

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

In the Matter of:)
)
 DAVID J. BOHO,)
)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF DAVID J. BOHO**

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.610, *et seq.*, an administrative review hearing was held May 23, 1995, in Chicago, Illinois, to consider the appeal of Teachers' Retirement System (TRS) member David Boho, challenging the staff determination denying Mr. Boho's request to purchase optional service credit for the period Mr. Boho served as an Aircraft Control and Warning Radar Maintenance Instructor while on active duty in the United States Air Force.¹ Mr. Boho has previously purchased two (2) years of optional service credit for time spent on active duty in the Air Force, the maximum amount allowable pursuant to the provisions of 40 ILCS 5/16-127(b)(3).

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.

Prior to hearing, it was agreed between the Parties that Mr. Boho's administrative review would be submitted to the Claims Hearing Committee solely upon the briefs and that oral argument would be waived.

After reviewing the briefs of the Parties and the exhibits submitted therewith, it is the determination of the Claims Hearing Committee that Mr. Boho's

¹ No specific amount of optional service credit has been requested at this point.

service as an Air Force radar maintenance instructor does not qualify for optional service under the provisions of 40 ILCS 5/16-127(b)(2).

II. Relevant Statutes and Rules

In the instant case, the Claims Hearing Committee must interpret and apply 40 ILCS 5/16-127(b)(2). Section 16-127(b)(2) governs the purchase of optional service for “out-of-system” teaching and states:

(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:

(2) Service in a capacity essentially similar or equivalent to that of a teacher, in the public common schools in school districts in this State not included within the provisions of this System, or of any other State, territory, dependency or possession of the United States, or in schools operated by or under the auspices of the United States, or under the auspices of any agency or department of any other State, and service during any period of professional speech correction or special education experience for a public agency within this State or any other State, territory, dependency or possession of the United States, and service prior to February 1, 1951 as a recreation worker for the Illinois Department of Public Safety, for a period not exceeding the lesser of $\frac{2}{5}$ of the total creditable service of the member or 10 years. The maximum service of 10 years which is allowable under this paragraph shall be reduced by the service credit which is validated by other retirement systems under paragraph (i) of Section 15-113 and paragraph 1 of Section 17-133. Credit granted under this paragraph may not be used in determination of a retirement annuity or disability benefits unless the member has at least 5 years of creditable service earned subsequent to this employment with one or more of the following systems: Teachers’ Retirement System of the State of Illinois, State Universities Retirement System, and the Public School Teachers’ Pension and Retirement Fund of Chicago. Whenever such service credit exceeds the maximum allowed for all purposes of this Article, the first service

rendered in point of time shall be considered. The changes to this subdivision (b)(2) made by Public Act 86-272 shall apply not only to persons who on or after its effective date (August 23, 1989) are in service as a teacher under the System, but also to persons whose status as such a teacher terminated prior to such effective date, whether or not such a person is an annuitant on that date.

III. Issue Statement

The Parties agreed prior to hearing upon the following issue statement:

The issue presented in Mr. Boho's administrative review is whether or not the time he spent in the United States Air Force as an instructor qualifies to earn him optional credit under 40 ILCS 5/16-127(b)(2) for "Service in a capacity essentially similar or equivalent to that of a teacher, . . . in schools operated by or under the auspices of the United States, . . . for a period not exceeding the lesser of 2/5 of the total creditable service of the member or 10 years." or is he prohibited therefrom, by applying the definition of "teacher" to 40 ILCS 5/16-127(b)(2), as found in 40 ILCS 5/16-106(1), Teacher: "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", as TRS contends it should be so applied.

However, the Claims Hearing Committee finds the issues raised in Mr. Boho's administrative review to be more accurately stated as follows:

1. Was the time Mr. Boho spent as an Air Force Radar Maintenance Instructor "service in a capacity essentially similar or equivalent to that of a teacher . . . in schools operated under the auspices of the United States . . . ?
2. Is an Air Force Radar Maintenance Instructor a "teacher" under the provisions of Article 16 of the Illinois Pension Code for optional service purposes?
3. Is an Air Force Training Center a "school" under the provisions of Article 16 of the Illinois Pension Code for optional service purposes?

