YSU for Swerdan's claimed service credit.

{¶ 58} 41. The record contains an F-3 form captioned "Request For Optional Exemption" signed by Swerdan on May 13, 1980. On the F-3 form, Swerdan indicated that his student employment will begin May 19, 1980. The F-3 form contains an OPERS stamp indicating that it was received by OPERS on May 23, 1980. Also, the F-3 form is stamped "Approved - PERS."

{¶ 59} 42. The record contains an NC-1 form captioned "Acknowledgement of Non-Contributing Status" signed by Swerdan on August 22, 1980. The NC-1 was received by OPERS on October 18, 1980. Box number two is marked beside the preprinted statement: "Student, employed less than 1500 hours per year — Exemption filed. The NC-1 form is stamped "Approved - PERS."

{¶ 60} 43. The record contains an F-3 form captioned "Request for Optional Exemption" signed by Swerdan on September 14, 1981. The F-3 form was received by OPERS on October 22, 1981. On the F-3 form, Swerdan indicates that his service will begin October 3, 1981. The F-3 form contains the markings of a stamp that is largely illegible on the copy of the record. However, the stamp's perimeter is the same as other stamps of record on which "Approved - PERS" appears.

{¶ 61} 44. On November 17, 2010, counsel for the relators wrote to YSU's general counsel, Holly A. Jacobs, as follows:

This office represents Gregory Gulas, Bernice Hamrock, Christine Domhoff, Richard Sweany and Roman Swerdan. It has come to our attention, that based on representations made by Youngstown State University ("YSU"), the Ohio Public Employees Retirement System (OPERS") has incorrectly reversed decisions on written exceptions when the above-referenced bargaining unit members served as student employees.

I contacted OPERS about these errors. Based on my conversations with them, it was recommended that we first try to work with YSU to resolve these issues. Therefore, I am providing you with information and documentation that clearly demonstrates that the exemptions have been incorrectly applied to these individuals.

It is clear that for the last 40 years, YSU has terminated the service of all student employees at the end of the spring quarter and/or semester. I have attached a number of memoranda and interoffice correspondence confirming this. This policy has also been substantiated by employees who work in the payroll department.

As evidenced by the attached records, new written exemptions were required each academic year after the employment of the student employees was terminated. YSU's policy is consistent with the requirements of O.R.C. §145.03(B) and O.A.C. §145-1-55, which state:

\* \* \*

Not only is there a requirement for a new exemption form to be executed after termination of employment, the statute and OPERS also require that an exemption must be signed within the first month after being employed and/or re-employed and that an actual original of an exemption form, stamped "approved," must be on record. See O.R.C. §145.03(B) and attached documents.

Based on YSU's policy, O.R.C. §145.03, O.A.C. §145-1-55 and interpretation of these provisions by OPERS, YSU submitted documentation to OPERS so that the employees would be granted unreported service as student employees with YSU. Based on this documentation, YSU was billed pursuant to O.R.C. §145.483 for the unreported service and the employees were credited for the unreported service.

However, OPERS has recently notified these individuals that exemptions were being applied to them based on representations made by YSU. For the following reasons, exemptions do not apply to these employees for their service as student employees:

[One] Gregory Gulas was originally granted unreported service from October 1, 1974 through June 14, 1975 based on documentation that was submitted to OPERS. A copy of a written exemption form was executed on December 10, 1973 by Mr. Gulas. Pursuant to Ohio law, Mr. Gulas was exempt from membership with OPERS until his service as a student employee was terminated. Pursuant to YSU's policy, Mr. Gulas' student employment was terminated at the end of the spring quarter in 1973. Since Mr. Gulas did not sign a new exemption form within the first month after being re-

employed in October of 1974, Ohio law mandates membership for Mr. Gulas in OPERS for the period of October 1, 1974 through June 14, 1975. Therefore, this time is considered unreported service with YSU that must be corrected with OPERS.

[Two] Bernice Hamrock was originally granted unreported service from July 1, 1981 through June 14, 1984 based on documentation that was submitted to OPERS. Copies of written exemptions were executed on December 5, 1980, September 9, 1981, June 30, 1982 and June 23, 1983 by Ms. Hamrock. Pursuant to YSU's policy, her service as a student employee for the 1980-81 school year was first terminated at the end of the spring quarter in 1981. Since Ms. Hamrock was re-employed in July of 1981, the September 9, 1981 exemption form is inapplicable. The exemption was not signed within the first month after being re-employed and Ohio law mandates membership for Ms. Hamrock in OPERS through the date of termination of her student employment in the spring of 1982.

In addition, other than Ms. Hamrock's September 1981 exemption form, her other exemption forms were signed prior to starting her employment. This was contrary to the unambiguous language of O.R.C. §145.03(B) which requires execution of the exemption form within one month after being employed. Therefore, all of this time is considered unreported service with YSU that must be corrected with OPERS.

