

**BEFORE THE BOARD OF TRUSTEES
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS**

In the Matter of:)
)
 MERLE E. RALSTON,)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF
MERLE E. RALSTON**

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.610, *et seq.*, an administrative review hearing was held October 28, 1996, in Springfield, Illinois, to consider the appeal of Teachers' Retirement System (TRS) member Merle Ralston. Mr. Ralston petitions the Board to have his retirement annuity calculated upon his term of office as a regional superintendent (August 5, 1991 through August 7, 1995) rather than upon a school year basis (July 1 through June 30). By calculating his final average salary upon his term of office, Mr. Ralston's initial TRS annuity will be increased by \$17.76 per month from \$3,169.74 to \$3,187.50 per month.

The TRS Board of Trustees (Board), the trier of fact in this matter as provided in TRS Rule 1650.620 (80 Ill. Admin. Code § 1650.620), was represented at hearing by its Claims Hearing Committee comprised of the following Board members: Scott Eshelman, Chairperson, James Bruner and Ray Althoff. Sitting as an alternate was Board member Judy Tucker. The Committee was advised in its deliberations by Ralph Loewenstein, Independent Counsel to the Board of Trustees.

TRS' staff position was presented by Thomas Gray, Assistant General Counsel. Mr. Ralston represented himself.

After reviewing the briefs of the Parties and the exhibits submitted therewith, it is the determination of the Claims Hearing Committee that Mr. Ralston's retirement annuity was correctly calculated by staff under the provisions

of 40 ILCS 5/16-133(b) and TRS Rule 1650.460(b) [80 Ill. Admin. Code § 1650.460(b)].

II. Relevant Statutes and Rules

In the instant case, the Claims Hearing Committee must apply 40 ILCS 5/16-133(b) and TRS Rule 1650.460(b). As stated in § 16-133(b):

For purposes of this Section, final average salary shall be the average salary for the highest 4 consecutive years within the last 10 years of creditable service as determined under rules of the board. The minimum final average salary shall be considered to be \$2,400 per year.

In the determination of final average salary for members other than elected officials and their appointees when such appointees are allowed by statute, that part of a member's salary for any year beginning after June 30, 1979 which exceeds the member's annual full-time salary rate with the same employer for the preceding year by more than 20% shall be excluded.

As further stated in TRS Rule 1650.460(b):

The highest four consecutive school years of service within the last ten years of creditable service shall be deemed the four highest consecutive credit years posted to the member's account. Provided, however, if a member is credited with less than one school year, the System shall use partial consecutive years to establish four consecutive years of salary.

III. Issue Statements

The Parties did not agree upon an issue statement. Accordingly, the Committee is left with framing the issues in this case. The Committee finds the issues it must address to be as follows:

- 1) Under the provisions of 40 ILCS 5/16-133(b) and TRS Rule 1650.460(b), is Mr. Ralston, the former Brown, Cass, Schuyler Regional Superintendent, entitled to have his final average salary for his highest four consecutive

years within the last ten years of creditable service determined upon his term of office as Regional Superintendent (August 5, 1991 through August 7, 1995), or upon his four highest consecutive school years creditable of service (July 1, 1991, through June 30, 1995)?

- 2) Is TRS estopped from calculating Mr. Ralston's final average salary upon his four highest consecutive school years of creditable service, rather than his term of office as Regional Superintendent, based upon an unsigned memorandum dated July 25, 1972, purporting to grant a variance to regional superintendents in the calculation of their final average salary?
- 3) Does 40 ILCS 5/16-133(b) provide special final average salary calculation for regional superintendents based upon their term of office?

