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

In the Matter of:	)
	)
DELORIS MOUNT,	)
	)
Petitioner.	)

PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW OF DELORIS MOUNT

I. Introduction

Pursuant to 80 Ill. Adm. Code § 1650.610, et seq., the Claims Hearing Committee of the Board of Trustees of the Teachers' Retirement System (TRS) met in Chicago, Illinois, to consider the appeal of TRS member Deloris Mount challenging the TRS staff determination that Ms. Mount was ineligible to receive service credit for 38 days of sick leave granted to her by her employer, Field Elementary School District No. 3, in a February 1, 1993, agreement regarding Ms. Mount's participation in TRS' Early Retirement Program (ERI). At the time the additional 38 days of sick leave were granted, Ms. Mount already had 132 days of accumulated, unused sick leave, and there were only 78 days of teacher attendance left in the 1992-93 School Year. Based upon TRS' long-standing interpretation of TRS Rule 1650.350(a) [80 Ill. Admin. Code § 1650.350(a)], since Ms. Mount could not actually use the 38 days of sick leave granted to her in the event of illness before her retirement (the 132 days she already had on record would have to be used before the additional 38 days could be considered for credit), Ms. Mount's request for additional sick leave credit was denied.

Prior to the meeting of the Claims Hearing Committee, it was agreed between the parties that the presentation of witnesses and oral argument was not necessary and the Committee should reach its decision based solely upon the administrative record. The Claims Hearing Committee consisted of the following Board members: Judy Tucker, Chairperson, James Bruner, and Ray Althoff. The Committee was advised in its deliberations in Ms. Mount's case by Ralph Loewenstein, independent counsel to the Board of Trustees. TRS' staff position was prepared and submitted by Thomas Gray, Assistant General Counsel. Ms. Mount's position was prepared and submitted by Wanda Van Pelt, Associate General Counsel, Illinois Education Association - NEA.

After considering the position statements of the parties and the exhibits attached thereto, it is the recommendation of the Claims Hearing Committee that the staff determination to deny Ms. Mount's claim for additional sick leave credit based upon the staff's interpretation of TRS Rule 1650.350(a) be upheld.

II. Relevant Statutes and Rules

The Board is asked to interpret TRS Rule 1650.350(a), promulgated pursuant to the Board's rulemaking power as set forth in 40 ILCS 5/16-168, which clarifies 40 ILCS 5/16-127(6).

TRS Rule 1650.350(a) states:

> To be creditable for retirement purposes, sick leave must have been actually available for use by a member in the event of illness. Service credit is not available and shall not be computed for sick leave days added to the credit of a teacher at the time of termination of service for the purpose of increasing a member's retirement service credit.

40 ILCS 5/16-127(6) states:

> **Any days of unused and uncompensated accumulated sick leave earned by a teacher.** The service credit granted under this paragraph shall be the ratio of the number of unused and uncompensated accumulated sick leave days to 170 days, subject to a maximum of one year 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.

III. Issue

The parties agreed the issues to be decided by the Board to be:

1. Under the provisions of 40 ILCS 5/16-127, Computation of Creditable Service, and Teachers' Retirement System (TRS) Rule 1650.350, Service Credit for Unused Accumulated Sick Leave Upon Retirement, duly promulgated pursuant to TRS' rulemaking authority, is Deloris Mount entitled to the 38 days of sick leave credit granted to her by her employer in the parties' February 1, 1993, agreement?

2. Was TRS' interpretation of Rule 1650.350(a) in the instant case arbitrary, capricious, or clearly erroneous?

IV. Statement of Facts

Prior to the meeting of the Claims Hearing Committee, the parties stipulated to the following facts, and the Board adopts and finds them to be the facts of this case.

1. Deloris Mount was employed as a teacher by Field Elementary School District No. 3, Texico, Jefferson County, Illinois, during the 1992-93 School Year.

2. In January, 1993, Ms. Mount's bargaining representative, the Field Education Association, IEA-NEA, entered into negotiations with her employer regarding Ms. Mount's participation in the Early Retirement Incentive (ERI) Program.

3. On February 1, 1993, the parties entered into an agreement regarding Ms. Mount's retirement under the ERI Program (Hearing Exhibit A).

4. Pursuant to the agreement, Ms. Mount was credited with 38 days of additional sick leave.

5. At the time of the signing of the agreement on February 1, 1993, Ms. Mount had 132 days of unused, accumulated sick leave.

