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

In the Matter of:	)	
	)	
SHERRY JONES,	)	No.
	)	
Petitioner.	)	

FINAL DECISION OF THE BOARD OF TRUSTEES
IN THE ADMINISTRATIVE REVIEW OF SHERRY JONES

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.610, et seq., an administrative review hearing was held January 21, 1994, in Springfield, Illinois, to consider the appeal of Teachers' Retirement System (TRS) member Sherry Jones that the staff determination finding Ms. Jones ineligible to purchase optional service credit for the period, January 1, 1966 through June 30, 1966, when she was away from teaching due to maternity, be reversed and that Ms. Jones be allowed to purchase optional service credit for this six (6) month period. Ms. Jones plans to retire at the conclusion of the 1993-94 School Year under the provisions of the Early Retirement Incentive (ERI) Program, and without service credit for the period in question, Ms. Jones' total enhanced service credit under ERI will only be 34.497 years. By retiring with less than 35 years of service credit, Ms. Jones' monthly TRS annuity will be approximately 27% less as set forth in 40 ILCS 5/16-133(a)(B)(2). Specifically, Ms. Jones is claiming that even though she submitted a resignation to her Board which was accepted through formal Board action and that she only had a conditional promise of re-employment by her Superintendent at the time she resigned her teaching position due to maternity, TRS should consider Ms. Jones to have been on a leave of absence and eligible to purchase optional service credit under the provisions of 40 ILCS 5/16-127(5) and TRS Rule 1650.340 (80 Ill. Admin. Code § 1650.340).

The TRS Board of Trustees, 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. Jones was represented by Ben Schutzenhofer, Field Service Director, Illinois Federation of Teachers. Also present at the hearing was Wilma VanScyoc, TRS General Counsel.

After hearing the presentations of the parties, the testimony of the witnesses, and considering all the hearing exhibits, it was the recommendation of the Claims Hearing Committee that the staff determination that Ms. Jones was not eligible to purchase optional service credit for the period in question under the provisions of 40 ILCS 5/16-127(5) and TRS Rule 1650.340 be upheld. The Board of Trustees hereby adopts the recommended decision of its Claims Hearing Committee.

II. Relevant Statutes and Rules

In the instant case, the Board is asked to interpret and apply 40 ILCS 5/16-127(b)(5) and TRS Rule 1650.340(c) which was duly promulgated by the Board pursuant to its rule-making authority as set forth in 40 ILCS 5/16-169.

§ 5/16-127, Computation of Creditable Service, 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 ...
>
> (5) Any periods for which a teacher, as defined in Section 16-106, is granted a leave of absence, provided he or she returns to teaching service creditable under this System or the State Universities Retirement System following the leave; and periods during which a teacher is involuntarily laid off from teaching, provided he or she returns to teaching following the lay-off. However, total credit under this paragraph may not exceed 3 years.
> ...

§ 1650.340, Service Credit for Leave of Absence, Sabbatical Leaves, or Involuntary Layoffs, states in relevant part:

> c) For purposes of this Section, a leave of absence is creditable as an approved leave if:
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> the member did not resign, the employer promised renewed employment at the end of the leave, and the employer through its board took official action to approve the request for leave.

III. Issue

The parties agree the sole issue to be decided by the Board to be:

> Under the provisions of 40 ILCS 5/16-127, Computation of Creditable Service, and TRS Rule 1650.340, Service Credit for Leave of Absence, Sabbatical Leaves or Involuntary Layoffs, is the Claimant, Sherry Jones, who was required by her employer, Harmony-Emge-Ellis School District No. 175, to submit a resignation to take time off for the birth of her child, and who returned to teaching the following school year, eligible to purchase service credit for the period January 1, 1966 through June 30, 1966?

IV. Statement of Facts

At the hearing, the parties stipulated to the following facts, and the Board adopts and finds them to be the facts of this case.

1. Prior to January 25, 1971, Harmony-Emge-Ellis School District No. 175 had

a Board of Education policy which prevented teachers from receiving a pregnancy/parental leave of absence without pay. Instead, teachers were required by the employer to submit a resignation, even though the teachers were given assurances, both written and verbal, that they would be re-employed the subsequent school year if there was a position available in the District.
(see Petitioner's Exhibits #1, #2, #3, #9 and #10)

2. On or before October 25, 1965, Superintendent Leonard Parish advised Sherry Jones, who at that time was a nontenured teacher, that she would be required to submit a letter of resignation in order to take time off for the birth of her child and for parental leave. He advised her, also, that the letter should state her availability for re-employment the following September. Superintendent Parish assured her that she would be re-employed since he anticipated that the district would have vacant positions that she would be qualified to fill.