IV. Statement of Facts

Prior to hearing, the Parties stipulated to the following facts. The Committee adopts these stipulations as the facts of the case:

- 1) Mr. Ralston was the Regional Superintendent of the Brown, Cass, Schuyler Educational Service Region.
- 2) Mr. Ralston's term of office was August 5, 1991 through August 7, 1995.
- 3) Mr. Ralston received \$51,000 each August 5 through August 6, during the four years he was in office.
- 4) The Teachers' Retirement System's (TRS) fiscal year is July 1 through June 30.
- 5) The school year in Illinois is July 1 through June 30.
- 6) TRS computed Mr. Ralston's final average salary to be \$50,682.66.
- 7) Mr. Ralston's initial gross monthly TRS benefit was \$3,169.74.

V. Position of the Parties

Mr. Ralston asserts the following in support of his position that he is entitled to a \$17.76 per month increase in his initial TRS annuity.

- 1) The word “year” in 40 ILCS 5/16-133(b) means any twelve month period selected by the member which maximizes the member’s retirement annuity. In Mr. Ralston’s case, he argues that his year for retirement annuity calculation purposes begins on August 5, the day in 1991, on which his term of office as regional superintendent began.
- 2) TRS is estopped from applying the present version of 40 ILCS 5/16-133(b) which became effective January 1, 1985, and the present version of TRS Rule 1650.460(b) which became effective October 29, 1990, by reason of an unsigned memorandum dated July 25, 1972, purporting to authorize a variance in the calculation of final average salary for regional superintendents.
- 3) 40 ILCS 5/16-133(b) authorizes special treatment of regional superintendents in the calculation of their final average salary.

It is TRS’ position that:

- 1) The word “year” in 40 ILCS 5/16-133(b) means “school year” (which is established by State statute as July 1 through June 30).¹
- 2) TRS is not estopped by a staff memorandum which conflicts with a subsequently enacted statute and rule and which was not even supported by the statute in existence when written.
- 3) 40 ILCS 5/16-133(b) does not authorize a special final average salary calculation for regional superintendents.

VI. Discussion and Analysis

Meaning of “years” in 40 ILCS 5/16-133(b)

40 ILCS 5/16-133(b) provides as follows:

¹ The Illinois School Code establishes July 1 through June 30 as Illinois’ school year. As stated in 105 ILCS 5/24-11: “... ‘school term’ means that portion of the school year, July 1 through the following June 30, when school is in actual session.” (Emphasis added).

For purposes of this Section, final average salary shall be the average salary for the highest 4 consecutive years within the last 10 years of creditable service as determined under rules of the board. (Emphasis added).

“Years of creditable service” are clearly defined in 40 ILCS 5/16-130. As stated in § 16-130 therein:

(a) Except as provided in paragraph (6) of subsection (b) of Section 16-127, only one year of service is creditable for all service in any one school year.

(b) For employment prior to July 1, 1990, service rendered for the regular legal school term, if creditable hereunder, is equivalent to one year of service, and time less than a legal school term shall be counted as a portion of a year in the ratio that the number of days paid bears to the number of days required at the time to constitute a legal school term; however, service of 170 or more days in any school year after June 30, 1959 shall constitute a year of service.²

(c) Creditable service for periods of employment after June 30, 1990 shall be calculated as follows:

For full-time, part-time, and substitute teachers, creditable service in any school year shall be that fraction of a year equal to the ratio of days paid in the legal school term, or the employment agreement if longer, to 170 days.

(d) Creditable service for optional service verified after July 1, 1990 for periods of employment prior to July 1, 1990 shall be calculated as follows:

For full-time, part-time, and substitute teachers, creditable service in any school year shall be that fraction of a year that is equal to the ratio of days paid in the legal school term, or employment agreement if longer, to either the number of days required at the time of service to constitute a legal school term or the number of days in the employment agreement, whichever is greater. However, service of 170 or more days in any school year after June 30, 1959 shall constitute a year of service. (Emphasis added).

² That July 1 through June 30 is a school year for TRS purposes could not be more plainly stated.

