BEFORE THE EXECUTIVE DIRECTOR
FOR THE INDIANA STATE TEACHERS' RETIREMENT FUND

IN THE MATTER OF JAMES HARO, Petitioner v. INDIANA STATE TEACHERS' RETIREMENT FUND, Respondent,	))))))))))	THE INDIANA STATE TEACHERS' RETIREMENT FUND

FINAL ORDER

By Resolution No. 2009-03-01 of the Board of Trustees of the Indiana State Teachers' Retirement Fund as the ultimate authority in this administrative review and pursuant to and in accordance with IC 4-21.5-3-28 and 550 IAC 2-2-2.5, the Board has directed the Executive Director to act as the Board's delegee and conduct final authority proceedings to issue a final order with respect to review and appeals of administrative action taken by the Fund and received by the Fund.

1. The Administrative Law Judge issued a Decision and Order in this matter on March 26, 2010 denying Petitioner's motion for summary judgment and granting summary judgment filed by Respondent.

2. It has been more than fifteen (15) days since having received the Decision and Order of the Administrative Law Judge.

3. Copies of the Decision and Order having been delivered to the parties.

4. No objection to the Decision and Order of the Administrative Law Judge has been received.

NOW THEREFORE the Decision and Order of the Administrative Law Judge is affirmed.

DATED April 16, 2010

Steve Russo, Executive Director
Indiana State Teachers' Retirement Fund
150 West Market Street, #300
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I certify that on the 16th day of April, 2010, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

Distribution:

James L. Haro
940 Redwing Drive
Columbus, IN 47203

Thomas N. Davidson
General Counsel for TRF
150 West Market St., #300
Indianapolis, Indiana 46204

Wayne E. Uhl
Administrative Law Judge
8710 North Meridian St., #200
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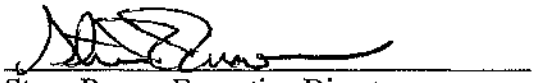

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Indiana State Teachers' Retirement Fund
150 W. Market St., #300
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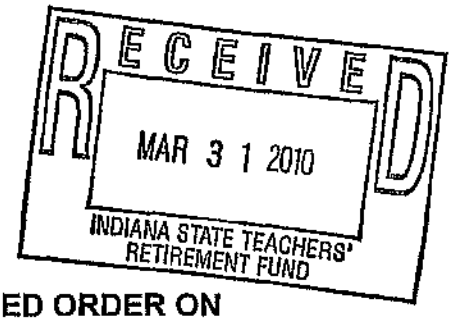
317-232-3868

BEFORE AN ADMINISTRATIVE LAW JUDGE
FOR THE INDIANA STATE TEACHERS' RETIREMENT FUND

JAMES HARO,	)
Petitioner,	)
	)
v.	)
	)
INDIANA STATE TEACHERS'	)
RETIREMENT FUND,	)
Respondent.	)



DECISION AND RECOMMENDED ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Introduction

James Haro appeals the initial determination of the Teachers' Retirement Fund (TRF) denying his application for one year of service credit for the 1982-1983 school year, during which he was on approved paternity leave to care for his newborn child. He took the leave so that his wife could return to work. She would have been granted a full year of service credit if she had taken the year off to care for the child, and both of them could have received the credit if they had adopted.

Pursuant to the schedule agreed to by the parties and ordered by the ALJ, TRF filed a motion for summary judgment on January 7, 2010, and Haro filed a motion for summary judgment on February 4, 2010. Neither party submitted any further response, reply or other brief, and neither party requested a hearing, so the motions are ripe for ruling.

Findings of Undisputed Material Fact

1. James Haro registered his membership in TRF in 1969 when he was first hired by the City of Columbus school district, which later became the Bartholomew Consolidated School Corporation (BCSC).

2. A collective bargaining agreement (CBA) governed relations between BCSC and its teachers' union, the Columbus Educators Association. The CBA for 1982-1985 provided various types of paid and unpaid leave for teachers.

