

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

**In the Matter of:** )  
 )  
 )  
**Julia Hansen,** )  
 )  
 )  
**Petitioner.** )

**RECOMMENDED DECISION**  
**IN THE ADMINISTRATIVE REVIEW OF JULIA HANSEN**

**I. Introduction**

Pursuant to 80 Ill. Admin. Code 1650.610 *et seq.*, an administrative review hearing was held on October 29, 2014, in Springfield, Illinois, to consider the appeal of TRS annuitant Julia Hansen (“Hansen”). Hansen challenges the staff determination that she was ineligible to receive sick leave service credit for 77.5 unused uncompensated sick leave days that were not verified by two of Hansen’s former employers prior to her retirement as required by 40 ILCS 5/16-127(b)(6).

The matter was heard by the Claims Hearing Committee of the Board of Trustees of the Teachers’ Retirement System of the State of Illinois (“TRS Board”), as provided in TRS Rule 1650.620 (80 Ill. Admin. Code 1650.620). The Claims Hearing Committee (“Committee”) was comprised of the following TRS board members: Sonia Walwyn, Chairperson, Cynthia O’Neill, and Mark Bailey. The Presiding Hearing Officer was Ralph Loewenstein. Hansen represented herself. TRS was represented by General Counsel Thomas Gray.

By agreement of the parties, the Committee considered the matter solely upon the agreed hearing record. It is Hansen’s position that she was entitled to service credit for unused sick leave even though it was not verified until after her retirement. Secondly, she asserts that the System is equitably estopped from denying her the sick leave service in question. Specifically, Hansen claims the System assumed responsibility to verify the sick days on her behalf and that she was led to believe the sick days in question were included in her retirement calculation.

It is the staff position that pursuant to 40 ILCS 5/16-127(b)(6) the member must verify sick leave service prior to retirement in order to receive service credit. Furthermore, TRS never promised to prove up Hansen’s sick leave for her, and is not equitably estopped from applying the clear provision of the statute.

After reviewing the briefs and exhibits submitted by the parties, it is the determination of the Committee that the unambiguous language of 40 ILCS 5/16-127(b)(6) precludes the relief sought by Hansen and that Hansen has failed to state a claim of estoppel against the System.

## **II. Findings of Fact**

- 1) Hansen retired July 1, 2012 under the provisions of the Reciprocal Act, 40 ILCS 5/20.
- 2) Hansen's last contributing reciprocal retirement system was the State Universities Retirement System ("SURS").
- 3) Hansen retired utilizing 8.420 years of TRS service credit.
- 4) Hansen last participated in TRS in the 1980-81 school year, 31 years prior to her reciprocal retirement.
- 5) On February 1, 2012, Hansen requested a Sick Leave Credit Brochure via the TRS forms order line.
- 6) On February 7, 2012, Hansen contacted TRS and advised staff that she thought that she had unused sick leave from previous employers. At Hansen's request, TRS member services representative Anthony Bollero ("Bollero") sent a sick leave certification form to Downers Grove CSD 58 ("Downers Grove") which had consolidated with Hansen's previous employer, Puffer-Hefty SD 69.
- 7) TRS would have no independent way of knowing whether or not Hansen had unused sick leave from a prior employer.
- 8) On November 5, 2012, TRS sent Hansen a notification of first payment letter providing detailed information about her retirement annuity. The letter informed Hansen, among other things, of the following: "The total service credit, including sick leave credit: 8.420 years." Hansen did not challenge this notification.
- 9) On April 8, 2013, a sick leave certification was received from Downers Grove for 32.5 sick days earned during the period July 1, 1972 to June 30, 1975.
- 10) On April 17, 2013, based upon data entry of 32.5 sick days from Downers Grove, TRS claims manager Lori Dour notified Hansen of an adjustment to her annuity based upon the addition of the 32.5 sick days to her record.
- 11) On April 29, 2013, based upon the April 8<sup>th</sup> certification, TRS employer services technician Steve Eck sent a sick leave verification to Hansen documenting the addition of the 32.5 sick days.
- 12) On April 29, 2013, a sick leave certification form was sent to Hansen via the TRS forms order line.
- 13) On May 16, 2013, TRS received a sick leave certification from Downers Grove for 45 sick days earned by Hansen during the period August 1, 1975 through December 31, 1980.

