No. 125141

IN THE
SUPREME COURT OF ILLINOIS

LORI G. LEVIN,	)	
	)	Appeal from the Appellate Court of
Respondent-Appellee,	)	Illinois, First Judicial District
	)	
v.	)	No. 18-1167
	)	There Heard on Appeal From The
THE RETIREMENT BOARD OF	)	Circuit Court of Cook County,
THE COUNTY EMPLOYEES' AND	)	Illinois
OFFICERS' ANNUITY AND	)	County Department, Chancery
BENEFIT FUND OF COOK	)	Division
COUNTY,	)	No. 2016 CH 14789
	)	
Petitioner-Appellant.	)	The Hon. Kathleen M. Pantle, Presiding

BRIEF OF APPELLANT THE RETIREMENT BOARD OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY

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NATURE OF THE CASE

Pursuant to Supreme Court Rule 315, Petitioner-Appellant, the Retirement Board ("Board") of the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("Fund"), hereby petitions this Court for appeal from the judgment of the Appellate Court, First District, Sixth Division, reversing the decision entered on administrative review in the Circuit Court of Cook County, Illinois, that affirmed the Board's decision to deny Plaintiff-Respondent's ("Plaintiff-Respondent" or "Levin") request to participate in the annuitant healthcare plan administered by the Fund because she did not qualify for the benefit based upon the eligibility rules.

On June 7, 2019, the Appellate Court of Illinois, First District, entered its decision reversing a judgment entered by the Circuit Court of Cook County, Illinois, on May 10, 2018, in favor of the Board and against Levin. Thereafter, the Board filed its petition for rehearing on June 28, 2019 and on July 2, 2019, the Appellate Court denied the Board's petition for rehearing from which this appeal was taken. On September 25, 2019, this Court granted the Board's Petition for Leave to Appeal.

No questions are raised on the pleadings.

JURISDICTION

This Court has jurisdiction over this appeal pursuant to Supreme Court Rule 315.

ISSUES PRESENTED FOR REVIEW

1. Whether the Appellate Court's ruling that the Plaintiff-Respondent has an unconditional right to purchase group health insurance coverage from the Defendant-Petitioner that is protected by the Pension Protection Clause of the Illinois Constitution is in direct conflict with the recent decision of *Underwood v. City of Chicago*, 2017 IL App (1st) 162356).

2. Whether the Appellate Court deviated significantly from well-established principles of statutory construction and created a healthcare benefit in Article 9 of the Pension Code contrary to the unambiguous intent of the legislature to authorize only discretionary payment of a partial subsidy pursuant to Section 9-239 of the Illinois Pension Code, 40 ILCS 5/9-239.

3. Whether the wholesale limitation imposed by the Appellate Court on the rule making authority of the Board will have a significant detrimental effect on the administration of all pension funds throughout the State.

STATUTES INVOLVED

40 ILCS 5/9-239.

> 9-239. **Group Health Benefit.**
> (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, a minimum annuity, or a child's annuity on or after January 1, 1990, under Article 9 or 10 by reason of previous employment by Cook County or the Forest Preserve District of Cook County (hereinafter, in this Section, "the County").
>
> (b) Beginning December 1, 1991, the Fund may pay, on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans, all or any portion of the total health care premium (including coverage for other family members) due from each such annuitant.

(c) The difference between the required monthly premiums for such coverage and the amount paid by the Fund may be deducted from the annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate and the obligation of the Fund shall also terminate.

(d) Amounts contributed by the county as authorized under Section 9-182 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and all such premiums shall be charged to it.

(e) The group coverage plan and benefits described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

40 ILCS 5/9-190. **Board Powers and Duties**

Sec. 9-190. Board Powers and duties. The Board shall have the powers and duties stated in Sections 9-191 to 9-202, inclusive, in addition to such other powers and duties provided in this article.

STATEMENT OF FACTS

The facts of this case are largely undisputed. Beginning on or about November 1, 1980, Levin was employed by Cook County as an Assistant State's Attorney until July 31, 2003 (with a few, brief interruptions in service). (C. 241; 252-254)[1]. During that time-period, Levin made the employee contributions required as a participant of the Fund. On or about August 1, 2003, Levin resigned from her position as an Assistant State's Attorney and entered service with the State of Illinois as Executive Director of the Illinois Criminal Justice Information Authority. (C. 242-243). During her tenure as Executive Director of the Illinois Criminal Justice Information Authority, Levin paid employee contributions required as a participant of the State Employees' Retirement System. On or about June 5, 2009, Levin resigned from service with the State of Illinois. (C. 243).

The Illinois Retirement Systems Reciprocal Act ("Reciprocal Act") permits retiring Illinois public employees to combine service credit they earned from any of the thirteen

[1] "C" denotes the Record on Appeal.

public retirement systems in Illinois that are delineated in the Reciprocal Act. 40 ILCS 5/20-101 *et seq*. On December 20, 2011, the Fund received Levin's application for annuity benefits in which she requested that her benefits be calculated under the Reciprocal Act. (C. 248-251). The Fund's calculation of Plaintiff's annuity benefits was based upon both the service she had with Cook County and with the State of Illinois, which resulted in a larger annuity benefit due to her longer service period pursuant to the Retirement Systems Reciprocal Act. *Id*.

After Levin had received four years of annuity benefits from the Fund, she sent a letter to the members of the Board on September 22, 2016 requesting that she receive retiree healthcare coverage from the Fund for both herself and her spouse. (C. 224). In that correspondence, Levin noted that she is not eligible to participate in the State Employees Group Insurance Act of 1971 [5 ILCS 375/1 *et seq.*] because she failed to meet the minimum vesting service requirements based on her State employment. *Id.* Levin additionally noted that the Fund's Director of Health Benefits had previously informed her that she is not eligible to receive retiree healthcare coverage under the Fund's plan because her last employer under the Reciprocal Act was the State of Illinois and not Cook County. *Id*.

Significantly, the Fund's eligibility rules for the retiree healthcare plan administered by the Fund require that an annuitant's last employer must be either Cook County or the Forest Preserve District (referred to as the "last employer rule"). (C. 281; 298-300). Levin does not dispute the fact that she fails to meet the Fund's eligibility rules to participate in the retiree healthcare plan administered by the Fund. On or about October 6, 2016, the Board President sent Levin a letter denying her request because she failed to

meet the eligibility requirements to participate in the Fund's retiree healthcare plan. (C. 221-222).

On or about November 10, 2016, Plaintiff filed a Complaint for Administrative Review in the Circuit Court of Cook County challenging the decision to deny her the opportunity to participate in the Fund's retiree healthcare program. The parties entered an Agreed Order on or about March 14, 2017, remanding the matter to the Board for written findings and a final administrative decision regarding Plaintiff's request to participate in the Fund's group health insurance plan for eligible retirees in order to comply with the decision in *Howe v. The Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 2013 Ill. App. (1st) 122446. On June 12, 2017, the Board denied Plaintiff's request to participate in the Fund's retiree healthcare program because Plaintiff failed to meet the eligibility requirement that only those annuitants whose last employer was Cook County could participate in the retiree healthcare plan. (C. 208-216). On June 26, 2017, Levin filed her renewed Motion for Preliminary Injunction seeking to enjoin the Fund from denying her request to participate in the retiree healthcare plan administered by the Fund. (C. 77-88). The trial court denied the Motion for Preliminary Injunction on July 13, 2017 finding that Levin was seeking to change the *status quo* and that she failed to demonstrate irreparable harm resulting from the Board's decision. (C. 342- 347). Levin did not appeal the denial of her request for emergency injunctive relief. On May 10, 2018, the trial court affirmed the Board's denial of Levin's request to participate in the retiree healthcare plan administered by the Fund. (C. 462-472). Levin filed her notice of appeal on June 4, 2018. (C. 473).

ARGUMENT

I. INTRODUCTION

Levin alleges that the eligibility requirement to participate in the retiree healthcare plan administered by the Fund is invalid because it: (i) conflicts with section 9-239 of the Illinois Pension Code [40 ILCS 5/9-239]; and (ii) diminishes the statutory benefit protected under the Pension Protection Clause of the Illinois Constitution [Ill. Const. 1970, art. XIII, Section 5]. Levin's arguments stem from her allegation that section 9-239 grants her the unconditional right to participate in the retiree healthcare plan administered by the Fund and that right cannot be diminished through the Fund's eligibility requirements. Contrary to Levin's assertions, section 9-239 of the Illinois Pension Code does not, and never has, provided the benefit she seeks—an unconditional and constitutional right to participate in the retiree healthcare plan administered by the Fund. The legislature specifically provided that the benefits permitted under section 9-239, were not to construed as "pension or retirement benefits for the purposes of Section 5 of Article XIII of the Illinois Constitution of 1970." 40 ILCS 5/9-239(e). Section 9-239 simply provides the Fund with the authority to subsidize a portion of an annuitant's healthcare premium. Importantly, the language of section 9-239 is unambiguous and discretionary with respect to the Fund's payment of a subsidy for retiree healthcare ("…[b]eginning December 1, 1991, ***the Fund may pay***").

For the reasons that follow, this Court should reverse the Appellate Court and affirm the Board's decision denying Levin's request to participate in the retiree healthcare plan administered by the Fund due to her failure to meet the eligibility requirements of the plan.

II. STANDARD OF REVIEW

All of the issues presented for review are questions of law that pertain to the construction of relevant provisions of Article 9 of the Illinois Pension Code (40 ILCS 5/9-101 et seq.). Issues of statutory interpretation are reviewed *de novo*. *Kanerva v. Weems*, 2014 IL 115811.

A. The Appellate Court's Ruling That The Plaintiff-Respondent Has An Unconditional Right To Purchase Group Health Insurance Coverage From The Defendant-Petitioner That Is Protected By The Pension Protection Clause Of The Illinois Constitution Is In Direct Conflict With The Recent Decision Of *Underwood V. City Of Chicago*, 2017 IL App. (1st) 162356.

In its Opinion the Appellate Court held that Levin has a right to purchase group health insurance from the Fund based on the plain language of section 9-239 as well as the Illinois Constitution, which provides that "[m]embership in any pension or retirement system of the State, any unit of local government *** **shall** be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." (Emphasis added). Ill. Const. 1970, act XIII, §5; 2019 IL App (1st) 181167, ¶ 20. This reliance on the pension protection clause as a basis for its ruling that Levin has an unfettered right to participate in the healthcare plan administered by the Fund conflicts directly with the recent decision of the Appellate Court in *Underwood v. City of Chicago*, 2016 IL App (1st) 153613.