3. On October 25, 1965, Sherry Jones submitted her letter of resignation, as she had been directed to do by Superintendent Parish. She requested time off from January of 1966 to the beginning of the 1966-67 school year.
(see Petitioner's Exhibit #4)

4. After receiving the letter, the Board of Education voted to accept Sherry Jones' resignation at the formal Board of Education meeting held on October 25, 1965. At this meeting, the Board also stated that she would be re-employed the following school year if there was a vacancy in the district for which she was qualified.
(see Petitioner's Exhibit #5)

5. The Secretary of the Board of Education wrote a letter to Sherry Jones on October 26, 1965, notifying her of the Board's decision.
(see Petitioner's Exhibit #6)

6. In August of 1966, at the beginning of the 1966-67 school year, Sherry Jones returned to work at Harmony-Emge-Ellis School District No. 175.

7. Sherry Jones did not seek a refund of TRS contributions made by her for the period from August of 1965 through December of 1965.

8. On May 4, 1993, Sherry Jones submitted a Leave of Absence Verification form to TRS seeking to purchase service credit for the period of January, 1966 through August, 1966.
(see Petitioner's Exhibit #7)

9. In a letter dated July 8, 1993, Christine Council, Supervisor - Member Accounts, informed Sherry Jones that her request to purchase service credit for this period was denied.
(see Petitioner's Exhibit #8)

V. Position of the Parties

By letter dated July 8, 1993, TRS staff denied Ms. Jones' request to purchase optional service credit for the six month period she was away from

teaching due to maternity in 1966. The decision to deny benefits was based upon TRS Rule 1650.340(c) which requires that for a leave to be creditable the member must not have resigned, the employer must have promised renewed employment at the end of the leave, and the School Board must have taken official action to approve the leave request. After reviewing the documentation submitted in support of Ms. Jones' purchase request, the staff determined that Ms. Jones did in fact resign her position; that her employer did not promise her renewed employment when it accepted her resignation; and that the employer did not grant Ms. Jones a leave of absence when it required her to submit a letter of resignation for Board approval and acceptance.

It is Ms. Jones' position that at the time the events in question transpired she was new to teaching; that she did not understand the implications of filing a resignation with regard to her TRS pension benefits and that she could not foresee that twenty-eight years later there would be an effect on her participation in the Early Retirement Incentive Program; that her School Board likewise did not understand the implication of requiring her to submit a resignation; that her employer's conditional promise of renewed employment if there was a position open should be considered to be a promise of renewed employment because she was re-employed the next year (as was her co-worker, Ardith Brown, who submitted a resignation for maternity at the same time as Ms. Jones); and that she should be considered to be on a leave of absence because her employer referred to the time that her co-worker, Ms. Brown, was away from teaching due to pregnancy as a leave of absence. Based upon these considerations, Ms. Jones asks the Board to find that she has met the requirements of TRS Rule 1650.340(c).

VI. Discussion and Analysis of the Board's Decision

The Board has carefully weighed the hearing exhibits, the stipulation of facts entered into by the parties prior to the hearing, and the testimony presented at hearing and finds the following to be persuasive in concluding that Ms. Jones' situation does not meet the requirements of TRS Rule 1650.340(c) and that Ms. Jones was not on a creditable leave of absence during the period that she was away from teaching due to maternity in 1966.

1) Ms. Jones' letter of October 25, 1965, states in relevant part:

> Even though I am resigning in January, I would like to be considered for employment next September.

The language of the letter admits of no interpretation. Ms. Jones resigned her position. Furthermore, the letter shows that Ms. Jones had no clear expectation of re-employment based upon her request to be considered for re-employment. Additionally, Ms. Jones stipulated that she did indeed resign.

2) The Board minutes of October 25, 1965, state in relevant part:

> Letters of resignation from Mrs. Ardith Brown and Mrs. Sherry Jones were read by the president.
>
> Mrs. O'Neill moved that the resignation of Mrs. Sherry Jones be accepted and that a letter be sent to Mrs. Jones explaining the

board policy and stipulating if there is an opening for a teacher in the district for which she is qualified, she will be considered if she desires to teach the 1966-67 school year. The motion was seconded by Mr. Charles Luther. Voice Vote: 6 ayes, 1 absent. Motion Carried.