- 14) On June 4, 2013, TRS sent a letter notifying Hansen she was not eligible for sick leave credit verified post-retirement.
- 15) If Hansen were to receive post-retirement service credit for the additional sick leave days at issue in this matter, it would cause her TRS annuity to increase by \$21.47 retroactive to her retirement date plus annual increases on that amount thereafter.
- 16) If Hansen were to receive post-retirement service credit for the additional sick leave days at issue in this matter, Hansen's reciprocal annuities from the Chicago Teachers' Pension Fund and SURS would be reduced proportionally. There would be no change in the total amount of her retirement annuity.
- 17) If Hansen were to receive post-retirement service credit for the additional sick leave days at issue in this matter, she would have been eligible for a refund of approximately \$2,137.47 from SURS for a prior purchase of optional service from SURS.

### **III. Analysis**

Hansen's claim against the System fails for the following reasons. First, the TRS Board as a creature of statute must administer benefits according to the provisions of the Pension Code and does not possess the power to grant equitable relief. Second, Hansen has failed to set forth facts sufficient to support a claim of equitable estoppel even if the TRS Board could grant such relief.

#### **1. The TRS Board does not possess power to grant equitable relief.**

An administrative agency possesses no general or common law powers. *Prazen v. Shoop*, 2013 IL 115035. Rather, its powers are limited to those granted to it by the state legislature. "It is well settled that an administrative agency is a creature of statute and therefore any power or authority claimed by it must find its source in the provisions of the statute that created it." *Id.* at ¶36. "The agency's authority must either arise from the express language of the statute or 'devolve by fair implication and intendment from the express provisions of the [statute] as an incident to achieving the objectives for which the [agency] was created.'" *Crittenden v Cook County Comm'n on Human Rights*, 2012 IL App (1<sup>st</sup>) 112437. at ¶78, 973 N.E.2d 408, 362 Ill.Dec. 308 (Ill App., 2012), quoting *Vuagniaux v. Dept. of Professional Regulation*, 208 Ill.2d 173, 186 (2003).

Article 16 of the Pension Code does not authorize the TRS Board to grant equitable relief. As provided in Pension Code Section 16-127(b)(6), optional service credit is available to TRS members for:

*(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 the date specified:*

*..(6)...any days of unused and uncompensated accumulated sick leave earned by a teacher. The service credit granted under this paragraph shall be in ratio of the number of unused and uncompensated accumulated sick leave days to 170 days, subject to a maximum of 2 years of service credit. **Prior to the member's retirement, each former employer shall certify to the System the number of unused and uncompensated accumulated sick leave days credited to the member at the time of termination of service.** The period of unused sick leave shall not be considered in determining the effective date of retirement. A member is not required to make contributions in order to obtain service credit for unused sick leave. (Emphasis added)*

Thus, the unambiguous language of the statute provides that only active members are eligible to establish TRS sick leave service credit. However, Hansen was an annuitant as defined in Pension Code Section 16-118 at the time she attempted to establish the sick leave in question.

The TRS Board of Trustees dealt with a similar issue in the *Administrative Review of Phyllis Clark* (attached). In the *Clark* matter, the TRS Board found that TRS annuitant Clark could not establish optional service post-retirement because the statute, 40 ILCS 5/16-128(e), did not allow it. Similarly in this matter, the applicable Pension Code provision, 40 ILCS 16-127(b)(6), does not allow post-retirement verification of sick leave. As the Illinois Supreme Court stated in *Homefinders, Inc. v. City of Evanston*, 357 N.E.2d 785, 792, 65 Ill.2d 115 (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.”

TRS is bound to apply the Pension Code as written by the General Assembly. Section 16-127(b)(6) does not authorize TRS to grant sick leave credit post-retirement, and in fact expressly requires that sick leave credit may only be granted prior to retirement.

**2. Hansen failed to state facts sufficient to support a claim of equitable estoppel against TRS.**

To support her apparent claim of estoppel, Hansen relies on the fact that a TRS member services representative sent a sick leave verification form to her former employer District 58 on her behalf. This is a routine function that TRS does as a matter of course for any TRS member. TRS staff made no representations to Hansen that it was assuming responsibility to verify her unused sick leave or that it had received verification forms from prior employers.

Hansen received a form email from TRS which stated:

*The Teachers' Retirement System has received all the forms and necessary information to process your claim for retirement. When the claim is completed, you will receive detailed information about the benefit amount*

*and issue date of your check(s). We expect to provide this information to you within four to six weeks.*

The form email made no mention of unused sick leave. After the form email, Hansen received a letter from TRS advising her that she had a total of 8.420 years of TRS total service including sick leave. Hansen did not challenge this number or inform TRS that any sick leave had been omitted from her record.