In *Underwood*, the issue involved various provisions of the Pension Code governing pension funds administered for the benefit of certain City of Chicago employees. The statutory provisions involved mandatory fixed-rate subsidies to be paid by the pension funds to the City to cover a set amount of the retiree's healthcare premium costs for the plans administered by the City. The retirees claimed, among other things, that they were entitled to lifetime healthcare coverage because the pension protection clause protected

their abstract right to healthcare coverage. The Appellate Court rejected that argument because the pension protection clause does not create and define benefits but only protects those arising out of a contractual or statutory commitment. ¶¶ 25-26.

The Appellate Court in *Underwood* also rejected the plaintiffs' arguments that subsidized healthcare is a benefit under the State constitution that may not be limited pursuant to the Supreme Court's holding in *Kanerva v. Weems*, 2014 IL 115811, 13 N.E. 3d 1228. In rejecting that argument, the Appellate Court stated:

> "But, again, the relevant constitutional provision and case law do not create benefits—they protect them. In *Kanerva*, the benefit recipients ***already had the enduring right***. *Id.* at ¶ 57. The Court just explained that, based on our constitution, it could not be taken away. *Id*. at ¶ 42. But here, the benefit always came with an expiration date. The time period was part of the benefit itself. *Id* at 27. (emphasis added).

Importantly, in this case, the legislative history of section 9-239 of the Illinois Pension Code dates back to January 24, 1990, at which time Article 9 was amended to require the Fund to pay 50% of the total healthcare premium, up to set limits, for a time-limited period of January 1, 1990 through December 31, 1993 for each annuitant who elected coverage under any of the County's healthcare plans. *See* Illinois Public Act 86-1025. Effective November 19, 1991, Article 9 of the Illinois Pension Code was further amended to allow the Fund to pay all or any portion of the total healthcare premium on behalf of retirees who choose to participate in any of the County's healthcare plans. *See* Illinois Public Act 87-794; 40 ILCS 5/9-239. In section 9-239, the legislature provided a permissive grant of authority to the Fund to provide a healthcare subsidy to annuitants. Nothing in the statute requires the Fund to provide a healthcare benefit to any annuitant. There is not, and never has been, an "enduring right", that was present in the *Kanerva* case, provided in Article 9

for Fund annuitants to participate in a healthcare plan administered by the Fund. And, to the extent that such "enduring right" is participation in the retiree healthcare plan administered by the Fund as Levin asserts, that "enduring right", similar to the expiration date for the benefit in *Underwood*, always came with a qualifier—i.e. such annuitant had to meet the eligibility requirements to participate in such retiree healthcare plan.

The Appellate Court's decision in this case does exactly what the *Underwood* court said is forbidden: it relies on an unwarranted extension of the pension protection clause to create an unconditional right to healthcare coverage that does not arise out of a contractual or statutory commitment under Article 9. This action of protecting a right for Levin that does not exist in contract or by statute has far reaching financial impacts on the Fund that must not be allowed to be implemented.

B. The Appellate Court Deviated Significantly From Well-Established Principles Of Statutory Construction And Created A Healthcare Benefit In Article 9 Of The Pension Code Contrary To The Unambiguous Intent Of The Legislature To Authorize Only A Discretionary Payment Of A Partial Subsidy.

The Appellate Court's ruling that Levin has an unconditional right to participate in the group health insurance plan administered by the Fund misinterprets the plain language of section 9-239 and well-settled principles of statutory interpretation in several respects. The Appellate Court acknowledges that it must ascertain and give effect to the intent of the legislature from a consideration of the entire act, its nature, its object, and the consequences resulting from different constructions. However, it then inexplicably abandoned those principles in conducting its analysis and in reaching its decision.

First and foremost, the Appellate Court does not even mention that Article 9 provides almost exclusively annuities and related disability and survivor benefits for Fund

participants. Other than the sole reference to a Group Health Benefit in section 9-239, there is no provision that allows participation in health insurance plans or provides related healthcare benefits in Article 9. A close review of the language of section 9-239 demonstrates that in enacting this provision the legislature intended to vest the Fund with the authority to subsidize, at its discretion, healthcare premiums but did not create a right for healthcare coverage to all annuitants. Subsections (b), (c) and (d) of section 9-239 address only issues that relate to the amount of the subsidy [section 9-239(b)], the method of collection of premiums from eligible annuitants [section 9-239(c)] and the handling of contributions by the Fund of the healthcare premiums [section 9-239(d)]. Instead of reading these provisions together as relating to only the grant of discretionary authority to the Fund to pay a subsidy for health insurance premiums, the Appellate Court interprets the clause in section 9-239(b) that states..."on behalf of each of the Fund's annuitants who chooses to participate in any of the county's healthcare plans…" as the language that creates the unconditional right to participate in the healthcare plan administered by the Fund. In so doing the Appellate Court elevates the language of this clause in a manner that is inconsistent with statutory interpretation principles.

Additionally, the appropriate reading of the term "annuitant" as used in section 9-239, is that it creates a threshold level; i.e. only persons who are annuitants might be eligible to receive healthcare benefits. If a person is not an annuitant, the applicant is not eligible for the benefit. However, there is no restriction in the statute that prohibits the Board from promulgating other eligibility rules on persons who are annuitants. The Appellate Court does not read the term annuitant as a threshold or limiting qualification, but interprets it expansively to create a constitutional right to healthcare for all annuitants,

which conflicts with the specific statutory instruction that such benefits are not entitled to the same protection afforded to pension benefits under the Illinois Constitution.

Under the principle of statutory construction known as the last antecedent doctrine, relative or qualifying words or phrases in a statute serve only to modify words or phrases which are immediately preceding and do not modify those which are more remote. *People v. Davis*, 199 Ill. 2d 130, 138, 766 N.E. 2d 641 (2002); *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 511-12, 702 N.E. 2d 545 (1998). In this case, under the last antecedent doctrine, the phrase "on behalf of each of the Fund's annuitants who choose to participate in any of the county's healthcare plans" modifies the grant of discretionary authority to the Fund to pay a subsidy for health insurance premiums. The clause cannot be read in isolation from the other subsections of section 9-239 to create an unconditional right to participate in the healthcare plan administered by the Fund. The other subsections of section 9-239 establish only the procedures for the payment of a subsidy. Therefore, the rules of statutory construction clearly establish that the term "annuitant" referred to in section 9-239 relates to a threshold eligibility factor for the payment of a subsidy and does not prohibit the Fund from instituting additional eligibility factors for participation in a healthcare plan it might administer.

Further, had the legislature wanted to create an unconditional right to access the healthcare plan, it could have plainly stated its direction to do so, but it did not. Indeed, the legislature specifically provided in section 9-239(e) that the health plan was not a retirement benefit. In contrast, when the legislature has required a public entity to provide retiree healthcare coverage the statutory language mandating such coverage is unambiguous and detailed with respect to the required healthcare coverage. For example,

the State Employees Group Insurance Act of 1971 [5 ILCS 375/1 *et seq.*] states that its purpose is "to provide a program of group life insurance, a program of health benefits and other employee benefits for persons in the service of the State of Illinois…" 5 ILCS 375/2. In detailing the necessary levels of coverage for such healthcare program, the State Employees Group Insurance Act specifically states: "the program of health benefits shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages. The program may include, but shall not be limited to, such supplemental coverages as out-patient diagnostic X-ray and laboratory expenses, prescription drugs, dental services, hearing evaluations, hearing aids, the dispensing and fitting of hearing aids, and similar group benefits as are now and may become available." 5 ILCS 375/6(a).

Additionally, Article 6 of the Illinois Pension Code was amended on January 12, 1983, to provide for a group health insurance plan for retirees covered under Article 6. (C. 424-425). Similar to the State Employees Group Insurance Act, the group health insurance provided in section 6-164.2 specifies that that coverage "shall provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as out-patient diagnostic X-ray and laboratory expenses, prescription drugs and similar benefits." *Id*. Section 6-164.2 additionally provides that the group health insurance program may additionally include: "(1) prepaid preventive health care through health maintenance organizations; (2) coverage for those who rely on treatment by prayer or spiritual means along for healing in accordance with the tenets and practice of a recognized religious denomination; (3) optional coverage for

dependents of the annuitant; (4) other optional coverage, such as for dental, psychological, or optometric services." *Id*.

Conversely, section 9-239 lacks any specific mandate from the legislature to the Fund to provide healthcare coverage for annuitants and it is completely devoid of any mention of varying levels of healthcare coverage. When the legislature uses certain language in one part of a statute and different language in another part, we assume that different meanings were intended. *People v. Davis,* 2012 IL App (2d) 100934, ¶ 14, 968 N.E.2d 682; *Gutraj v. Bd. of Trustees of Police Pension Fund of Vill. of Grayslake, Illinois*, 2013 IL App (2d) 121163, ¶ 8, 992 N.E.2d 605, 607.

In this instance, it is clear that the unambiguous language of section 9-239, in contrast to the language of the State Employees Group Insurance Act and section 6-164.2 of the Illinois Pension Code, simply provides the Fund with the authority to subsidize a portion of an annuitant's healthcare premium and may, or may not, exercise its discretion to do so. The statute does not require that healthcare coverage be provided to all annuitants of the Fund. Moreover, reading the clause in such a manner treats it as a benefit that is protected by the pension protection clause in the Illinois Constitution -- a reading that directly conflicts with the express language of section 9-239(e) that clearly prohibits such treatment.

Read as a whole, section 9-239(b) authorizes the Fund to partially subsidize healthcare premiums on a purely discretionary basis for eligible annuitants who participate in the Fund's plan. When properly read as part of subsection (b), the clause relied on by the Appellate Court is positioned to modify the "Fund may pay" language, thereby limiting the voluntary subsidy to those annuitants who are enrolled in the healthcare plan

administered by the Fund. In other words, the legislature used the clause to prohibit payment of the subsidy for annuitants who were not participating in the plan administered by the Fund (i.e. for annuitants who might be participating in the State of Illinois retiree plan based upon service with a state employer or with a private insurer). Such a limitation makes prudent fiscal sense and the legislature was well within its purview to include such a limitation.

