

STATE OF INDIANA)
)
COUNTY OF VANDERBURGH)

IN THE VANDERBURGH COUNTY COURT)
) SS:
CAUSE NO. [REDACTED]

RECEIVED

JAN 27 1983

IN RE THE FINAL DETERMINATION)
MADE BY BOARD OF TRUSTEES,)
INDIANA STATE TEACHERS')
RETIREMENT FUND, IN THE)
MATTER OF WILLIAM A. MILLER,)
ACCOUNT NO. [REDACTED])
)
WILLIAM A. MILLER, Petitioner,)
)
vs.)
)
BOARD OF TRUSTEES,)
INDIANA STATE TEACHERS')
RETIREMENT FUND.)

CLERK OF COURT
JAN 27 1983
VANDERBURGH COUNTY COURT

FINDINGS OF FACTS,
CONCLUSIONS OF LAW AND JUDGMENT

This matter came before this Court on the petition of William A. Miller (Petitioner) seeking judicial review, pursuant to IC 4-22-4, of the administrative determination made by the Board of Trustees (Trustees) of the State Teachers' Retirement Fund (Fund) on the Petitioner's claim for military service credit, out-of-state service credit and professional improvement leave credit for state teachers' retirement benefits. Being advised by counsel on their briefs and oral argument and having taken this matter under advisement, the Court now makes the following:

A. FINDINGS OF FACTS

1. Petitioner was born on January 14, 1933, and became a public school teacher and a member of the Fund at the beginning of the 1954-55 school year.
2. He took leave of absence from Evansville-Vanderburgh School Corporation effective January 1, 1960 and began his active duty as an enlisted member in the Regular Air Force on December 23, 1959.
3. Petitioner was honorably discharged from his enlisted status on March 21, 1960 to accept a commission as an officer in the Air Force Reserve on extended active duty for an obligatory term of three (3) years.
4. On April 22, 1962, Petitioner was appointed and accepted a commission as a regular officer in the United States Air Force.

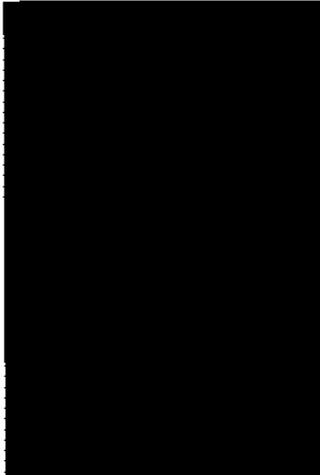
5. On June 1, 1962, Petitioner departed for a three-year overseas assignment and as a result incurred another three-year active duty service commitment.

6. From 1965 to 1967 and while under active military duty status, Petitioner enrolled as a full-time student at Auburn University, Auburn, Alabama and received a Bachelor of Science degree in Aeronautical Engineering at the completion of that period for which he claims credit for leave of absence for professional improvement.

7. In accepting the foregoing educational assignment and upon its completion, the Petitioner incurred still another active service commitment until March 23, 1974.

8. Petitioner did not submit a written request to nor was he granted by a school corporation for sabbatical leave for professional improvement.

9. Petitioner submitted five (5) "Certificates" to the Fund showing that he was employed as an evening school teacher by a state supported school for a minimum of sixty (60) days for each of the following employment and remuneration:

<u>Period</u>	<u>Employer</u>	<u>Salary</u>
July 1960-June 1961	University of Southern Mississippi	
July 1961-June 1962	University of Southern Mississippi	
July 1961-June 1962	University of Mississippi	
July 1963-June 1964	University of Maryland	
July 1967-June 1968	Florida State University	

10. Petitioner sought credit for the above employment as public school teaching rendered outside of the state for the purpose of arriving at the number of years of service in computing Indiana retirement benefits.

11. Petitioner paid into his annuity account with the Fund for the remainder of the 1959-60 school year and for the 1960-61, 1961-62 and 1962-63 school years.

12. Petitioner retired from the United States Air Force effective September 30, 1979 ending a continuous period of active service of nineteen (19) years six (6) months and nine (9) days and accumulated total active service of twenty (20) years one (1) month and six (6) days. He has been and is drawing retired pay from the United States Air Force.

13. 10 U.S.C. Section 8075(b) provides that the Regular Air Force includes the retired officers and enlisted members of the Regular Air Force.

14. Federal law provides a person who enlists in the armed forces has the same rights to restoration of employment and employment benefits as those persons who were inducted under the Military Selective Service Act if such person's service performed did not exceed four (4) years after June 24, 1948 (the date of enactment of the Selective Service Act of 1948) and the total of any service, additional or otherwise, performed after August 1, 1961, does not exceed five (5) years. Similar rights are also available to persons who enter upon active duty in response to an order or call to active duty, reservists who enter upon active duty for initial training and for other than training. 38 U.S.C. Sections 2021 and 2024.

15. Indiana Code 20-6.1-6-2 provides:

A school corporation may grant a teacher, on written request, a sabbatical for improvement of professional skills through:

- (1) advanced study;
- (2) work experience;
- (3) teacher exchange programs; or
- (4) approved educational travel.

After taking a sabbatical, the teacher shall return for a length of time equal to that of the sabbatical leave.

