

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

In the Matter of:)
)
)
 Robert Strande)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF ROBERT STRANDE**

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner Robert Strande 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 by telephonic conference on December 18, 2006, to consider Mr. Strande's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman Sharon Leggett and Committee members Jan Cleveland and James Bruner

Petitioner Strande filed the instant administrative review to challenge the denial of his request to purchase seven years of "out of state" Wisconsin teaching service credit under the provisions of 40 ILCS 5/16-127(b)(2). Mr. Strande's purchase request was denied based upon the staff determination that Mr. Strande was using these years of service credit to receive a public pension from the Wisconsin Retirement System (WRS). Under such circumstance, 40 ILCS 5/16-127 (c) prevents a TRS member from purchasing such service credit for use in determining a TRS retirement annuity.

Mr. Strande argues his claim to be allowed to purchase his Wisconsin service credit should be granted for two reasons. His first argument is that TRS is misapplying and misinterpreting 40 ILCS 5/16-127(c). His second argument is

that TRS is barred by promissory estoppel from denying his optional service purchase request.

After considering the pleadings of the parties and the agreed upon exhibits contained in the Claims Hearing Packet, the Committee's recommendation is to uphold the staff's determination. As will be more fully explained, the Committee finds that the staff correctly interpreted 40 ILCS 5/16-127(c) and that Mr. Strande failed to state a claim of promissory estoppel against the System.

II. Mr. Strande's Statutory Misapplication and Misinterpretation Claim

As stated in 40 ILCS 5/16-127 (c):

The service credits specified in this Section shall be granted only if: (1) such service credits are not used for credit in any other statutory tax-supported public employee retirement system...

First, Mr. Strand argues that under Wisconsin law he is not using his Wisconsin service credit for credit in the WRS. To resolve this issue, the Claims Hearing Committee must first determine if it has the authority to interpret Wisconsin law. As stated in 40 ILCS 5/16-163:

A board of 11 members constitutes the board of trustees authorized to carry out the provisions of this Article and is responsible for the general administration of the System.

Pursuant to 40 ILCS 5/16-127(b)(2), TRS members are allowed to purchase as optional service:

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...(subject to the provisions of 40 ILCS 5/16-127(c)).

To administer and carry out the provisions of §16-127(c), the Claims Hearing Committee finds that pursuant to §16-163, it has been granted authority

by the Illinois General Assembly to interpret relevant foreign law when necessary to properly apply its own statutes, including the law governing the WRS in this case.

In his brief, Mr. Strande argues that he is not using his Wisconsin service credit in the WRS because his WRS retirement benefit was determined under the WRS “money purchase” formula. In response, the System has submitted the affidavit of Robert F. Weber, Chief Counsel of the State of Wisconsin Department of Employee Trust Funds, administrator of the WRS. As stated by Mr. Weber:

Mr. Strande nevertheless relies upon his service credit from Richland School District for credit in the State of Wisconsin Retirement System (WRS). If he had not qualified for this creditable service, he would not have been a participating employee in the WRS. There would have been no employee required contributions into the WRS (or employer required contributions) upon which to calculate an annuity by the money purchase method, and no employee or employer contributions with which to fund his WRS pension.

While not binding upon the Claims Hearing Committee, the Committee first finds that Chief Legal Counsel Weber’s affidavit may be considered in the determination of whether Mr. Strande is using his service credit in the WRS and in interpreting Wisconsin law.

The WRS has a retirement annuity determination methodology almost identical to that of TRS (see 40 ILCS 5/16-133). Wis. Stat. §40.23 governs the calculation of WRS retirement benefits. As explained by Chief Counsel Weber in his affidavit:

At the risk of oversimplifying a bit, the two different methods can be described as follows:

The Money Purchase Method: *Is based on the dollar amount in the participant’s separate, individual account in the Public Employee Trust Fund, Employee Accumulation Reserve. This method treats the sum of: (1) the accumulated contributions the employee was required to make and accumulated interest, plus (2) a like amount taken from the employer-required contributions, plus (3) any additional voluntary*

contributions, as the present value of a monthly straight life annuity.

