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

In the Matter of:)
)
JULIA J. DYCUS,)
)
Petitioner.)

PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW OF JULIA J. DYCUS

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.610, et seq., an administrative review hearing was held August 12, 1996, by telephone conference, to consider the appeal of Teachers' Retirement System (TRS) member Julia Dycus, challenging the staff determination denying Ms. Dycus' request to purchase .603 years of pregnancy leave credit under the provisions of 40 ILCS 5/16-127(b)(5)(iii).

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. Sitting as an alternate was Board member Scott Eshelman. 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 Ms. Dycus' 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, Ms. Dycus did not cease "covered employment" at the conclusion of the 1968-69 School Year and does not qualify to purchase pregnancy leave credit under the provisions of 40 ILCS 5/16-127(b)(5)(iii).

II. Relevant Statutes and Rules

In the instant case, the Claims Hearing Committee and the Board must apply 40 ILCS 5/16-127(b)(5)(iii), which states:

40 ILCS 5/16-127

Sec. 16-127. Computation of creditable service.

(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:

(5) … (iii) periods prior to July 1, 1983 during which a teacher ceased covered employment due to pregnancy, provided that the teacher returned to teaching service creditable under this System or the State Universities Retirement System following the pregnancy and submits evidence satisfactory to the Board documenting that the employment ceased due to pregnancy. …

III. Issue Statements

The Parties agreed prior to hearing upon the following issue statements.

1) Did Julia Dycus "cease covered employment" in the 1968-69 School Year?

2) Does the phrase "covered employment" in 40 ILCS 5/16-127(b)(5)(iii) mean employment in a position requiring contributions to TRS?

3) Does the phrase "covered employment" in 40 ILCS 5/16-127(b)(5)(iii) include noncontributing part-time teaching employment later purchased as optional service?

The Claims Hearing Committee finds these to be accurate statements of the issues to be resolved in this matter.

IV. Statement of Facts

Based upon the stipulation of the parties and a review of the applicable statues, the Committee finds the following to be the facts of the case.

1) In the 1968-69 School Year, Julia Dycus was employed as a permanent and continuous part-time teacher by Carbondale Community Unit High School No. 65.

2) Ms. Dycus delivered her son, Darrin, on June 26, 1969.

3) Permanent and continuous part-time teachers were not members of TRS nor eligible to contribute to TRS in the 1968-69 School Year.

4) Permanent and continuous part-time teachers did not become members of TRS eligible to contribute to TRS until August 28, 1969.

5) In January 1984, Ms. Dycus purchased her permanent and continuous part-time teaching service for the 1968-69 School Year under the provisions of 40 ILCS 5/16-127(b)(9).

V. Position of the Parties

40 ILCS 5/16-127(b)(5)(iii) allows TRS members to purchase optional service for:

> ... periods prior to July 1, 1983 during which a teacher ceased covered employment due to pregnancy, provided that the teacher returned to teaching service creditable under this System or the State Universities Retirement System following the pregnancy and submits satisfactory evidence to the Board documenting that the employment ceased due to pregnancy. (Emphasis added).

It is Ms. Dycus' position that she ceased "covered employment" at the conclusion of the 1968-69 School Year. Ms. Dycus states in her March 21, 1996, administrative review request:

> Petitioner paid for and received TRS service credit for 1968-69. Petitioner received service credit for 1968-69 and this indicates employment in TRS. As an employee in TRS in 1968-69, petitioner is

eligible to apply for service credit under the absence due to pregnancy law.

It is the System's position that "covered employment" means employment in a position requiring contributions to TRS. Since Ms. Dycus was not serving in such a position in the 1968-69 School Year, she is not eligible to purchase optional service credit under the provisions of § 16-127(b)(5)(iii).

VI. Discussion and Analysis

To be eligible to purchase optional service credit under 40 ILCS 5/16-127(b)(5)(iii), a TRS member is required to have ceased "covered employment" due to pregnancy. In this context, the Claims Hearing Committee finds the General Assembly intended "covered employment" to be employment subject to the mandatory contribution provisions of Article 16. The basis for the Committee's conclusion is the use of the term "covered employment" in Illinois case law. Where the phrase is found, it is always used to refer to employment subject to the mandatory provisions of a statute or contract.