3. Under the heading of "Leave for Pregnant Teachers," the CBA provided that, pursuant to former IC 20-6.1-6-4, a teacher who was pregnant could continue in active employment as late into the pregnancy as she desired, if able to do so. A teacher who was pregnant was "entitled to a leave of absence any time between the commencement of her

pregnancy and one (1) year following the birth of the child, if, except in a medical emergency, she notifies the Superintendent of the school corporation in which she teaches at least thirty (30) days before the date on which she desires to start her leave." The teacher had the option of charging any portion of the leave to available paid sick leave, after which she would be absent without pay. "This leave may be taken without jeopardy to re-employment, retirement and salary benefits, tenure and seniority rights."

4. Under the heading of "Adoptive Leave," the CBA provided for leave without pay for up to one year "for a teacher adopting a child (four (4) years of age or less)."

5. Under the heading of "Paternity Leave," the CBA provided, "When a child is born to the wife of a male teacher, the teacher shall be granted two (2) days paternity leave with pay, such days being deducted from the teacher's accumulated sick leave days." A male teacher could "extend such leave . . . and be absent for a period of up to one (1) year without pay for purposes of infant child care."

6. On May 10, 1982, the School Board granted Haro's request for paternity leave for the upcoming 1982-1983 school year.

7. On July 10, 2009, Haro filled out a Leave of Absence Verification form (State Form 24315) that was received by TRF on July 24, 2009. The form contained sections for four categories of leave: Sabbatical/Professional Improvement, Sickness or Disability, Military Service, and Other.

8. Under "Other," the form provided choices for "Pregnancy leave (please attach a copy of the child's birth certificate)" and "Adoption leave."

9. Haro checked the box for "Pregnancy leave" but he crossed out the word "Pregnancy" and wrote "Paternity." Haro wrote that the leave was taken from August 1982 through June 1983, without compensation.

10. By letter dated August 4, 2009, TRF responded that BCSC had indicated that the leave was "Paternity Approved Leave" and therefore it was not eligible for service credit.

11. By letter dated September 3, 2009 (apparently in response to a phone call from Haro), TRF General Counsel Thomas Davidson confirmed TRF's decision to deny service credit for the paternity leave, and gave Haro notice of his right to seek administrative review.

12. Haro filed a petition for review dated September 14, 2009, which was received by TRF on September 18, 2009.

13. By letter dated January 7, 2010, TRF notified Haro that he could purchase one year of service credit for $9,756.73.

Conclusions of Law

Legal standard

Summary judgment "shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law." Ind. Code § 4-21.5-3-23(b).

As with motions under Ind. Trial Rule 56, a genuine issue of material fact exists where facts concerning an issue which would dispose of litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue. The party moving for summary judgment bears the burden of making a *prima facie* showing that there is no genuine issue of material fact and that he or she is entitled to a judgment as a matter of law. Once the moving party meets these two requirements, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact by setting forth specifically designated facts. *Indiana-Kentucky Electric Corp. v. Comm'r, Indiana Dept. of Environmental Management*, 820 N.E.2d 771, 776 (Ind. App. 2005) (citing cases).

Contrary to federal practice, a moving party cannot simply allege that the absence of evidence on a particular element is sufficient to entitle that party to summary judgment—it must prove that no dispute exists on all issues. *Dennis v. Greyhound Lines, Inc.*, 831 N.E.2d 171, 173 (Ind. App. 2005), citing *Jarboe v. Landmark Community Newspapers*, 644 N.E.2d 118 (Ind. 1994).

When the parties have filed cross-motions for summary judgment, each motion is considered separately to determine whether the moving party is entitled to judgment as a matter of law, construing the facts most favorably to the non-moving party in each instance. *Keaton and Keaton v. Keaton*, 842 N.E.2d 816, 819 (Ind. 2006); *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 160 (Ind. 2005).

An ALJ's review of an agency's initial determination is *de novo*, without deference to the initial determination. *Indiana Dept. of Natural Resources v. United Refuse Company, Inc.*, 615 N.E.2d 100, 103-04 (Ind. 1993); *Branson v. Public Employees' Retirement Fund*, 538 N.E.2d 11, 13 (Ind. App. 1989).

Evidence

No party has raised an objection to the admissibility of the evidence submitted.

Genuine disputes of material fact

No party has argued that there is a genuine dispute of material fact.

Issue presented

The question presented is whether TRF must grant service credit for the year that Haro took unpaid paternity leave.

Discussion

For retirement benefit calculation purposes, creditable service consists of all service in a covered position, plus any other service for which the retirement law gives credit. IC 5-10.2-3-1(a). For teachers, the general rule is that a TRF member earns one year of service credit for service of at least 120 days in a year, or at least 60 days in each of two years. IC 5-10.4-4-2.