IV. Statement of Facts

Prior to hearing, Mr. Boho proposed the following stipulations:

1. TRS does not allow the purchase of optional service credit for being an instructor in the U.S. military and has not authorized such purchases.
2. The specific objection that TRS has to a branch of the U.S. military certifying a service person as a teacher is that to TRS' knowledge, the U.S. military does not issue public common school teaching certificates.
3. The out-of-system verification forms dating back to 1979 provided Claimant by TRS in its Answer to Interrogatory 9, are authentic copies of all the forms used by TRS for verification, and are admissible.
4. The military records of Claimant received by TRS on October 25, 1993 and the correspondence from Keith R. Jester, M Sgt. U.S.A.F. dated May 16, 1994, to David Thompson, and Claimant's records in possession of TRS, are admissible.
5. The parties make no agreement regarding the content, relevancy, materiality and/or accuracy of said documents authenticated in paragraphs 3 & 4 above.

The System responded to Mr. Boho's proposed stipulations as follows:

TRS agrees with Stipulations 3, 4 and 5.

Stipulation 1 is agreeable with the proviso that if the member establishes that a teaching certificate issued as a result of completing the necessary higher education requirements to teach in elementary or secondary schools was required to perform the instruction by the U.S. military, then credit would be available.

With regard to Stipulation 2, it is TRS' position that instructor certifications granted by the U.S. military do not qualify their recipients to receive TRS optional service credit because they do not qualify the recipient to teach in public common schools.

Based upon the Parties' stipulations and the exhibits contained in Mr. Boho's hearing packet, the Claims Hearing Committee makes the following findings of fact:

1. Mr. Boho served as an Air Force Radar Maintenance Instructor from March 11, 1966 through June 10, 1968.
2. Mr. Boho was not required to hold an elementary or secondary teaching certificate to be employed as an Air Force Radar Maintenance Instructor.
3. Completion of Air Force Instructor Course, AIR 75100-3, did not and does not qualify Mr. Boho to be certificated as a teacher in the Illinois public common school system.
4. An Air Force Personnel Training Center is not the equivalent of a public common school.
5. Mr. Boho was not employed as a teacher for Article 16 purposes when he served as an Air Force Radar Maintenance Instructor.
6. An Air Force Personnel Training Center does not provide elementary or secondary level education.
7. TRS does not allow the purchase of optional service credit for those who served as instructors in the U.S. military unless a teaching certificate is required to serve in the position and the teaching is performed in a secondary or elementary school setting.
8. The U.S. military does not issue public common school teaching certificates.
9. Mr. Boho previously purchased two (2) years of optional service credit for time spent on active duty in the Air Force, the maximum amount allowable pursuant to the provisions of 40 ILCS 5/16-127(b)(3).

V. Position of the Parties

It is Mr. Boho's position that:

1. He was a "teacher" in the Air Force.
2. He taught in a "school" operated by the United States (i.e., an Air Force Training Center).
3. He served in a "capacity essentially similar or equivalent to that of a teacher" while in the Air Force.
4. The Illinois General Assembly intended the instruction of military personnel to be covered by 40 ILCS 5/16-127(b)(2), as evidenced by the decision in Fishman v. TRS, 41 Ill. Dec. 767, 408 N.E.2d 113 (1980).
5. TRS allows out-of-system optional service credit for many forms of non-certificated service outside public common schools.

It is the System's position that:

1. Mr. Boho's position as an Air Force Radar Maintenance Instructor was not equivalent to that of a public school teacher in the public common schools.
2. Mr. Boho was not required to hold an elementary or secondary teaching certificate to be a Radar Maintenance Instructor in the Air Force (i.e., Mr. Boho did not hold a position requiring certification under laws governing the certification of public common school teachers).
3. Mr. Boho did not teach in an elementary or secondary school operated under the auspices of the United States.
4. TRS does not and has not granted optional service credit for non-certificated teaching employment outside the public common schools.
5. The decision in Fishman v. TRS (id.) does not demonstrate that the Illinois General Assembly intended military instruction to be included under 40 ILCS 5/16-127(b)(2).

VI. Discussion and Analysis

40 ILCS 5/16-127(b)(2) governs the purchase of optional service credit and states in relevant part:

(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:

(2) Service in a capacity essentially similar or equivalent to that of a teacher . . . in schools operated under the auspices of the United States . . .

As defined in § 16-106, a “teacher” is:

(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; . . .

