

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 110017-U

Filed 7/15/11

NO. 4-11-0017

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

BOARD OF EDUCATION OF NILES TOWNSHIP	)	Appeal from
HIGH SCHOOL DISTRICT NO. 219,	)	Circuit Court of
Plaintiff-Appellant,	)	Sangamon County
v.	)	No. 10MR90
THE BOARD OF TRUSTEES OF THE TEACHERS'	)	
RETIREMENT SYSTEM OF THE STATE OF	)	Honorable
ILLINOIS,	)	Patrick J. Londrigan,
Defendant-Appellee.	)	Judge Presiding.

---

JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Steigmann and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* Section 20-124 of the Retirement Systems Reciprocal Act did not authorize the Teachers' Retirement System of the State of Illinois to reduce a member's earned unused and uncompensated accumulated sick leave from 340 days to 262 days upon the member's retirement where member earned the maximum of two years (340 days) of service credit.

¶ 2 On February 26, 2010, defendant, the Board of Trustees of the Teachers' Retirement System of the State of Illinois (Board), upheld an assessment of employer retirement costs against plaintiff, Board of Education of Niles Township High School District No. 219 (Niles), in the amount of \$361,096.68. On appeal, the circuit court of Sangamon County affirmed the Board's judgment.

¶ 3 Niles appeals, arguing the Board erred in its interpretation of section 20-124 of the Retirement Systems Reciprocal Act (Reciprocal Act) (40 ILCS 5/20-124 (West 2006)). We

agree and reverse.

¶ 4 Niles Township High School District No. 219 is a public school district organized pursuant to the Illinois School Code (105 ILCS 5/1-1 through 36-1 (West 2006)). Neil Codell (Codell) served as superintendent of schools beginning July 1, 2002, through December 31, 2008. Codell had previously worked in a certified staff position in the Chicago Public Schools from July 1, 1999, through June 30, 2002.

¶ 5 The Teachers' Retirement System of the State of Illinois (TRS) provided a reciprocal benefit estimate to Codell on September 6, 2005, approximately 40 months before his retirement on January 1, 2009. The estimate advised Codell he earned 11.336 years of service credit from the Chicago Teacher's Pension Fund (CTPF), and projected Codell would earn 23.676 years of service credit from TRS (which included 2.000 years TRS sick leave credit), if Codell retired on December 15, 2008. TRS projected a total credit of 35.012 years of service credit through December 15, 2008, at age 56. The Illinois Pension Code (Pension Code) provides for a member to retire before age 60. See 40 ILCS 5/16-133.2 (West 2006). However, an early retirement without discount (ERO) requires a member and employer contribution to avoid a reduction in the retirement annuity. The reduction does not apply if the member has at least 35 years of creditable service. See 40 ILCS 5/16-133.2 (West 2006).

¶ 6 On May 22, 2006, Codell elected to retire from Niles under the early retirement provisions of section 16-133.2 of the Pension Code (40 ILCS 5/16-133.2 (West 2006)), effective January 1, 2009.

¶ 7 On October 22, 2008, TRS provided a benefit estimate to Codell with the same projected claim date of December 15, 2008. However, TRS reduced the service credit from

CTPF to 10.875 years, and thus, reduced the projected total service credit to 34.540 years . In a letter dated October 23, 2008, TRS advised Niles of an error in its calculations, stating:

"The second issue results from a TRS error which overestimated the amount of sick leave Mr. Codell would be able to use toward retirement. There is a two-year limit on credit granted due to unused sick leave, and TRS had not properly applied the limit when including Mr. Codell's sick leave earned while employed by the Chicago Public Schools in the estimate of his pension. Unfortunately, when the total sick leave from the two pension systems is reduced to two years, Mr. Codell's total service credit falls below the 35 years necessary to avoid being subject to the Early Retirement Option (ERO) employer and employee costs. As a result, both Mr. Codell and District #219 will be responsible for ERO contributions."

¶ 8 Codell retired under the Reciprocal Act (40 ILCS 5/20 -101 through 20-133 (West 2006)), effective January 1, 2009.

¶ 9 On February 25, 2009, TRS issued an employer bill requiring Niles to pay \$361,096.68 in employer retirement costs. In May 2009, Niles sought administrative review of the employer retirement costs.