The first question is whether Haro's paternity leave qualifies for service credit under the TRF statutes. Service credit for leaves of absence is addressed by IC 5-10.4-4-7, which provides in its entirety:

> **Leaves of absence**
>
> Sec. 7. (a) Except as provided in section 8 of this chapter, a member may be given credit for leaves of absence for *study, professional improvement, and temporary disability* if the leave credit does not exceed one-seventh (1/7) of the total years of service claimed for retirement (referred to as the one-seventh rule). A member granted a leave in these instances for exchange teaching and for other educational employment approved individually by the board is considered a teacher and is entitled to the benefits of the fund if for or during the leave the member pays into the fund the member's contributions. A leave for other educational employment is not subject to the one-seventh rule.
>
> (b) In each case of a teacher requesting a leave of absence to work in a federally supported educational project, the board must determine that the project is educational in nature and serves state citizens who might otherwise be served by the public schools or state educational institutions. The board shall make this determination for a one (1) year period, which is later subject to review and reapproval.
>
> (c) Subject to this chapter, *leaves of absence specified in IC 20-28-10-1, IC 20-28-10-2, IC 20-28-10-3, or IC 20-28-10-4 and adoption leave of not more than one (1) year must be credited to retirement.*
>
> (d) Notwithstanding any law, this section must be administered in a manner consistent with the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the

Family and Medical Leave Act but is not entitled to receive credit for service for benefit purposes unless the leave is described in subsection (a), (b), or (c).

(Emphases added.)

Haro's paternity leave is not covered by subsections (a) or (b) of the above statute, because it was not for study, professional improvement or temporary disability.

Subsection (c) of IC 5-10.4-4-7 requires service credit for leaves granted by IC 20-28-10-1 through -4, plus adoption leave. IC 20-28-10-1(a) authorizes leaves of absence for "(1) a sabbatical; (2) a disability leave; or (3) a sick leave." Haro's leave does not fall into any of these categories, even if disability or sick leave are broadly construed to include caring for a family member who is disabled or sick.[1]

IC 20-28-10-1(d) provides: "A teacher who is pregnant shall be granted a leave of absence for the period provided in and subject to section 5 of this chapter." IC 20-28-10-5, in turn, treats pregnancy as a "temporary disability" and requires the school corporation to grant the pregnant teacher a leave of absence from the commencement of pregnancy and up to one year after birth. This language is closely tracked by the maternity leave benefit under the BCSC contract, which was based on the predecessor statute, IC 20-6.1-6-4. The leave required by IC 20-28-10-1(d) and -5 is limited to pregnant teachers, so Haro's paternity leave did not qualify under these statutes.

Subsection (c) of IC 5-10.4-4-7 requires that service credit also be given for "adoption leave" of not more than one year. There is no evidence that the leave taken by Haro in 1982-1983 was for the adoption of a child, because in that event he could have checked the "adoption leave" box and obtained service credit.

Finally, for multiple reasons, Haro is not entitled to service credit for his paternity leave based on IC 5-10.4-4-7(d) pertaining to FMLA leave. Subsection (d) was apparently added to assure that a denial of service credit would not risk violating the FMLA, which was enacted in 1993. The drafters of subsection (d) probably felt that a specific reference to "vesting and eligibility" was required. While the FMLA itself says nothing about whether service credit must be granted for an FMLA-required leave, the implementing rules provide that a period of unpaid FMLA leave "shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate," but that "unpaid FMLA leave

[1] TRF cites an administrative decision holding that "sick leave" under IC 20-28-10-1 includes leave to care for a seriously ill family member. *Young v. TRF*, Decision and Recommended Order (10/13/09) (TRF Exhibit E). That decision became a final order of the TRF Board. Subsequently, the TRF Board amended its rules to define "sick leave" under IC 5-10.4-4-7 as leave taken due to *the member's* illness or injury. 550 IAC 2-1-12.8 (adopted 12/16/09). Because Haro does not contend and the evidence does not show that his leave was taken to care for a disabled family member, this question need not be revisited.

periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate." 29 CFR § 825.215(d)(4).

