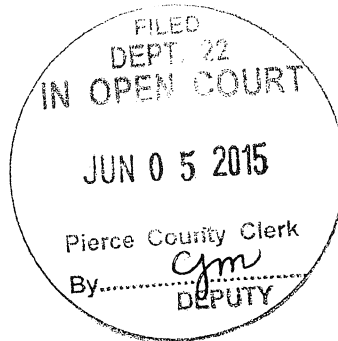


The Honorable John R. Hickman  
Hearing Date: June 5, 2015  
Time: 1:30 p.m.



**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

KEVIN DOLAN and a class of similarly  
situated individuals,

Plaintiffs,

v.

KING COUNTY, a political subdivision of  
the State of Washington,

Defendant.

NO. 06-2-04611-6

**ORDER MODIFYING PERMANENT  
INJUNCTION**

**Motion Before the Court**

The Class moved to modify the Permanent Injunction, entered on April 17, 2009 and modified on March 2, 2012, to require the Department of Retirement Systems ("DRS") and King County (to the extent it has further responsibilities on this matter) to within a reasonable time provide service credit to class members so that they can retire in accordance with PERS provisions. King County and the Class have entered into a separate Stipulation, pursuant to which King County agrees to the entry of this Order. The Court has approved the Stipulation. DRS initially opposed the motion, but now has agreed to the entry of this Order in the interests of partially settling this long dispute and obtaining a workable structure for the complexities of establishing the extensive retroactive service credit involved in this litigation.

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1. The Court's Permanent Injunction of April 17, 2009, and its modification of that injunction on March 2, 2012, remains in effect and are modified as set forth below.

2. The Class subject to this injunction is defined as

All W-2 employees of King County public defense agencies and any former or predecessor King County public defense agencies who work or who have worked for one of the King County public defense agencies within three years of the filing of this lawsuit;

and

All W-2 employees of the King County public defense agencies and any former or predecessor King County public defense agencies who have not worked for one of the King County public defense agencies within three years of the filing of this lawsuit, but who work or have worked in a PERS-eligible position within three years of the filing of this lawsuit.

The Class does not include W-2 King County public defense employees who were never in a PERS-eligible position (e.g., a position with insufficient hours and/or months in a year).

The parties' prior settlement agreement listed Class Members then known to the parties. Additional Class Members have been identified since then and the parties learn of the existence of additional Class Members from time to time. These individuals are Class Members entitled to relief under this injunction if they are within the Class definition.

3. Class Members are eligible to receive retroactive PERS service credit for work as a King County public defense employee during the period January 1, 1978 to March 31, 2012. Class members who (a) are now enrolled in PERS 1, (b) who are or were employed in a PERS-eligible position at some time during the class period (January 24, 2003 to July 1, 2013), and (c) who have not yet attained thirty years of PERS-eligible service, are entitled to retroactive PERS-eligible service credit for service at the King County public defense agencies before 1978, but only to the extent that service or a portion of the service does not cause their total PERS service credit to exceed the thirty-year maximum service credit for PERS.

1           4.       In calculating the Class Member's retroactive PERS-eligible service, DRS is to use  
2 the Class Member's initial hire date with one of the King County public defense agencies, with  
3 three exceptions that apply to a few Class Members. The exceptions are: (a) for Class Members  
4 hired by one of the public defense agencies before January 1, 1978, their retroactive PERS-eligible  
5 services under this Injunction shall only begin on January 1, 1978; (b) for those Class Members  
6 initially hired in a position that is not a PERS-eligible position their eligible service begins when  
7 they start working in a PERS-eligible position, (c) for those Class Members already enrolled or  
8 previously enrolled in PERS 1, 2 or 3, their PERS eligible service commencement date will be their  
9 prior enrollment date, but they will earn retroactive monthly service for their work as a King  
10 County public defense employee starting with their initial hire with one of the public defenses  
11 agencies, unless the service is within exceptions (a) or (b) stated above, in which case the  
12 provisions of those exceptions applies, or unless they are within the provision concerning PERS 1  
13 members with less than 30 years of PERS service, as stated in paragraph 3.

14           5.       King County will provide DRS with the employment and pay information for the  
15 Class Members, if it has not already provided that information to DRS, and it shall complete any  
16 forms, documents or correction reports reasonably requested by DRS, if any are required. DRS  
17 shall accept the Class Members as PERS members with all the rights and privileges of other PERS  
18 members, including the payment of retirement benefits that reflect the retroactive PERS service  
19 credit established pursuant to this Injunction. Class Members shall retire as a member of the PERS  
20 Plan in which they are currently enrolled or, if the Class Member is not currently enrolled in a  
21 PERS plan, that Class Member shall be a member of PERS Plan 2 and shall not be provided with  
22 the option of choosing PERS Plan 3 now or in the future because these Class Members have  
23 irrevocably chosen Plan 2 through this action. Class Members who are already enrolled in PERS  
24 Plan 3 are not entitled to any retroactive adjustments to their defined contribution account as a  
25 result of this Order.

