

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

**In the Matter of:**                    )  
  )  
                  **PHYLLIS CLARK,**            )  
  )  
                  **Petitioner.**                )

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING  
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF  
PHYLLIS CLARK**

**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 Phyllis Clark, challenging the staff determination denying Ms. Clark's request to purchase optional service credit for substitute teaching claimed to have been performed in the Chicago Public Schools. Ms. Clark's request was denied because her claim was submitted after her retirement from teaching and her receipt of annuity payments from TRS.

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. Clark appeared on her own behalf to present her claim to the Claims Hearing Committee. Ms. Clark was accompanied at hearing by her husband.

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. Clark is not eligible to purchase optional service credit for her claimed substitute teaching under the provisions of 40 ILCS 5/16-128(e).

## **II. Relevant Statutes and Rules**

The purchase of optional service credit for substitute teaching post-retirement and post-receipt of TRS annuity payments is governed by 40 ILCS 5/16-128(e), which states:

The contributions required under this Section may be made from the date the statement for such creditable service is issued until retirement date. All such required contributions must be made before any retirement annuity is granted.

## **III. Issue Statement**

The Parties failed to agree upon a statement of issues prior to hearing. However, after hearing the Parties' arguments and reviewing the exhibits submitted, the Claims Hearing Committee determines the issue raised in Ms. Clark's administrative review to be:

Is a retired TRS member in receipt of her first three (3) TRS monthly annuity payments still eligible to purchase optional service credit under the provisions of 40 ILCS 5/16-128(e)?

## **IV. Statement of Facts**

The Parties did not agree upon a statement of facts. Accordingly, based upon the testimony presented at hearing and a thorough review of all exhibits submitted therewith, the Claims Hearing Committee determines the following to be the facts of the case:

- 1) Phyllis Clark retired from her teaching position with Cook District No. 63 effective June 11, 1994.
- 2) Ms. Clark's first monthly TRS annuity check was issued August 31, 1994.
- 3) Ms. Clark deposited her first monthly TRS annuity check on September 3, 1994.

- 4) On September 29, 1994, TRS received a Substitute or Homebound Service Verification from Ms. Clark seeking to purchase optional service for substitute teaching in the Chicago Public Schools.
- 5) The Substitute or Homebound Service Verification was not signed by a school official.
- 6) At no time prior to September 29, 1994, did Ms. Clark advise TRS that she was attempting to verify optional service credit for substitute teaching in the Chicago Public Schools.
- 7) At no time prior to September 29, 1994, was TRS aware that Ms. Clark was attempting to verify optional service credit for substitute teaching in the Chicago Public Schools.
- 8) The Chicago Public School System is not an agent of the Teachers' Retirement System.
- 9) Ms. Clark began corresponding with the Chicago Public Schools on October 17, 1993, asking the Chicago Public School System to verify substitute teaching in the 1962-63 through 1967-68 School Years.
- 10) Ms. Clark wrote follow-up letters to the Chicago Public Schools on April 2, 1994, and June 11, 1994.
- 11) Ms. Clark received the unsigned verification back from the Chicago Public Schools on September 28, 1994.
- 12) Had Ms. Clark advised TRS that she was attempting to confirm substitute teaching service with the Chicago Public Schools, TRS would have held Ms. Clark's annuity payments until she had verified the service in question.

**V. Positions of the Parties**

It is Ms. Clark's position that:

- 1) 40 ILCS 5/16-128(e) is vague and ambiguous and that optional service can be purchased after a member is in receipt of TRS annuity payments.
- 2) TRS should have been aware that Ms. Clark was attempting to verify optional service credit with the Chicago Public Schools and should have advised her not to cash her annuity check of August 31, 1994.
- 3) The Chicago Public Schools is TRS' agent for the processing of optional service requests.
- 4) The failure of the Chicago Public Schools to return Ms. Clark's verification form to her prior to her depositing her TRS annuity payment on September 3, 1994, negates the application of 40 ILCS 5/16-128(e).

It is TRS' position that:

- 1) 40 ILCS 5/16-128(e) is plain and unambiguous in its application.
- 2) The only way TRS could have been aware that Ms. Clark was attempting to verify substitute teaching service with the Chicago Public Schools was to have been so advised by Ms. Clark.
- 3) The Chicago Public School System is not TRS' agent for the processing of optional service requests or any other purpose.
- 4) The failure of the Chicago Public Schools to return Ms. Clark's verification form prior to September 3, 1994, is irrelevant to the application of 40 ILCS 5/16-128(e).

## **VI. Discussion and Analysis**

1. It is the determination of the Claims Hearing Committee that 40 ILCS 5/16-128(e) is plain and unambiguous and does not authorize the purchase of optional service credit after a member is in receipt of monthly payments from the System. Ms. Clark makes the argument that § 16-128(e) is ambiguous because the first sentence uses the word "may" ("The contributions required under this Section 'may' be made from the date the statement for such creditable service is issued until retirement date"); while the second sentence uses the word "must" ("All such required contributions 'must' be made before any retirement annuity is granted").