Haro's leave was not "FMLA leave" because the FMLA had not yet been enacted when he took it. In any event, the FMLA, its implementing regulations, and subsection (d) do not require that Haro receive service credit because those provisions require service credit only where the member's vesting and eligibility are affected, which is not the case here.[2] The statute bars granting service credit for FMLA leave for benefit purposes, unless the leave falls into one of the other authorized categories.

Thus, TRF correctly concluded that Haro's paternity leave does not qualify for service credit under the statutes. Haro essentially concedes this. Instead, he argues that denying him service credit for the year after birth or adoption is "discriminatory," both as between males and females, and as between adoptive and biological fathers. He does not cite authority for his argument, and much of his argument is based on societal attitudes rather than legal principles. He argues that it is "time to update the statutes," which of course is the role of the General Assembly, not TRF. TRF has not replied to his discrimination argument.

If Haro is entitled to relief on this score, it would be because the statutory scheme unconstitutionally discriminates against biological fathers, who are denied up to a year of service credit for caregiving that is granted to biological mothers and all adoptive parents. It is highly likely that a court would find that the statutory scheme violates both the U.S. and Indiana Constitutions. TRF, however, is without authority to declare the statute unconstitutional or refuse to follow it on constitutional grounds.

Statutes that discriminate between classifications of citizens are analyzed under the Equal Protection Clause of the Fourteenth Amendment using different levels of scrutiny. The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). But classifications that burden a fundamental right or that are based on race, national origin or alienage are given the strictest scrutiny, under which the classification must suitably tailored to serve a compelling governmental interest. *Id.* Gender classifications are given intermediate scrutiny, surviving only if the classification is substantially related to an important or "exceedingly persuasive" governmental objective, regardless of whether the statutory policy discriminates against women or men. *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721, 728-29 (2003); *U.S. v. Virginia*, 518 U.S. 515, 531 (1996); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982).

[2] It appears that Haro has been a member of TRF continuously since 1969, and has more than the ten years required to attain vested status regardless of whether the year off to care for his children is counted. IC 5-10.2-1-8(a).

The statutory scheme at issue here draws two distinctions, granting service credit to biological mothers but not the fathers of their children, and granting credit to all adoptive parents but not biological fathers. While there is no case on point, the reasoning in cases analyzing similar situations suggests that these distinctions would not survive equal protection scrutiny.

In *California Federal Savings and Loan Ass'n v. Guerra*, 479 U.S. 272 (1987), the Supreme Court rejected a challenge to a state law requiring employers to provide up to four months of unpaid pregnancy disability leave. The trial court held that the state law was pre-empted by Title VII of the Civil Rights Act of 1964, because employers who granted such leave would be subject to reverse discrimination lawsuits by temporarily disabled men. The Supreme Court held that the state law providing preferential treatment to pregnant employees was consistent with Title VII, including the Pregnancy Discrimination Act, as both had the salutary goal of protecting women against discrimination on the basis of pregnancy. But the court noted that the state law under review was "narrowly drawn to cover only the period of actual physical disability on account of pregnancy, childbirth, or related medical conditions." *Id.* at 290.

Based on *Guerra*, the Sixth Circuit rejected a male employee's claim that he was subject to reverse discrimination because his employer's disability policy granted more benefits for maternity-related disability than for other types of disability. *Harness v. Hartz Mountain Corp.*, 877 F.2d 1307 (6th Cir. 1989). However, the Third Circuit ruled in favor of a male employee who challenged a school board's policy of permitting pregnant women but not fathers up to one year to care for a newborn child. The court held that any *caregiving* leave granted beyond the period of actual *disability* from pregnancy and childbirth discriminated against men in violation of Title VII. *Schafer v. Board of Public Educ. of the School Dist. of Pittsburgh*, 903 F.2d 243, 248 (3rd Cir. 1990).

In *Johnson v. University of Iowa*, 431 F.3d 325 (8th Cir. 2005), a biological father challenged a state university's policy of permitting biological mothers to be paid for up to six weeks of accumulated sick leave, all adoptive parents to use up to five days of sick leave, but biological fathers to take no sick leave upon arrival of a new child. The challenge was brought under both Title VII and the Equal Protection Clause.