26           6.       King County will pay to DRS the employer and the pick-up or employee  
27 contributions (as applicable) attributable to the retroactive PERS service credit of the Class

1 Members established in this Order. The employer contributions are estimated to be approximately  
2 \$19 million and the employee contributions are estimated to be approximately \$13 million. This  
3 Order does not resolve the actual amount of those contributions or when King County will pay  
4 those contributions to DRS.

5 7. King County and DRS do not agree on whether DRS is owed, may assess or should  
6 be permitted to collect any additional charges beyond employer and pick-up or employee  
7 contributions (as applicable) relating to the service credit established in this Order, including,  
8 without limitation, interest on such contributions. This Order does not resolve those issues.

9 8. DRS will provide the Class Members with the service credit established in this Order  
10 while the issues regarding King County's payment of employer contributions, pick-up or employee  
11 contributions (as applicable), interest or other costs or charges are being resolved so that retirement-  
12 eligible Class Members can begin retiring within a reasonable time.

13 9. This Order does not resolve the Class Members' obligation to pay attorney fees or a  
14 method of paying attorney fees.

15 10. For Class Members who are former King County public defense employees as of  
16 April 1, 2012, who were not active members of PERS as of April 1, 2012, and whose PERS  
17 service as a King County public defense employee totaled less than 60 months, King County has  
18 no duty to report employment or pay information to DRS, or to make PERS contributions unless  
19 the Class Member obtains a PERS eligible job after April 1, 2012. Either DRS or the Class  
20 Member may notify King County of the fact that the Class Member has obtained a PERS eligible  
21 job. When King County is so notified, it shall report the Class Member's employment and pay  
22 information and make the PERS contributions, both the employer and the pick-up or employee  
23 contributions (as applicable). The Class Members affected by this paragraph then known to the  
24 parties were listed on Exhibit F in the previous settlement agreement and were called "Group Five"  
25 Class Members. When King County provides the employment and pay information for these Class  
26 Members, DRS shall provide them with the service credit established in this Order. This treatment  
27

1 of "Group Five" Class Members shall not be used in other actions as evidence of a concession by  
2 DRS as to what service credits or contributions are due in other circumstances.

3 11. DRS shall provide class counsel with any information reasonably requested by  
4 Class Counsel concerning Class Members and the implementation of this Injunction and the  
5 Court's previous orders for interim relief. This information includes but is not limited to service  
6 credit calculations, salary/pay history, work history, contributions made and owed according to  
7 DRS, average final compensation for those Class Members already retired, and monthly pension  
8 amounts for retired Class Members. DRS shall not redact personal information about Class  
9 Members, including names and social security numbers, from the information provided to Class  
10 Counsel.

11 12. All other issues, including issues referred to above in paragraphs 6 and 7, are not  
12 decided by this Order.

13 13. Individual issues, if any, that arise concerning the data provided by King County to  
14 determine service credit and/or contributions, the implementation of the Court's injunction regarding  
15 service credit, whether an individual is a Class Member or a Class Member's individual service credits  
16 shall be addressed first by the parties and if they cannot agree, by the Court.

17 14. Following the entry of this Order, the statute of limitations will not be asserted as a  
18 defense in this case. The non-assertion of that defense in this case shall not be used in other actions  
19 as evidence of a concession by King County or DRS that the defense does not apply or lacks merit.

20 15. Pursuant to CR 54(b), the Court finds that there is no just reason for delay of entry of  
21 final judgment on the issues that are resolved in this Order. Accordingly, the Court directs that this  
22 Order Modifying Permanent Injunction shall constitute a final judgment in accordance with CR 54(b)  
23 as to those issues. Failure to make this Permanent Injunction final as to those issues will cause  
24 considerable harm to Class Members who will be unable to retire while parties seek to resolve  
25 funding issues that underlie the service credit ordered here.

1 Dated this 5 day of June, 2015.

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3  
4 John R. Hickman  
JOHN R. HICKMAN  
SUPERIOR COURT JUDGE

5 Presented by:

6 BENDICH STOBAUGH & STRONG, P.C.

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Attorneys for Plaintiffs

10 Approved for entry:

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24 Attorneys for Washington State  
25 Department of Retirement Systems  
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