[Three] Christine Domhoff was originally granted unreported service from January 1, 1982 through June 14, 1984 based on documentation that was submitted to OPERS. YSU submitted an Acknowledgment of Non-contributing Status form dated January 5, 1982. However, this document is not a written exemption, stamped "approved." As evidenced by a May 15, 2003 letter from OPERS, included in the attached documents, it is the responsibility of YSU to keep the original copy of the actual exemption form, stamped "approved," in order to have the exemption applied to her. Since YSU does not possess an original copy of an exemption form, Ms. Domhoff's service until the termination of her employment at the end of the spring quarter in 1982 is unreported service. Furthermore, because Ms. Domhoff did not sign a new exemption form within the first month after being re-employed, Ohio law mandates membership for Ms. Domhoff in OPERS through June 14, 1984. Therefore, this

time is considered unreported services with YSU that must be corrected with OPERS.

[Four] Richard Sweany was originally granted unreported service from September 17, 1974 through June 30, 1976 based on documentation that was submitted to OPERS. A copy of a written exemption form was executed on October 29, 1973 by Mr. Sweany. However, Mr. Sweany signed this exemption prior to starting his employment. As with Ms. Hamrock, based on the unambiguous language of O.R.C. §145.03(B), the written exemption was filed prior to starting his employment with YSU contrary to the statute which requires execution of the exemption form within one month after being employed.

Even if the exemption was applicable, Mr. Sweany would only have been exempt from membership until his service as a student employee was terminated. Pursuant to YSU's policy, Mr. Sweany's service as a student employee was terminated at the end of the spring quarter in 1973. Since Mr. Sweany did not sign a new exemption form within the first month after being re-employed in September of 1974, Ohio law mandated membership for Mr. Sweany in OPERS for the period of September 17, 1974 through June 30, 1976. Therefore, this time is considered unreported service with YSU that must be corrected with OPERS.

[Five] Roman Swerdan was originally granted unreported service from June 15, 1980 through January 20, 1982 based on documentation that was submitted to OPERS. A copy of a written exemption form was executed on May 13, 1980. Therefore, in accordance with Ohio law, Mr. Swerdan was exempt from membership until his service as a student employee was terminated, or until he worked more than 1,500 hours in a calendar year – which he exceeded effective November 1, 1981.

Pursuant to YSU's policy, Mr. Swerdan's service as a student employee was terminated at the end of the spring quarter in 1981. Since Mr. Swerdan did not sign a new exemption form within the first month after being re-employed in 1981, Ohio law mandates membership for Mr. Swerdan in OPERS from the date of his re-employment through January 20, 1982. Therefore, this time is considered unreported service with YSU that must be corrected with OPERS.

Finally, it appears that YSU has only questioned the student service of these certain individuals, while ignoring the service of others who had also served as student employees. Please explain how YSU determined that only these individuals' status should be challenged.

Notwithstanding this fact, mistakes have been made and employees are not receiving service credit for periods they are entitled to under Ohio law and YSU's own policy. Therefore, Mr. Gulas, Ms. Hamrock, Ms. Domhoff, Mr. Sweany and Mr. Swerdan request that YSU immediately correct these errors in unreported service with OPERS. If YSU fails to respond to this request by December 1, 2010, I will notify OPERS and take appropriate action to make sure that these employees receive credit for the unreported service to which they are entitled.

(Emphasis sic.)

{¶ 62} 45. On December 1, 2010, Jacobs responded to relators' counsel:

I am in receipt of your letter dated November 17, 2010. I have reviewed your letter with individuals who work in our Human Resources Office, as well as those in our Office of Student Life. The University provided exemption forms to Ohio Public Employees Retirement System (OPERS) that covered the pertinent periods of student employment for your clients. This was done to correct inaccurate information previously sent to OPERS on behalf of the University. OPERS determined that the service credit would not be applied to the employees total service credit time.

After thoroughly reviewing the documents, your letter and the policies of the University, the University has determined that it will not be changing the information submitted to OPERS at this time. It seems the appropriate avenue to pursue is an appeal of the OPERS determination. If you have any further questions, please feel free to call me.

{¶ 63} 46. On August 11, 2011, counsel for relators wrote to OPERS associate counsel, Lauren Gresh, as follows:

As you are aware, this office represents Gregory Gulas, Bernice Hamrock, Christine Domhoff, Richard Sweany and Roman Swerdan. Based on representations made by Youngstown State University ("YSU"), the Ohio Public



Employees Retirement System ("OPERS") has incorrectly reversed decisions on written exceptions when the above-referenced individuals served as student employees.

During our previous conversations, you recommended that we first try to resolve the issues with YSU. Following your recommendation, by letter dated November 17, 2010, I provided documentation to Attorney Holly Jacobs, General Counsel for YSU, demonstrating clear evidence that the exceptions had been incorrectly applied to these individuals. Although you were copied with that letter, for your convenience, another copy is attached. In response, by letter dated December 1, 2010, Attorney Jacobs notified me that - despite the overwhelming evidence - YSU "has determined that it will not be changing the information submitted to OPERS at this time." A copy of the December 1, 2010 letter is attached.