The Claims Hearing Committee finds that § 16-127(b)(2) requires equivalency to teaching service covered by Article 16 of the Pension Code. Accordingly, to qualify for optional service credit, a federal teaching position must:

1) be held in the equivalent of a public common school;²

² As stated by the Illinois Supreme Court in Cook v. Board of Directors, 266 Ill. 164 (1914):

. . . The system of free schools thus to be established is limited in its purposes to a good common school education for all of the children of the State. The support of such a school is the primary object for which school districts are organized. The “good common school education” which the legislature is compelled to provide for through our system of common schools is not limited to the primary or intermediate grades but may be extended to include a high school education. The high school for more advanced education is as much a part of our system of free public schools as the district school, in which only the lower grades are taught. (Russell v. High School Board, 212 Ill. 327; People v. Moore, supra.) (Cook at p. 168 and 169).

In other words, “public common schools” are public elementary and secondary schools.

- 2) require certification under the laws governing teacher certification; and
- 3) provide elementary or secondary level instruction in a school operated under the auspices of the United States.

Mr. Boho's radar instruction in the Air Force meets none of these criteria.

Mr. Boho asks the Claims Hearing Committee to ignore 40 ILCS 5/16-106, Teacher, when interpreting § 16-127(b)(2). Mr. Boho's position is that the Committee should adopt the generic definitions of "teacher" and "schools" found in Webster's College Dictionary. For purposes of §16-127(b)(2), "teacher" should be defined as "one who teaches or instructs," and "schools" should be defined as "any place, situation, etc. that instructs or indoctrinates." However, Mr. Boho goes on to undermine his case and negate his suggested statutory interpretation of §16-127(b)(2) by concluding that he served in a "capacity essentially similar or equivalent to that of a teacher." Mr. Boho's suggested definition of "teacher" is so broad that the words "essentially similar or equivalent to" are rendered meaningless. Mr. Boho is really asking the Committee to ignore the phrase "capacity essentially similar or equivalent to that of a teacher" and to read § 16-127(b)(2) as if it stated: "Service . . . (as) . . . a teacher (i.e., one who teaches anything) . . . in schools (i.e., any kind of school) operated under the auspices of the United States."

However, it is clear this is not what the General Assembly intended. When the General Assembly used the phrase "essentially similar or equivalent to that of a teacher," it meant teaching service covered by the System as defined in § 16-106. The Committee finds that the training provided by an Air Force radar instructor to military personnel has absolutely no similarity or equivalency to the teaching performed by public school employees covered by TRS (i.e., the teaching of elementary or high school students).

Mr. Boho's argument that when it comes to Federal employment, TRS should allow optional service credit for any time spent in any place or situation where instruction or indoctrination takes place without limitation is equally without merit. Under Mr. Boho's interpretation of § 16-127(b)(2), a former military or federal prison chaplain would receive optional credit for instructing his or her congregation, a former USDA Extension Service Advisor would receive optional service credit for instructing farmers and a former FBI Academy

instructor would receive optional service credit for training FBI recruits. Such a broad interpretation of the term “school” was clearly not intended by the General Assembly. What the General Assembly did intend was optional service credit for the performance of certificated teaching work in public schools (i.e., service involving elementary and secondary level instruction) in other States or with the federal government and nothing more.

Mr. Boho’s interpretation violates two basic rules of statutory interpretation. One, it requires the Committee to ignore words in the statute. Two, it requires the Committee to read § 16-127(b)(2) in a vacuum. 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).

As further stated in Chrysler Credit Corp. v. Ross, 328 N.E.2d 65 (1975):

In construing any portion of a statute, it is the language of the whole that is read, not words of a section or a provision in isolation; courts will construe the details of an enactment in conformity with its dominating general purpose. (People ex rel. Barrett v. Anderson, 398 Ill. 480, 485, 76 N.E.2d 773; see S. Bloom, Inc. v. Korshak, 52 Ill.2d 56, 284 N.E.2d 257; compare People v. Suddoth, 52 Ill.App.2d 355, 202 N.E.2d 120.) And statutes that relate to the same subject, those in pari materia, are considered together as one, even though they are enacted at different times. See Springhill Cemetery of Danville, Illinois v. Ryan, 20 Ill.2d 608, 170 N.E.2d 619; I.L.P. Statutes § 131. (Ross at p. 71).

These rules of statutory construction are equally applicable to administrative tribunals [See Heifner v. Bd. of Ed. of Morris Comm. H.S. Dist. No. 101, 335 N.E.2d 600 (1975)] and must be followed in this case. In doing so, the Committee can only conclude out-of-system teaching performed at the elementary or secondary level is eligible for purchase.

