

No. 122905

IN THE SUPREME COURT OF ILLINOIS

DAVID PICCIOLI,

Plaintiff-Appellant,

v.

BOARD OF TRUSTEES OF THE
TEACHERS' RETIREMENT SYSTEM, et
al.,*Defendants-Appellees.*

) On Direct Appeal from the
) Circuit Court of the Seventh
) Judicial Circuit, Sangamon
) County, Illinois

) No.: 15-MR-43

) The Honorable
) Ryan M. Cadagin,
) Judge Presiding
)
)
)

PLAINTIFF-APPELLANT'S BRIEF AND APPENDIX

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NATURE OF THE CASE

This action was initiated to obtain a judicial declaration that the legislature's revocation of a vested pension benefit violates the Illinois Constitution's pension protection clause (Ill. Const. 1970, art. XIII, § 5), and to enjoin the public pension system from implementing that law. Faced with cross-motions for summary judgment, the trial court granted summary judgment in favor of the public pension system. The lower court sidestepped the pension question by ruling that the legislation that originally granted the pension benefit is unconstitutional special legislation. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the Teachers' Retirement System has standing to challenge the constitutionality of pension legislation that granted the plaintiff a vested pension benefit.
2. Whether the legislation extending a pension benefit to the plaintiff qualifies as unconstitutional special legislation.
3. Whether the legislature's decision to revoke a vested pension benefit violates the plaintiff's rights under the Illinois Constitution's pension protection clause.

JURISDICTION

Because the trial court held that a state statute creating a pension benefit was invalid, this appeal reaches the Supreme Court directly from the trial court under Illinois Supreme Court Rule 302(a). Ill. S. Ct. R. 302(a) (eff. Oct. 4, 2011).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **Ill. Const. 1970, art. IV, § 13. SPECIAL LEGISLATION:**

The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

- **Ill. Const. 1970, art. XIII, § 5. PENSION AND RETIREMENT RIGHTS:**

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

- **Excerpt from Pub. Act 94-1111 (eff. Feb. 27, 2007) amending 40 ILCS 5/16-106¹:**

A person who is a teacher as described in item (8) of this Section may establish service credit for similar employment prior to becoming certified as a teacher if he or she (i) is certified as a teacher on or before the effective date of this amendatory Act of the 94th General Assembly, (ii) applies in writing to the system within 6 months after the effective date of this amendatory Act of the 94th General Assembly, and (iii) pays to the system contributions equal to the normal costs calculated from the date of first full-time employment as described in item (8) to the date of payment, compounded annually at the rate of 8.5% per year for periods before the effective date of this amendatory Act of the 94th General Assembly and for subsequent periods at a rate equal to the System's actuarially assumed rate of return on investments. However, credit shall not be granted under this paragraph for any such prior employment for which the applicant received credit under any other provision of this Code.

¹ The full text of the legislation is available at <http://www.ilga.gov/legislation/publicacts/94/PDF/094-1111.pdf>.

- **Excerpt from Pub. Act 97-0651 (eff. Jan. 5, 2012) amending 40 ILCS 5/16-106²:**

Section 97. Retroactive repeal. This amendatory Act of the 97th General Assembly hereby repeals and declares void ab initio the last paragraph of Section 16-106 of the Illinois Pension Code as contained in Public Act 94-1111 as that paragraph furnishes no vested rights because it violates multiple including, provisions of the but not limited to, 1970 Illinois Article VIII, Constitution, Section 1. Upon receipt of an application within 6 months after the effective date of this amendatory Act of the 97th General Assembly, the System shall immediately refund any contributions made by or on behalf of a person to receive service credit pursuant to the text set forth in Public Act 94-1111, as well as any amount determined by the Board to be equal to the investment earned by the System on those contributions since their receipt.

² The full text of the legislation is available at <http://www.ilga.gov/legislation/publicacts/97/PDF/097-0651.pdf>.

STATEMENT OF FACTS

For decades, Illinois law has permitted employees of some private entities that serve public employees to join the State's retirement systems. C 430-31. For example, while most members of the Teachers' Retirement System ("TRS") are former public school teachers, its members also include employees of the Illinois Association of School Boards, the Illinois Education Association ("IEA"), the Illinois Federation of Teachers ("IFT") as well as principals, superintendents, regional superintendents and teachers employed by correctional facilities. C 431; C 456-60; C 497. Notably, not all TRS members are certified teachers. C 199.