A clear example of the "subject to" interpretation of "covered employment" is found in Castillo v. Jackson, 171 Ill. Dec. 471, 594 N.E.2d 323 (1992). As stated therein:

> FUTA levies an excise tax on "wages" paid by "employer[s]" in covered "employment." (26 U.S.C. § 3301 (1988).) (Castillo at p. 473) (Emphasis added).

FUTA taxes, like TRS contributions, are assessed on the salary of employees in "covered employment." The Committee finds that Ms. Dycus was not in "covered employment" in the 1968-69 School Year because her earnings were not subject to TRS contribution assessments.

Other cases supporting the Committee's "subject to" interpretation include:

a) Friend v. Industrial Commission, 237 N.E.2d 491 (1968). Plaintiff injured while cutting timber on employer's farm was found to be in "covered employment" for purposes of the Workers Compensation Act.

b) O'Hare-Midway Limousine Service v. Baker, 173 Ill. Dec. 171, 596 N.E.2d 795 (1992). Plaintiffs, who were limousine drivers, were found to be in "covered employment" for purposes of the Unemployment Insurance Act.

c) Pollacek v. Human Rights Com'n, 112 Ill. Dec. 508 (1987). Plaintiff's employment was "covered" by a collective bargaining agreement.

When interpreting a statute, words found therein are to be given their ordinary meaning. As stated in Salyes v. Thompson, 75 Ill. Dec. 446, 457 N.E.2d 440 (1983):

> The ordinary meaning of the language employed by the drafters in the questioned constitutional or statutory clause provides the best evidence of the drafters' intent. (*People v. Brown* (1982), 92 Ill.2d 248, 255, 65 Ill.Dec. 825, 442 N.E.2d 136; *People v. Robinson (*1982), 89 Ill.2d 469, 475-76, 60 Ill.Dec. 632, 433 N.E.2d 674*; People v. Haron* (1981), 85 Ill.2d 261, 266, 52 Ill.Dec. 625, 422 N.E.2d 627.) (Salyes at p. 448).

The Committee finds that its "subject to" interpretation gives ordinary meaning to the term "covered employment."

Furthermore, TRS has previously interpreted the phrase "covered employment" in its application of 40 ILCS 5/20-125, Return to Service - Suspension of Benefits. As stated in 40 ILCS 5/20-125:

> If a retired employee returns to employment which is covered by a system from which he is receiving a proportional annuity under this Article, his proportional annuity from all participating system shall be suspended during the period of re-employment.
>
> The provisions of the Article under which such employment would be covered shall govern the determination of whether the employee has returned to employment, and if applicable the exemption of temporary employment or employment not exceeding a specified duration or frequency, for all participating systems from which the retired employee is receiving a proportional annuity under this Article, notwithstanding any contrary provisions in the other Articles governing such systems. (Emphasis added).

If "covered employment" was found by the Committee to include non-covered employment purchased through optional service, a TRS annuitant who had purchased prior out of state teaching service under the provisions of § 16-127(b)(2) could not hold a teaching job in another state post-retirement. However, § 20-125 has never been interpreted this way by TRS. TRS has always allowed out of State teaching post-retirement without restriction or jeopardy to a retiree's annuity. 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). 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). (Emphasis added). (Ruff at p. 282).

Since the Illinois General Assembly has taken no steps to overturn this long-standing interpretation, it must be presumed the Legislature concurs with TRS' interpretation of "covered employment". The Committee finds the Legislature intended "covered employment" to be contributing service and not optional service purchased under the provisions of § 16-127(b).

Furthermore, in viewing Article 16 as a whole, it is clear the Legislature intended "covered employment" to mean employment requiring the withholding of TRS contributions.

As stated in People v. Ortega, 62 Ill.Dec. 580, 436 N.E.2d 606 (1982):

> Provisions of a statute must be construed in light of the statute as a whole (*Winks v. Board of Education* (1979), 78 Ill.2d 128, 135, 34 Ill.Dec. 832, 298 N.E.2d 823), and to effectuate the intent of the legislature. (*People v. McCoy* 1976), 63 Ill.2d 40, 44-45, 344 N.E.2d 436.) (Ortega at p. 584).