Upon YSU's refusal to resolve these issues, by letter dated December 3, 2010, I requested copies of all exception forms on file with OPERS regarding these individuals. A copy of the December 3, 2010 letter is attached. I received copies of all the exceptions on file which were essentially the same as those OPERS had in its possession when the Certifications of Unreported Public Service were first filed by these individuals.

By letter dated January 6, 2011, I submitted another request to OPERS for "all records including, but not limited to, all documentation submitted to OPERS relating to service time and certification for unreported service" for all of these individuals. A copy of the January 6, 2011 letter is attached. When I did not receive a response, I sent a follow up letter dated March 11, 2011. A copy of the March 11, 2011 letter is attached. Over the next month or so, I received copies of the records which were then reviewed by the individuals.

It is clear that over the last 40 years, YSU has consistently terminated the service of all student employees at the end of the Spring term. As documented through memorandum and interoffice correspondence, YSU's policy is to terminate student employment at the end of the Spring term. Furthermore, the policy requires students employed in the Summer and/or following school year to complete new Appointment forms and Request for Exemption forms. See also Affidavits of Bernice Hamrock and Richard Sweany.

As evidenced by the attached records, those previously submitted and the Affidavits of Ms. Hamrock and Mr. Sweany, new written exemptions were required each academic year after the employment of student employees was terminated. YSU's policy is consistent with the requirements of O.R.C. §145.03(B) and O.A.C. §145-1-55[.]

\* \* \*

Not only is there a requirement for a new exemption form to be executed after termination of employment, the statute and OPERS also require that an exemption must be signed within the first month after being employed and/or re-employed and that an actual original of an exemption form, stamped "approved," **must be on record**. See O.R.C. §145.03(B) and attached documents. (Emphasis added).

Based on YSU's policy, O.R.C. §145.03, O.A.C. §145-1-55 and interpretation of these provisions by OPERS, YSU originally submitted documentation to OPERS so that the employees would be granted unreported service as student employees with YSU. Based on this documentation, YSU was billed pursuant to O.R.C. §145.03 for the unreported service and the employees were credited for the unreported service. Despite this, OPERS has now notified these individuals that exemptions are being applied to them based on "representations" made by YSU.

Beyond revised Certifications of Unreported Public Service, YSU has not submitted any documentation that warrants the reversals by OPERS. On the other hand, I have provided OPERS with numerous examples of memoranda and inter-office correspondence from YSU for various years regarding the policy of YSU to terminate all student employees at the end of the Spring term. To bolster this fact, I am attaching additional examples of memorandum and inter-office correspondence provided by YSU over the years. See attached documents.

As further evidence of this clear policy, I am also providing you with Affidavits from Ms. Hamrock and Mr. Sweany. As explained in Ms. Hamrock's Affidavit, she has worked in the payroll office for approximately fourteen years. During a great part of this time, Ms. Hamrock was responsible for submitting Certifications of Unreported Public Service to OPERS. In her Affidavit, Ms. Hamrock explains that for as long as she has been in the payroll department - and for as

long as 40 years or more based on conversations with individuals employed longer than Ms. Hamrock - YSU has always had a policy to terminate student employees at the end of the Spring term. See Affidavit of Ms. Hamrock. Then, Mr. Sweeney's Affidavit states that he was involved in the hiring student of [sic] employees in his department. Throughout that time, he received memoranda and inter-office correspondence from YSU for various years regarding the policy of YSU to terminate all student employees at the end of the Spring term. This is why some of these individuals had so many exemptions in their files. If YSU had not had such a policy, it would not have been necessary to have additional exemptions.

Based on a review of the affected individuals' files, YSU's policy, O.R.C. §145.03, O.A.C. §145-1-55 and interpretation of these provisions by OPERS, exemptions do not apply to these employees for their service as student employees for the following reasons:

[The letter then repeats the arguments regarding each of the five relators as numbered one through five in the November 17, 2010 letter.]

\* \* \*

Clearly mistakes have been made and these employees are not receiving service credit for periods they are entitled to under Ohio law and YSU's own policy. Therefore, Mr. Gulas, Ms. Hamrock, Ms. Domhoff, Mr. Sweany and Mr. Swerdan request that OPERS immediately correct these errors in unreported service.

If OPERS refuses to make the required corrections, please notify me of that fact and whether the decision is final. The employees also request that this letter and all its supporting documentation be added to their files in case a mandamus action is required.

(Emphasis sic.)

{¶ 64} 47. By separate letters dated October 28, 2011 as to each relator, OPERS associate counsel Ellen C. Leach responded to the August 11, 2011 letter from relators' counsel. As to each letter, Leach informed relators' counsel that the requests for service credit are denied and that the determination is final.

