

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

In the Matter of:)
)
)
 Scott Birtman)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF SCOTT BIRTMAN**

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner Scott Birtman agreed with System staff that his request for administrative review would be presented to the TRS Board of Trustees' Claims Hearing Committee solely upon the record agreed to by the parties. The Claims Hearing Committee met on May 19, 2010, to consider Mr. Birtman's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman Cynthia O'Neill and Committee members Jan Cleveland and Janice Reedus.

Scott Birtman has filed the instant appeal, claiming he should be allowed to purchase substitute teaching service performed at the Bridge View and Challenger Day Schools in Deerfield and Northbrook, Illinois at the public school optional service rate set forth in 40 ILCS 5/16-128(b), rather than at the optional private school teaching rate set forth in §16-128(d-5). As further explained in this decision, the Committee finds that the staff properly assessed Mr. Birtman the private school optional service teaching rate.

Findings of Fact

Based upon the exhibits contained in the Claims Hearing Packet and the statements of the parties, the Committee makes the following findings of fact.

- 1) Bridge View and Challenger Day Schools is and was a for-profit private school and not a public school.
- 2) Scott Birtman substitute taught 29 days at Bridge View and Challenger Day Schools in 1989 and 1990 (.157 of a school year).
- 3) For Mr. Birtman to purchase .157 of a year of private school teaching service credit, the cost if purchased prior to March 11, 2010, would be \$3,918.98.
- 4) The same amount of TRS covered public school subbing if purchased prior to March 11, 2010 would be \$615.58
- 5) Interest is still accruing on Mr. Birtman's private school service credit.
- 6) Mr. Birtman was paid by Bridge View and Challenger Day Schools and issued W-2's for his subbing service.

Discussion and Analysis

Mr. Birtman makes two arguments in support of his claim to have his substitute teaching service at Bridge View and Challenger Day Schools treated as public school teaching. First, Mr. Birtman argues that since the students were referred from public schools and their tuition was paid for by the referring public schools this transformed Bridge View and Challenger Day Schools into a TRS covered public school. Second, Mr. Birtman argues that the term "substitute teaching" in 40 ILCS 5/16-106.3 and §16-127(b)(8) means substitute teaching in any school setting without restriction.

The Claims Hearing Committee finds these arguments without merit for the following reasons.

1) Birtman's "look to the source of funding" argument:

The First District Appellate Court has rejected Birtman's "source of funding" argument in Falato v. Teachers' Retirement System, 209 Ill. App. 3d 419 (1991). In Falato, a band teacher who was employed by a private corporation to teach public school students in a TRS covered public school was found ineligible to purchase such service.

As found by the Court:

Falato argues that “teacher” as defined in the Illinois Pension Code of 1963 (and, by implication, in the School Code of 1961) includes any certified teacher who teaches in Illinois public common schools, whether or not such teacher is actually employed by an Illinois school district. Falato bases his interpretation on the use of the words, “teaches or is employed in the public common schools,” asserting that the implication created therefrom is that only one of the two criteria need be met, i.e., that a teacher need only teach in or be employed in the public common schools. Since Falato taught in public common schools, he argues that he need not have also been an employee of the public common schools. On the basis of this interpretation, Falato contends that he is entitled to service credit for the 1962-65 school years, even though he was in fact an employee of and compensated by MESI, rather than the school district.

We disagree with Falato's interpretation of Section 25-4 of the School Code of 1961 and Section 16-106(a) of the Illinois Pension Code of 1963. While the language of Section 25-4 of the School Code of 1961 and Section 16-106(a) of the Illinois Pension Code of 1963 is arguably ambiguous, we find that use of the words, “teaches or is employed by” was not, as Falato contends, intended to distinguish between teachers who are employees in the public common school and teachers who are not employees but who nevertheless render teaching services in the public schools. Rather, such words were intended to distinguish between persons rendering actual teaching services and certain other persons (such as principals, librarians, school nurses, etc.) who, while not “teachers” in the traditional sense, nevertheless were to be accorded similar rights under the Pension Code.

More recently, the TRS Board of Trustees reached the same conclusion in the Administrative Review of Signe Oakley. As stated in the Oakley decision:

It is clear from the record that Ms. Oakley was an employee of the Adams County Mental Health Center and that the Center was not a public agency. Ms. Oakley asks the Committee to look past her employment relationship to find that her service was for the Quincy Public Schools. However, where a person was employed is the test

for determining eligibility to purchase optional service. Extraneous factors such as students taught or funding sources are irrelevant to the determination.

Ms. Oakley served the Center and its students. She had no relationship with the Quincy Public Schools. The District did not hire Ms. Oakley nor did the District pay her salary. The mere fact that Ms. Oakley's students may have resided in the District is irrelevant. Again, the test for purchasing optional service is whether Ms. Oakley was employed by an eligible employer as defined in §16-127(b)(2).

To purchase optional service as a public school substitute teacher, one must substitute in a public school.

2) Private school substitute teaching is purchasable under 40 ILCS 5/127(b)(8).

Under the provisions of 40 ILCS 5/16-127(b)(8), a TRS member may purchase optional teaching service credit for:

Service as a substitute teacher for work performed prior to July 1, 1990.

Mr. Birtman argues that §16-127(b)(8) allows the purchase of substitute teaching of any kind prior to July 1, 1990. However, it is clear to the Committee that the term “substitute” teacher in §16-127(b)(8) means substitute teacher for a TRS covered employer only.

P.A. 86-273 extended TRS membership to substitute and part-time teachers employed by TRS employers effective July 1, 1990. The Act also allowed the purchase of such service performed prior to July 1, 1990 on an optional basis.

Mr. Birtman's argument fails when he argues that 40 ILCS 5/16-106.3 which defines “substitute teacher” as “*any teacher employed on a temporary basis to replace another teacher;*” includes private school substitute teachers and private school subbing. “Teacher” is defined in 40 ILCS 5/16-106 as follows:

The following individuals, provided that, for employment prior to July 1, 1990, they are employed on a full-time basis, or if not full-time, on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term:

- 1) *Any educational, administrative, professional or other staff employed in the public common schools included within this system in a position requiring certification under the law governing the certification of teachers;*

“Substitute” teachers are merely a subclass of “teachers”; not a distinct group as argued by Mr. Birtman. If Mr. Birtman were correct, private school substitute teachers would be contributing TRS members, which of course they are not.

Conclusion

Based on the foregoing, the Claims Hearing Committee finds staff correctly billed Mr. Birtman for his private school substitute teaching service. If Mr. Birtman wishes to purchase those 29 days of service, he must pay the private school optional service teaching cost.

VI. 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.