Estoppel simply does not lie against an agency of the State of Illinois such as TRS. As the TRS Board found in the *Administrative Review of Schaumburg CCSD54*:

*First, it is well settled that estoppel is particularly disfavored when public revenues are at stake. Patrick Engineering, 2012 IL 113148, at ¶ 40. “Anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for its stays within the bounds of his authority and this is so even though the agent himself may have been unaware of the limitations on his authority.” Patrick Engineering, 2012 IL 113148, ¶ 36 (citation omitted).*

*Second, the Committee finds that, as a matter of law, TRS’s General Counsel does not have express authority to bind TRS, particularly in situations where any advice or guidance given is contrary to Illinois law. The Illinois Supreme Court’s recent decision in Patrick Engineering, Inc. v. the city of Naperville is on point. The Patrick Engineering Court held that a plaintiff seeking to invoke equitable estoppel against a municipality must plead specific facts that show (1) an affirmative act by either the municipality itself or an official with express authority to bind the municipality; and (2) reasonable reliance upon that act by the plaintiff that induces the plaintiff to detrimentally change its position.*

*Patrick Engineering, Inc, 2012 IL 113148, ¶ 40.*

Even if member services representative Bollero promised to pursue Hansen’s sick leave, which there is no evidence that he ever did, Bollero was not authorized to make such a promise on behalf of the System. Furthermore, the form email upon which Hansen relies to support her estoppel claim is of no avail to her. The email mentions nothing about sick leave service. Thereafter, Hansen received a letter from the System which did specifically advise her that she had a total of 8.420 years of TRS total service including sick leave. This would have been the time for Hansen to correct her service record with TRS, if in fact she believed that not all sick leave was included. However, that is not what happened. Hansen did not challenge the amount of service credit stated in the letter. No misrepresentation was ever made to Hansen.

Hansen’s argument is similar to that in the *Administrative Review of Ralph Halderson*, an argument that was rejected by the TRS Board:

*Lastly, the Committee finds that the System is not estopped from disallowing the reporting of Mr. Halderson’s State Aid Adjustment earnings. As stated in Gianetti V. Angiuli, 200 Ill. Dec.744, 635 N.E.2d 1083 (1994):*

*Equitable estoppel is a doctrine that is invoked to prevent fraud and injustice and arises whenever a party, by his word or conduct, reasonably induces another to rely on his representations and leads another, as a result of that reliance, to change his position to his injury. (Payne v. Mill Race Inn (1987), 152 Ill.App.3d 269, 276-77, 105 Ill.Dec 324, 504 N.E.2d 193.)(Gianetti at p.751).*

*In the instant case, there was no change of position by Mr. Haldorson to his injury. Mr. Haldorson continued to work in the 24 school districts. He still earned \$311,616.26 from those districts. His only complaint is that he was not allowed to report those earnings to TRS to increase his pension, something he was not allowed to do by the Pension Code in the first place.*

*As further stated in Lewis-Connelly v. Bd. of Ed., 214 Ill. Dec 92, 660 N.E.2d 283 (1996):*

*Defendant correctly asserts that “the doctrine of estoppel cannot be invoked against a public body when the action taken by it was ultra vires, i.e., beyond its authority and void.” (Evans v. Benjamin School District no. 25 (1985), 134 Ill.App.3d 875, 883, 89 Ill.Dec. 637, 480 N.E.2d 1380.) Here, the Board’s action of allowing plaintiff to teach until February 25 was beyond its authority because sections 21-1 and 21-1b prohibited such action. “The doctrine of estoppel may not be applied to validate an ultra vires act, and we will not do so here.” Evans, 134 Ill.App.3d at 883, 89Ill.Dec. 637, 480 N.E.2d 1380. (Lewis-Connelly at p. 96).*

*Under the provisions of § 16-106(a), Mr. Haldorson was not eligible to contribute to TRS because he was not serving in certificated positions in the 24 districts. The Committee finds that, even if Mr. Kennedy had received all the facts from Mr. Haldorson, no representation by a TRS staff member could change the operation of §16-106(a).*

#### **IV. Conclusion**

The Committee finds in favor of the staff in this matter. Hansen is receiving the full retirement annuity to which she is entitled, which she admits. To add sick days to her record post-retirement would be an *ultra vires* act which Article 16 of the Pension Code does not authorize or allow. The Committee has no authority to deviate from the clear provisions of 40 ILCS 5/16-127 (b)(6) requiring sick leave service credit to be verified prior to retirement.

#### **V. Notice of Right to File Exceptions**

Exceptions to this Recommended Decision must be filed within 15 days of receipt by the Petitioner. A Final Decision will be issued by the TRS Board after it has considered this Recommended Decision and any exceptions filed by the Petitioner.