

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

In the Matter of:)
)
 BARBARA SIROTIN,)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS
HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW
OF BARBARA SIROTIN**

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.610 *et seq.*, an administrative review hearing was held September 29, 1994, in Chicago, Illinois, to consider the appeal of Teachers' Retirement System (TRS) member Barbara Sirotin, challenging the staff determination denying Ms. Sirotin's requests to purchase optional service credit for the period June 8, 1969 through June 8, 1970, when Ms. Sirotin resigned her teaching position at Mannheim School District No. 83 to accompany her husband on a world tour funded by a foreign travel cash grant awarded to her husband through his masters degree program.

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: Judy Tucker, Chairperson, James Bruner, and Ray Althoff. 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, TRS Assistant General Counsel. Ms. Sirotin appeared on her own behalf to present her claim to the Claims Hearing Committee.

After hearing the presentations of the parties and considering all the pleadings and hearing exhibits presented in support of their

respective positions, it is the determination of the Claims Hearing Committee that Ms. Sirotin is not eligible to purchase optional service credit for the 1969-70 School Year under the provisions of Ill. Rev. Stat., ch. 108 1/2, § 116-127(11) (1969).

II. Relevant Statutes and Rules

In the instant case, the Board is asked to determine if the period Ms. Sirotin was away from teaching in 1969 and 1970 is eligible for purchase as optional service credit under the provisions of Ill. Rev. Stat., ch 108 1/2, § 16-127 (11) (1969), the Statute in effect during the period in question in this administrative review which states:

16-127. § 16-127. Creditable service--computation of credits. The following periods of service, subject to the limitation in sub-paragraph (2) of Section 16-123, shall be considered creditable service, and each member shall receive credit for all such service for which satisfactory evidence is supplied to the Board, as of the dates specified:

(11) Any periods after July 1, 1963, for which a teacher, as defined in Section 16-106, is granted a leave of absence provided the member returns to teaching following the leave; however, total credit under this paragraph may not exceed 1 year. Credit is conditioned upon the member making the required payments, as of the date the payments are completed. (Emphasis added)¹

¹ The statutory provision dealing with leaves of absence remains virtually unchanged to this day. As stated in 40 ILCS 5/16-127(b)(5):

(b) The following periods of service shall earn optional credit and each member shall receive credit for all such service for which satisfactory evidence is supplied and all contributions have been paid as of the date specified: ...

(5) Any periods for which a teacher, as defined in Section 16-106, is granted a leave of absence, provided he or she returns to teaching service creditable under this System or the State Universities Retirement System following the leave; ... (Emphasis added).

III. Issue Statement

The parties agree the sole issue presented in the instant administrative review to be:

Is a TRS member who unequivocally resigned her teaching position, to accompany her spouse on a world tour funded through a foreign travel cash grant awarded to her husband through his masters degree program, with no intention of returning to the employment of the district from which she resigned, and who was not granted a leave of absence by her employing district, eligible to purchase optional service credit under the provisions of Ill. Rev. Stat., ch. 108 1/2, § 16-127(11) (1969), now 40 ILCS 5/16-127(b)(5)?

The Claims Hearing Committee finds this to be an accurate statement of the issue presented and adopts it as the issue statement in Ms. Sirotin's administrative review.

IV. Statement of Facts

The parties have stipulated to the following:

1. By letter dated May 7, 1969, Ms. Sirotin resigned her teaching position with Mannheim School District No. 83.
2. Ms. Sirotin was not granted a leave of absence for the 1969-70 School Year by the School Board of Mannheim School District No. 83.
3. Ms. Sirotin was not promised renewed employment by Mannheim School District No. 83 upon her return from her world tour with her husband.
4. Ms. Sirotin was on a world tour with her husband from June 8, 1969 through June 8, 1970 and was not employed by Mannheim School District No. 83 during this period.

Upon review, the Claims Hearing Committee adopts these stipulations as the facts of the case.