This Court in *In Re Estate of Shelton*, 2017 IL 121199, held that the appellate court's statutory analysis was contrary to established canons of statutory construction because it expanded the meaning of "agent" as used under the Illinois Power of Attorney Act. Similarly here, the Appellate Court's reading of the modifying clause in subsection (b) to create an unconditional right of annuitants to have health insurance coverage under Article 9 is an impermissible expansion of the legislature's limited scope of section 9-239 to provide only for a voluntary payment of a subsidy to certain annuitants of the Fund. The Board's interpretation of the subsections of section 9-239 read as a whole is more in harmony with the legislative intent than this court's statutory analysis. *Daniel Hooker v. The Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 2013 IL 114811 (wherein the appellate court was reversed for departing from the plain language and meaning of a pension statute by reading into it exceptions, limitations, or conditions that the legislature did not express).

The Appellate Court's decision essentially rewrote section 9-239 in a manner that leads to an anomalous result. When Levin joined the Fund in 1990, the County was administering a health care plan to annuitants. That plan no longer exists. Yet, under the Appellate Court's decision Levin, and potentially other annuitants, will enjoy an enduring

right to healthcare coverage in a plan being administered by the Fund, a different and distinct entity from the County.

In *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 544 (2006) *modified upon denial reh'g* (May 29, 2007), this Court clarified that the most important function of a pension board is to ensure adequate financial resources to cover the Board's obligations to pay current and future retirement and disability benefits to those who qualify for such payments: "[p]erhaps the most important function of a pension board is to ensure adequate financial resources to cover the Board's obligations to pay current and future retirement and disability benefits to those who qualify for such payments." *Id.* As part of its fiduciary duties to beneficiaries, the Board must weigh many factors when making determinations regarding the benefits conferred under the Pension Code, including its fiduciary duty to ensure that the Fund not only remain financially viable and stable but that it continue to remain so for the benefit of all current and future beneficiaries. Providing healthcare coverage that is not authorized by Article 9 would be in derogation of the Board's fiduciary duties and would expose the Trustees of the Board to individual liability. 40 ILCS 5/1-114 (2012).

C. The Wholesale Limitation Imposed By The Appellate Court On The Rule Making Authority Of The Board Will Have A Significant Detrimental Effect On The Administration Of All Pension Funds Throughout The State.

The Illinois Pension Code gives the Board exclusive and original jurisdiction over the benefits to be provided by the Fund and allows them the authority to create rules for the Fund's administration. Section 9-190 of the Pension Code states, "The Board shall have the powers and duties stated in sections 9-191 to 9-202.1, inclusive, in addition to such other powers and duties provided in this Article." 40 ILCS 5/9-190 (West 2016).

Section 9-196 of the Illinois Pension Code expressly vests the Board with exclusive original jurisdiction in "all matters relating to the fund, including, in addition to all other matters, all claims for annuities, pensions, benefits or refunds." 40 ILCS 5/9-196 (West 2016). This general and overarching grant of authority indicates the legislature's intent that the Board administer all matters relating to the Fund; including, but not limited to, the proper administration of a retiree healthcare plan. Section 9-202 provides the Board with the clear authority to "make rules and regulations necessary for the administration of the Fund." 40 ILCS 5/9-202. Taking these sections together, the legislature clearly intended to grant the Board broad authority over the administration of the fund, including the administration of a healthcare plan, and provide the Board with the ability to make rules that are consistent with that general scope of legislative authority.

This Court recognizes that one of the fundamental principles of statutory construction is to view all of the provisions of a statute as a whole. Words and phrases should not be construed in isolation, but interpreted in light of other relevant portions of the statute so that, if possible, no term is rendered superfluous or meaningless. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 422 (2002). Further, when undertaking the interpretation of a statute, we must presume that, when the legislature enacted a law, it did not intend to produce absurd, inconvenient or unjust results. *Progressive Universal Insurance v. Liberty Mut. Fire*, 215 Ill. 2d at 134, 828 N.E. 2d 1175 (2005). Contrary to those principles, the Appellate Court interpreted the language of section 9-202 as so limited in scope that the Board could not impose the "last employer rule" as part of its administration of the healthcare plan. In essence the court found that the Board has no authority to take any steps to regulate a healthcare plan that it administers

despite the broad language used to grant rule making authority to the Fund. This anomaly resulted from the court's incorrect interpretation that section 9-239(b) created an unconditional right for all annuitants to healthcare benefits --- notwithstanding the lack of any direction in the statutory scheme to define the benefits to be provided. Based upon the court's decision, the Fund is charged with providing an 'enduring right' to healthcare benefits, but it has no authority to define what those benefits might be or to whom they may be provided.

It makes no sense for an administrator of a healthcare plan to have no authority to promulgate rules and regulations relating to the eligibility of plan participants. Indeed, when section 9-239 was first implemented into the Pension Code (Public Act 86-1025) and later revised to its current language (Public Act 87-794), Cook County, one of Ms. Levin's former employers, was the entity responsible for administering a retiree healthcare program for Fund annuitants. At that time, Cook County was responsible for selecting an insurance carrier, negotiating rates, establishing eligibility requirements and determining coverage options for eligible retirees. Importantly, any eligibility requirement or coverage option determined by Cook County could never have been inconsistent with the legislative grant in section 9-239 of the Illinois Pension Code because section 9-239 solely addresses the Fund's permissive authority to provide a subsidy to certain annuitants. Further, Levin does not assert that her purported right to participate in a retiree healthcare program was effectively "diminished" when Cook County notified the Fund in 1992 that it would no longer be administering a retiree healthcare program. It is undisputed, however, that the coverage available to her in 1990, the date she began her membership in the Fund, is no

longer available to annuitants because Cook County ceased providing such coverage. Importantly, section 9-239 contains the exact same language used when Cook County administered the retiree healthcare program before it ceased that program in 1992. Yet the Appellate Court's decision has the practical impact of expanding the language of section 9-239 to create a pension-protected benefit when there was no such benefit, when the retiree healthcare plan was administered by Cook County. Similar to the *Underwood* case analysis, *supra*, Levin lacked an enduring right to participate in the healthcare plan when either Cook County or the Fund administered the healthcare plan.

Since the Fund assumed responsibilities for administering a retiree healthcare plan from Cook County in 1992, the Fund has, by necessity and as is consistent with its rule-making authority under section 9-202 , performed various duties in administering the retiree healthcare plan including, but not limited to, the selection of an insurance carrier, setting the subsidies for premiums, selection of coverage options for annuitants and beneficiaries, setting eligibility requirements, negotiating rates, and communications to retirees regarding the healthcare plan. None of these necessary administrative items are articulated within section 9-239 of the Pension Code. As noted, the entirety of Article 9 is silent with respect to the details of administering retiree healthcare. Instead, the only mention of healthcare relates to the Fund's permissive authority to pay a subsidy to annuitants under section 9-239. The legislature's silence with respect to the administration of a retiree healthcare program necessitates that the Fund promulgate rules and regulations

in accordance with its broad authority to make rules and regulations as allowed by section 9-202 of the Pension Code.[2]

The documents governing the retiree healthcare plan administered by the Fund clearly outline the Fund's "last employer rule" that was promulgated by the Fund pursuant its rule and regulation authority under section 9-202 of the Pension Code. Such documents also provide information relating to postponing, suspending, and reinstating coverage that are not delineated in section 9-239 of the Pension Code. Under the Appellate Court's ruling, the Fund could arguably be estopped from enforcing reasonable rules for its retiree healthcare program that are customary in the healthcare marketplace and necessary for proper administration of a healthcare plan. Examples of such reasonable rules include requiring annuitants to select coverage within a proscribed enrollment period or requiring that certain conditions be met before reinstating cancelled or suspended coverage. Section 9-239 is wholly silent with respect to the administration of a retiree healthcare plan by the Fund and thus, no one can reasonably dispute the fact that it is necessary for the Fund to make certain decisions and promulgate rules with respect to healthcare coverage requirements in order for the Fund to administer a retiree healthcare plan. The Fund's eligibility rules promulgated by its general rule-making authority under section 9-202 are not inconsistent with the plain language of section 9-239 because section 9-239 is silent with respect to any specifics about how the retiree healthcare program should be administered.

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[2] The Cook County Pension Fund Medical Choice Plus Plan contained an eligibility section that clearly stated that "you are eligible to enroll in the Plan if you are an "annuitant" as defined in section 9-239 of the Illinois Pension Code (40 ILCS 5/9-239) and provided that you were last employed with Cook County or Forest Preserve District." (C.182).

Most importantly, virtually every fund created under the Pension Code has a rule making provision similar to section 9-202. (40 ILCS 5/2-143; 40 ILCS 5/3-140; 40 ILCS 5/4-126; 40 ILCS 5/5-195; 40 ILCS 5/6-191; 40 ILCS 5/7-198; 40 ILCS 5/8-209; 40 ILCS 5/9-202; 40 ILCS 5/11-198; 40 ILCS 5/13-706(i); 40 ILCS 5/14-135.03; 40 ILCS 5/15-177; 40 ILCS 5/17-145; 40 ILCS 5/18-150; 40 ILCS 5/19-109(5); 40 ILCS 5/22-225). The legislature predominantly used the same broad language in all of the rule-making provisions. If left to stand, the Appellate Court's decision will effectively strip pension funds of the operational ability to promulgate rules to administer those funds. Such an outcome manifestly deviates from the legislature's obvious intent to grant the funds broad authority to operate efficiently and prudently in administering the operations of the funds.

CONCLUSION

For these reasons, the Retirement Board of the County Employees' and Officers' Annuity and Benefit Fund of Cook County respectfully requests that this Court reverse the judgment of the Appellate Court of Illinois, First District.

Respectfully submitted,

THE RETIREMENT BOARD OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY AND EX OFFICIO FOR THE FOREST PRESERVE DISTRICT EMPLOYEES' ANNUITY AND BENEFIT FUND OF COOK COUNTY

By: /s/Vincent D. Pinelli
One of its Attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this foregoing Appellant's Brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the Brief under Rule 342(a) is 21 pages.

By:/s/Vincent D. Pinelli

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CERTIFICATE OF FILING AND SERVICE

On October 30, 2019, I electronically filed the foregoing **BRIEF OF APPELLANT THE RETIREMENT BOARD OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY** (the "Brief") with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

To the best of my knowledge, counsel for all other participants in this appeal are registered as service contacts on the Odyssey eFileIL system and the Brief was served on them through this system when I filed it and I also served each party by emailing the Brief directly to its attorneys (as indicated below) on October 30, 2019:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109), I certify that to the best of my knowledge, information, and belief the statements in the Proof of Filing and Service are true and Correct.

