

State of Wisconsin

OFFICE OF STATE EMPLOYMENT RELATIONS

– COMPENSATION & LABOR RELATIONS BULLETIN –

Date: September 20, 2005

Subject: Seniority Versus Continuous Service

Locator No: OSER-0079-CLR/PP

In most instances, seniority and continuous service are determined in the same manner, and therefore, the two (as well as seniority date and adjusted continuous service date) are often used interchangeably. Due to unique contract language regarding seniority and statutory language regarding continuous service, seniority and continuous service are not always identical. The purpose of this bulletin is to clarify the difference between the concepts and to explain the importance of knowing the distinction.

I. DEFINITIONS

Continuous service is defined as “all the time in continuous employment status as computed under s. ER 18.02 (2), Wis. Adm. Code, in the unclassified service or as a permanent employee in the classified service. Continuous service does not include time served in limited term employment and in those positions under s. 230.08 (2) (k), Wis. Stats., regarding students.” Per s. ER 18.02 (2), Wis. Adm. Code, breaks in service shall not be counted in calculating continuous service. Therefore, the adjusted continuous service date is the date of hire adjusted for breaks in service.

The collective bargaining agreements usually define seniority based on the date of hire but also exclude breaks in service as the rules do for continuous service. When seniority is defined in this manner, seniority and continuous service (and seniority date and adjusted continuous service date) may be used interchangeably. Because seniority is not defined (or used) in the statutes or rules, we could, until recently, use the terms interchangeably for nonrepresented employees as well.

When there is an exception to the definition of seniority, a difference between the two terms is created and, technically, they should not be used interchangeably. This currently is true of language for the Security and Public Safety (SPS) and the Wisconsin Law Enforcement Association (WLEA) bargaining units. Their contractual definitions of seniority do not allow employees returning to state service in a position in one of these bargaining units to count previous state employment. Consequently, employees may not count previous state employment to determine contractual rights and eligibilities that are established by seniority.

Although it does not state so directly, the Wisconsin State Employee Union’s contract acknowledges the differences between seniority and continuous service in at least two ways. First, it states that employees joining a bargaining unit during the life of the Agreement will have

seniority determined by “the adjusted continuous service as of the time they became members of the unit.” By defining the term “seniority” to equate with continuous service for this type of situation, the language allows these employees to receive credit for previous state employment, which SPS and WLEA do not allow, thus avoiding a permanent negative impact on employees’ continuous service dates. Second, the WSEU contract states that Supplemental Health Insurance Conversion Credits (SHICC) eligibility shall be determined based on having at least 15 years of adjusted continuous service, not “seniority,” upon retirement.

II. IMPORTANCE OF RECOGNIZING DISTINCTION

The previous paragraph already mentioned the two main reasons to differentiate between seniority and continuous service: Collective bargaining can alter a represented employee’s seniority, but does not alter continuous service. Because an employee’s seniority and continuous service dates may be different, it is important to know which term applies when determining an employee’s eligibility for SHICC. The importance of recognizing these distinctions is also illustrated by the rule on use of vacation while in the first six months of a classified appointment. According to s. ER 18.02 (3) (a), Wis. Adm. Code, classified employees “are not eligible to take annual leave during the first 6 months of the most recent period of continuous service in the classified service.” This allows individuals who return to classified service with previous continuous service to use vacation in the first 6 months of the appointment. This is true even if the employee is returning to an SPS or WLEA represented position, in which case the prior service does not count for purposes of seniority.

NOTE: “Creditable service” as determined by the Department of Employee Trust Funds for retirement purposes is a completely separate calculation from “seniority” or “continuous service” and should not be confused with these two terms.

III. COMPLICATING FACTORS

The current Department of Administration payroll system can mislead users to believe that seniority and continuous service are the same. Because the system does not have a field for seniority, the adjusted continuous service date field is used as the seniority field. Agencies need to be aware that the adjusted continuous service date of an employee may change when a personnel transaction occurs.

Although this situation usually occurs if an employee is entering or leaving an SPS or WLEA represented position, there may be other situations when a change in the adjusted continuous service date field is necessary:

- 1) In the early 1980’s other WSEU collective bargaining units had exceptions to seniority similar to those of SPS and WLEA. Therefore, there is a slight chance that the seniority date will change for an employee leaving one of those units, requiring a change to the adjusted continuous service field.
- 2) In some cases, employees’ adjusted continuous service dates may change if they leave state service for more than five years and later are employed in a nonrepresented position in which

they are considered exempt under the Federal Fair Labor Standards Act. See bulletin OSER-0018-CLR dated March 2, 2004, for more detail.

IV. EXAMPLE

Below is an example showing how various transactions can affect continuous services dates and seniority dates.

Employee starts August 1, 1990; terminates August 1, 2002; rehired into an SPS position August 1, 2004; transfers to AS August 1, 2005.

When the person is hired into SPS:

- The continuous service date is August 1, 1990 (in this case, the original date of hire)
- The adjusted continuous service date is August 1, 1992 (the continuous service date adjusted for being out of service for exactly 2 years)
- Seniority is now changed to August 1, 2004 (SPS language says the seniority date starts with the date of re-hire)

When the person transfers to AS:

- The continuous service date is August 1, 1990 (in this case, the original date of hire)
- The adjusted continuous service date is August 1, 1992 (still the continuous service date adjusted for being out of service)
- Seniority is August 1, 1992 (AS language describes as being calculated the same as adjusted continuous service date)

If the person subsequently promotes to nonrep, the adjusted continuous service date remains the same.

Now let's change the termination date to August 1, 1998

- The continuous service date is August 1, 2004 (person was gone more than five years so continuous service was broken and the date becomes date of rehire)
- The adjusted continuous service date is August 1, 2004 (continuous service was broken and a new date established versus adjustment of the prior date)
- Seniority is August 1, 2004 (SPS language)

When the employee transfers, the continuous service date remains the same, i.e., no date adjustment required because a new date was established when service was broken (person gone more than five years).

When the employee promotes to nonexempt nonrep, the continuous service date remains the same.

If the promotion is to **exempt** nonrep, s. 230.35(1m)(f), Wis. Stats., applies and:

- The continuous service date is August 1, 1990 (statute says the continuous service is no longer broken)

- The adjusted continuous service date is August 1, 1996 (the continuous service date adjusted for being out of service 6 years)
- Seniority is August 1, 1996

For the seniority date to be different than the adjusted continuous service date, the **rehire must be to SPS**. If the rehire is to AS or nonrep first, and the person later moves to SPS, the adjusted continuous service date and seniority date will remain the same.

REFERRAL OF QUESTIONS

Employee Questions:

Employees with questions regarding seniority and continuous service should contact their agency Human Resources Office directly.

Employer Questions:

Employer questions regarding information contained in this bulletin should be directed to Paul Ostrowski by phone at (608) 267-0343 or by e-mail at paul.ostrowski@osser.state.wi.us.

James A. Pankratz, Administrator
Division of Compensation and Labor Relations

PLO