

R E C O M M E N D E D    O R D E R

FINDINGS OF FACT

This administrative cause having come to be heard on June 25, 1987, pursuant to the Indiana Administrative Adjudication Act, IC 4-22-1 et seq., the following findings of fact are hereby made:

1. That Mr. Michael Cappy died on January 6, 1986 while employed as a school principal with the Monroe County Community School Corporation (MCCSC) (Joint Stipulation of Fact, Paragraphs Nos. 2 and 4) ;

2. That the decedent, initially as a school teacher and later as a school administrator, was a continuous member of the Indiana State Teachers' Retirement Fund (ISTRF), Account No. \_\_\_\_\_ commencing with the scholastic year of 1971-72 until the date of his above-stated death during the 1985-86 scholastic year. (Joint Stipulation of Fact, Paragraph Nos. 1, 2 and 3);

3. At the time of the decedent's death, he had undisputedly completed fourteen (14) years of "creditable service" in the ISTRF and ninety-two (92) days of further "creditable service" during the 1985-86 scholastic year. At the time of Mr. Cappy's death, he had also earned a balance of "accrued sick leave" of \_\_\_\_\_ days. (Joint Stipulations of Fact, Paragraph Nos. 3, 4 and 5; Petitioner's Exhibit No. 2);

4. During the ninety-two (92) days of undisputed "creditable" service" in the 1985-86 scholastic year, the decedent had been compensated at this full, contracted per diem salary. Twenty-two (22) days of said period were for actual on-the-job services and the remaining seventy (70) days were for sick leave compensation to which the decedent had been entitled. (Joint Stipulations of Fact, Paragraph No. 5);

5. After Mr. Cappy's death, the MCCSC entered into a "finalization process" whereby it sought to pay the decedent's beneficiary or estate any unpaid sum owed by the school corporation. The \$ \_\_\_\_\_ actually paid per this "finalization process" was calculated in the following manner: Unused "accumulated sick leave" days \_\_\_\_\_ times the per diem contractual salary \_\_\_\_\_ times the contractual servance percentage (25%). (Petitioner's Exhibit No. 2 and Transcript Page 26);

<sup>1</sup> The parenthetical references to stipulations, exhibits and/or transcripts are not necessarily the exclusive authority for the Findings of Fact found herein.

6. By letter dated May 23, 1986, Dr. Loren T. Tiede, Executive Secretary of ISTRF, notified the decedent's widow, Mrs. Barbara Cappy (Petitioner herein), that she would only be entitled to "...a lump sum payment of Mr. Cappy's contribution plus interest..." and that she was not eligible to receive monthly surviving spouse benefits inasmuch as Mr. Cappy did not complete, prior to his death on January 6, 1986, fifteen (15) years of required "creditable service". (Joint Exhibit No. 2);

7. On May 30, 1986, the Petitioner, by her attorney, timely appealed the ISTRF's initial determination which was embodied in the May 23, 1986 letter, referenced above in Paragraph No. 6 herein. (Joint Exhibit No. 3);

8. On June 25, 1986, at the monthly Board of Trustees meeting for the ISTRF, the Board was advised of the administrative appeal situation described above in Paragraphs Nos. 6 and 7 by a memo (Petitioner's Exhibit No. 5) and thereafter approved a hearing in the matter. (Transcript, Pages 108 to 113);

9. There was no evidence submitted by the Petitioner that the Board of Trustees for the ISTRF were so predisposed, in approving the holding of an evidentiary hearing on Petitioner's claim, to adopt the initial decision set-out in Dr. Tiede's letter of May 23, 1986 before considering the Recommended Order of the Administrative Law Judge, and;

10. On February 27, 1987, the Executive Secretary, on behalf of the ISTRF's Board of Trustees, appointed James M. Granato, Staff Attorney for the Indiana State Department of Public Welfare, as Special Administrative Law Judge to hear and make a recommendation in this matter. (Hearing Officer's Exhibit No. 1).

The above-noted Findings of Fact are essentially undisputed by the parties and should serve as the necessary factual basis to understand the Conclusions of Law discussion which follows below. Any finding of fact deemed to be a conclusion of law shall be a conclusion of law.

## CONCLUSION OF LAW

### ISSUE I

Whether the Board of Trustees of the Indiana State Teachers' Retirement Fund, as the "ultimate authority" for that agency, has denied due process of law to the Petitioner by having reviewed the factual and legal framework of Petitioner's case prior to approving the holding of an evidentiary hearing in this matter?

The evidence disclosed (Findings of Fact No. 8) that the Board of Trustees were presented, as an agenda item, at their regular monthly meeting in June of 1986, a memorandum from the ISTRF's staff which outlined some of the factual and legal considerations of this case. For the reader's convenience, the entire contents of this memorandum (Petitioner's Exhibit No. 5) is set-out below:

SPECIAL

Cappy, Michael, TRF 1

Request for hearing, Appeal from a final determination.

Mr. Cappy was an elementary principal. He died on January 6, 1986 having served 14 1/2 years according to our records. Eligibility for the survivor benefit is predicated upon 15 or more years of creditable service.