6. The last day of school in the 1992-93 School Year for District No. 3 was June 1, 1993.

7. At the time the additional 38 days of sick leave were granted to Ms. Mount by the agreement, there were 78 days left in the School Year (Hearing Exhibit B).

8. By letter dated August 24, 1993, the Teachers' Retirement System (TRS) notified Ms. Mount that the 38 days of sick leave granted to Ms. Mount in the February 1, 1993, agreement were not reportable to TRS based upon TRS' finding that "the sick leave days granted by District 3 were not granted sufficiently in advance of retirement so as to be available for use as sick leave" (Hearing Exhibit C).

9. Ms. Mount is seeking credit for 170 days of unused, accumulated sick leave.

10. TRS has granted service credit for the 132 days of sick leave Ms. Mount had on February 1, 1993.

11. Ms. Mount took no sick days between February 1, 1993, and June 1, 1993.

V. Position of the Parties

It is TRS' position that a member's previously accumulated and unused sick leave must be taken into consideration when applying TRS Rule 1650.350(a). In Ms. Mount's case, since she already had 132 days of sick leave on record she could not use the 38 additional days granted in the event of illness because she would be retired well before the existing 132 days were used up.

It is Ms. Mount's position that a member's existing days of sick leave should be ignored and that the only limitations on granting additional sick leave are the 170 day limit set forth in 40 ILCS 5/16-127(6) and the number of days left until the member's retirement. Ms. Mount also contends that TRS Rule 1650.350(a) is void, because it violates § 5-20 of the Administrative Procedure Act, 5 ILCS 100/5-20, which requires an administrative rule involving the exercise of a discretionary power to be "stated as precisely and clearly as practicable under the conditions to inform fully those affected."

VI. Discussion and Analysis of the Board's Decision

The Board has carefully examined the language of the rule in question, the arguments of the parties, and the statutory and case law presented by the parties in support of their respective positions and finds that:

1. TRS Rule 1650.350(a) is a reasonable exercise of TRS' rulemaking authority.

2. TRS' interpretation of Rule 1650.350(a) is not arbitrary, capricious, or clearly erroneous.

3. TRS Rule 1650.350(a) does not violate the provisions of § 5-20 of the Administrative Procedures Act.

Promulgated in Accordance with Board Rulemaking Authority and Reasonable Exercise of Rulemaking Authority Thereof

Petitioner does not challenge the Board's authority to promulgate rules for the governance of the Teachers' Retirement System (TRS), nor does Petitioner claim that the Board exceeded its rulemaking authority in promulgating Rule 1650.350(a). However, the Board feels it necessary to address these issues as a starting point to the analysis of its decision in this case.

Pursuant to 40 ILCS 5/16-168, the Illinois General Assembly has granted to the Board of Trustees the power to enact rules to insure orderly administration of TRS. As stated therein:

> Board - meeting - rules - voting. The board shall meet regularly at least 4 times a year at such time as it may by by-laws provide, or at the call of the president or of a majority of the members. The board may adopt rules for the government of its meetings and for the administration of the system. Each trustee is entitled to 1 vote. The votes of a majority of the members are necessary for a decision by the trustees at any meeting of the board. (Emphasis added).

Based upon this grant of authority from the Legislature, the Board promulgated TRS Rule 1650.350(a) to establish parameters for when sick leave would be creditable to increase member retirement benefits. As stated in the Matter of Estate of Hoheiser, 53 Ill. Dec. 612, 424 N.E.2d 25 (1981):

> An administrative agency possesses no inherent or common law power (Sibley v. Health & Hospitals' Governing Comm. (1974), 22 Ill.App.3d 632, 317 N.E.2d 642), and thus the only power held by such body is conferred by express provision of law or is found, by fair implication or intendment, to be incident to and included in the authority expressly conferred for the purpose of carrying out

and accomplishing the objectives for which the agency was created (Department of Public Aid v. Brazziel (1978), 61 Ill.App.3d 168, 18 Ill Dec 483, 377 N.E.2d 1119). (Hoheiser at p. 614.)

The crediting of sick leave is an express function of TRS, and the establishment of rules governing the crediting of sick leave are clearly incident to the administration of the System.

TRS Interpretation Not Arbitrary, Capricious, nr Clearly Erroneous

Petitioner's first argument for reversing the staff determination that Ms. Mount was not eligible to receive 38 sick leave credit under the provisions of TRS Rule 1650.350(a) is that the staff's interpretation of Rule 1650.350(a) is arbitrary, capricious, and clearly erroneous. The Board rejects this assertion for the following reasons.