In determining what the Legislature meant by "covered employment," the Committee must also look to 40 ILCS 5/16-106, Teacher; 40 ILCS 5/16-107, Member; 40 ILCS 5/16-123, Membership of System; and 40 ILCS 5/16-127, Computation of Creditable Service. When these statutory provisions are read *in pari materia* (i.e., with reference to each other), the distinction between "covered employment" and eligible to be purchased as optional service becomes clear.

Section 16-106 sets forth who is a "teacher" for Article 16 purposes. Section 16-107 provides that "teachers," as defined in § 16-106, are members of TRS. Section 16-123, provides that "[t]he membership of this System shall be composed of all teachers ... who become members as a condition of employment on the date they become teachers." Section 16-127 sets forth how service credit may be earned; either through membership service or through the purchase of optional service.

This dichotomy between membership service, which requires the withholding of contributions, and service outside the System, which may be purchased only if it qualifies under § 16-127(b), can only lead to the conclusion that employment is not "covered" unless TRS contributions are withheld.

The various types of employment which qualify to be purchased as optional service in no way are "covered" by TRS (i.e., "subject to" TRS statute and rule). It is left to the choice of the member whether to purchase such optional service. The option to purchase such out-of- System service does not make service or an employer "covered by" or "subject to" TRS. TRS' interpretation of "covered employment" is the only one that makes sense within the total legislative scheme of Article 16.

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

> The following periods of service shall earn optional credit ...
>
> ... periods prior to July 1, 1983 during which a teacher ceased covered or noncovered employment which was later purchased as optional

> service due to pregnancy, provided that the teacher returned to teaching service creditable under this System or the State Universities Retirement System or the State Universities Retirement System following the pregnancy and submits evidence satisfactory to the Board documenting that the employment ceased due to pregnancy. However, total credit under this paragraph (5) may not exceed 3 years.

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).

There is simply no provision in § 16-127(b)(5)(iii) allowing Ms. Dycus to qualify for pregnancy credit by ceasing non-covered employment (i.e. part-time teaching in 1968-69). Under Illinois' rules of statutory construction, the Committee cannot read provisions into § 16-127(b)(5)(iii) not clearly found therein to give Ms. Dycus the relief she seeks.

If "covered employment" were determined to be employment eligible to purchased as optional service, then a teacher who left teaching in Alaska to have a baby would be eligible to purchase up to three years of pregnancy credit, if she had previously purchased her Alaska credit with TRS. There is no language in the statute to suggest the General Assembly intended this result. As stated in Lindsey v. Edgar, 84 Ill.Dec. 876, 473 N.E.2d 92 (1984):

> Generally, the interpretation of a statute must be grounded on the nature and object of the statute as well as the consequences which would result from construing it one way or another. (*Andrews v. Foxworthy* (1978), 71 Ill.2d 13, 21, 15 Ill.Dec. 648, 651, 373 N.E.2d 1332, 1335.) (Lindsey at p. 878).

There is simply no provision in § 16-127(b)(5)(iii) showing an intent on the part of the General Assembly intended to protect anyone other than those who were forced out of TRS contributing service due to pregnancy.

Lastly, it must be presumed the Legislature was aware that permanent and continuous part-time teaching was not covered by TRS in 1968-69 and, had it wished part-time teachers to be covered, it would have included them within § 16-127(b)(5)(iii). As stated in Petition of Short, 241 N.E.2d 216 (1968):

> Applying the usual rules of statutory construction it must be deemed that the legislature acted with due awareness both of the pre-existing statutory provision and the interpretation thereof.

Prior to August 28, 1969, permanent and continuous part-time teaching was not "covered" by TRS. The absence of mention of permanent and continuous part-time teachers in the statute can only lead to the conclusion that permanent and continuous part-time teachers were not intended to be covered by § 16-127(b)(5)(iii).

VII. Conclusion

Based upon the foregoing, it is the Claims Hearing Committee's recommendation that the staff decision to deny Ms. Dycus' claim for pregnancy leave credit 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.