The Committee can reach no other conclusion than that final average salary is to be calculated on a school year basis (i.e., the Illinois School Year); which the Committee notes Mr. Ralston agreed to be July 1 through June 30. Furthermore, the Committee notes that the Board of Trustees has adopted the Illinois School Year, July 1 through June 30, as its “year” for final average salary calculation in TRS Rule 1650.460 as authorized in § 16-133(b). As stated in paragraph (b):

The highest four consecutive school years of service within the last ten years of creditable service shall be deemed the four highest consecutive credit years posted to the member’s account.³ (Emphasis added).

Having established the period July 1 through June 30 as the “school year” for final average salary calculation purposes, as authorized by State statute, the Committee cannot now disregard its rules to accommodate Mr. Ralston’s desire to improve his final average salary calculation. As stated in Heavner v. Illinois Racing Bd., 30 Ill. Dec. 706, 432 N.E.2d 290 (1982):

. . . While it is familiar law that administrative regulations enjoy a presumption of validity (*Du-Mont Ventilating v. Department of Revenue* (1977), 52 Ill.App.3d 59, 10 Ill.Dec. 144, 367 N.E.2d 532; *Armstrong Chemcon, Inc. v. The Pollution Control Board* (1974), 18 Ill.App.3d 753, 310 N.E.2d 648), it is equally well established that where an administrative agency adopts rules or regulations under its statutory authority for carrying out of its authorized duties, it is bound by those rules and cannot arbitrarily disregard them or apply them in a discriminate manner. (*Service v. Dulles* (1957), 354 U.S. 363, 1

³ See also TRS Rule 1650.320, Method of Calculating Service Credits. As stated therein:

- a) No more than one year’s service credit shall be granted for total service rendered between July 1 of one year through June 30 of the following year.
- b) If the service rendered on a full-time basis, substitute basis, or part-time basis after June 30, 1990 is less than 170 days between July 1 of one year through June 30 of the following year, then credit for service shall be at a ratio of the actual number of days of service to 170 days.
- c) Service credit for service rendered on a permanent and continuous part-time basis prior to July 1, 1990, between July 1 of one year through June 30 of the following year, shall be at the ratio of creditable earnings to the annual salary rate. Provided, however, that for service after June 30, 1959, if such ratio equals or exceeds the ratio of 170 days to the days in the legal school term, one year of service credit shall be granted. (Emphasis added).

L.Ed.2d 1403, 77 S.Ct. 1152; *Citizens to Preserve Overton Park, Inc. v. Volpe* (1971), 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 136; *Holland v. Quinn* (1978), 67 Ill.App.3d 571, 24 Ill.Dec. 325, 385 N.E.2d 92; *Margolin v. Public Mutual Fire Insurance Company* (1972), 4 Ill.App.3d 661, 281 N.E.2d 728.) In the latter case, the court said at p. 667:

Having once established rules and regulations pursuant to statutory authority, an administrative agency is bound by those rules and regulations and may not violate them. (Emphasis added). (Heavner at p. 710).

Mr. Ralston asks the Committee to read § 16-133(b) as if it stated:

For purposes of this Section, final average salary shall be the average salary for the highest 48 consecutive months within the last 10 years of creditable service.

However, as stated by the Illinois Supreme Court in People ex rel. Nelson v. Olympic Hotel Bldg. Corp., 91 N.E.2d 597 (1950):

... This court will not read into a statute words which are not found therein either by express inclusion or a fair implication. *Landry v. E. G. Shinner & Co.*, 344 Ill. 579, 176 N.E. 895; *First Nat. Bank v. Hahnemann Institutions*, 356 Ill. 366, 190 N.E. 707. (Olympic Hotel at p. 601).

Nowhere in Article 16 is there language authorizing TRS to use a different school year for the computation of a Regional Superintendent's final average salary. Had the Legislature wished to use the formula advocated by Mr. Ralston, they well know how to do so. In effect, Mr. Ralston is asking TRS to utilize the State Employees' Retirement System's (SERS) final average salary formula, which provides:

(a) For retirement and survivor annuities, "final average compensation" means the monthly compensation obtained by dividing the total compensation of an employee during the period of: (1) the 48 consecutive months of service within the last 120 months of service in which the total compensation was the highest, or (2) the total period of service, if less than 48 months, by the number of

months of service in such period; provided that for purposes of a retirement annuity the average compensation for the last 12 months of the 48-month period shall not exceed the final average compensation by more than 25%. (See 40 ILCS 5/14-103.12).