In deciding any case involving a challenge to an agency's interpretation of its rules, the trier of fact must initiate it inquiry with the presumption that the agency's interpretation is valid. As stated in Sexton Contr. v. Pollution Control Bd., 146 Ill. Dec. 888, 558 N.E.2d 1222 (1990):

> It is well established that the interpretation given by an administrative agency to its own rules and regulations is entitled to respectful consideration and will not be overruled unless plainly erroneous. (Heifner v. Board of Education, (1975), 32 Ill.App.3d 83, 87, 335 N.E.2d 600.) (Sexton at p. 894).

For an agency interpretation to be considered "plainly erroneous[1]," the burden is on the challenging party to demonstrate that the language of the rule in question is clear and unambiguous; admits of only one construction, and that the agency failed to apply that construction (see Hetzer v. State Police Merit Bd., 8 Ill. Dec. 23, 25, 365 N.E.2d 261 (1977). The Board has carefully reviewed TRS Rule 1650.350(a) and finds that Rule 1650.350(a) does not provide for the crediting of sick leave days without any consideration of a member's existing days of unused sick leave, nor does it state that the only limitation on the granting of sick leave is the number of days left until a member retires Petitioner is merely offering an alternative interpretation of Rule 1650.350(a) to justify increasing her service credit. However, the positing of alternative rule interpretations is not sufficient to meet a challenging party's burden to establish that an agency's interpretation is "plainly erroneous." The Board finds Petitioner's argument on this issue to be without merit.

[1] The terms "arbitrary and capricious, clearly erroneous, and plainly erroneous" are nsed interchangeably by Illinois Courts (see Ted Sharpenter, Inc. v. Ill. Liquor Control, 102 Ill. Dec. 112, 499 N.E.2d 669 (1990) and Mitee Racers, Inc. v. Carnival Amusement Safety Bd., 105 Ill. Dec. 780, 504 N.E.2d 1298 (1987) for variations)

As stated in Freeman Coal v. Ruff, 228 N.E.2d 279 (1967):

> Rules of statutory construction are tools or aids for ascertaining legislative intention and the application of a particular rule is not in and of itself determinative of legislative intention. It is, of course, axiomatic that long-standing contemporaneous construction by ones charged with the administration of a particular statute is entitled to great weight in construing the statute. This doctrine of contemporaneous construction becomes even more persuasive when it has been of long standing and the legislature, presumably aware of the administrative interpretation, has amended other sections of the act during the period involved but left untouched the sections subject to the seemingly approved administrative interpretation. Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 414 Ill. 275, 111 N.E.2d 329 (1953). People ex rel. Spiegel v. Lyons, 1 Ill.2d 409, 115 N.E.2d 895 (1953). Bell v. South Cook Co., Mosquito Abatement Dist., 3 Ill.2d 353, 121 N.E.2d 473 (1954). Mississippi River Fuel Corp. v. Illinois Commerce Comm'n, 1 Ill.2d 509, 116 N.E.2d 394 (1953). (Ruff at p. 282) (Again, the rules of statutory interpretation as set forth in Ruff are equally applicable to the interpretation of TRS rules.)

As demonstrated by Hearing Exhibits F through L, TRS has been consistent in its interpretation and application of Rule 1650.350(a). Furthermore, there have been numerous changes to the Pension Code over the period covered by the exhibits, the most recent changes having been enacted in 1993. During this period, the Legislature has not seen fit to enact changes to the Pension Code to reverse or alter TRS' interpretation of Rule 1650.350(a). Having allowed TRS' interpretation to continue, the Legislature is presumed to concur in it.

Furthermore, the fact that a rule is subject to interpretation does not invalidate an agency's interpretation of that rule. As stated in Phillips v. Hall, 69 Ill. Dec. 201, 447 N.E.2d 418 (1983):

> A reviewing court should accord substantial discretion to administrative agencies in the construction and application of their rules, interfering only if a body's interpretation is plainly erroneous or inconsistent with long-settled constructions. The doctrine does not invite arbitrariness or inconsistency from case to case, because an interpretation, like its parent statute and rule, binds the agency as its policy and must be followed. Scheffki v. Board of Fire & Police Commissioners (1974), 23 Ill.App.3d 971, 973, 320 N.E.2d 371 and cases cited therein; 2 Am.Jur.2d Administrative Law §§ 241, 242, 243 (1962). (Phillips at p. 208).