{¶ 65} 48. The affidavit of Bernice Hamrock executed July 20, 2011 (as attached to the August 11, 2011 letter) states:

[One] I have been employed by Youngstown State University ("YSU") in a variety of positions since 1996, including fourteen years as an Account Clerk, Payroll Specialist and Administrative Assistant in the payroll department.

[Two] During my fourteen years as an Account Clerk, Payroll Specialist and Administrative Assistant, one of my duties was to process the appointment forms for all student employees hired on campus by YSU.

[Three] During my entire time processing appointment forms, YSU followed the same procedure for hiring student employees - whether a new hire or a returning employee. The student employee was given a packet of forms to be completed. This packet consisted of an appointment form, W-4 form, School District Tax form, OPERS membership form and/or OPERS Optional Exemption form and an I-9 form. Recently a Terrorist Questionnaire form was added to the packet of forms.

[Four] Until a couple years ago, appointment forms listed a beginning and end date. The beginning date was when the department wanted the student employee to start the job. The end date was either the date which the department terminated the student's employment - depending on duration of the job - or the end of the Spring term. Spring term as the end of the academic year and all student employees were terminated at that time.

[Five] Throughout my experience working with student appointments, YSU had a policy that required all student employment to be terminated at the end of the spring term. New appointment forms and OPERS forms were required for all student employees employed for the following academic year including student employees who were going to continue working in the department the following academic year. A student was not permitted to work unless these forms were completed, processed and approved by YSU.

[Six] Normally, reappointment of student employees who had been terminated at the end of the Spring term took place in May of each year if the student employee was going to work during the Summer, and August of each year if the

student employee was going to work during the Fall but not during the Summer.

[Seven] As long as I can remember, YSU sent notices of this policy each year through memoranda and interoffice correspondence. These memoranda and interoffice correspondence reiterated YSU's ongoing policy requiring reappointment of student employees and the completion of new appointment forms and Request for Exemptions forms for each year of employment.

\* \* \*

[Nine] When the appointment form was completed by the student employees, it was submitted to Student Life or Financial Aid - the departments that approved or denied students' employment. The form was not accepted without an OPERS form - exemption or membership. If the student employee was brand new, all other forms were to be attached with the appointment form as well before processing was started. Once Student Life/Financial Aid made sure that the student employees met the qualifications to work on campus, they signed off on the forms and sent the appropriate paperwork to the Payroll office.

[Ten] Once received by the Payroll office, I would make sure that all necessary paperwork was attached to the appointment form, properly code the forms and enter them into the system. The process of entering the appointment form consisted of a start date, end date (termination date), wage per hours, department charged, W-4 information and OPERS option. If it was for a reappointed student employee, most of the information remained the same in the system, except for the beginning and end (termination) dates. These dates were updated each time the student employee was rehired.

[Eleven] At one point during the time that I was processing student employee appointments, I read that OPERS only required one exemption form per student at the beginning of their employment, as long as the student employee was not terminated and then rehired. I asked my Supervisor - who was Maureen Yambar at that time - about YSU's policy and why we required an OPERS form with all student employee appointment forms. Her response was that since we terminated the students at the end of each academic year, a new form was necessary. I had asked Ms. Yambar this same

question other times over the next several years and received the same answer each time.

[Twelve] Throughout my entire time processing appointment forms, YSU's policy has always been to terminate the employment of student employees at the end of the Spring term, even if the student employee was rehired during the next academic year. This policy was applied regardless whether the student employee was hired the next business day after the end of the Spring term or further into the year. In fact, based on my conversations with other employees in the Payroll Department - who had been in Payroll much longer than myself - this policy has been in effect for at least forty years.

{¶ 66} 49. The affidavit of Richard Sweany executed July 22, 2011 (as attached to the August 11, 2011 letter) states:

[One] I have been employed by Youngstown State University ("YSU") in a variety of positions for approximately 35 years - 38 years with student service.

[Two] During my tenure as a full time employee at YSU, I held several positions that dealt directly with student employees. As a Secretary I and Secretary II (1985-1994) in the College of Business Administration Advisement Center and as an Administrative Assistant 1 (1999-2002) in the Office of the Registrar, my duties included interviewing, hiring, scheduling, training, supervising and making assignments for student employees.

[Three] Throughout my experience working with student employees, pursuant to YSU Policy, all students were terminated at the end of the Spring term and had to be reappointed if the student employee was going to continue working in the department.

[Four] When Youngstown State University switched from quarters to semesters, reappointment of student employees took place in May of each year if the student was going to work during the Summer Semester and August of each year of [sic] the student was going to work during the Fall, but not during the Summer.

[Five] Notices of this policy, which required reappointment of student employees and the completion of new appointment forms and Request for Exemption forms, were

provided by YSU each year through memoranda and interoffice correspondence.

{¶ 67} 50. On March 21, 2012, the relators filed this mandamus action.