The Formula Method: *Calculates a monthly straight life annuity amount by multiplying four factors together: (1) creditable service times (2) final average earnings times (3) a multiplier determined by the category of employment times (4) an actuarial adjustment for early retirement. The last factor applies only if the pension will become effective before the statutory normal retirement age, which is 65 for teachers. The adjustment is reduced by accumulated creditable service, so for example a teacher with 30 years of creditable service retiring at age 57 would actually experience no actuarial adjustment for early retirement.*

The Department of Employee Trust Funds automatically pays an annuity based on the methodology that yields the higher monthly pension for the annuitant. This treatment is implicit in the language of WIS STAT. §40.23(2m) and 40.23(3). It is also clearly stated in the Department of Employees Trust Funds' brochure "Calculating Your Retirement Benefits," form ET-4107 at pages 2-3. A copy is enclosed for your reference. This was equally true when Mr. Strande left WRS covered employment in 1984.

The Claims Hearing Committee finds Mr. Strande's argument that he is not using his service credit in the WRS to be unpersuasive. It is clear to the Committee that to participate in the WRS one must have service credit and creditable earnings just as in TRS. Without service and earnings, one cannot be a WRS member eligible for a retirement annuity. Just as in TRS, there are two methods of calculating a member's annuity; the method which pays the highest amount is what is received by the member. The WRS member has absolutely no choice in the benefit received. The Committee finds that under the provisions of Wis. Stat. §40.23, Mr. Strande is using his WRS service credit in the WRS.

Second, Mr. Strande argues that TRS is misinterpreting §16-127(c). Mr. Strande is asking the Committee to read §16-127(c) as if it stated:

The service credits specified in this Section shall be granted only if:

1) such service credits are not used in the calculation of a benefit in any other tax-supported public employee retirement system...

The Claims Hearing Committee has ruled on this very issue in the Administrative Review of Bodach. As the Committee determined in Bodach:

The Committee is constrained by the plain language of § 16-127(b)(5)(iii) and must enforce the statute as written. The desire to become pregnant is not a predicate to purchasing pregnancy leave optional service.

Ms. Bodach asks the Committee to read § 16-127(b)(5)(iii) as if it stated:

... periods prior to July 1, 1983 during which a teacher ceased covered employment due to pregnancy or to attempt to become pregnant ...

However, as stated in Western Nat. Bank of Cicero v. Village of Kildeer, 167 N.E.2d 169 (1960):

Courts will not inject provisions not found in the statute however desirable they may appear to be. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882; People ex rel. Bondurant v. Marquiss, 192 Ill. 377, 61 N.E. 352. (Western Nat. Bank at p. 173).

The Committee is without authority to read the words into § 16-127(b)(5)(iii) necessary to grant the relief sought by Ms. Bodach.

Likewise, the Committee is without authority to read §16-127(c) as Mr. Strande desires.

III. Mr. Strande's Promissory Estoppel Claim

Next, Mr. Strande claims the System is promissory estopped from denying his request to purchase his WSR service based upon two conversations between him and former TRS employee Rase Sherwood in April or May of 2000. The Committee finds Mr. Strande has failed to establish a claim of promissory estoppel against the System for the following reasons.

In considering Mr. Strande's promissory estoppel claim, the Claims Hearing Committee notes that neither side in this matter cited nor discussed the cases of Dewitt v. Fleming, 357 Ill. App. 3d 571 (2005) and ESM Development Corp. v. Dawson, 342 Ill. App. 3d 688 (2003).