The court began with the different benefits conferred upon biological mothers and biological fathers. "If the leave given to biological mothers is granted due to the physical trauma they sustain giving birth, then it is conferred for a valid reason wholly separate from gender. If the leave is instead designed to provide time to care for, and bond with, a newborn, *then there is no legitimate reason for biological fathers to be denied the same benefit.*" 431 F.3d at 328 (emphasis added). The court went on to find that six weeks of "presumptive disability" was justified in light of standard medical practice that a mother should take at least six weeks off after childbirth. *Id.* at 329.

The court analyzed the distinction between adoptive parents and biological fathers using the rational basis test (no fundamental right to paid leave, biological fathers are not a suspect class). The court found a rational basis for the five days of paid leave granted to adoptive parents, in that adoptive parents "face demands on their time and finances that may be significantly greater than those faced by biological parents," such as having to pay for the delivery expenses of the birth mother and attending to administrative matters prior to the arrival of the child. *Id.* at 331-32.

gender discrimination

Based on these cases, it is doubtful that IC 5-10.4-4-7's disparate treatment of biological mothers and fathers, *beyond* the period when the mother is disabled, would pass the intermediate scrutiny standard for gender discrimination. Particularly relevant here is the condemnation of invalid gender-based stereotypes, specifically in the administration of leave benefits, including the disparate granting of maternity and paternity leave benefits. *Hibbs*, 538 U.S. at 729-35. It is also questionable whether granting a full year of leave to adoptive parents but not to biological fathers would pass even rational basis scrutiny.

It is also highly doubtful that the denial of service credit to biological fathers would pass muster under Article 1, Section 23 of the Indiana Constitution: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." A challenge to a statute under this provision is evaluated with a two-prong test:

> First, the disparate treatment accorded by the legislation must be reasonably related to inherent characteristics [that] distinguish the unequally treated classes. Second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated. Finally, in determining whether a statute complies with or violates Section 23, courts must exercise substantial deference to legislative discretion.

Giles v. Brown County ex rel. Board of Comm'rs, 868 N.E.2d 478, 481 (Ind. 2007), quoting *Collins v. Day*, 644 N.E.2d 72, 80 (Ind. 1994).

* disparate treatment of mothers + fathers under service credit statutes.

Again, the service credit statute disparately treats pregnant women and the fathers of their children. The obvious inherent characteristic that distinguishes these classes is that women bear and nurse children. Therefore, the granting of service credit in connection with maternity leave is rationally related to this inherent characteristic, but only to the extent that a mother requires time to recover from childbirth and form a maternal bond. As suggested by the federal cases cited above and the FMLA, however, a reasonable time to serve this objective is six to 12 weeks after birth. Granting the mother service credit for a full year, and denying credit to the father, is not reasonably related to this justification or to any other conceivable justification.

The statute's disparate treatment of biological and adoptive fathers is also questionable. While it is true that many adoptive parents face some different burdens than biological parents

(*e.g.*, negotiation, administrative or legal matters, or international travel), a full year of credit for post-adoption caregiving is not reasonably related to any inherent difference between adoptive and biological fathers.

In *Cornell v. Hamilton*, 791 N.E.2d 214 (Ind. App. 2003), the court strongly suggested that granting paid funeral leave to married employees upon the death of a spouse's parent, but not to unmarried employees upon the death of a partner's parent, would not be justified under the first prong of the *Collins* test, particularly noting that "preferential legislative treatment for a classification which was proper when enacted may later cease to satisfy the requirements of Section 23 because of intervening changes in social or economic conditions." 791 N.E.2d at 219, quoting *Collins*, 644 N.E.2d at 81. That argument was waived and left undecided in *Cornell*, but the same argument could be made here. A policy that only mothers should be granted extended caregiving leave may have been justified several decades ago, but societal and legal views regarding the father's role have changed. This sea change is reflected by the fact that Haro's employer agreed to provide paternity leave in the early 1980s.

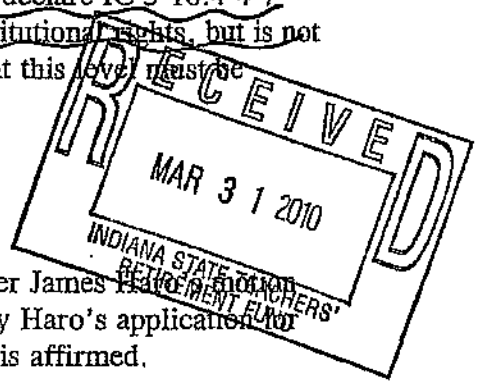
only a court can grant Haro service credit under the statute.