¶ 10 On January 20, 2010, the claims-hearing committee recommended upholding the staff determination that Niles owed employer retirement costs of \$361,096.68. Contrary to the benefit estimate dated October 22, 2008, where TRS reduced the service credit from CTPF to

10.875 years, the committees's written recommendation found that "TRS staff correctly applied Reciprocal Act Section 20-124 when it reduced Codell's TRS sick leave credit from 340 days to 262 days." (Emphasis added.) Codell's TRS annuity calculation was based on 23.315 years of service credit, which included 262 days (1.541 years) of unused, uncompensated sick leave, and Codell's CTPF annuity calculation was based on 11.361 years of service credit, which included .461 years of unused, uncompensated sick leave.

¶ 11 According to the claims hearing committee, TRS reduced Codell's retirement-creditable sick leave from 340 days (2.000 years) to 262 days (1.541 years), so Codell would not receive a benefit utilizing sick leave credit from CTPS (.461 years) and sick leave credit from TRS (2.000 years) in excess of the maximum TRS allowance of 2.000 years. Because Codell retired with less than 35 years of service credit (34.676 years), TRS assessed employer retirement costs against Niles in the amount of \$361,096.68.

¶ 12 On February 26, 2010, the Board voted to adopt the committee's recommended decision. On December 7, 2010, the circuit court affirmed the Board's decision.

¶ 13 This appeal followed.

¶ 14 Niles argues the Board erred in its interpretation of section 20-124 of the Reciprocal Act (40 ILCS 5/20-124 (West 2006)).

¶ 15 In an appeal from an administrative agency's decision, this court reviews the agency's determination, not the circuit court's. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531, 870 N.E.2d 273, 292 (2006). In all administrative proceedings, the plaintiff bears the burden of proof. *Marconi*, 225 Ill.2d at 532–33, 870 N.E.2d at 293. Based upon the question presented, this court reviews agency determinations under three distinct

standards of review. The agency's interpretation of a statute or administrative rule is a question of law, which receives *de novo* review. *Marconi*, 225 Ill. 2d at 532, 870 N.E.2d at 293. The agency's factual determinations will be upheld unless they are against the manifest weight of the evidence. *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 465, 917 N.E.2d 999, 1011 (2009). A finding is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *Peacock v. Board of Trustees of the Police Pension Fund*, 395 Ill. App. 3d 644, 652, 918 N.E.2d 243, 250 (2009). Finally, this court reviews mixed questions of fact and law under the clearly erroneous standard. See *McKee v. Board of Trustees of the Champaign Police Pension Fund*, 367 Ill. App. 3d 538, 543, 855 N.E.2d 571, 575 (2006).

¶ 16 An administrative agency's decision is clearly erroneous where the reviewing court comes to the definite and firm conclusion the agency has committed an error.

¶ 17 *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211, 886 N.E.2d 1011, 1018 (2008). The clearly erroneous standard provides some deference based upon the agency's experience and expertise, falling between *de novo* and manifest-weight-of-the-evidence review. *McKee*, 367 Ill. App. 3d at 543, 855 N.E.2d at 575.

¶ 18 This case involves a question of statutory interpretation, which we review *de novo*.

¶ 19 When interpreting a statute, our duty is to ascertain and give effect to the intent of the legislature. *Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 371, 864 N.E.2d 162, 165 (2007). "Legislative intent is best derived from the language of the statute itself, which, if unambiguous, should be enforced as written." *Taddeo v. Board of Trustees of the Illinois*

*Municipal Retirement Fund*, 216 Ill .2d 590, 595, 837 N.E.2d 876, 879 (2005). The court must give the language of a statutory provision its effect when that language is clear, and if the language is clear, the court must not resort to other aids for construction. *Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill .2d 76, 81, 630 N.E.2d 820, 822 (1994). A statute is ambiguous "if its meaning cannot be interpreted from its plain language or when it is capable of being understood by reasonably well-informed persons in two or more different senses." *People v. Purcell*, 201 Ill. 2d 542, 549, 778 N.E.2d 695, 699-700 (2002). "If the statutory language is susceptible to more than one interpretation \*\*\* legislative intent may be ascertained by considering 'the entire act, its nature, its object, and the consequences resulting from different constructions.'" *Taddeo*, 216 Ill. 2d at 595-96, 837 N.E.2d at 879, quoting *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 494, 791 N.E.2d 516, 519 (2003). Pension statutes are to be construed liberally in favor of the rights of the pensioner. *Taddeo*, 216 Ill .2d at 596, 837 N.E.2d at 879.