V. Positions of the Parties

It is Ms. Sirotin's position that while she was not granted a leave of absence by her employer, Mannheim School District No. 83, when she left teaching at the conclusion of the 1968-69 School Year to accompany her husband upon his fellowship funded world tour (and, in fact, resigned her teaching position with District No. 83 to do so) that the Claims Hearing Committee and Board should consider her absence from teaching during the 1969-70 School Year to be "in the spirit of leaves of absence that are given TRS credit."

It is TRS' position that the statutory mandate of Ill. Rev. Stat., ch. 108 1/2, § 16-127(11) (1969) is plain and unambiguous. Leaves of absence must be "granted". If a leave of absence is not "granted", the period away from teaching cannot simply be characterized as a leave of absence by a member to qualify the member to purchase optional service credit. It is TRS' further position that there is no provision in the Pension Code to allow a member to purchase service credit after resigning his or her teaching position.

VI. Discussion and Analysis

It is the determination of the Claims Hearing Committee that Ill. Rev. Stat., ch. 108 1/2, § 16-127(11) (1969) [present version found at 40 ILCS 5/16-127(b)(5)] does not authorize the purchase of optional service credit where a leave has not been granted nor is there any provision of the Pension Code which authorizes the Claims Hearing Committee to award service credit for periods away from teaching due to resignation.

Ms. Sirotin makes it clear in her request for administrative review dated July 6, 1994, that she was not granted a leave of absence (see Position of Member). This was confirmed by TRS with Ms.

Sirotin's employer, District No. 83 (see Exhibit A). To find in Ms. Sirotin's favor the Claims Hearing Committee must disregard the requirement that a leave must be "granted". However, the Hearing Committee cannot do this because the statutory provision governing credit for leaves of absence is clear and unambiguous and must be given effect by the Claims Hearing Committee and the Board. As stated in Powers v. Retirement Bd., 188 Ill. Dec. 387, 618 N.E.2d 957 (1993):

We have examined the statute in question and find it to be clear, plain and unambiguous. This statute admits of only two circumstances where a participant in the Fund is entitled to a refund of sums paid for the establishment of a widow's annuity; namely, if the police officer is unmarried when he withdraws from service and enters upon his own annuity, or when he withdraws from service and enters upon his own annuity, or when he becomes a widower while still in active service. The plaintiff in this case was married at the time he withdrew from service and entered upon his annuity, and consequently was not entitled to a refund of his contributions under either circumstance set forth in the statute. As our supreme court held in People ex rel. Pauling v. Misevic (1994), 32 Ill.2d 11, 15, 203 N.E.2d 393:

"Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise. (Citations.) Such consequences can be avoided only by a change of the law, not by judicial construction, (citation) and, by the same token, courts are not at liberty to read exceptions into a statute the legislature did not see fit to make, (citation) or, by forced or subtle constructions, to alter the plain meaning or the words employed. (Citations)"

We do not mean to minimize the logic of the plaintiff's argument that the statute as written permits a retention by the Fund of all the plaintiff's contributions for a widow's annuity when there is no possibility for a widow to take. However, since the language of the statute is clear and unambiguous, it must be given effect as written. The plaintiff's argument is one that ought to be addressed to the legislature. (Powers at p. 388 and 389.)

The rule of statutory construction set forth in Powers must be followed by the Claims Hearing Committee and the Board in Ms. Sirotin's case. The Claims Hearing Committee and the Board are without power to disregard the plain language of § 16-127(11) to find a leave of absence where none was "granted".

Additionally, the Pension Code does not provide service credit for periods away from teaching by reason of a resignation. Ms. Sirotin is asking TRS to ignore her resignation and to go outside the statutory provisions of 40 ILCS 5/16-127 to grant her the relief she seeks. However the Claims Hearing Committee and Board are without power to take this step. 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).

VII. Conclusion

Based upon the foregoing, it is the Claims Hearing Committee's recommendation that the staff determination in the instant case, which is supported by the plain and unambiguous language of Ill. Rev. Stat., ch. 108 1/2, § 16-127(11), as well as that of 40 ILCS 5/16-127(b)(5) be upheld, and Ms. Sirotin's request to purchase optional service credit for the 1969-70 School Year be denied.

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 of the Proposed Decision 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.