TRS' interpretation of Rule 1650.350(a) clearly meets the "long-settled" construction test set forth in Phillips. Furthermore, to be considered "clearly erroneous," an agency's rule interpretation would have to be such that no reasonable person would interpret the rule as did the agency; not just that a different interpretation might have been feasible, or even more wise [see Midwest Petroleum Marketers v. City of Chicago, 37 Ill. Dec. 707, 402 N.E.2d 709 (1980)] In

the instant case, the Board finds that the Claimant cannot demonstrate a clearly erroneous interpretation by TRS and fails that portion of the Phillips' test as well.

The Board also finds the computation of creditable service to be a technical problem of pension administration and that TRS staff is uniquely qualified to decide how credit requests should be resolved.

As stated in Shell Oil Co. v. Pollution Control Bd., 37 Ill. App.3d 264, 346 N.E.2d 212 (1976):

> When reviewing administrative rules and regulations, on the other hand, a court may not invalidate the regulation unless it is clearly arbitrary, unreasonable or capricious, because administrative agencies are inherently more qualified to decide technical problems and the mechanics of dealing with them. Because the courts lack the expertise possessed by adminstrative agencies, they should hesitate to find a regulation unreasonable. (Shell Oil at p. 218).

Lastly, the Board finds that the Petitioner is seeking to be treated differently than other similarly situated members. However, having consistently denied sick leave credit to others who attempted to do what Petitioner seeks to do, the Board is constrained to uphold the staff determination in this case. As stated in Gatica v. Ill. Dept. of Public Aid, 53 Ill. Dec. 488, 423 N.E.2d 1292 (1981):

> An agency may not abruptly deviate from such prior rules with respect to the applicability of a fundamental directive without prior notice of its intended change. Briscoe v. Kusper (7th Cir. 1970), 435 F.2d 1046, 1055. (Gatica at p. 492).

Based upon the foregoing, the Board finds that TRS staff interpretation and application of TRS Rule 1650.350(a) was not arbitrary, capricious, or clearly erroneous.

Rule Does Not Violate § 5-20 of the Administrative Procedure Act

The Claimant further asserts that Rule 1650.350(a) fails to comply with § 5-20 of the Administrative Procedures Act (5 ILCS 100/5-20) and, therefore, TRS' interpretation is unlawful. Section 5-20 states:

> Implementing discretionary powers. Each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practicable under the conditions to inform fully those persons affected.

Section 5-20 is not applicable to Claimant's case. Rule 1650.350(a) does not implement a discretionaty power to be exercised by TRS staff. As stated in Eck v. McHenry County Public Bldg. Com'n, 178 Ill.Dec. 586, 604 N.E.2d 1109 (1992): "Discretionary acts are those which

require personal deliberation, decision, and judgment." (Eck at p. 592). Under Rule 1650.350(a) and TRS' interpretation thereof, sick leave is either creditable or not, depending on the number of sick leave days a member has and the number of days left until retirement.

Application of Rule 1650.350(a) is purely a ministerial function. As stated in Anderson v Village of Forest Park, 179 Ill. Dec. 373, 606 N.E.2d 205 (1992):

> Ministerial acts are those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority and without reference to the official's discretion as to the propriety of the acts. (Anderson at p. 381.)

TRS staff has no discretion in its administration of Rule 1650.350(a). The staff can only apply the Rule 1650.350(a) credibility equation to the member's sick leave numbers. Accordingly, the Board finds that Ms. Mount's § 5-20 argument is without merit.

VII. Conclusion

Based upon the Claims Hearing Committee's conclusion that the Board of Trustees clearly possessed the statutory authority to promulgate TRS Rule 1650.350(a) and that the promulgation of TRS Rule 1650.350(a) was a reasonable exercise of the Board's rulemaking authority; that TRS' interpretation of Rule 1650.350(a) is not arbitrary, capricious, or clearly erroneous; and that § 5-20 of the Administrative Procedures Act is not applicable to Ms. Mount's case, the Claims Hearing Committee recommends that the Board uphold the staff determination to deny Ms. Mount service credit for the 38 days of sick leave granted to her pursuant to her ERI agreement with her employer, Field Elementary School District No. 3.

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 Claimant. 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 Claimant.