Conclusions of Law:

{¶ 68} Three issues are presented: (1) whether the exemption form is invalid if signed prior to the start of employment, (2) whether the absence on an exemption form of an OPERS stamp approval invalidates the exemption, and (3) whether relators were "continuously employed" within the meaning of R.C. 145.03 even though it was YSU's policy to terminate all of its student employees at the end of each spring term.

{¶ 69} The magistrate finds: (1) the exemption form is not invalid if signed prior to the start of employment, (2) the absence of an OPERS approval stamp on the exemption form does not automatically invalidate the exemption, and (3) the relators were continuously employed within the meaning of R.C. 145.03 even though it was YSU's policy to terminate all of its student employees at the end of each spring term.

{¶ 70} Accordingly, it is the magistrate's decision that this court deny the relators' requests for a writ of mandamus, as more fully explained below.

{¶ 71} R.C. 145.03 currently states:

(A) A public employees retirement system is hereby created for the public employees of the state and of the several local authorities mentioned in section 145.01 of the Revised Code. Except as provided in division (B) of this section, membership in the system is compulsory upon being employed and shall continue as long as public employment continues.

(B) A student who is not a member at the time of his employment with the school, college, or university in which he is enrolled and regularly attending classes may elect to be exempted from compulsory membership and a student who is a member may elect to have his employment with the school, college, or university in which he is enrolled and regularly attending classes exempted from contribution to the retirement system. An election to be exempted from membership or contribution shall be made by signing a written application for exemption within the first month after being employed and filing the application with the public employees retirement board. All applications, when approved by the public employees retirement board and filed

with the employer, shall be irrevocable while the employee is continuously employed by the school, college, or university and regularly attending classes.

{¶ 72} Ohio Adm.Code 145-1-55 is captioned "Exemption Termination." Effective January 1, 2003, the rule provides:

An exemption from membership in the public employees retirement system pursuant to section 145.03 of the Revised Code shall be valid only during the current period of employment for the public employer by whom a public employee is employed at the time the exemption is approved. When the employment is terminated the exemption also terminates. Upon a return to public employment either for the former employer or another employer membership in the system is mandatory unless the employee may be exempt or excluded from membership.

{¶ 73} Prior to January 1, 2003, the above rule was found at former Ohio Adm.Code 145-5-10, which became effective September 30, 1991. The Ohio Monthly Record, September 1991, at page 195, states as follows:

Note: the substance of this rule was adopted and has continued as effective board policy since 11-13-46; it was readopted and filed as required by Am. Sub. H.B. 268 on 12-2-76.

{¶ 74} Apparently, it can be said that the substance of the rule currently found at Ohio Adm.Code 145-1-55 was in effect during the periods at issue in this action, i.e., as far back as the early 1970's.

{¶ 75} Because there is no statutory provision that it do so, OPERS is not required to provide an explanation for its decisions or cite to the evidence that supports them. *State ex rel. Cydrus v. Pub. Emp. Retirement Sys.*, 10th Dist. No. 09AP-595, 2010-Ohio-1143, ¶ 8; *State ex rel. Garrett v. Ohio Public Emp. Retirement Sys.*, 10th Dist. No. 11AP-1020, 2012-Ohio-4504, ¶ 2.

{¶ 76} If the meaning of a statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary. *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78 (1997). Unambiguous statutes are to be applied according to the plain meaning of the words used. *Id.* Courts are not free to delete or insert other words. *Id.*



{¶ 77} Courts must accord an agency the deference to which it is entitled in interpreting the pertinent legislation. *State ex rel. Gill v. School Emp. Retirement Sys. of Ohio*, 121 Ohio St.3d 567, 2009-Ohio-1358, ¶28. The court must give due deference to the agency's reasonable interpretation of the legislative scheme. *Id.*

### **The First Issue**

{¶ 78} Turning to the first issue, relying upon *State ex rel. Lancaster v. Pub. Emp. Retirement Sys. of Ohio*, 40 Ohio App.3d 135 (5th Dist.), relators argue that the exemption form is invalid if signed prior to the start of employment. Relators' reliance upon *Lancaster* is misplaced.

{¶ 79} According to relators, because the exemption form must be signed "within the first month after being employed," the statutory language necessarily excludes signing the exemption form before the start of employment.

{¶ 80} However, respondent argues that the end of the first month of employment is solely a "cut-off date for when student exemptions must be completed." (Respondent's brief, at 9.)

{¶ 81} Respondent argues that the statutory language does not specify a "beginning date" for signing the exemption form such that signing before such date invalidates the exemption. (Respondent's brief, at 9.) That is, respondent's position is that the exemption form can be validly signed prior to the start of the employment that the exemption form is intended to address. The magistrate agrees with the position of the respondent.