Even substitute teachers, who are not employed with teachers unions, automatically join TRS on the first day of service so long as the substitute teaching position requires a teaching certificate. C 176-77; C 216; C 522; see A 29. The monetary contributions TRS receives for its members who are employed by teachers unions are higher than the contributions it receives for its members who work for public school districts. C 205-207; C 221-22; see C 218. Since the eighties, employees of Illinois' two statewide teachers unions who were certified teachers and who had previously established TRS service credit by teaching, whether fulltime or as a substitute, could earn a TRS pension for their union service. C 222; C 239; C 497; see A 29.

In February 2007, Illinois' governor signed Senate Bill 36, which became immediately effective as Public Act 94-111 (the "2007 Act"). Pub. Act 94-111 (eff. Feb. 27, 2007) amending 40 ILCS 5/16-106; A 26-31; C 45. The 2007 Act

permitted employees of Illinois' statewide teachers unions who were certified teachers and members of TRS before the 2007 Act's effective date to buy service credit with TRS for prior service with those unions. A 26-31. The IEA and the IFT were the only statewide teachers unions. C 644; see C 569-70.

Plaintiff-Appellant David Piccioli worked as a legislative lobbyist for the IFT from 1997 to December 29, 2012. A 9-10; C 267; C 644. In 2006, he obtained a teaching certificate and worked for one day as a substitute teacher in January 2007. A 10; C 189; C 390-93. He then joined TRS. C 237-38; C 353-54; C 394-96; see C 216.

From June 1, 2007, to December 2012, Piccioli paid approximately \$172,000 to TRS for his ongoing public sector union service—that is, service from June 2007 until his retirement.³ A 12; C 189-90; C 402-03.⁴ Adhering to the law, Piccioli contributed \$192,668 to TRS for his union service prior to joining TRS. A 11-12; C 192-93; C 217; C 355-56; C 404; C 445. Piccioli made these payments in several installments over nearly four years, borrowing \$50,000 from his IFT annuity, selling stocks and bonds from his investment portfolio and also scrimping and living a frugal lifestyle. C 382-83; C 404. In total, Piccioli spent \$365,000 from personal resources to secure retirement benefits with TRS,

³ Piccioli's pension rights for post-June 2007 service are not an issue in this case.

⁴ While TRS' records show that payments for Piccioli were made by him and on his behalf by IFT, both types of payments came from him. The latter was simply withheld from his paycheck. A 21-22; see C 402.

including a \$192,668 contribution for pre-June 2007 service and \$172,000 in contributions for service after June 2007. A 12; C 228-29; C 241-42.

Piccioli did not work on pension issues while with IFT. C 358; C 547. He had nothing to do with the drafting or passage of the 2007 Act. C 358; C 380; C 541; C 547. Indeed, Piccioli did not know that IFT was involved in the drafting or lobbying of the 2007 Act until several years after it became law. C 358; C 379-80.

In 2012, the governor signed legislation voiding the 2007 Act as unconstitutional. A 13; C 649. The legislation, dubbed "Retroactive Repeal," "repeal[ed] and declare[ed] void *ab initio* the last paragraph of Section 16-106 of the Illinois Pension Code as contained in Public Act 94-111." Pub. Act 97-0651 (eff. Jan. 5, 2012) amending 40 ILCS 5/16-106 (the "2012 Act"); A 32-33; A 13; C 288-89. The 2012 Act states that the to-be-excised paragraph from the 2007 Act—which enabled Piccioli to purchase pre-2007 service credit—"furnishe[ed] no vested rights because it violate[ed] multiple provisions of the 1970 Illinois Constitution, including, but not limited to, Article VIII, Section 1." A 33. The 2012 Act goes on to explain the process that a member of the pension system must follow to receive a refund and avoid losing both pension rights and the monies contributed in securing that right. A 13; A 33.

Faced with the Hobson's choice of getting a \$192,668 refund for contributions he made to secure pre-June 2007 retirement benefits under the law in place at the time he paid the money or losing both the money and the pension

benefits, Piccioli accepted a refund. A 13-14. Thus, per the 2012 Act, TRS eliminated Piccioli's benefits accrued as a result of contributions he made for service prior to June 2007. A 13-14; C 212. Accordingly, when Piccioli retired, service credits he had earned for contributions made for years prior to the 2007 Act were no longer available to him in calculating retirement benefits. C 212.

After this Court, in *Kanerva v. Weems*, 2014 IL 115811, confirmed that the State could not renege on promised retirement benefits, Piccioli initiated this lawsuit challenging the 2007 Act under the pension protection clause. C 12-39. He named TRS' board of trustees ("Board") as a defendant only because it is the entity charged with implementing the unconstitutional 2012 Act. See C 12. TRS' answer denied that the 2012 Act is unconstitutional. A 11-13; C 158.