By:/s/Vincent D. Pinelli

No. 125141

IN THE
SUPREME COURT OF ILLINOIS

LORI G. LEVIN,	)	
	)	Appeal from the Appellate Court of
Respondent-Appellee,	)	Illinois, First Judicial District
	)	
v.	)	No. 18-1167
	)	There Heard on Appeal From The
THE RETIREMENT BOARD OF	)	Circuit Court of Cook County,
THE COUNTY EMPLOYEES' AND	)	Illinois
OFFICERS' ANNUITY AND	)	County Department, Chancery
BENEFIT FUND OF COOK	)	Division
COUNTY,	)	No. 2016 CH 14789
	)	
Petitioner-Appellant.	)	The Hon. Kathleen M. Pantle, Presiding

NOTICE OF FILING

TO: See Attached Proof of Service.

PLEASE TAKE NOTICE that on October 30, 2019, we caused to be filed with the Supreme Court of Illinois, Brief of Appellant The Retirement Board of the County Employees' and Officers' Annuity and Benefit Fund of Cook County, a copy of which is attached hereto and served upon you by operation of the Court's eFileIL electronic filing system.

Respectfully submitted,

THE RETIREMENT BOARD OF THE COOK COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY

By: /s/Vincent D. Pinelli
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No. 125141

IN THE
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BENEFIT FUND OF COOK	)	Division
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	)	
Petitioner-Appellant.	)	The Hon. Kathleen M. Pantle, Presiding

APPENDIX TO
BRIEF OF APPELLANT THE RETIREMENT BOARD OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY

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APPENDIX

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TAB A

Lawyers

2019 IL App (1st) 181167

SIXTH DIVISION
June 7, 2019

No. 1-18-1167

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LORI G. LEVIN on Behalf of Herself and All Others Similarly Situated, Plaintiff-Appellant, v. THE RETIREMENT BOARD OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 16 CH 14789 Honorable Kathleen M. Pantle, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court, with opinion.
Justice Cunningham concurred in the judgment and opinion.
Justice Connors dissented, with opinion.

OPINION

¶ 1 In September 2016, plaintiff-appellant, Lori G. Levin, requested that defendant-appellee, the Retirement Board of the County Employees' and Officers' Annuity and Benefit Fund of Cook County (hereinafter Board), allow her to purchase health insurance under the County Employees' and Officers' Annuity and Benefit Fund of Cook County (hereinafter Fund). After several procedural delays, the Board voted to deny Levin the ability to purchase health insurance under the Fund because Levin's last employer was the State of Illinois and not Cook County. The Board cited a provision in the benefits handbook, which required that in order to be eligible

for the insurance, an individual must be an "annuitant" as defined by statute and the annuitant's last job must have been with Cook County. Levin appealed the Board's decision to the circuit court of Cook County. In May 2018, the circuit court affirmed the Board's decision. The circuit court ruled Levin did not have an unconditional right to the health insurance and the Board did not exceed its authority when it implemented the "last-employer" rule. Levin then appealed to this court.

¶ 2 For the reasons stated more fully below, we reverse the order of the Board. It is undisputed that Levin is an "annuitant," and we conclude that under the applicable statute she is entitled to seek health insurance provided by the Fund. We hold the Board exceeded its authority when it implemented the "last-employer" rule. The rule is declared void and unenforceable.

¶ 3 JURISDICTION

¶ 4 This action commenced on September 22, 2016, when Levin sent a letter to the Board requesting health benefits under the Fund. The Board denied her request in a final order dated June 12, 2017. Levin timely sought administrative review of the Board's order before the circuit court of Cook County. On May 10, 2018, the circuit court affirmed the Board's order denying health insurance benefits to Levin. On June 4, 2018, Levin timely filed her notice of appeal. Accordingly, this court has jurisdiction over this matter pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 Both parties agree the facts of this case are largely undisputed. Plaintiff-appellant, Levin, was employed by Cook County as an assistant state's attorney from November 1, 1980, until July 31, 2003. During her employment with Cook County, she made the employee contributions required to be an annuitant of the Fund. On or about August 1, 2003, Levin entered into service

with the State of Illinois as executive director of the Illinois Criminal Justice Information Authority. During her tenure as executive director, Levin paid employee contributions required as a participant of the State Employees' Retirement System. On or about June 5, 2009, Levin resigned from service with the State of Illinois. On December 20, 2011, the Board received Levin's application for annuity benefits. The Board approved the application at its regularly scheduled meeting in January 2012. The calculation of Levin's annuity benefit was based upon her service with Cook County and the State of Illinois pursuant to the Retirement Systems Reciprocal Act (40 ILCS 5/20-101 *et seq.* (West 2016)).

¶ 7 Following her retirement from the State, Levin had health insurance under her husband's employer's plan. Subsequently, her husband left his employer and the couple continued to have coverage via COBRA insurance. This coverage expired on October 1, 2016. Since Levin had not worked for the State of Illinois for the required eight years, she was ineligible to participate in the State of Illinois's retiree health insurance plan.

¶ 8 In a letter dated September 22, 2016, Levin requested that the Board allow her to purchase health insurance under the Fund's plan for herself and her husband. The Board responded in a letter dated October 6, 2016. It stated her request had been rejected:

> "The Board has considered your request and we regret that upon review you and your husband do not satisfy the eligibility requirements to participate in the retiree health plan. In closing, because Cook County was not your last employer prior to the effective date of your annuity benefits, you do not meet the eligibility requirements."

The Board's October 6, 2016, letter referenced the "Cook County Pension Fund Health Benefits Handbook" dated 2009 (hereinafter Handbook), which states that in order to be eligible for the retiree health benefits, a participant must be both an "annuitant" pursuant to section 9-239 of the

Illinois Pension Code (*id.* § 9-239) and must have been last employed with Cook County or the Forest Preserve District.

¶ 9 In an October 22, 2016, letter to the Board, Levin requested reconsideration of the October 6 decision. No response was ever received. On November 10, 2016, Levin filed a complaint in the circuit court of Cook County seeking administrative review of the Board's October 6 decision. On March 14, 2017, at the request of the Board, the circuit court entered an agreed order remanding the matter "to the Board for further proceedings, at its April 6, 2017 meeting and to issue a final administrative decision regarding Plaintiff's request to purchase group health insurance from the Fund." Following an executive session, the Board adopted a motion to take the matter "under advisement and that a decision regarding her request be deferred until the Board's next regular meeting on May 4, 2017."

¶ 10 The Board did not address the issue at the May 4 meeting nor did it address it at the June 1 meeting. At a special meeting of the Board on June 12, 2017, the Board issued a final decision rejecting Levin's request. The Board again pointed to the eligibility requirements found in the Handbook.

¶ 11 The parties then returned to the circuit court. The parties briefed Levin's complaint for administrative review. On September 27, 2017, the circuit court requested supplemental briefing on whether it was necessary to reach the constitutional grounds raised in Levin's complaint. After supplemental briefing, the circuit court heard oral arguments on November 20, 2017. On May 10, 2018, the circuit court issued an order affirming the Board's denial of Levin's request. In its ruling, the circuit court held that section 9-239 did not provide Levin with an unconditional right to participate in the Fund's health plan because the statute states that the Fund "may" subsidize an annuitant's health coverage. The court further ruled that the "last-employer" rule

adopted in 2009 did not exceed the Board's authority and did not conflict with the Pension Code. Finally, the court held that the pension clause of the Illinois Constitution was inapplicable.

¶ 12 This timely appeal followed.

¶ 13 ANALYSIS

¶ 14 Initially, the parties disagree as to the standard of review applicable to this case. In an appeal from an administrative review proceeding, this court will review the agency's decision, not the trial court's final order. *Roszak v. Kankakee Firefighters' Pension Board*, 376 Ill. App. 3d 130, 138 (2007). Under the Administrative Review Law, the scope of judicial review extends to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110 (West 2016). The standard of review, which determines the deference given to the Board's decision, depends on whether the question presented is one of fact, one of law, or a mixed question of law and fact. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204-05 (1998).

¶ 15 The Board argues this case presents a mixed question of law and fact and should be subject to the clearly erroneous standard of review. *Id.* at 205. A mixed question is one " 'in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or *** whether the rule of law as applied to the established facts is or is not violated.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001) (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982)). Levin argues the issue before this court is purely a question of law and should be reviewed under a *de novo* standard. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995).

¶ 16 We agree with Levin that a *de novo* standard of review applies because the issue before us is one of statutory construction.[1] "Interpretation of a statute is a question of law; in cases involving an agency's interpretation of a statute which the agency is charged with administering, the agency's interpretation is considered relevant but not binding on the court." *Id.* (citing *Van's Material Co. v. Department of Revenue*, 131 Ill. 2d 196, 202-03 (1989), and *City of Decatur v. American Federation of State, County, & Municipal Employees, Local 268*, 122 Ill. 2d 353, 361 (1988)). Here, the rule of law is disputed. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 391 (clearly erroneous applies when rule of law is undisputed). Resolution of this case depends on whether Levin has the statutory right to purchase health insurance under the Fund and whether the Board has the statutory authority to impose the "last-employer" rule. This is an issue of statutory construction and we apply a *de novo* standard of review.

¶ 17 In its order denying Levin's request to purchase health insurance under the Fund, the Board concluded Levin was "not eligible to receive retiree health benefits, pursuant to Section 9-239 [(40 ILCS 5/9-239 *et seq.* (West 2016))] of the Pension Code and the Fund's applicable rules, because Cook County was not her last employer when she applied for annuity benefits from the Fund."[2] The Handbook states, "[t]o be eligible for benefits under the Group Health Benefit, you must be an 'Annuitant' as defined in Section 9-239 of the Illinois Pension Code [(40 ILCS 5/9-239(a) (West 2016))] and you must have been last employed with Cook County or the Forest Preserve District." In a prior part of the Board's order, the Board stated that it had "authority under section 9-202 [(40 ILCS 5/9-202 (West 2016))] of the Illinois Pension Code to adopt rules and regulations necessary for the administration of the Fund." The Board concluded that pursuant to section 9-202 it had the authority to implement the "last-employer" rule.