The pertinent issue is that Mr. Cappy served only 92 days from the beginning contract date of August 12, 1985 through the date of death on January 6, 1986, which would qualify for 1/2 year of service. The law IC 21-6.1-4-2 is very specific in stating "To receive one year of service in the fund, a member, under contract or not, must serve at least 120 days in a year."

Mr. Robert E. Cambridge, Attorney at Law, represents Mrs. Cappy, survivor, and contends that Mr. Cappy was on a 12-month contract and with the final pay on his contract which included sick days after his death, he was credited with 127.17 days of service.

Mr. Cambridge now requests the appointment of an independent hearing officer to appeal our denial of service.

What is the pleasure of the Board?

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The Petitioner's position appears to be that she has been denied due process of law since the Board of Trustees of the ISTRF had effectively decided the case against her when they approved the holding of the evidentiary hearing in this matter. This conclusion was apparently reached by a reasoning process similar to the following:

a - The Board of Trustees, which approved the holding of the hearing, is the same administrative entity which will ultimately adopt, modify, or reject the Recommended Order of the Administrative Law Judge;

b - The memorandum in question presents only two alternatives to the Board of Trustees: (1) Reject the ISTRF's staff's initial determination of the Petitioner's ineligibility for the monthly pension and grant the Petitioner's claim for said benefits; or, (2) accept the ISTRF's staff's recommendation and order the requested hearing;

c - Since the holding of an evidentiary hearing was approved by the Board of Trustees, the Board had impliedly rejected the first alternative (granting Petitioner's claim) and accepted the staff's recommendation; and

d - Inasmuch as the Board of Trustees had already made its decision (denying Petitioner's claim), it will not, or it's highly unlikely, that it would change its decision regardless of the Administrative Law Judge's Recommended Order. In another words, when the Board approved the hearing, it lost its impartiality in this matter.

The Administrative Law Judge disagrees with Petitioner's position and concludes that the Petitioner was not denied any due process of law by virtue of the Board of Trustees' action of approving the holding of an evidentiary hearing in this cause.

A review of the Administrative Adjudication Act (IC 4-22-1 et seq.)<sup>1</sup> as well as the pertinent statutes which created and vested the Board of Trustees with the requisite authority for discharging their duties (IC 21-6.1-1 et seq.) clearly evidence a statutory scheme which requires the Board's involvement in claim matters from their initial consideration to their final administrative disposition.

As an example, IC 21-6.1-3-6 (b) (1) provided that the Board of Trustees shall "act on each application for benefits." In order to "act" responsibly, the Board must be acquainted with the underlying facts of each claim and what concerns, if any, the ISTRF staff may have regarding the claims validity. In approving the evidentiary hearing, the Board only deferred any final resolution of this matter until after they had the benefit of considering the Recommended Order and the record resulting from the hearing.

Since no evidence was introduced which would suggest that the Board of Trustees, in approving the holding of a hearing, was so predisposed to a position contrary to that of the Petitioner's so that the holding of a hearing would be meaningless, it is unreasonable to conclude as a matter of law that due process has been denied. This is especially true in view of the statutory required involvement of the Board in the claims review process.

## ISSUE II

Whether a deceased member's unused "accrued sick leave" may be counted as "creditable service" for purposes of entitling the surviving spouse to monthly survivor benefits in the Indiana State Teachers' Retirement Fund?

The parties have stipulated that IC 5-10.2-3-7 is controlling in determining that fifteen (15) years of "creditable service" is required by a deceased member of the ISTRF in order for that member's survivor to be entitled to monthly survivor benefits. One year of such "creditable service" is specifically defined at IC 21-6.1-4-2 as containing, at a minimum, one hundred twenty (120) days in which the member must "serve" in a year. For purposes of this cause, the parties have implied in their arguments that a year, as used in IC 21-6.1-4-2, is the same as a scholastic year.

<sup>1</sup> IC 4-22-1 et seq. was repealed on July 1, 1987 and replaced by the Administrative Orders and Procedure Act which is cited as IC 4-21.5-1 et seq. The role of an agency's "ultimate authority" (Board of Trustees) is virtually the same in administrative hearings pursuant to both citations.



In the present case, the staff of the ISTRF has only recognized ninety-two (92) days of "creditable service" for Mr. Cappy during the 1985-86 scholastic year. The ISTRF would agree that had Mr. Cappy survived for an additional twenty-eight (28) working days, although ill and using his earned "accrued sick leave" during the illness, then the Petitioner would have unquestionably been entitled to the monthly survivor benefits inasmuch as the one hundred twenty (120) days minimum would have been met and Mr. Cappy's fifteenth (15th) year of service completed.

The Petitioner argues that the ISTRF should have counted her deceased husband's unused [redacted] days of "accrued sick leave", which he had left at the time of his death on January 6, 1986, thereby allowing his account to reflect the completion of the required, minimum service of one hundred twenty (120) days.

The Administrative Law Judge concludes, as a matter of law, that the unused "accrued sick leave" of the decedent should not be counted as "creditable service" and that the initial determination of the ISTRF should be sustained and be made the final administrative determination of the Board of Trustees of the ISTRF. This conclusion is based upon the following discussion of the Petitioner's issues in this case.