Furthermore, the Committee finds that TRS has been consistent in its interpretation of 40 ILCS 5/16-127(b)(2) and has denied purchase requests similar to Mr. Boho's [see Hearing Packet, pages 82 through 85]. As stated by the Illinois Supreme Court in Ill. Consol. Tel. Co. v. Ill. Commerce Com'n, 69 Ill. Dec. 78, 477 N.E.2d 295 (1983):

This court has recognized that while they are not binding on the court, "interpretations by administrative agencies express an informed source for ascertaining the legislative intent." (citations omitted) (the interpretations of statutes by administrative bodies constitute an informed source for guidance to ascertain the legislature's intention when it enacted the statute); (citations omitted) (a construction placed on a statute by a departmental agency is entitled to great weight, though a court still retains its authority to construe the statute to the contrary).

This deference to administrative constructions is often applied in the case of factual situations where constructions have been consistently adhered to for a long period of time. (citations omitted) Yet, while lack of consistency or duration may affect the weight a court will give to an administrative interpretation in a particular case (citations omitted), consistency and duration are not requisites for applying the rule (citations omitted).

As the court in *City of Richmond v. Drewry-Hughes Co.* (1918), 122 Va. 178, 193, 90 S.E. 635, 94 S.E. 989, 992, explained:

"It is true that the rule of interpretation which permits the courts to look to the practical construction adopted by executive officers is usually applied to cases in which such construction has continued and been acquiesced in for a long period of time; but it is not to be confined to such cases. One reason for the rule is that the officers charged with the duty of carrying new laws into effect are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the new law, and to have formed an independent, conscientious, and competent expert opinion thereon." (Ill. Consol. at p. 83-84).

The Committee finds TRS' consistent interpretation that § 16-127(b)(2) does not cover military instruction persuasive.

Mr. Boho next asserts "countless members . . . qualify for out-of-system service credit who were neither certificated teachers nor employed in a public common school." The Committee finds this assertion to be based upon the following misunderstandings by Mr. Boho:

(a) The employees cited by Mr. Boho do not receive optional service for the certificated teaching they perform in the State of Illinois. The employees mentioned receive active teaching service credit under 40 ILCS 5/16-127(a).³

(b) The employees cited are certificated teachers who teach at the elementary and secondary level in state institutions such as the Jacksonville School for the Deaf, the Madden and Tinley Park Mental Health Center Juvenile Wings, or any other number of State Facilities housing children.

(c) All persons employed in the Department of Corrections are not members of TRS. Only certificated teachers in the Department of Corrections Public School System are members of TRS. These persons teach at the secondary education level.

(d) School superintendents are included within the definition of "teacher" in Article 16 [see 40 ILCS 5/16-106(1)]. They are certificated by the Illinois State Board of Education and come from the teaching ranks. It is clear to the Committee that Mr. Boho does not fully understand the teacher certification process in Illinois.

(e) Speech correction and special education teachers are certificated throughout the United States.

The Committee finds Mr. Boho's arguments in this area to be unavailing.

Lastly, Mr. Boho cites Fishman v. TRS, 41 Ill.Dec. 767, 408 N.E.2d 113 (1980) for the proposition that the General Assembly intended military instruction to be included under § 16-127(b)(2). Fishman is not relevant to Mr. Boho's case. At the time of the Fishman decision, optional service credit for military service was

³ Sec. 16-127. Computation of creditable service. (a) Each member shall receive regular credit for all service as a teacher from the date membership begins, for which satisfactory evidence is supplied and all contributions have been paid.

only available to those who were TRS members prior to their military service. Fishman and several other TRS members who were not TRS members prior to their military service challenged this distinction. The Court found the distinction between those who were TRS members prior to military service and those who were not to be a permissible distinction for equal protection purposes. There was no finding by the Court in Fishman that the legislature intended to ease the transition from military to civilian life by allowing a member to count military service as teaching service under 40 ILCS 5/16-127(b)(2) after the member purchased all the military service available under 40 ILCS 5/16-127(b)(3) as Mr. Boho asserts.

It is clear to the Committee that § 16-127(b)(2) and (b)(3) are separate and distinct. Military service credit is provided solely under (b)(3). Mr. Boho admits he has received all credit available thereunder. The Committee finds this to be all the optional service credit available for Mr. Boho's military service.

Based upon the foregoing, it the Claims Hearing Committee's recommendation that the staff determination denying Mr. Boho's request to purchase optional service for the time he spent as a Radar Maintenance Instructor in the U.S. Air Force be upheld.

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.