As stated in Dewitt at p. 574, 575:

In the absence of directly controlling authority to the contrary, we decline to abandon our decision, made just two years ago, that promissory estoppel "is not a proper vehicle for direct relief," "cannot properly be pled as a cause of action," "is meant to be utilized as a defensive mechanism-not as a means of attack," and "does not form the basis for a damages claim. " ESM Development Corp. v. Dawson, 342 Ill. App. 3d 688, 695, 795 N.E.2d 397, 277 Ill. Dec. 30 (2003). We believe that an explicit rule of law that promissory estoppel exists only for defensive purposes in Illinois promotes the stability and integrity of Illinois jurisprudence and provides attorneys practicing in Illinois, as well as their clients, with a clear, stable guidepost to which they may conform themselves.

As further stated in ESM Development at p. 693, 694:

Estoppel in General

We initially note that estoppel is an equitable remedy, meaning simply that a party is stopped "from claiming or saying something." D. Dobbs, Remedies § 2.3, at 41 (6th ed. 1984). Estoppel does not furnish a basis for a damages claim. D. Dobbs, Remedies § 2.3, at 42 (6th ed. 1984). Estoppel does serve as a defense to a claim of the estopped party. D. Dobbs, Remedies § 2.3, at 42 (6th ed. 1984). In other words, estoppel is not available as a claim but is utilized for defensive purposes-usually in the form of an affirmative defense or as a reply to an affirmative defense.

Estoppel against public entities is rare and not preferred and is allowed only in rare and unusual circumstances designed to prevent fraud and injustice. Chicago Limousine Service, Inc. v. City of Chicago, 335 Ill. App. 3d 489, 499, 781 N.E.2d 421, 429, 269 Ill. Dec. 624 (2002) (relying on Halleck v. County of Cook, 264 Ill. App. 3d 887, 893, 637 N.E.2d 1110, 1114, 202 Ill. Dec. 374 (1994)).

Equitable Estoppel

Equitable estoppel is defined as "the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in chancery, from asserting rights which might otherwise have existed as against another person who has, in good faith, relied upon such conduct and has been led thereby to change his position for the worse and who on his part acquires some corresponding right." 18 Ill. L. & Prac. Estoppel § 22, at 79 (1956). To be enforceable, the party against whom estoppel is sought must have made misrepresentations or otherwise concealed facts with knowledge that those representations were untrue, which caused the other party to take action prejudicial to his or her position. 18 Ill. L. & Prac. Estoppel § 22 (1956); [McInerney v. Charter Golf, Inc., 176 Ill. 2d 482, 492, 680 N.E.2d 1347, 1352, 223 Ill. Dec. 911 \(1997\)](#). Section 36 of volume 18 of Illinois Law and Practice deals with the procedure of making an estoppel claim, stating:

"The facts constituting any affirmative defense such as estoppel, or any defense which by other affirmative matter seeks to avoid the legal effect of or defeat the cause of action set forth in the complaint or a counterclaim[,] must be plainly set forth in the answer or reply." 18 Ill. L. & Prac. Estoppel § 36, at 122 (1956).

Equitable estoppel is designed to prevent fraud and injustice, and the doctrine is utilized as a "shield and not a sword." 18 Ill. L. & Prac. Estoppel § 22, at 81 (1956).

*A party asking that a municipality be equitably estopped must establish the following: "(1) an affirmative act on the part of the municipality; (2) that the affirmative act induced the complained-of action; and (3) that it substantially changed its position as a result of its **justifiable reliance**." (Emphasis in original.) [Tim Thompson, Inc. v. Village of Hinsdale, 247 Ill. App. 3d 863, 878-79, 617 N.E.2d 1227, 1239, 187 Ill. Dec. 506 \(1993\)](#) (citing [Haeflinger v. City of Wood Dale, 129 Ill. App. 3d 674, 677, 472 N.E.2d 1228, 1231, 84 Ill. Dec. 832 \(1984\)](#)). The affirmative acts that induce reliance cannot simply be the unauthorized acts of a ministerial officer but must be acts of the*

municipality, such as legislation. [Tim Thompson, Inc., 247 Ill. App. 3d at 879, 617 N.E.2d at 1239.](#)

