

Boad



STATE OF INDIANA

ROBERT D. ORR - Governor

INDIANA STATE TEACHERS' RETIREMENT FUND

RECEIVED
JAN 30 1984
STATE TEACHERS RETIREMENT
FUND

506 State Office Building
100 North Senate Avenue
Indianapolis, IN 46204-2264
317/232-3860

STATE OF INDIANA)
COUNTY OF MARION) SS

Administrative Adjudication
before the Hearing Officer
for the Indiana State Teachers'
Retirement Fund (ISTRF)

IN THE MATTER OF:

WILLIAM A. MILLER, PETITIONER

FINDING OF FACTS, CONCLUSIONS OF LAW,
AND RECOMMENDATION

This matter came before the Hearing for the ISTRF for hearing on December 13, 1983. Petitioner appeared pro se. The state was represented by Alfred K. B. Tsang, Deputy Attorney General. The Hearing Officer heard the testimony, considered the documentary evidence, observed the demeanor of the witnesses, considered the arguments, took administrative notice, as noted on the record, of certain statutes and documents, took administrative notice of Petitioner's original complaint filed in the Marion Superior Court, Room 1 and the court's August 23, 1983 order dismissing the complaint for Petitioner's failure to exhaust his administrative remedies pursuant to IC 4-22-1-1 et seq. Based upon the above considerations, the Hearing Officer now issues the following Findings of Fact, Conclusions of Law, and Recommendation:

1. In 1955, Petitioner, William A. Miller, earned \$ [redacted] while employed as a teacher in the Barton Township School Corporation, Gibson County, Indiana and earned \$ [redacted] while employed as a teacher in the Evansville, Indiana School Corporation.
2. Petitioner's above 1955 earnings became, at a later date, subject to Federal Insurance Contributions (FICA taxes) at the rate of [redacted] of gross earnings.
3. In 1955 and at all times relevant to this proceeding, Petitioner has been a member of the ISTRF.
4. The 1955 FICA taxes were to be deducted from Petitioner's ISTRF account pursuant to statute.
5. In 1956, ISTRF only deducted \$ [redacted] from Petitioner's ISTRF account to cover the 1955 FICA taxes.
6. ISTRF should have deducted \$ [redacted] ([redacted] of [redacted])



STATE OF INDIANA

ROBERT D. ORR - Governor

INDIANA STATE TEACHERS' RETIREMENT FUND

506 State Office Building
100 North Senate Avenue
Indianapolis, IN 46204-2264
317/232-3860

7. On May 21, 1983, Petitioner paid the ISTRF [REDACTED] to cover the amount which should have been deducted from his ISTRF account to pay the 1955 FICA taxes.
8. In September, 1963, the Public Employees' Retirement Fund (PERF) wrote the attached letter to ISTRF. The letter is incorporated by reference into these Findings of Fact. (see Attachment A).
9. Pursuant to the letter, ISTRF deducted [REDACTED] from Petitioner's ISTRF account and paid it to PERF.
10. Therefore, ISTRF paid [REDACTED] to cover Petitioner's 1955 FICA taxes.
11. Petitioner's share of 1955 FICA taxes was [REDACTED] of \$ [REDACTED]
12. The evidence showed that ISTRF deducted [REDACTED] too much from Petitioner's ISTRF account to cover his 1955 FICA taxes. (see Findings of Fact 5,8, and 11.)
13. Even though ISTRF acted in good faith and pursuant to a request from PERF in 1963, the evidence showed that ISTRF overpaid [REDACTED] from Petitioner's account.
14. Based upon the above considerations, the State of Indiana should credit [REDACTED] to Petitioner's ISTRF account.
15. Because PERF and ISTRF are agencies under the executive branch of the State of Indiana, ISTRF should not be able to hide behind a veil and claim that another state agency committed the error and that ISTRF only acted upon the request. The State of Indiana is responsible for the overpayment.
16. Indiana Code 5-10.1-6-5 prohibits Petitioner from recovering accrued interest for the \$ 8.09 from 1963 to the present. (see Attachment B).
17. The general rule in American civil and administrative proceedings is that each party bears the cost of pursuing or defending an action unless a statute provides otherwise.
18. No Indiana statutory exists to permit Petitioner to recover the cost of successfully prosecuting this matter.

RECOMMENDATION

Based upon the above considerations, the Hearing Officer issues the following RECOMMENDATION:



STATE OF INDIANA

ROBERT D. ORR - Governor


INDIANA STATE TEACHERS' RETIREMENT FUND

506 State Office Building
100 North Senate Avenue
Indianapolis, IN 46204-2264
317/232-3860

That the State of Indiana should credit
Petitioner's Indiana State Teachers'
Retirement fund \$ [REDACTED] Further, that
Petitioner should not recover from the
State of Indiana the costs of persuing
this administrative action.

cc: William Miller (certified)
Alfred K. B. Tsang, Deputy Attorney General
Loren T. Tiede (Certified)

Dated: January 27, 1984


Bradley K. Kage, Hearing Officer