Given the questionable constitutionality of the statutory scheme, the next question is whether TRF can grant Haro service credit contrary to the statute. The answer is that only a court can do so.

There is authority to the effect that administrative agencies are not authorized to pass on the constitutional validity of a statute. *Sunshine Promotions, Inc. v. Ridlen*, 483 N.E.2d 761, 764-65 (Ind. App. 1985); *Bielski v. Zorn*, 627 N.E.2d 880, 887-88 (Ind. Tax 1994) (state board and officers "have no authority whatsoever to determine the constitutionality of a statute."). As a general rule, constitutional questions are within the primary jurisdiction of the courts, not administrative agencies. *Town Board of Orland v. Greenfield Mills, Inc.*, 663 N.E.2d 523, 527-28 (Ind. 1996). But that does not mean that presentation of a constitutional question takes the case outside administrative jurisdiction. To the contrary, as in *Greenfield Mills*, a plaintiff may be required to present the constitutional question to the administrative agency, where the gravamen of the relief sought is the subject of an administrative scheme. *See also Save the Valley, Inc. v. Indiana Dept. of Environmental Management*, 724 N.E.2d 665, 669-70 (Ind. App. 2000). Another line of cases on exhaustion of administrative remedies holds that the administrative process may be bypassed to directly present to a court a claim that an entire statute or ordinance is invalid, but not where the plaintiff is claiming that the statute is invalid as applied to the plaintiff's individual circumstance. *See Galbraith v. Planning Dept. of City of Anderson*, 627 N.E.2d 850, 853 (Ind. App. 1994) (citing and discussing cases).

An as-applied challenge seeks a declaration that a statute or regulation is invalid on the facts of the particular case, while a facial challenge contends that there is no set of circumstances under which the statute can be constitutionally applied. *Dowdell v. City of Jeffersonville*, 907 N.E.2d 559, 564-65 (Ind. App. 2009); *Doe v. Town of Plainfield*, 893 N.E.2d 1124, 1129 (Ind. App. 2008).

Haro claims that IC 5-10.4-4-7 is discriminatory as applied to him, but if he is correct the statute is facially unconstitutional as to all biological fathers who took paternity leave. To rule in Haro's favor and grant him the credit would be to effectively declare IC 5-10.4-4-7 unconstitutional. TRF has an obligation to honor its members' constitutional rights, but is not authorized to directly contravene a statute in order to do so. Relief at this level must be denied, and can be granted only by a court upon judicial review.



Recommended Order

TRF's motion for summary judgment is granted, and petitioner James Haro's motion for summary judgment is denied. TRF's initial determination to deny Haro's application for one year of service credit for the year that he was on paternity leave is affirmed.

DATED: March 26, 2010.

Wayne E. Uhl
Administrative Law Judge
8710 North Meridian Street, Suite 200
Indianapolis, Indiana 46260-5388
(317) 844-3830

STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW

The undersigned administrative law judge is not the ultimate authority, but was designated by the TRF Board to hear this matter pursuant to I.C. § 4-21.5-3-9(a). Under I.C. § 4-21.5-3-27(a), this order becomes a final order when affirmed under I.C. § 4-21.5-3-29, which provides, in pertinent part:

> (b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:
>
> (1) affirming;
>
> (2) modifying; or
>
> (3) dissolving;
>
> the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.
>
> (c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

(1) identifies the basis of the objection with reasonable particularity; and

(2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

This means that any party who objects to this decision and recommended order must, within 15 days after service, file a written objection with the TRF Board, c/o Thomas N. Davidson, General Counsel, 150 W. Market St., Ste. 300, Indianapolis, IN 46204. The written objection must state the basis of the objection with reasonable particularity.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document on the following persons, by U.S. Postal Service first-class mail, **certified mail, return receipt requested**, postage prepaid, on March 26, 2010:

James L. Haro
940 Redwing Dr.
Columbus, IN 47203

Thomas N. Davidson
General Counsel
Teachers' Retirement Fund
150 W. Market St., Ste. 300
Indianapolis, IN 46204

Wayne E. Uhl
Administrative Law Judge