



### **III. Issue**

The following issue is presented to the Board in this case:

Pursuant to the provisions of 40 ILCS 5/16-133.5(a)(3), is a TRS member who failed to file her ERI election by the February 28, 1994, election deadline, eligible to late file an election application where the member's decision to retire was made after the election application deadline had passed, and was based upon circumstances occurring after February 28, 1994?

### **IV. Findings of Fact**

Based upon the information submitted by Ms. Parisi, the Board has determined the following to be the facts of this case:

1. TRS member Virginia Parisi failed to file an ERI election application with TRS by the February 28, 1994, election deadline.

2. By letter dated March 5, 1994, five days after the close of the ERI election period, Ms. Parisi sought permission to file a post-deadline ERI application after Ms. Parisi learned on March 3, 1994, that her daughter in California had separated from her husband and had requested that Ms. Parisi come to California to assist the daughter in caring for her children.

3. There was no event prior to the February 28, 1994, ERI election deadline which impacted Ms. Parisi's ability to file her ERI application.

4. Ms. Parisi's request for late election was denied by TRS on March 18, 1994.

5. Ms. Parisi filed her request for administrative review on March 24, 1994.

### **V. Position of the Parties**

It is Ms. Parisi's position that TRS should take into account her daughter's family problems and waive the ERI election filing deadline so that she can move to California to assist her daughter. It is TRS' position that Ms. Parisi failed to file her ERI application by the February 28, 1994 deadline, and the statute does not allow TRS to grant an exception and accept her late application.

### **VI. Discussion and Analysis**

The language of 40 ILCS 5/16-133.5(a)(3) is plain and unambiguous. The General Assembly clearly set February 28, 1994, as the deadline for filing ERI election applications with TRS, and Ms. Parisi failed to meet the statutorily imposed deadline. Furthermore, it is clear from the record that nothing prevented Ms. Parisi from meeting the ERI filing deadline. In such a

situation, the Board is constrained to apply subsection (a)(3) as written. As stated in Am. Buyers Club v. Zuber, 15 Ill. Dec. 440, 373 N.E.2d 786 (1978):

Moreover, there is no rule of construction which empowers a court to declare that the legislature did not mean what the plain language of the statute imports (Western National Bank of Cicero v. Village of Kildeer, 19 Ill.2d 342, 350, 167 N.E.2d 169, 178-74 (1960).) (Zuber at p. 443).

This rule of construction applies equally to administrative tribunals. Furthermore, as stated in Homefinders, Inc. v. City of Evanston, 2 Ill. Dec. 565, 357 N.E.2d 785 (1976):

Since an administrative agency is a creature of the legislative body from which it derives its existence and authority, any of its acts or orders which are unauthorized by the enabling statute or ordinance are void. (Homefinders at p. 572).

Were the Board to grant an exception in this case, it would have to ignore 40 ILCS 5/16-133.5(a)(3) in its entirety. The Board finds it is constrained from doing this. The Board further finds it is obligated to give meaning to the deadline language of 40 ILCS 5/16-133.5(a)(3). As stated in Atlas Finishing Co. v. Anderson, 83 N.E.2d 177 (1949):

It would violate another fundamental rule of construction of statutes, that meaning must be given wherever possible to the language employed in legislative enactments, and that no construction will be given it which would otherwise render language meaningless. (Atlas at p. 180).

By granting an exception to Ms. Parisi, the Board would be adjudicating subsection 133.5(a)(3) out of existence and opening the door for requests more remote in time than Ms. Parisi's.

## **VII. Conclusion**

Based upon the foregoing and the Claims Hearing Committee's recommendation that the Board strictly adhere to the election deadline set forth in 40 ILCS 5/16-133.5(a)(3), the Board hereby denies Ms. Parisi's request to participate in the ERI Program.

## **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 Claimant. 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 Claimant.