16. At the time when the Trustees made their determination, Indiana Code 21-6.1-4-4 as amended by Acts 1980, P.L. 28, Section 12 provides:

In computing the service credit for each member who has served as a public school teacher out-of-state, the board may include:

(1) For members who begin teaching in Indiana before July 1, 1980, not more than the greater of:

(A) Eight [8] years for out-of-state service; or

(B) The number of out-of-state years which meets the condition of one [1] out-of-state year in four [4] years of service; excepting those out-of-state years which qualify the member for retirement in an out-of-state system.

After April 1, 1965, at least ten [10] years of in-state service is required before a member may claim any out-of-state service credits.

17. Since the Trustees made their administrative determination, IC 21-6.1-4-4 has been repealed by Acts 1981, P.L. 49, Section 5 and replaced by IC 21-6.1-4-4.5 which provides:

(a) "Out-of-state service" means service in any state in a comparable position which would be creditable service if performed in Indiana.

(b) In computing the service credit for each member who began teaching in Indiana before July 1, 1981, and who has served as a public schoolteacher out of state, the board may include the greater of eight [8] years or one [1] year of out-of-state service for every four [4] years of in-state service; however, this out-of-state service may be included only if rendered before July 1, 1981.

* * *

(d) Out-of-state years which qualify a member for retirement in an out-of-state system may not be granted under this section.

(e) After April 1, 1965, at least ten [10] years of in-state service is required before a member may claim any out-of-state service credits.

18. A member of the Fund is eligible for retirement with at least ten years of creditable service at age sixty-five or for early retirement with a reduced pension with at least fifteen years of creditable service at age of fifty. IC 5-10.2-4-1.

CONCLUSIONS OF LAW

1. The law is with the Respondent and against the Petitioner.

2. The Court in reviewing the record of administrative proceedings does not reweigh the evidence before the agency nor substitutes its judgment for that of the agency. Indiana Education Employment Relations Board v. The Board of Trustees of Baugo Community Schools (1978) Ind.App. 377 N.E.2d 414.

3. State pensions are gratuities; they involve no agreements of the parties and create no vested rights, notwithstanding compulsory contributions from the retirement fund member's pay. Until retirement, the employee has no vested right in pension benefits. Where the statutory conditions for retirement existing when the application is made have been met, and the award of the pension has been made, or as of right should have been made, the pensioner's interest becomes vested and takes on the attributes of a contract. Etherton v. Wyatt (1973) Ind.App. 293 N.E.2d 43. Thus, the eligibility for retirement is based upon the statutory requirement when a member applies for retirement.

4. The Petitioner had not met the statutory minimum age requirement for retirement when he appeared before the trustees for the determination of his retirement credit.

5. Federal veterans reemployment rights law pre-empts state law except where state law provides greater or additional rights or protections.

6. The Petitioner was on military leave when he left his employment on January 1, 1960. He repeatedly extended his service commitment by accepting a regular commission, overseas assignment and educational assignment and until he incurred sufficient length of service to obtain

military retirement benefits were deemed waivers of his rights and the waivers were clearly and unequivocally indicated. Smith v. Missouri Pacific Transportation Company (8th Cir. 1963) 313 F.2d 626, Lee v. City of Pensocola (5th Cir. 1981) 634 F.2d 886.

7. Petitioner is not eligible for professional improvement leave credit for his failure to submit written request for, nor to have been granted leave from the school corporation. Petitioner also failed to have returned to teaching for the length of time equal to that of the leave period claimed. IC 20-6.1-6-2.

8. Petitioner is not eligible for out-of-state service credit due to:

a. His failure to present evidence that the out-of-state service was in a comparable position which would be creditable service if performed in Indiana. IC 21-6.1-4-4.5(a).

b. His out-of-state years qualified him for retirement under an out-of-state retirement system. IC 21-6.1-4-4.5(d).

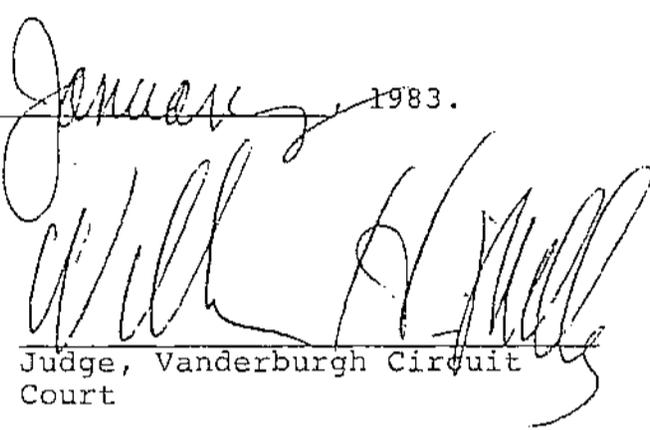
c. His failure to have at least ten years of in-state service. IC 21-6.1-4-4.5(e).

9. The actions of the Trustees were not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or in excess of statutory jurisdiction, authority or limitations; or unsupported by substantial evidence.

JUDGMENT

IT IS HEREBY CONSIDERED, ADJUDGED AND DECREED by this Court that the administrative determination by the Respondent, Board of Trustees, Indiana State Teachers' Retirement Fund, is affirmed and relief sought by the Petitioner is denied.

This 24 day of January, 1983.


Judge, Vanderburgh Circuit Court

Copies to:

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