{¶ 82} In the *Lancaster* case, the issue was whether a public employee could validly sign an exemption form after the first month of employment. The *Lancaster* court held that R.C. 145.03 makes membership in OPERS mandatory for all public employees unless the employee signs a written waiver within one month after being employed. The court reasoned:

There is no statutory provision for a waiver of [O]PERS membership by any procedure other than a written waiver filed within one month of commencing employment. Having expressly created a procedure for waiver of membership, the statute cannot be construed as permitting waiver by any other method.

*Id.* at 137.

{¶ 83} The *Lancaster* court did not hold that an exemption form cannot be signed prior to the start of employment, nor does the case even suggest the conclusion that relator endeavors to draw from the case here.

{¶ 84} To the extent that the language of R.C. 145.03 is ambiguous as to whether the written application for exemption may be validly signed before the start of employment, OPERS' interpretation is clearly reasonable. As respondent puts it, "[a]ny person who had held a job knows there is a great deal of paperwork that needs to be completed before work can begin such as W-2 forms, etc." (Respondent's brief, at 8.)

{¶ 85} In short, this court must accept OPERS' interpretation of R.C. 145.03 such that a written application for exemption may be validly signed before the start of employment.

### **The Second Issue**

{¶ 86} The second issue, as earlier noted, is whether the absence on the exemption form of an OPERS stamp of approval invalidates the exemption.

{¶ 87} The language in the last sentence of R.C. 145.03 "when approved by the public employees retirement board and filed with the employer" can be read to set forth a statutory requirement that the effectiveness of the signed written application for exemption is conditional upon OPERS approval. However, the statute is silent as to whether the written application for exemption itself must indicate on its face that the application has been approved by OPERS.

{¶ 88} Apparently, as the record indicates, OPERS has had a practice or procedure whereby the written application for an exemption is stamped to indicate OPERS approval. However, that OPERS has engaged in such practice or procedure does not create a statutory mandate of such practice or procedure nor is there an automatic consequence when such practice or procedure has failed to occur.

{¶ 89} As respondent seems to argue here, that the exemption forms at issue do not indicate OPERS refusal or denial is some evidence that the exemption forms were OPERS approved.

{¶ 90} In short, the absence on an exemption form of an OPERS stamp of approval does not automatically invalidate the exemption.

### **The Third Issue**

{¶ 91} The third issue asks the meaning of the R.C. 145.03(B) phrase "continuously employed" and the meaning of the word "terminated" at Ohio Adm.Code 145-1-55.

{¶ 92} The relators' argument for a finding of non-exempted service during the time periods at issue hinges largely on YSU policy with respect to student employment. Two paragraphs of the Hamrock affidavit are worth repeating:

[Five] Throughout my experience working with student appointments, YSU had a policy that required all student employment to be terminated at the end of the spring term. New appointment forms and OPERS forms were required for all student employees employed for the following academic year including student employees who were going to continue working in the department the following academic year. A student was not permitted to work unless these forms were completed, processed and approved by YSU.

\* \* \*

[Twelve] Throughout my entire time processing appointment forms, YSU's policy has always been to terminate the employment of student employees at the end of the Spring term, even if the student employee was rehired during the next academic year. This policy was applied regardless whether the student employee was hired the next business day after the end of the Spring term or further into the year. In fact, based on my conversations with other employees in the Payroll Department -- who had been in Payroll much longer than myself - this policy has been in effect for at least forty years.

{¶ 93} According to the relators, because YSU always terminated their employments at the end of each spring term, the exemption forms they signed at the start of their YSU employments also terminated at the end of the spring terms. The magistrate disagrees.

{¶ 94} This court's decision in *State ex rel. Brown v. Public Emp. Retirement Bd.*, 10th Dist. No. 93AP-290 (Sept. 30, 1993), jurisdictional motions overruled 68 Ohio St.3d 1452 (1994) is instructive. William D. Brown ("Brown") brought an action in the court of common pleas seeking declaratory judgment and a writ of mandamus to establish his right to receive STRS credit for periods in 1962 when he was employed part-time as a

student assistant in the Horticulture and Forestry Department at The Ohio State University ("OSU"). Brown's right to obtain STRS credit hinged in large part upon his status under OPERS for the time in question.

{¶ 95} Brown first worked at OSU in September 1960, and he worked each month thereafter through June 1961. It was unclear from the record whether Brown worked in July 1961. However, he did not work in August or September 1961 but resumed employment in the same department in October 1961, working continuously through September 1962.

{¶ 96} Upon beginning work for OSU, Brown signed a request for an optional exemption from OPERS membership.

{¶ 97} At the time of Brown's employment, R.C. 145.03 provided:

Such an application for exemption, when approved, shall be irrevocable while the employee continuously is employed in such part-time capacity and the employee shall forever be barred from claiming or purchasing membership rights or credit for the particular period covered by such exemption.

\* \* \* [.]

{¶ 98} The request for exemption gave a beginning date of employment of September 14, 1960. Brown did not sign any further requests for exemption until September 25, 1962 for service to begin on October 1, 1962. Thus, the September 14, 1960 request for exemption is the only effective request for exemption which is relevant to the time period in question.