Promissory Estoppel

To establish the validity of a promissory estoppel claim, the party must establish the following elements:

- 1. An unambiguous promise was made to the party.*
- 2. The party relied upon this promise.*
- 3. The party's reliance upon this promise was reasonable in nature.*
- 4. The party suffered a detriment as a result of this reliance. [Chicago Limousine Service, Inc., 335 Ill. App. 3d at 499, 781 N.E.2d at 429.](#)*

In the instant case, Mr. Strande is clearly using a claim of promissory estoppel as a sword against the System in pursuit of monetary damages (i.e. a larger annuity). Based upon the decisions in Dewitt and ESM Development, the Committee finds Strande has failed to assert a justiciable claim regarding his conversations with Mr. Sherwood. However, the Committee specifically finds that even if estoppel was properly asserted in this case – promissory or equitable, Mr. Strande’s claim is without merit.

In paragraph 5 of his affidavit of February 23, 2006, Mr. Strande states:

During these telephone conversations, Sherwood informed me that I would be able to purchase seven years of optional service credit with TRS and still would be able to draw an annuity from Wisconsin based on the same seven year service period (1977 – 1984), as long as I was not also using those seven years of service for a benefit calculation in a different state. Sherwood further stated that I could not “double dip” in two systems, meaning I could not use more years of service than I actually worked. I told her that I would not be using the seven years of service credit in Wisconsin for any retirement calculation. When I asked Sherwood if I needed to withdraw the money from Wisconsin to pay for

the purchase of the years of service in Illinois, she stated that I did not need to use the money from Wisconsin to pay for the years of service credit with TRS. She further stated that TRS did not care what I did with my money in the Wisconsin system, as long as I was not “double dipping” and using years of service credit twice.

The Committee finds Mr. Strande’s representation of his conversations with Mr. Sherwood to be far less than an unambiguous promise by Sherwood to Mr. Strande that he would be able to purchase and use his WRS service credit in TRS. In fact, Mr. Sherwood told Mr. Strande he could not “double dip” nor use his service in both Systems. Even if Mr. Sherwood’s advice was found to be wrong, the System is within its rights and obligated to correct an error. (See Deford-Goff v. Ill. Dept. of Public Aid, 281 Ill. App. 3d 888, 893 (1996).

Since there was no unambiguous promise by Sherwood, the Committee finds there was nothing upon which Mr. Strande could rely.

Lastly, Mr. Strande began drawing his WRS pension in August, 2000. It is clear to the Committee that Mr. Strande intended to draw his WRS pension, or he would have asked Mr. Sherwood the effect of his drawing his pension rather than his ambiguous questions about not using the years in a benefit calculation. Mr. Strande received \$156,353.88 in WRS pension benefits between August 1, 2000 and his retirement with TRS on July 1, 2005. Furthermore, Mr. Strande will receive back the contributions he made to TRS to purchase his WRS service credit. Mr. Strande has suffered no detriment. Rather, he is simply not receiving a TRS benefit to which he is not entitled by law.

Equitable Estoppel

With regard to equitable estoppel, there was no claim by Mr. Strande that Mr. Sherwood concealed facts or knowingly misrepresented things to Mr. Strande to cause him to change his position. Furthermore, with regard to TRS’ status as an agency of the State of Illinois, there was no testimony offered that Mr. Sherwood was an official of TRS with power to bind the System. In fact, the Committee notes that Mr. Sherwood was not a TRS official. Mr. Sherwood was a ministerial employee of the System and had no authority to bind the System. Based upon the foregoing, the Committee finds that Mr. Strande has failed to state a claim for equitable estoppel in this matter as well.

V. Conclusion

The Claims Hearing Committee finds in favor of the staff in this matter. Mr. Strande has failed to establish either his claim of statutory misapplication/misrepresentation or his claim of promissory estoppel. It is clear to the Committee that staff rightly applied 40 ILCS 5/16-127(c). The Committee recommends the Board adopt this proposed decision.

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.