¶ 20 Section 20-124 of the Reciprocal Act states:

"Maximum benefits. In no event shall the combined retirement \*\*\* annuities exceed the highest annuity which would have been payable by any participating system in which the employee has pension credits, if all of his pension credits had been validated in that system.

If the combined annuities should exceed the highest maximum as determined in accordance with this Section, the respective annuities shall be reduced proportionately according to the ratio

which the amount of each proportional annuity bears to the aggregate of all such annuities." 40 ILCS 5/20-124 (West 2006).

¶ 21 The Board argues that section 20-124 of the Reciprocal Act authorizes their combining the sick leave earned by Codell in CTPF (.461 years) and the sick leave earned by Codell in TRS (2.000 years) and then reducing Codell's retirement-creditable sick leave in TRS to 1.541 years so that the total of sick leave earned in CTPF *and* TRS does not exceed the maximum TRS allowance of 2.000 years. See 40 ILCS 5/16-127(b)(6) (West 2006) ("Any days of unused and uncompensated accumulated sick leave earned by a teacher. The service credit granted under this paragraph shall be \*\*\* subject to a maximum of 2 years of service credit.") We note that TRS must grant the maximum TRS allowance of 2.000 years of service credit if "such service credits are not used for credit in any other \*\*\* retirement system." 40 ILCS 5/16-127(c) (West 2006) The Board does not argue that Codell used the sick leave days earned in TRS to secure service credit in any other retirement system.

¶ 22 The stated purpose of the Reciprocal Act "is to assure full and continuous pension credit for all service in public employment which is covered by a retirement system." 40 ILCS 5/20-101 (West 2006). Section 20-124 of the Reciprocal Act provides that combined retirement annuities should not exceed the highest annuity which would have been payable by any participating system in which the employee has pension credits. Without citation to authority, the Board asserts that "[t]he basic premise of the Reciprocal Act is that service credit accrued under all participating systems is combined to determine eligibility for benefits \*\*\*." In fact, a proportional retirement annuity is calculated by each participating system in which pension credit has been established *on the basis of pension credits under each system*. See 40 ILCS 5/20-121

(West 2006). Here, Codell earned .461 years of service credit for unused and uncompensated accumulated sick leave in CTPF and that credit was to be used by CTPF to calculate a proportional retirement annuity in accordance with the formula or method prescribed by CTPF. See 40 ILCS 5/20-121 (West 2006). Similarly, Codell earned 2.000 years of service credit for unused and uncompensated accumulated sick leave in TRS and that credit was to be used by TRS to calculate a proportional retirement annuity in accordance with the formula or method prescribed by TRS. See 40 ILCS 5/20-121 (West 2006). We find no authority under section 20-124 of the Reciprocal Act for TRS to combine the service credit earned in CTPF with the service credit earned in TRS, and then apply the formula or method prescribed by TRS to calculate creditable service. A proportional retirement annuity is computed by each participating system on the basis of pension credits earned under each system and not on the basis of pension credits earned under another of the participating systems. The plain language of section 20-124 references combined retirement annuities and not combined service credit for unused and uncompensated accumulated sick leave.

¶ 23 Further, section 20-124 clearly provides a course of action if the combined annuities exceed the highest annuity which would have been payable by any participating system. "The respective annuities shall be reduced proportionately according to the ratio which the amount of each proportional annuity bears to the aggregate of all such annuities." 40 ILCS 5/20-124 (West 2006).

¶ 24 Because we find section 20-124 of the Reciprocal Act did not authorize TRS to reduce Codell's earned unused and uncompensated accumulated sick leave from 340 days to 262 days upon his retirement , where Codell earned the maximum of two years (340 days) of service

credit, we need not address Niles' remaining arguments.

¶ 25           Based on the record before us, Codell retired with more than 35 years of service credit and, therefore, TRS must vacate the assessment of employer retirement costs against Niles.

For the reasons stated, we reverse the Board's judgment.

¶ 26           Reversed.