{¶ 99} Holding that the September 14, 1960 exemption applied to the period of service beginning October 1961 even though there was a two-or-three-month break in service, the *Brown* court explains:

The applicability of the September 1960 exemption to the period from October 1961 through September 1962 turns upon our interpretation of the phrase "continuous employment" in R.C. 145.03. This court has previously construed this language to mean that a new exemption need not be signed for each year of employment, when any temporary interruptions in employment can reasonably be interpreted as the result of the normal cycle of student employment through the school year. In the recent case of *State of Ohio ex rel. Rita Palmer v. State Teachers Retirement Board and Public Employees Retirement Board*

(September 23, 1993), Franklin App. No. 93AP-185, unreported ( 1993 Opinions 3969), we determined that a graduate teaching assistant was continuously employed from year to year, despite a yearly three month hiatus through each summer. In the case before us, relator's position is analogous. The two, or possibly three, month break in employment through July, August and September 1961 can be reasonably interpreted as a normal summer break in student employment, which would not constitute a break in continuous employment for purposes of R.C. 145.03. Therefore, no new request for exemption need have been executed to cover the period from October 1961 through September 1962 in order to exempt relator from PERS coverage. We therefore find that relator was not subject to PERS coverage for October 1961 through September 1962, and R.C. 145.483 does not apply.

{¶ 100} Unlike the situation here, OSU apparently had no policy of terminating student employment on an annual basis such as at the end of each spring term as was the case at YSU. The *Brown* court makes no mention of such a policy. On that point, relators endeavor to distinguish *Brown* from the instant case. Also, the *Brown* court did not address Ohio Adm.Code 145-1-55 effective January 1, 2003 or the predecessor rule found at former Ohio Adm.Code 145-5-10.

{¶ 101} Here, respondent asserts that YSU's "payroll policy" is not dispositive of the question of whether the relators were "continuously employed" under R.C. 145.03 such that normal breaks in student employment did not serve to change the "irrevocable" status under the statute. (Respondent's brief at 7 and 12) The magistrate agrees with respondent's position that the "payroll policy" is not dispositive of the question before this court. It appears that the "payroll policy" required termination of employment on paper even though, in reality, no termination of employment was actually contemplated or understood by the parties to the employment agreement. That is to say, the paperwork did not necessarily reflect the actual understanding that the student employment was to continue even after the so-called termination of employment. In the view of the magistrate, YSU's policy of terminating all of its student employees at the end of each spring term did not alter the fact that, following the normal university summer break, YSU anticipated the return of its students to the same employment. In the magistrate's view, there is no indication at Ohio Adm.Code 145-1-55 that its reference to "terminated"

employment encompasses the YSU policy that all student employees be "terminated" at the end of the spring term regardless of the intent of the parties to the employment agreement.

{¶ 102} In short, the magistrate rejects the arguments of relators regarding the meaning of the R.C. 145.03(B) phrase "continuously employed" and the meaning of the word "terminated" found at Ohio Adm.Code 145-1-55.

**Christine Domhoff - Revisited**

{¶ 103} The magistrate shall now apply his conclusions of law to the specific facts as to each relator's student employment. That is to say, the magistrate now revisits each of the specific facts as to each relator.

{¶ 104} OPERS reversed its earlier determination that Domhoff was entitled to service credit from June 13, 1982 to June 14, 1984 at the expense of YSU.

{¶ 105} However, Domhoff began her employment at YSU on January 1, 1982. The employment at YSU ended in June 1984.

{¶ 106} In his November 17, 2010 letter to Jacobs and his August 11, 2011 letter to Gresh, Domhoff's counsel states incorrectly that Domhoff "was originally granted unreported service from January 1, 1982 through June 14, 1984." The letters suggest that service credit beginning January 1, 1982 is being requested. As earlier noted, service credit was ultimately denied by OPERS.

{¶ 107} As earlier noted, the record contains an OPERS form captioned "Acknowledgment of Non-Contributing Status." This NC-1 form was signed by Domhoff on January 5, 1982. The NC-1 form signed January 5, 1982 contains a stamp stating "Employees Permanent Record, Approved - PERS[,] keep this copy in your files." OPERS received this document on January 21, 1982.

{¶ 108} With respect to Domhoff, it is pointed out here that respondent was unable to produce the actual R.C. 145.03 written application for exemption, which would be the OPERS form captioned "Request For Optional Exemption" and referred to as the "F-3 (Rev. 12/1/76)." Domhoff signed another NC-1 form on July 13, 1982; however, the record fails to contain an F-3 form signed by Domhoff.

{¶ 109} According to Domhoff, her NC-1 form signed January 5, 1982 cannot serve as evidence that Domhoff executed an exemption on the F-3 form. The magistrate

disagrees. As respondent here points out, on the NC-1 form signed January 5, 1982, Domhoff certifies that an exemption was filed. Clearly, the NC-1 signed January 5, 1982 is some evidence that Domhoff executed a written application for exemption that was approved by OPERS.