[1]The circuit court also reviewed the Board's order *de novo*.

[2]Neither party disputes that Levin meets the criteria to qualify as an "annuitant" pursuant to section 9-239(a). 40 ILCS 5/9-239(a) (West 2016).

¶ 18 Before this court, Levin argues an individual need only qualify as an "annuitant" pursuant to section 9-239 to purchase group health insurance from the Fund. She contends section 9-239 contains the only eligibility requirement and section 9-202 does not allow the Board to impose the "last-employer" rule as an additional qualification to purchase group health insurance. The Board responds that section 9-239 "does not require healthcare coverage be provided to annuitants of the Fund or prohibit the Fund from establishing reasonable eligibility requirements to participate in a retiree healthcare plan administered by the Fund." The Board maintains that section 9-202 allows it to institute the "last-employer" rule.

¶ 19 "Statutory construction requires courts to ascertain and give effect to the intent of the legislature." *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 493-94 (2003) (citing *In re C.W.*, 199 Ill. 2d 198, 211 (2002)). The best indicator of the General Assembly's intent is the language of the statute, which must be accorded its plain and ordinary meaning. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 26 (2005). The General Assembly's "intent must be ascertained from a consideration of the entire act, its nature, its object, and the consequences resulting from different constructions." *Shields*, 204 Ill. 2d at 494 (citing *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54, 96 (1990)). Where the language in the statute is clear and unambiguous, this court will apply the statute as written and will not resort to extrinsic aids of statutory construction. *In re R.L.S.*, 218 Ill. 2d 428, 433 (2006). Finally, we note that a pension statute "must be liberally construed in favor of the rights of the pensioner." *Kanerva v. Weems*, 2014 IL 115811, ¶ 55.

¶ 20 Section 9-239 of the Pension Code states:

> "Group Health Benefit. (a) For the purposes of this Section, 'annuitant' means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, a minimum annuity, or a child's annuity

on or after January 1, 1990, under Article 9 or 10 by reason of previous employment by Cook County or the Forest Preserve District of Cook County (hereinafter, in this Section, 'the County').

(b) Beginning December 1, 1991, the Fund may pay, on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans, all or any portion of the total health care premium (including coverage for other family members) due from each such annuitant.

(c) The difference between the required monthly premiums for such coverage and the amount paid by the Fund may be deducted from the annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate and the obligation of the Fund shall also terminate.

(d) Amounts contributed by the county as authorized under Section 9-182 for the benefits set forth in this Section shall be credited to the reserve for group hospital care and all such premiums shall be charged to it.

(e) The group coverage plan and benefits described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970." 40 ILCS 5/9-239 (West 2016).

Contrary to our colleague's dissent, we hold Levin has a right to purchase group health insurance from the fund. We base our determination on the plain language of section 9-239 as well as the Illinois Constitution, which provides that "[m]embership in any pension or retirement system of the State, any unit of local government *** *shall* be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." (Emphasis added.) Ill. Const. 1970, art. XIII, § 5. We agree with Levin that she has an enforceable contractual right to purchase group

health insurance from the Fund. Section 9-239(b) states in relevant part that the "Fund may pay, *on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans*, all or any portion of the total health care premium (including coverage for other family members) due from each such annuitant." (Emphasis added.) 40 ILCS 5/9-239(b) (West 2016). It is clear from the plain language of subsection (b) that the statute has only two requirements for participation: (1) an individual must be an "annuitant" and (2) an individual must "choose[ ] to participate." *Id.* The Fund does not dispute that Levin qualifies an annuitant within the meaning of subsection (a). *Id.* § 9-239(a). Moreover, in her letter dated September 22, 2016, she elected to participate.

¶ 21 We disagree with the Board and circuit court's reasoning regarding the effect the word "may" has within subsection (b). Both the Board and circuit court interpreted the use of the word "may" to mean the Board has discretion to decide who could participate in the Fund's health insurance scheme. We hold the use of the word "may" within subsection (b) has no impact on an individual's *right* to participate in the county's health care plan. We conclude from the plain language of subsection (b) that the word "may" refers to the Fund's payment of "all or any portion of the total health care premium" and not to an annuitant's *right* to participate. *Id.* § 9-239(b). The Board and circuit court wrongly read the term "may" in isolation and not within the broader context of section 9-239(b). See *In re Estate of Shelton*, 2017 IL 121199, ¶ 36 (noting that language in a statute should not be read in isolation). We find that the term "may" refers to the payment of participants' premiums and does not affect an individual's right to participate in the health insurance scheme.

¶ 22 The legislative history of section 9-239(b) supports the above conclusion. Section 9-239 has been amended twice since 1990. Each amendment dealt with the Fund's payment of the

health insurance premium, while the language concerning an "annuitant who chooses to participate" has remained unchanged. Public Act 86-1025 amended subsection (b) to state:

> "(b) From January 1, 1990 through December 31, 1993 the Fund shall pay, on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans, 50% of the total health care premium (including coverage for other family members) due from each such annuitant limited to the following maximums ***." Pub. Act 86-1025 (eff. Jan. 24, 1990) (amending 40 ILCS 5/9-239).

Section 9-239(b) was amended again by Public Act 87-794, which created the current version before this court. Pub. Act 87-794 (eff. Nov. 19, 1991) (amending 40 ILCS 5/9-239). Public Act 86-1025 and Public Act 87-794 changed the language directing the Fund as to how much of the total premium it had to cover. The statutory language, "on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans," has remained consistent. We find the change in statutory language from "shall pay, *** 50% of the total health care premium" to "may pay, *** all or any portion of the total health care premium" did not result in giving the Board discretion to decide which annuitants are allowed to participate.

¶ 23 The Board contends that section 9-202 grants it the authority to impose the "last-employer" requirement as a condition of participation in its health insurance plan. Section 9-202 states, "[t]o make rules and regulations necessary for the administration of the fund." 40 ILCS 5/9-202 (West 2016). In its brief, the Board argues this statutory language grants it "rule-making authority [that] is general and overarching in its scope and it not limited to specific benefits that are provided under Article 9 of the Illinois Pension Code."

¶ 24 As an administrative agency, the Board is "limited to the powers granted to it by the legislature, and any actions it takes must be authorized by statute." *Crittenden v. Cook County Comm'n on Human Rights*, 2013 IL 114876, ¶ 14 (citing *Vuagniaux v. Department of Professional Regulation*, 208 Ill. 2d 173, 186 (2003)). An administrative agency "has no general or common law powers." *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 16. As a creature of statute, an administrative agency's power finds "its source in the provisions of the statute that created it." *Prazen v. Shoop*, 2013 IL 115035, ¶ 36. "The agency's authority must either arise from the express language of the statute or 'devolve by fair implication and intendment from the express provisions of the [statute] as an incident to achieving the objectives for which the [agency] was created.' " *Vuagniaux*, 208 Ill. 2d at 188 (quoting *Schalz v. McHenry County Sheriff's Department Merit Comm'n*, 113 Ill. 2d 198, 202-03 (1986)).

¶ 25 We reject the Board's argument that section 9-202 grants it the "general and overarching" authority to impose the "last-employer" rule. As determined above, section 9-239 sets forth that an eligible individual must be an "annuitant" and must then elect to participate. 40 ILCS 5/9-239(b) (West 2016). Nothing in that section states that an annuitant must have last worked for Cook County in order to be eligible to participate.

¶ 26 Not only does the "last-employer" rule conflict with the plain language of section 9-239, the Board's assertion that section 9-202 grants it such authority is contrary to Illinois administrative law. The Board's ability to impose any rule must expressly arise from a statute or by "fair implication *** as an incident to achieving the objectives for which the [Board] was created." (Internal quotation marks omitted.) *Vuagniaux*, 208 Ill. 2d at 188. Section 9-202 does not expressly give the Board any authority to impose additional eligibility requirements. Nor does such authority arise by "fair implication" because it would conflict with section 9-239. If section 9-202 did grant the Board the authority to impose additional eligibility requirements then

the Board could not only impose the "last-employer" rule, but any eligibility rule it decided was "necessary for the administration of the fund." Such a finding would conflict with Illinois law that holds administrative agencies have limited powers. See *Sharp v. Board of Trustees of the State Employees' Retirement System*, 2014 IL App (4th) 130125, ¶¶ 25-26 (rejecting a claim by the retirement board that it had implied authority to fix pension errors after concluding the statute did not give the board the express authority to make the correction outside of a 35-day period).

¶ 27 The Board's contention that the "last-employer" rule has been in place since it took over administration of the Fund is unpersuasive and finds no support in the record before this court. The Board's brief states "the eligibility rule has been applied in a consistent manner since the Fund began administering a retiree healthcare program in 1992." In contravention of supreme court rules, the Board fails to cite any document in the record to support this assertion. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). The contractual language found in the 1992 administrative services agreement with BlueCross BlueShield does not discuss allowing the Board to impose eligibility requirements. The first appearance of the "last-employer" rule comes from the 2009 Handbook, some 17 years after the Board took over administration of the Fund. However, even if the "last-employer" rule appeared in a prior handbook or an administrative service agreement with a health insurance carrier, that would not render the rule valid. The Board draws its authority to promulgate rules from Illinois statutes not handbooks or service agreements. *Department of Revenue v. Civil Service Comm'n*, 357 Ill. App. 3d 352, 363 (2005).

¶ 28 We hold the "last-employer" rule promulgated by the Board exceeds the statutory authority granted to it and is therefore invalid. *R.L. Polk & Co. v. Ryan*, 296 Ill. App. 3d 132, 141 (1998).

¶ 29 Given our finding that section 9-239 does establish the criteria for participation in the health insurance program and that the "last-employer" rule is invalid, we decline to decide

whether Levin's right to participate is a protected constitutional right or whether the "last-employer" rule impermissibly violates the Illinois Constitution and its pension protection clause (Ill. Const. 1970, art. XIII, § 5). See *Innovative Modular Solutions v. Hazel Crest School District 152.5*, 2012 IL 112052, ¶ 38 (noting that courts should avoid addressing constitutional issues when the case can be decided on nonconsitutional grounds).

¶ 30 CONCLUSION

¶ 31 Based on the above, we reverse the order of the Board denying Levin's participation in the health insurance program established under the Fund. Additionally, we hold the "last-employer" rule invalid and can no longer be enforced. We remand these proceedings to the Board for the entry of an order granting Levin's request to participate in the health insurance program retroactive to the date of her application.