First of all, Petitioner, contends that the unused "accrued sick leave" of [redacted] days should be deemed as full "creditable service" time since the MCCSC compensated the Petitioner for these unused days (See Finding of Fact No. 5). In another words, "creditable service" should be linked to "compensated service".

This rationale is rejected by the Administrative Law Judge since the compensation of unused "accumulated sick leave" by the employing school corporation is done pursuant to that corporation's "Administrators Salary Agreement" (Petitioner's Exhibit No. 3, Page No. 11) which existed between the school corporation and its various administrators. The ISTRF, which by statute is charged with the management of the retirement fund, is not a party to that agreement and its decisions regarding the fund should not be governed by the agreements of the different school districts in the state, but rather in accordance with a common sense application of statutory guidelines.

It should also be noted that even if "compensation" were equivalent to "creditable service", the decedent would still not be found to be entitled to recognition of the fifteenth (15th) year of such service since the MCCSC paid the Petitioner only twenty-five percent (25%) of the compensation which the decedent would have been entitled to had he survived that additional period of working days. In another words, 25% of [redacted] days of "accrued sick leave" plus the 92 recognized days of "creditable service" still does not yield the threshold of 120 days which IC 21-6.1-4-2 requires.

It should be noted here that the MCCSC must have deemed Mr. Cappy's experience to have constituted at least fifteen (15) years of service or it would not have paid him twenty-five percent (25%) of his unused "accumulated sick leave". Petitioner's Exhibit No. 3 (Page 11.) clearly evidences the school district's determination with regard to length of service for purpose of its contractual obligation to the decedent's family. However, MCCSC's method of determining what constitutes fifteen (15) years of service to it is not necessarily the same methodology which the ISTRF must employ for purpose of retirement benefits under the law.

Petitioner also suggests that the ISTRF should have recognized the decedent's unused "accrued sick leave" since it alleges that the ISTRF policy to leave the determination of "creditable service" to the local school corporations and abide by their decisions in the matter.

There is no evidence in the record that the ISTRF does, in fact, rely on the individual school corporation's determination of what constitutes the required fifteen (15) years of creditable service for purpose of administering the fund. Even if there were such a finding of fact, it would be the duty of this Administrative Law Judge to point out that such practices would be in contravention of the legislative mandate imposed upon the Board of Trustees of ISTRF by IC 21-6.1-1 et seq. The unrefuted testimony of Dr. Tiede clearly established that the Board of Trustees acts on each claim for benefits pursuant to IC 21-6.1-3-6 (b) (1).

There is evidence in the record, however, that the ISTRF does rely upon the raw data information furnished to it by the various school districts as to length of service. Obviously, reliance on the raw data is not reliance on the school district's determination of whether fifteen (15) years of "creditable service" has been performed in order to become eligible for pension benefits.

One of the cardinal rules of statutory construction is that the plain and ordinary language of a statute should be used in reaching an interpretation thereunder. In this regard, it would be clearly illogical to conclude that unused "accumulated sick leave" could be applicable towards "creditable service" in a position. Sick days are "contingent" in nature and the employee must be sick in order to use them for any purpose.

Dr. Baldwin's testimony did not refute this notion of contingency regarding sick days. His answers, on cross-examination, were evasive regarding whether sick days could be used even if the employee were known not to be sick on a day when he was absent for that ostensible reason. Regardless of the various interpretations that one might argue from this testimony, Petitioner's Exhibit No. 3 at Page No. 5 clearly indicates that sick leave is recognized in the MCCSC as "creditable service" only if the employee or his family is ill.

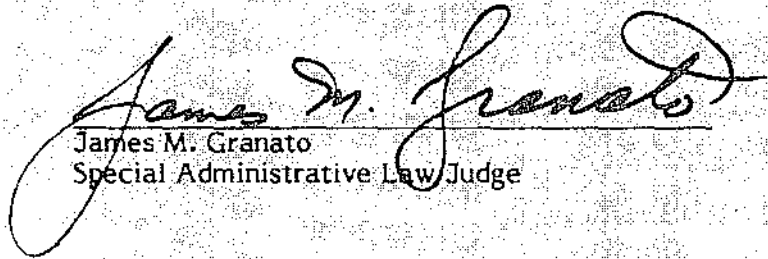
This Administrative Law Judge cannot recommend that the Board deem the decedent's unused "accumulated sick days" as "creditable service". It would be an illogical proposition to do so and plainly contrary to the intent of IC 21-6.1-4-2.

Any conclusion of law deemed to be a finding of fact shall be a finding of fact.

RECOMMENDATION

In view of the foregoing findings of fact and conclusions of law, the Administrative Law Judge does hereby recommend to the Board of Trustees of the Indiana State Teachers' Retirement Fund that the claim of Mrs. Barbara Cappy for monthly survivor benefits be denied and that the initial decision of the ISTRF staff be sustained.

So Recommended this 29<sup>TH</sup> day of January, 1988.

  
James M. Granato  
Special Administrative Law Judge