However, the Claims Hearing Committee finds it is not free to substitute SERS' formula for that of TRS. Mr. Ralston's annuity must be based upon his highest four school years of salary, not his highest 48 months.

Mr. Ralston also claims that:

The original calculation of my annuity was not based on my four year average. (August 5, 1991 through August 7, 1995). It was based on my four year, one month, five day average. (July 1, 1991 through August 7, 1995). It was more than a four year average! (Ralston Administrative Review Hearing Packet at p. 54).

The Committee has determined this not to be the case. As explained by the staff, Mr. Ralston's final average salary was based upon his four highest consecutive years, the 1991-92 through 1994-95 School Years. Mr. Ralston's confusion arises in the fact that TRS took into consideration Mr. Ralston partial year of service in which he had a higher salary rate. To recognize the fact that Mr. Ralston experienced a substantial increase in earning rate in 1991-92 with his promotion to regional superintendent, the System blended his 1991-92 salary rate with his final partial year rate to increase his final average salary as it does with all similarly situated TRS members. Rate blending helped Mr. Ralston, it did not hurt him as he believes. Furthermore, TRS has blended earning rates for members whose last year of service was only for a partial year since January 1, 1985, the date the present version of § 16-133(b) was enacted into law. When an administrative agency has construed a particular statute consistently over a period of years as TRS has done in this case, as evidenced by past Employer Guides⁴, it is presumed that the General Assembly has concurred in TRS' interpretation of § 16-133(b). As stated in Freeman Coal v. Ruff, 228 N.E.2d 279 (1967):

⁴ TRS' partial year, average salary computation has been clearly explained in every TRS Employer Guide since the 1986 edition (See Supplement to TRS Position Statement starting at p. 77 of Mr. Ralston's Hearing Packet).

Rules of statutory construction are tools or aids for ascertaining legislative intention and the application of a particular rule is not in and of itself determinative of legislative intention. It is, of course, axiomatic that longstanding contemporaneous construction by ones charged with the administration of a particular statute is entitled to great weight in construing the statute. This doctrine of contemporaneous construction becomes even more persuasive when it has been of longstanding and the legislature, presumably aware of the administrative interpretation, has amended other sections of the act during the period involved but left untouched the sections subject to the seemingly approved administrative interpretation. Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 414 Ill. 275, 111 N.E.2d 329 (1953). Bell v. South Cook Co. Mosquito Abatement Dist., 3 Ill.2d 329 (1954). Mississippi River Fuel Corp. v. Illinois Commerce Comm'n, 1 Ill.2d 509, 116 N.E.2d 394 (1953). (Emphasis added). (Ruff at p. 282).

Since 1986, there have been numerous changes to Article 16 of the Pension Code and, yet the Illinois General Assembly has not seen fit to enact legislation to change TRS' interpretation of 40 ILCS 5/16-133(b).

The Committee finds Mr. Ralston claim of misapplication of 40 ILCS 5/16-133(b) to be without merit.

Mr. Ralston's Claim of Estoppel

First, the Committee would note that the memorandum referred to by Mr. Ralston was written thirteen years prior to the present version of 40 ILCS 5/16-133(b) and eighteen years prior to the present version of TRS Rule 1650.460(b). Based upon these facts alone, the memorandum was obsolete and is no basis for a claim of estoppel.⁵

⁵ Furthermore, the memorandum was unsupported by the version of § 16-133(b) in effect in 1972 which stated:

(B) A member retiring on or after June 1, 1971 shall receive the larger of (a) the total age retirement allowance provided under paragraphs (A) 1, 2, and 3 of this section or (b) the retirement allowance derived from the following formula:

(1) If he is age 60 or over, the retirement allowance shall be 1 ½% of the average salary for the highest 4 consecutive years within the last 10 years of creditable service, as determined by the rules of the board, for each year of service creditable to him, plus the sum of \$7.50 per year for each year of creditable service not to exceed a total of \$150; or 1.67% of such average salary for each of the

The Committee goes on to note that TRS is required to apply 40 ILCS 5/16-133(b) as written. The fact that a prior TRS staff member issued a memorandum directing staff to disregard § 5/16-133(b) in computing final average salaries for Regional Superintendents is irrelevant. The recent decision in Deford-Goff v. Ill. Dept. of Public Aid, 217 Ill. Dec. 612, 667 N.E.2d 701 (issued June 26, 1996) deals specifically with the misapplication of a statute by a government employee. As stated therein:

The affirmative acts of the State inducing detrimental reliance in another generally must be the acts of the State itself, such as legislation, rather than the unauthorized acts of a ministerial officer. See Bank of Pawnee v. Joslin, 166 Ill.App.3d 927, 939, 118 Ill.Dec. 484, 492, 521 N.E.2d 1177, 1185 (1988). As stated in Halleck v. County of Cook, 264 Ill.App.3d 887, 894, 202 Ill.Dec. 374, 378-79, 637 N.E.2d 1110, 1114-15 (1994), quoting City of Chicago v. Unit One Corp., 218 Ill.App.3d 242, 246, 161 Ill.Dec. 67, 70, 578 N.E.2d 194, 197 (1991):

“If a [government entity] were held bound through equitable estoppel by an unauthorized act of a governmental employee, then the [government] would remain helpless to remedy errors and forced to permit violations ‘to remain in perpetuity.’ ”

In Brown’s Furniture, an out-of-state retailer was held liable for collection and payment of Illinois use tax. The retailer contended the State agency was estopped from collecting the tax since it had been informed by an agency employee that it was not required to do so and had previously received differing explanations of why it was liable for the tax. The supreme court held that the State was not estopped by misinformation given by agency employees and there was no evidence the agency had fraudulently or unjustly misled the retailer into not collecting the tax. Brown’s Furniture, 171 Ill.2d at ---- - ---- 216 Ill.Dec. at 548-49, 665 N.E.2d at 806-07. (Deford-Goff at p. 616).

first 10 years of creditable service; 1.90% for each year in excess of 10 but not exceeding 20; 2.10% for each year in excess of 20 but not exceeding 30; and 2.30% for each year in excess of 30, whichever is greater. The maximum annuity as computed under this paragraph shall be 75% of average salary.

The 1972 version clearly contained no exception for regional superintendents.

The Deford-Goff case makes it clear that a government body is not estopped from enforcing a statute as written despite a dated memorandum to the contrary. It is clear to the Committee that Mr. Ralston has no claim of estoppel regarding the computation of his annuity.

Exception For Regional Superintendents

Lastly, Mr. Ralston argues that it was the intent of the Illinois General Assembly to allow regional superintendents to have their final average salary calculated upon the dates of their term of office. However, where a statute is clear on its face, legislative intent arguments cannot be raised to reach a result not provided therein. While 40 ILCS 5/16-133(b) provides relief from the 120% salary cap imposed on final year earnings for elected officials, it does not provide Regional Superintendents a special 4 year average salary calculation. Section 16-133(b) clearly demonstrates the Legislature's ability to write an exception for Regional Superintendents. That the exception did not extend to final average salary calculations, confirms that the Legislature intended Regional Superintendents should be treated no differently than any other TRS members in this regard.

VII. Conclusion

Based upon the foregoing, it is the Claims Hearing Committee's recommendation that the staff decision to deny Mr. Ralston's claim for a final average salary calculation based upon his term of office as regional superintendent be upheld. The committee finds that Mr. Ralston was treated in accordance with 40 ILCS 5/16-133(b) and TRS Rule 1650.460(b) and no differently than any other similarly situated TRS member.

VIII. Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed Decision and any exceptions filed by the Petitioner.