¶ 32 Reversed and remanded with directions.

¶ 33 JUSTICE CONNORS, dissenting:

¶ 34 The Board's decision denying Levin participation in the health insurance program was correct, and thus, I would affirm. Specifically, I respectfully dissent from the majority's conclusions that Levin "has a right to purchase group health insurance from the Fund" and that the Board exceeded its authority in promulgating the "last-employer" rule.

¶ 35 A careful reading of section 9-239 of the Pension Code shows that nothing in that section confers on Levin the unconditional right to participate in the county health care program. Section 9-239(a) of the Pension Code defines an annuitant, which all parties agree Levin is. 40 ILCS 5/9-239(a) (West 2016). Respectively, sections 9-239(b), (c), and (d) explain that the Fund may pay a portion of the health care premium due, the Fund may deduct amounts for premiums from the annuitant's annuity, and county contributions under section 9-182 shall be credited to the reserve

group for hospital care and all such premiums charged to it. 40 ILCS 5/9-239(b), (c), (d) (West 2016). Finally, section 9-239(e) affirmatively states, "[t]he group coverage plan and benefits described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970." 40 ILCS 5/9-239(e) (West 2016). Thus, section 9-239 merely provides the Fund the authority to subsidize a portion of an annuitant's health care program.

¶ 36 It is puzzling that the majority relies on section 9-239 of the Pension Code for the conclusion that Levin has "a right to purchase group health insurance from the Fund" because the language of this section clearly does not address, let alone establish, such a right. I recognize that the Illinois Constitution provides that "[m]embership in any pension or retirement system of the State, any unit of local government *** shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5. However, in *Underwood v. City of Chicago*, this court reiterated the principle that, "[t]he Pension Code does not by itself confer those benefits," and instead, "the benefits are created by contract or by statute." 2016 IL App (1st) 153613, ¶ 22. The court rejected the plaintiffs' argument that subsidized health care is a benefit under the state constitution that may not be limited by relying on our supreme court's decision in *Kanerva v. Weems*, 2014 IL 115811, and explaining as follows:

> "But again, the relevant constitutional provision and case law do not create benefits—they protect them. In *Kanerva*, the benefit recipients already had the enduring right. [Citation.] The Court just explained that, based on our constitution, it could not be taken away. [Citation.] But here, the benefit always came with an expiration date. The time period was part of the benefit itself. The only enduring rights that these retirees ever contracted for or were successfully able to get adopted by the legislature are those

codified in the 1983 and 1985 amendments." *Underwood*, 2016 IL App (1st) 153613, ¶ 27.

¶ 37 Section 9-239, which Levin relies upon, only provides the Fund with the authority to subsidize health care premiums. Further, the retiree health care plan provided to annuitants through the county when Levin joined the Fund in 1992 no longer exists. There is no "enduring right" present in section 9-239 or anywhere else in article 9 for Fund annuitants to participate in a retiree health care plan administered by the Fund.

¶ 38 Further, I find problematic the majority's invalidation of the "last-employer" rule based on its finding that the Board exceeded its authority. The Board adopted, and has consistently applied since 1992, the "last-employer" rule—an eligibility rule that requires an annuitant's last employer must be either Cook County or the Forest Preserve District in order to be eligible for the retiree health care program. Although not mentioned by the majority, the record on appeal contains a document titled "Cook County Pension Fund Medical Choice Plus Plan,"[3] containing an "Eligibility" section that states, "You are eligible to enroll in the Plan if you are an 'Annuitant' as defined in Section 9-239 of the Illinois Pension Code (40 ILCS 5/9-239) and provided that you were last employed with Cook County or the Forest Preserve District." According to the plain reading of this rule, Levin does not qualify for health care benefits since her last employer was neither Cook County nor the Forest Preserve District.

¶ 39 The majority cites our supreme court's recognition that "[a]ny power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created" and that any authority "must either arise from the express language of the statute or 'devolve by fair implication and intendment from the express provisions of the [statute]

[3]This document was attached as an exhibit to the Board's findings of fact, conclusions of law, and decision, which was dated June 12, 2017.

as an incident to achieving the objectives for which the [agency] was created.' " *Vuagniaux*, 208 Ill. 2d at 188 (quoting *Schalz*, 113 Ill. 2d at 202-03). However, the majority glosses over and fails to contextualize section 9-202 of the Pension Code, which expressly grants the Board the power to make rules for fund administration. Section 9-190 of the Pension Code states, "The board shall have the powers and duties stated in Sections 9-191 to 9-202.1, inclusive, in addition to such other powers and duties provided in this Article." 40 ILCS 5/9-190 (West 2016). Section 9-202 is titled "To make rules" and states that the board shall have the power "[t]o make rules and regulations necessary for the administration of the fund." 40 ILCS 5/9-202 (West 2016). Based on its plain language, section 9-202 expressly grants the Board the power to enact rules, such as the "last-employer" rule.

¶ 40 The majority opines that, "[s]ection 9-202 does not expressly give the Board any authority to impose additional eligibility requirements." *Supra* ¶ 26. I disagree because the express grant of rulemaking authority contained in section 9-202 is general and overarching in its scope and is not limited in any way. Contrary to the majority's suggestion, section 9-202 does not contain an enumeration of the fund administration topics to which the Board's rulemaking power is restricted. If the legislature intended to limit the Board's ability to promulgate rules and regulations to only specific benefits or administrative items, it would have done so. As a result, the breadth of section 9-202 expressly authorizes the Board to enact any rule or regulation that is necessary for the administration of the fund.

¶ 41 However, assuming *arguendo* that the Board's power to enact the "last-employer" rule does not derive from the express language of section 9-202 of the Pension Code, I would still find that the Board had the authority to enact such a rule through "fair implication." See *Vuagniaux*, 208 Ill. 2d at 188 (quoting *Schalz*, 113 Ill. 2d at 202-03). Overall, article 9 of the Pension Code provides little detail regarding the administration of retiree health care. Thus, it

only makes sense that it would be necessary to establish rules and regulations to govern the retiree health care program. As such, it can be fairly implied that by enacting section 9-202 of the Pension Code, the legislature intended to provide the Board with authority to enact whatever rules were necessary to administer the fund.

¶ 42 The majority concludes that the Board's authority to enact the "last-employer" rule could not have arisen though "fair implication" under section 9-202 because the "last-employer rule" conflicts with section 9-239. *Supra* ¶ 26. I disagree because both the statute and the "last-employer" rule can be read in conjunction with one another. Essentially, section 9-239 can be broken into two primary components: (1) an annuitant who chooses to participate and (2) the Board that chooses to pay for the participating annuitant's health care premium. 40 ILCS 5/9-239 (West 2016). The "last-employer" requirement does not open the program to people who do not qualify as annuitants, and thus does not conflict with or go beyond the definition of annuitant in section 9-239(a) of the Pension Code. Instead, the "last-employer" rule addresses when an annuitant, as defined in section 9-239(a), is eligible or qualifies for group health benefits. Thus, the "last-employer" rule merely limits the Board's obligations to pay any or all of the health care premiums to specific annuitants. As a result, there is no conflict.

¶ 43 The majority's reliance on *R.L. Polk & Co. v. Ryan*, 296 Ill. App. 3d 132 (1998), as the basis for its invalidation of the "last-employer" rule is unpersuasive. In *Polk*, the court held generally, as it pertained to the facts of that case, that (1) the Illinois Secretary of State had discretionary authority to adopt the rule in question, (2) the rule was sufficiently precise to satisfy the Illinois Administrative Procedures Act (Act) (5 ILCS 100/1-1 *et seq.* (West 1996)), and (3) the rule was adopted in compliance with the Act. *R.L. Polk & Co.*, 296 Ill. App. 3d 132. Because the case before this court does not present any issue or argument relative to the Act, the second and third aforementioned holdings cannot be a basis for the majority's invalidation of the

"last-employer" rule. Additionally, it is puzzling why the majority relies on *Polk* to support its invalidation of a rule, when *Polk* actually determined that the rule at issue there was valid and properly enacted. When ruling that the Secretary of State did have the authority to adopt the rule, the court in *Polk* explained that the Secretary of State is empowered to promulgate rules and regulations pursuant to certain sections of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 1996)) that provide the authority. *R.L. Polk & Co.*, 296 Ill. App. 3d at 143. So too in this case, the Board had the authority to rule that, pursuant to section 9-202 of the Pension Code, eligibility to participate in health care coverage is based on one's having retired from Cook County or the Forest Preserve District.

¶ 44 In conclusion, because Levin was not last employed by either Cook County or the Forest Preserve District, I would affirm the Board's decision denying her participation in the health insurance program under the Fund.

TAB B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

LORI G. LEVIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**16 CH 14789**
	)	**Hon. Kathleen M. Pantle**
RETIREMENT BOARD OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY,	)	
	)	
Defendant.	)	

ORDER

This case comes before the Court on Plaintiff's, Lori Levin, Motion for Summary Judgment on her Complaint for Administrative Review. Levin seeks review and reversal of Defendant's, the Retirement Board of Cook County Employees' and Officers' Annuity and Benefit Fund of Cook County (the "Board"), decision to deny her request to participate in the County's retiree health plan.

The Board's final administrative decision is affirmed.

Undisputed Facts

Levin was employed at the Cook County State's Attorney's Office ("CCSAO") for over twenty-two (22) years as an Assistant State's Attorney. During that time, she contributed to the pension fund. On July 31, 2003, Levin left the employ of the CCSAO and began working for the State of Illinois as the Executive Director of the Illinois Justice Information Authority. Levin worked less than six years for the State of Illinois and left her employment on June 5, 2009.

Levin conceded that she is not eligible to participate in the State Employees Group Insurance Act of 1971, 5 ILCS 375/1 *et seq.*, because she had fewer than eight years of service with the State. Pursuant to the State Employees Group Insurance Act, qualified retirees may participate in the State of Illinois Group Insurance Plan. 5 ILCS 375/2. In order to be a "member" of the State of Illinois Group Insurance Plan, a retired employee "must meet the minimum vesting requirements of the applicable retirement system in order to be eligible for group insurance benefits under that system." 5 ILCS 375/3(l).