Again, the language used by the Board was clear and unambiguous. The Board was clearly addressing and accepted a letter of resignation. Furthermore, the language used by the Board with regard to Ms. Jones' future employment was conditional in nature and any perceived promise contained therein was purely illusory and would be unenforceable at law.

The Claimant asks the Board to look beyond the plain language of the communications between Ms. Jones and her employer in 1965, the public records of the Board, as well as her stipulations, to find that a leave of absence was granted. However, the Board finds that the best evidence of what transpired in 1965 to be in the words of the contemporaneous written communications between the Claimant and her employer, the official meeting minutes of the Board, and the stipulation of facts entered into by the parties, to conclude that a leave of absence was not granted to Ms. Jones. That Ms. Jones' employer sometimes referred to the period that its female teachers left teaching due to pregnancy as maternity leave does not negate the district's resignation policy, nor does the fact that Ms. Jones and Ms. Brown were rehired after their pregnancies change the fact, that there was no promise of re-employment prior to their leaving to give birth. The Claimant simply does not meet the requirements of Rule 1650.340(c).

Furthermore, as testified to by TRS employee, Christine Council, TRS has been denying optional service purchase requests for persons in the same situation as Ms. Jones since Ms. Council started working for TRS in 1987. Ms. Council further testified that, to her knowledge, during the course of her employment no exception was made to the interpretation of Rule 1650.340(c) that where there was a resignation, optional service credit could not be purchased for a period away from teaching due to maternity. Clearly, TRS has been consistent in its application of Rule 1650.340(c) and has treated all similarly situated individuals in the same fashion.

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 longstanding 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).

As early as 1987, TRS interpreted the relevant statutory provisions to disallow service credit for time away from teaching due to maternity where a resignation was given by the TRS member and the other requirements of Rule 1650.340(c) were not met. Since 1987, there has been a multitude of changes to Article 16 of the Pension Code, the most recent one being enacted in January 1993. In this period, the Illinois General Assembly has not seen fit to enact a law regarding purchase of optional service by those in Ms. Jones' situation. By not addressing this issue, the Legislature is presumed to have concurred with TRS' administrative actions relative to Rule 1650.340(c). Under these circumstances, the staff's interpretation, which is supported by long-term, consistent application, must be upheld.

Lastly, as stated in Heavner v. Illinois Racing Bd., 59 Ill. Dec. 706, 432 N.E.2d 290 (1982):

> While it is familiar law that administrative regulations enjoy a presumption of validity (Du-Mont Ventilating v. Department of Revenue (1977), 52 Ill.App.3d 59, 10 Ill.Dec. 144, 367 N.E.2d 532; Armstrong Chemcon, Inc. v. The Pollution Control Board (1974), 18 Ill.App.3d 753, 310 N.E.2d 648), it is equally well established that where an administrative agency adopts rules or regulations under its statutory authority for carrying out of its authorized duties, it is bound by those rules and cannot arbitrarily disregard them or apply them in a discriminate manner. (Service v. Dulles (1957), 354 U.S. 363, 1 L.Ed.2d 1403, 77 S.Ct. 1152; Citizens to Preserve Overton Park, Inc. v. Volpe (1971), 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 136: Holland v. Quinn (1978), 67 Ill.App.3d 571, 24 Ill.Dec. 325, 385 N.E.2d 92; Margolin v. Public Mutual Fire Insurance Company (1972), 4 Ill.App.3d 661, 281 N.E.2d 728.) In the latter case, the court said at p. 667:
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> > "Having once established rules and regulations pursuant to statutory authority, an administrative agency is bound by those rules and regulations and may not violate them."
>
> (Heavner at p. 710).

TRS simply does not have the discretion to ignore a rule duly promulgated by its Board. Nor does the Board possess the power to arbitrarily decide to ignore a rule once promulgated because the result might seem harsh and unjust. In this case the Board must follow the clear and unambiguous language of Rule 1650.340(c) and deny Ms. Jones' appeal.

VII. Conclusion

Based upon the foregoing, the Board denies Ms. Jones' request to purchase optional service credit for the six (6) month period she resigned from teaching due to maternity.

IX. NOTICE OF RIGHT TO APPEAL

This Decision may be appealed in accordance with the Illinois Code of Civil Procedure, Article III, Administrative Review, 750 ILCS 5/3-101, et seq., by the filing of a complaint and the issuance of a summons within 35 days from the date the Claimant is served with a copy of this Decision. The date of service is the day upon which the Decision is deposited in the United States mail by TRS.