**Bernice Hamrock - Revisited**

{¶ 110} OPERS reversed its earlier determination that Hamrock was entitled to service credit from July 1, 1981 to June 14, 1984 at the expense of YSU.

{¶ 111} However, Hamrock began her employment at YSU on December 28, 1980. Her employment at YSU ended June 14, 1984.

{¶ 112} In his November 17, 2010 letter to Jacobs and his August 11, 2011 letter to Gresh, Hamrock's counsel suggests that service credit beginning December 28, 1980 is being sought.

{¶ 113} As earlier noted, the record contains an OPERS form captioned "Request For Optional Exemption" which OPERS designated as the "F-3 (Rev. 12/1/76)." Hamrock signed this form on December 5, 1980 prior to the start of her employment on December 28, 1980. According to relator, because the F-3 form was signed by Hamrock before she started her employment, the F-3 form is invalid. Relator is incorrect, as previously discussed.

{¶ 114} According to Hamrock, because her employment was terminated, pursuant to YSU policy, following the spring terms in 1981, 1982, and 1983, the F-3 form signed December 5, 1980 did not exempt her service following the spring term of 1981. As discussed earlier, Hamrock is incorrect. The F-3 form she signed on December 5, 1980 exempted her entire service from December 28, 1980 to June 14, 1984.

**Gregory Gulas - Revisited**

{¶ 115} OPERS reversed its earlier determination that Gulas was entitled to service credit from October 1, 1974 to June 14, 1975 at the expense of YSU.

{¶ 116} However, Gulas began his employment at YSU on January 3, 1974. His employment ended in June 1975.

{¶ 117} Here, Gulas claims that OPERS should have granted him service credit from January 3, 1974 to June 14, 1975.

{¶ 118} As earlier noted, on December 10, 1973, Gulas signed the F-4 form. The F-4 form indicated that Gulas' employment would begin on January 3, 1974. Gulas claims that the F-4 form was invalid because it was signed before he began his employment. Gulas is incorrect as earlier discussed.

{¶ 119} Gulas also claims that his employment was terminated pursuant to YSU policy following the end of the spring term in 1974. Because Gulas did not sign another F-4 form at the time of his employment in October 1974, Gulas claims that his employment beginning October 1, 1974 is not exempt. Gulas is incorrect. The F-4 form signed by Gulas on December 10, 1973 exempted his service for the entire period of his employment at YSU.

#### **Richard Sweany - Revisited**

{¶ 120} OPERS reversed its earlier determination that Sweany was entitled to service credit from September 17, 1974 to June 30, 1976.

{¶ 121} Sweany was a student employee at YSU from October 29, 1973 through July 25, 1976.

{¶ 122} Here, Sweany claims that OPERS should have granted him service credit from October 29, 1973 through July 25, 1976.

As earlier noted, the record contains an F-4 form signed by Sweany on October 3, 1973. Because the F-4 form was signed by Sweany prior to the start of his employment, Sweany claims that the F-4 form is invalid. Relator is incorrect as previously discussed.

{¶ 123} Sweany also claims that his employment was terminated pursuant to YSU policy following the end of the spring terms in the years 1974, 1975, and 1976. On that basis, Sweany claims that he is entitled to service credit beginning September 17, 1974 to June 30, 1976. Sweany is incorrect as previously discussed.

#### **Roman Swerdan - Revisited**

{¶ 124} OPERS reversed its earlier determination that Swerdan was entitled to service credit from June 15, 1980 to January 20, 1982.

{¶ 125} Swerdan began his student employment at YSU on June 14, 1979. His employment ended on January 20, 1982.

{¶ 126} Here, Swerdan claims that OPERS should have granted him service credit from June 15, 1980 through January 20, 1982.



{¶ 127} As earlier noted, the record contains an F-3 form signed by Swerdan on May 13, 1980. On the F-3 form, Swerdan indicated that his employment will begin May 19, 1980. Swerdan claims that the F-3 form is invalid because it was signed prior to the start of his employment. Swerdan is incorrect, as earlier discussed.

{¶ 128} Also, Swerdan claims that his employment was terminated, pursuant to YSU policy, at the end of the spring term in 1981. On that basis, Swerdan claims entitlement to service credit beginning October 1981 even though he signed another F-3 form on September 14, 1981 indicating his employment would restart on October 3, 1981. Swerdan argues that the F-3 form signed September 14, 1981 is invalid. Swerdan is incorrect. Clearly, the F-3 form signed May 13, 1980 exempted the entire period of his employment beginning June 15, 1980 through January 20, 1982.

### **Conclusion**

{¶ 129} Accordingly, for all the above reasons, it is the magistrate's decision that this court deny the requests for writs of mandamus as to all the relators.

/S/ MAGISTRATE  
KENNETH W. MACKE

### **NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).