Levin is married. After leaving the employ of the State of Illinois, she was carried as a dependent on her husband's medical insurance. After he left his employment, Levin and her husband paid premiums for the COBRA health insurance. Near the end of the COBRA period, on September 22, 2016, Levin sent a letter to the Board seeking to participate in the health insurance plan made available to county annuitants (as that term is defined under 40 ILCS 5/9-239) on behalf of herself and her husband. The Board refused to allow Levin to participate on the grounds that Cook County was not Levin's last employer (the "last employer" requirement) prior to the effective date of her annuity benefits. The Board took the position that Levin was therefore not eligible for participation in the retiree health plan.[1]

On November 10, 2016, Levin filed a Complaint for Administrative Review in the Circuit Court of Cook County challenging the decision to deny her the opportunity to participate in the Fund's retiree healthcare program. On March 14, 2017, the parties entered an Agreed Order remanding the matter to the Board for written findings and a final administrative decision regarding Levin's request to participate in the Fund's group health insurance program for eligible retirees in order to comply with the decision in *Howe v. The Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 2013 Ill. App. (1st) 122446. On June 12, 2017, the Board denied Levin's request to participate in the Fund's retiree healthcare program because she failed to meet the eligibility requirements that only those annuitants whose last employer was Cook County could participate in the retiree healthcare program. On June 26, 2017, Levin filed her renewed Motion for Preliminary Injunction seeking to enjoin the Fund from denying her request to participate in the retiree healthcare program administered by the Fund. On July 13, 2017, this Court denied Levin's Motion for Preliminary Injunction because commanding the Fund to allow Levin to participate in the retiree healthcare program would alter, rather than maintain, the *status quo*. (July 13 Order, p. 3-4). Further, the Court found that Levin failed to demonstrate irreparable injury resulting from the Board's decision. (July 13 Order, p. 4-6). Levin did not appeal the denial of her request for emergency injunctive relief.

[1] In 2009, the Board adopted and the Fund published a Group Health Benefits Handbook that codified the eligibility requirements for the retiree healthcare program administered by the Fund. The 2009 Handbook defines initial eligibility for health benefits and states:

> "To be eligible for benefits under the Group Health Benefits, you must be an "Annuitant" as defined in Section 2-239 of the Illinois Pension Code [40 ILCS 5/9-239] and you must have been last employed with Cook County or the Forest Preserve District."

Standard of Review

All final administrative decisions of the Board are subject to and governed by the Illinois Administrative Review Law. 40 ILCS 5/14-150[2]. The applicable standard of review determines the extent of deference afforded to the administrative agency's decision. *Marconi v. Chi. Heights Police Pension Bd.*, 225 Ill. 2d 497, 532 (2006). This determination depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact. *Id.* Under any standard of review, the plaintiff to an administrative proceeding bears the burden of proof. *Id.* Therefore, relief will be denied if the plaintiff fails to sustain that burden. *Id.* at 532-33.

The Administrative Review Law mandates that the "findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 88 (1972) (citing 735 ILCS 5/3-110). To determine the standard of review, a court looks at the questions presented. Rulings on questions of fact will only be reversed if they are against the manifest weight of the evidence. *Abrahamson*, 153 Ill. 2d at 88. A finding is against the manifest weight of the evidence if "the opposite conclusion is clearly evident" or where it is "unreasonable, arbitrary, and not based upon any of the evidence." *Lyon v. Dep't of Children & Family Servs.*, 209 Ill. 2d 264, 271 (2004) (quoting *Snelson v. Kamm*, 204 Ill. 2d 1, 35 (2003)). When a court reviews an agency's factual findings, it may not reweigh the evidence or substitute its judgment for that of the agency. *See e.g. Am. Fed'n of State, County & Mun. Emps., Council 31 v. Ill. State Labor Relations Bd.*, 216 Ill. 2d 569, 577 (2005). Moreover, the reviewing court's function is not to re-determine the credibility of the witnesses. See *Knop v. Dep't of Registration and Educ.*, 96 Ill. App. 3d 1067, 1075 (1981). Accordingly, if there is evidence in the record supporting the agency's determination, the factual determinations of the agency must be affirmed. *Abrahamson*, 159 Ill. 2d at 88. "However, if the agency relies on factors that the statute does not intend, fails to consider an issue, or the decision is so implausible, the decision may be reversed as arbitrary and capricious." *Lambert v. Downers Grove Fire Dep't Pension Bd.*, 2013 IL App (2d) 110824, ¶ 23 (quoting *Ellison v. Ill. Racing*, 377 Ill. App. 3d 433, 440-41 (2007)).

[2] "The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the retirement board provided for under this Article. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure." 40 ILCS 5/14-150.

In contrast, rulings on questions of law are reviewed with less deference. *City of Belvidere v. Ill. State Labor Rels. Bd.*, 181 Ill. 2d 191, 205 (1998). A court reviews such determinations on a *de novo* basis. *Id.* As such, an agency's decision on a question of law is not binding on a reviewing court. *Id.* Lastly, rulings on a mixed question of law and fact are reviewed under the clearly erroneous standard. *Marconi v. Chi. Heights Police Pension Bd.*, 225 Ill. 2d 497, 532 (2006). The clearly erroneous standard of review lies between the manifest weight of the evidence standard and a *de novo* standard, so as to provide "some deference" to the agency's decision. *AFM Messenger Serv. v. Dep't of Empl. Sec.*, 198 Ill. 2d 380, 392 (2001).

Initially, the parties dispute which standard applies in this matter. On the one hand, the Board contends that the clearly erroneous standard applies because the resolution of whether the Board properly denied Levin's request to participate in the retiree healthcare plan administered by the Fund depends on evidence presented to the Board and whether the Board properly denied Levin's request to participate. (Def. Br. Opp'n, p. 4). On the other hand, Levin argues that the standard of review is *de novo* because the issue is whether the Board correctly interpreted the Pension Code and the Illinois Constitution, which is a pure question of law. (Pl. Memo, p. 6-7); (Pl. Reply Br., p. 2-3).

The Court agrees with Levin. The main issues in this case are: 1) whether the Illinois Pension Code requires the Board to pay all or any portion of the healthcare premiums of those annuitants who choose to participate in the program, and 2) whether the Board's "last-employer" requirement conflicts with the Code. These two issues present the Court with pure questions of law.

Analysis

Section 9-239

Levin argues that Section 9-239 does not limit annuitants who may participate in the Group Health Benefit insurance plan to those who "last" worked for the County. Levin contends that it is undisputed that she is considered an "annuitant" under the Pension Code that chooses to participate in the healthcare program and that there is nothing in the Pension Code that permits the Board to deny her this right. The Board responds that Levin fails to meet the eligibility requirements to participate in the Fund's retiree healthcare place. The Board argues that the only statutory reference in Article 9 of the Illinois Pension Code to retiree healthcare coverage is found in Section 9-239 and Levin has failed to cite to any other contract, representation or

statutory reference that provides her with an unfettered right to participate in the retiree healthcare plan administered by the Fund. The Board asserts that Section 9-239 is devoid of any statutory obligation of the Fund to provide retiree healthcare coverage for annuitants. Thus, the first issue is whether Section 9-239 creates a statutory right to participate in any of the County's health care plans.

Section 9-239 states:

> (a) For the purposes of this Section, "annuitant" means a person receiving an age and service annuity, a prior service annuity, a widow's annuity, a widow's prior service annuity, a minimum annuity, or a child's annuity on or after January 1, 1990, under Article 9 or 10 by reason of previous employment by Cook County or the Forest Preserve District of Cook County (hereinafter, in this Section, "the County").
>
> (b) Beginning December 1, 1991, the Fund **may** pay, on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans, all or any portion of the total health care premium (including coverage for other family members) due from each such annuitant.
>
> (c) The difference between the required monthly premiums for such coverage and the amount paid by the Fund may be deducted from the annuitant's annuity if the annuitant so elects; otherwise such coverage shall terminate and the obligation of the Fund shall also terminate.
>
> (d) Amounts contributed by the county as authorized under Section 9-182 [40 ILCS 5/9-182] for the benefits set forth in this Section shall be credited to the reserve for group hospital care and all such premiums shall be charged to it.
>
> (e) The group coverage plan and benefits described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970.

40 ILCS 5/9-239 (emphasis added).

"The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. The best indicator of the legislature's intent is the language in the statute, which must be accorded its plain and ordinary meaning. Where the language in the statute is clear and unambiguous, this court will apply the statute as written without resort to extrinsic aids of statutory construction." *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 5-6 (2009) (citations omitted). "One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. Words and phrases should not be construed in isolation, but must be

interpreted in light of other relevant provisions of the statute. In construing a statute, courts presume that the General Assembly, in the enactment of legislation, did not intend absurdity, inconvenience, or injustice." *Mich. Ave. Nat'l Bank v. Cnty of Cook*, 191 Ill. 2d 493, 504 (2000) (citations omitted).

Levin is correct that she satisfies the "annuitant" part of Section 9-239; however, Levin is incorrect in asserting that she has an unconditional right to participate in the county healthcare program. As the Board correctly points out, Section 9-239 of the Pension Code is devoid of any obligation of the Fund to provide a retiree healthcare program to annuitants. Importantly, Section 9-239 provides the Fund with the discretion to subsidize all or a portion of an annuitant's healthcare premium. The plain language of the statute clearly shows that the Fund has the choice of determining whether or how much of a participating annuitant's healthcare premium will be subsidized. As such, Levin's assertion that Section 9-239 provides annuitants with an automatic right to participate in a retiree healthcare program is without merit.

Indeed, the use of the term "may" in Section 9-239(b) of the Pension Code shows that the Fund has discretionary, rather than mandatory, authority to decide whether to pay the annuitants who choose to participate in any of the county's health care plans. The term "may" refers to the Fund's "ability to" pay any or the entire total portion of the annuitant's healthcare premium from the program. "may." Merriam-Webster Online Dictionary. 2017. http://www.merriam-webster.com (29 Nov. 2017). Even though the statute is unambiguously clear, the legislative history of Section 9-239 also shows that the General Assembly intended on giving the Fund the discretion in deciding what, if any, premiums to pay. Section 9-239 was added to the Pension Code in March 18, 1989. The original section included the following relevant provision:

> (a) from January 1, 1990 through December 31, 1993 the fund **shall** pay, on behalf of each of the fund's annuitants who chooses to participate in any of the county's health care plans, 50% of the total health care premium (including coverage for other family members) due from each such annuitant limited to the following maximums...