The Committee finds nothing ambiguous about § 16-128(e). Sentence one advises that optional service<sup>1</sup> may be purchased from the date the member receives TRS' bill until the date the member retires. Sentence two advises that the bill for optional service must<sup>2</sup> be paid before any retirement annuity is "granted."<sup>3</sup>

In the instant case, Ms. Clark by her own admission failed to apprise TRS she was trying to prove up optional service. Therefore, she was not billed for any optional service prior to her retirement nor did she pay for such service prior to receipt or "granting" of her August 31, 1994, annuity payment. Under these circumstances, § 16-128 precludes Ms. Clark from attempting to verify and/or purchase optional service credit at this time.

2. Ms. Clark next argues that TRS should have been aware that she was attempting to verify optional service credit with the Chicago Public Schools and warned her not to cash her August 31, 1994 annuity payment because she had requested an optional service verification form. However, the Committee finds that the requesting of an optional service verification form would not have put TRS on notice that Ms. Clark was attempting to verify optional service with the Chicago Public Schools.

Ms. Clark's substitute service was being verified at her option. It was for Ms. Clark to make the necessary contacts to receive the necessary signatures; as well as submit a properly executed form in a timely manner. Even had she done this, there was still no requirement that she go ahead and purchase the service after the verification was made. She could have determined the price was too high and not gone through with the purchase. Nowhere in Article 16 is TRS required to contact a member to determine if the member is attempting to prove up optional service based upon a request for an optional service verification form.<sup>4</sup>

Furthermore, the Claims Hearing Committee takes notice of the fact that TRS' Optional Service Unit has a staff of seven and that in Fiscal Year 1993, the Optional Service Unit processed 4,558 optional service record adjustments.<sup>5</sup> There is simply no way the staff could follow up with every member who requested an

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<sup>1</sup> Service credit which is purchased at the member's option would always be service that "may" be purchased. Service that must be purchased would not be optional.

<sup>2</sup> The "must" in sentence two establishes a cut-off date for purchasing optional service.

<sup>3</sup> "Grant" is defined in Black's Law Dictionary as "a conveyance."

<sup>4</sup> Members can also obtain optional service forms from their employers and the Office of the Regional Superintendent.

<sup>5</sup> It should be noted that in the period May 1, 1994 to October 1, 1994, TRS processed 8,104 retirements. 7,299 of these were due to the Early Retirement Incentive Program.

optional service form to find out what was being done with those forms in addition to performing the Unit's actual work.

The Committee concludes that it was Ms. Clark's responsibility to timely file her request for optional service and that TRS had no statutory duty to monitor her to see if she was attempting to prove up optional service prior to her retirement.

3. The Claims Hearing Committee further determines that the Chicago Public School System is not TRS' agent for the purpose of processing optional service requests. Nowhere in Article 16 of the Pension Code is the Chicago Public School System, whose employees are not even covered by TRS, authorized to receive TRS optional service requests on TRS' behalf. Ms. Clark's optional service request was not filed with TRS until September 29, 1994, when it was received at TRS Headquarters. At that point, under the provisions of § 16-128(e), Ms. Clark's request was statutorily barred.

4. Lastly, Ms. Clark asks the Board to read § 16-128(e) as if it stated:

“All such required contributions must be made before any retirement annuity is granted except where a verification request is made to an employer prior to an annuity being granted.” (Emphasis added).

However, as stated by the Illinois Supreme Court in People ex rel. Pauling v. Misevic, 203 N.E.2d 393 (1964):

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. (Louisville and Nashville Railroad Co. v. Industrial Board, 282 Ill. 136, 118 N.E. 483; City of Nameoki v. City of Granite City, 408 Ill. 33, 95 N.E.2d 920.) Such consequences can be avoided only by a change of the law, not by judicial construction, (City of Decatur v. German, 310 Ill. 591, 142 N.E.2d 252,) and, by the same token, courts are not at liberty to read exceptions into a statute the legislature did not see fit to make, (Belfield v. Coop, 8 Ill.2d 293, 134 N.E.2d 2449, 58 A.L.R.2d 1008,) or, by forced or subtle constructions, to alter the plain meaning of the words employed. (People v. Shader, 326 Ill. 145, 157 N.E.2d 225, Stiska v. City of Chicago, 405 Ill. 374, 90 N.E.2d 742.) (Misevic at p. 395).

As pointed out by the Supreme Court in Misevic, judicial and administrative bodies<sup>6</sup> are not allowed to read words into statutes that the General Assembly did not draft into them.

## **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 40 ILCS 5/16-128(e), be upheld, and that Ms. Clark's request to purchase optional service credit for substitute teaching in the Chicago Public Schools 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 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.

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<sup>6</sup> Rules of statutory construction governing courts 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)].