Group Health Benefit, 1989 ILL. HB 158, Pub. Act 86-1025, 1989 Ill. Laws 1025. Notably, the General Assembly amended Section 9-239 in 1991 and replaced the mandatory term "shall" with "may," which effectively gave the Fund the decision to pay the premiums for those annuitants

who chose to participate in the program.[3] Group Health Benefit, 1991 ILL. HB 971, Pub. Act 89-1025, 1991 Ill. Laws 1025. Moreover, the General Assembly also amended Section 9-239 to allow the Fund discretion in paying "all or any portion" of the total health care premium of those participating annuitants. *Id.* Had the General Assembly intended for or required the Fund to pay any and all participating annuitants, it would have preserved the term "shall" or replaced it with other mandatory terms such as "will", "should", or "must."

The Fund also argues that when the General Assembly has required retiree healthcare coverage, the statutory language mandating such coverage is unambiguous and detailed. For instance, the State Employees Group Insurance Act of 1971 specifically provides that "[t]he program of health benefits **shall** provide for protection against the financial costs of health care expenses incurred in and out of hospital including basic hospital-surgical-medical coverages..." 5 ILCS 375/6(a) (emphasis added). The State Employees Group Insurance Act then details the type of costs it may cover, including prescription drugs and dental services. 5 ILCS 375/6(a). Similarly, Section 6-164.2(b) specifically provides that "**[t]**he board **shall** pay to the city, on behalf of the board's city annuitants who participate in any of the city's health care plans, the following amounts..." 40 ILCS 5/6-164.2(b) (emphasis added). Unlike both of these statutes that require the board or the program to pay for expenses, Section 9-239 only allows or permits payments. "When the legislature uses certain language in one part of a statute and different language in another, we may assume different meanings were intended." *People v. Davis*, 2012 IL App (2d) 100934, ¶ 15 (citing *People v. Hudson*, 228 Ill. 2d 181, 193 (2008)). By not specifically using the term "shall" and instead replacing it with the term "may", the legislature made clear its intent that the Fund had discretion in paying the premiums for those annuitants.

Levin argues that the plain language of the statute does not require annuitants to have worked for the county as their last place of employment in order to participate in the program. Although that is true, the plain language of the statute does authorize the Fund to choose to pay all or any part of a participating annuitant's healthcare premium. Thus, the Fund only has to have

[3] (b) [A> BEGINNING DECEMBER 1, 1991, <A] [D> From January 1, 1990 through December 31, 1990 <D] the Fund [A> MAY <A] [D> shall <D] pay, on behalf of each of the Fund's annuitants who chooses to participate in any of the county's health care plans, [A> ALL OR ANY PORTION <A] [D> 50% <D] of the total health care premium (including coverage for other family members) due from each such annuitant[A> . <A][D> , limited to the following maximums: <D]. (Source: P.A. 86-1025.) ([A> Uppercase text within these symbols is added <a]
[d> Text within these symbols is deleted <d].

the authority to create rules and regulations in order to implement and work in concert with the Pension Code.

"Last Employer" Rule

Thus, the next issues are whether a) the Board had the authority to create and enforce the "last employer" rule, and 2) whether the "last employer" requirement conflicts with the Pension Code. Levin asserts that the "last employer" requirement does not fall within the scope of the Board's enabling statute and that it conflicts on its face with the Pension Code. Levin argues that the "last employer" requirement exceeds the Board's scope of authority because the Pension Code does not grant the Board power to add additional eligibility requirements; rather, the Pension Code sets the eligibility requirements for the annuitants itself. Levin cites to Section 9-219 to support her argument that the Board does not have the authority to exclude annuitants from participation nor determine eligibility in the first place. Levin also contends that the "last employer" requirement conflicts with the Pension Code because the statute provides that "each" annuitant is eligible to participate, and the Board's new requirements means that some annuitants, such as Levin, may not participate.

> An administrative agency possesses no inherent or common law powers, and any authority that the agency claims must find its source within the provisions of the statute by which the agency was created. Accordingly, the authority of an administrative agency to adopt rules and regulations is defined by the statute creating that authority, and such rules and regulations must be in accord with the standards and policies set forth in the statute. Properly promulgated administrative regulations have the force and effect of law.
>
> However, an administrative body cannot extend or alter the enabling statute's operation by the exercise of its rulemaking powers. If an agency promulgates rules that are beyond the scope of the legislative grant of authority or that conflict with the statute, the rules are invalid.

Ill. Dep't of Revenue v. Ill. Civil Serv. Comm'n, 357 Ill. App. 3d 352, 363-64 (1st Dist. 2005) (citations omitted).

The Fund is "created, set apart, maintained and administered, in the manner prescribed in this Article, for the benefit of the employees and officers herein designated and their beneficiaries." 40 ILCS 5/9-101. Under the Pension Code, the Board has the power "[t]o authorize or suspend the payment of any annuity or benefit in accordance with this Article. The board shall have exclusive original jurisdiction in all matters relating to the fund, including, in addition to all other matters, all claims for annuities, pensions, benefits or refunds." 40 ILCS 5/9-

196. Additionally, the Board is authorized "[t]o make rules and regulations necessary for the administration of the fund." 40 ILCS 5/9-202. Accordingly, the Board has the authority to create and/or enforce requirements necessary for the administration of the fund, which includes healthcare premiums paid to participating annuitants. Indeed, as Levin points out, administration of the fund is dictated by over 200 different sections of Article 9. Yet, Levin has not cited one section that provides that the Board cannot create and enforce a requirement like the "last employer requirement" for Section 9-239.

Levin argues that if the legislature wanted to add a "last employer" requirement, it would have done so in Section 9-239 or any other section. However, Levin misses the point. The legislature did not have to include a "last employer" requirement or any requirement because it gave the Fund the authority to do so instead.

Additionally, the Board's "last employer" requirement does not conflict with the Pension Code because both the statute and the new requirement can be read in conjunction with one another. In essence, Section 9-239 can be broken into two parts: (1) an annuitant who chooses to participate and (2) the board that chooses to pay for the participating annuitant's healthcare premium. The "last employer" requirement is not opening the program to people who do not qualify as annuitants. Instead, the "last employer" requirement limits its obligation to pay any or all of healthcare premiums to specific annuitants. Thus, there is no conflict.

Levin contends that the Board's "last employer" requirement directly conflicts with the Pension Code because under the plain language of the statute, Levin is an annuitant and thus eligible to participate while under the new requirement, she is not eligible to participate. However, the Board is not arguing that Levin is not an annuitant; rather, the Board is arguing that the "last employer" requirement necessitates that only those annuitants whose last employer was Cook County or the Forest Preserve District can participate in the retiree healthcare program. The Fund has, and always had, the sole authority to determine coverage limitations and eligibility requirements. The "last employer" eligibility requirement is consistent with other retiree healthcare plans administered by Illinois public pension funds. For example, the Chicago Teacher's Pension Fund requires that an annuitant's final teaching service must be with the Chicago Public Schools or Chicago Charter Schools in order to participate in the retiree healthcare program administered by the Chicago Teacher's Pension Fund. (R. 83). The Fund's Group Health Benefits Handbook expressly notes that an annuitant "must have been last

employed with Cook County or the Forest Preserve District" in order to be eligible to participate in the Fund's healthcare coverage. (R. 75). One of the Board's findings was that "Since the time the Fund took over the administrative of the retiree healthcare program (*i.e.* February 1992), the Fund has consistently applied the rule to similarly situated annuitants to Ms. Levin that in order to be eligible to participate in the retiree healthcare program, an annuitant's last employer had to be Cook County or the Forest Preserve District." (R. 8-9, 4). As the Fund always had the right to determine eligibility, its "last employer" rule does not violate the Pension Code.

Pension Protection Clause

Levin's argues that her healthcare benefit is protected by the Pension Protection Clause. Levin, however, cannot point to any contract or statute promising annuitant healthcare coverage in the Fund's retiree healthcare plan. Without evidence of a contractual relationship between the Fund and Levin requiring the Fund to permit Levin to participate in the retiree healthcare plan administered by the Fund, the Pension Protection Clause does not apply. The Illinois Appellate Court made clear in *Underwood v. City of Chicago* that the Pension Protection Clause does not itself create or confer benefits; rather, "the benefits are created by contract or by statute. But, the legislature can impose conditions, including time limitations on statutorily created rights." *Underwood v. City of Chi.*, 2016 IL App (1st) 153613, ¶ 22. In reaching its decision, the appellate court addressed the Illinois Supreme Court's decision in *Kanerva v. Weems*, 2014 IL 115811. As the appellate court stated:

> But, again, the relevant constitutional provision and case law do not create benefits—they protect them. In *Kanerva*, the benefit recipients already had the enduring right. *Id.* at ¶ 57. The Court just explained that, based on our constitution, it could not be taken away. *Id.* at ¶ 42. But here, the benefit always came with an expiration date. The time period was part of the benefit itself. The only enduring rights that these retirees ever contracted for or were successfully able to get adopted by the legislature are those codified in the 1983 and 1985 amendments.

Id. at ¶ 27.

Here, Levin has no "enduring right" to participate in a retiree healthcare plan administered by the Fund because she cannot point to any contract, representation, or statute promising healthcare coverage under the retiree healthcare program administered by the Fund. The Board imposed the "last employer" requirement as a condition to receiving subsidized healthcare premiums, and, as stated above, the Board had the statutory authority to do so. Therefore,

Levin's right to participate in the Fund's healthcare program is not protected by the Pension Protection Clause.

Conclusion

The Board's final administrative decision is affirmed.

This is a final Order disposing of all matters in this litigation.

DATE: May 10, 2018

ENTERED
JUDGE KATHLEEN M. PANTLE-1775
MAY 10 2018
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Kathleen M. Pantle

TAB C

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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Vincent Dominick Pinelli
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September 25, 2019

In re: Lori G. Levin, etc., Appellee, v. The Retirement Board of the County Employees' and Officers' Annuity and Benefit Fund of Cook County, Appellant. Appeal, Appellate Court, First District. 125141

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

TAB D

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

COOK COUNTY, ILLINOIS

LORI G. LEVIN

Plaintiff/Petitioner

Reviewing Court No: 1-18-1167
Circuit Court No: 2016CH014789
Trial Judge: KATHLEEN M. PANTLE

v.

RETIREMENT BOARD OF THE COUNTY EMPLOYEES, ET AL.

Defendant/Respondent

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