After discovery, Piccioli moved for summary judgment. C 83-112; C 60-80; C 130-157. The Board filed a cross-motion arguing, for the first time, that the 2007 Act was invalid special legislation and, as such, was void from the start. C 643-56.⁵ Piccioli responded that TRS lacked standing to challenge the 2007 Act and, in any event, the 2007 Act is constitutional and the government could not

⁵ The General Assembly, via the 2012 Act, proclaimed the 2007 Act unconstitutional because lawmakers deemed it in violation of Section 1 of the Illinois Constitution's finance article. That section provides, in relevant part, that "(a) Public funds, property or credit shall be used only for public purposes. (b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance." Ill. Const. 1970, art. VIII, § 1. A 13. And while the Board raised two unrelated affirmative defenses with its answer, it abandoned those defenses, instead arguing for the first time in its cross-motion on summary judgment that the 2007 Act was special legislation. A 15-16; C 641.

unilaterally eradicate his vested pension rights. C 658-70. On summary judgment, the trial court accepted the Board's new argument by ruling that the 2007 Act was special legislation and, thus, did not create a valid pension benefit. A 2-7.

Piccioli moved to reconsider raising standing, the 2007 Act's constitutionality and the 2012's Act's unconstitutionality. C 733-44. That motion was denied. A 8. This appeal followed. A 34-43.

STANDARD OR REVIEW

Appeals from orders granting summary judgment are reviewed *de novo*. *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 234 (2005). *De novo* review is also proper because issues under appeal raise constitutional questions. *Id.*

ARGUMENT

This Court should reverse the lower court's ruling that the 2007 Act is unconstitutional special legislation because the Board lacks standing to launch that constitutional attack. Even if the Board had standing, the 2007 Act does not qualify as special legislation under this Court's jurisprudence. Because the 2007 Act passes constitutional muster and because Plaintiff legitimately exercised his right to purchase service credit for pre-June 2007 service under the 2007 Act, the subsequent elimination of that credit violates the pension protection clause.

I. The Board Lacks Standing

The Board does not have standing to challenge the 2007 Act because the relief Piccioli seeks does not injure the Board's or TRS' personal rights. In addition, even if the 2007 Act is unconstitutional, it is not unconstitutional insofar as TRS is concerned. Standing is an aspect of justiciability and, as such, cannot be waived. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 265 n. 6 (2010). Controversies concerning standing are properly resolved on summary judgment and reviewed *de novo* on appeal. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 496 (1988); *Stevens v. McGuire Woods LLP*, 2015 IL 118652, ¶¶ 11, 22-23.

To have standing in Illinois, a litigant must suffer "some injury in fact to a legally cognizable interest." *Messenger v. Edgar*, 157 Ill. 2d 162, 170 (1993). The claimed harm, whether actual or imminent, must be distinct and palpable, traceable to the opponent's actions, and likely be redressed by the requested

relief. *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 419-20 (2005). Additionally, when a party seeks a declaration that a statute is unconstitutional—as the Board does here—it must have an interest in the controversy. *Messenger*, 157 Ill. 2d at 171. Significantly, "[i]nterest" entails more than mere "curiosity about or a concern for the outcome of the controversy;" it requires a personal claim, status, or right capable of being affected by the grant of such relief. *Id.* Moreover, a party challenging a statute's constitutionality "must bring himself within the class as to whom the law is allegedly unconstitutional." *Id.*; *Cronin v. Lindberg*, 66 Ill. 2d 47, 56 (1976) (holding that a school board and its superintendent lacked standing to challenge a statute's constitutionality because they were not members of the class to whom the statute was allegedly unconstitutional).

Nothing in this record suggests that permitting Piccioli to purchase past service credit under the 2007 Act harmed TRS, nor that it diminished TRS' financial position. Quite the contrary. The record shows that Piccioli paid \$192,668 to receive past service credit, yet he never had a chance to draw a pension on the past service credit he bought and so TRS enjoyed the benefit of his money for a number of years without cost. A 12; C 211-12. In addition, lawmakers, during debates on the 2007 Act, made it clear that the option to purchase service credits should not present additional costs to TRS. C 676-77 (State Representative Hannig stating this pension bill will not "cost the State of

Illinois any additional pension moneys" and that the amendment will come at "no cost to the State of Illinois.").

Even if, *arguendo*, TRS' costs rise slightly over the years as a result of Piccioli's receipt of pension benefits due to his past service credit purchase, the Board still lacks the right to challenge the 2007 Act. TRS is a creature of Article 16 of the Illinois Pension Code ("Article 16"), and its powers are limited by that statute. 40 ILCS 5/16-101 *et. seq.*; *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547, 553 (2005) (administrative agencies have no general or common law powers; their authority is limited to what the legislature specifically authorizes).

Article 16 contemplates that TRS' 13-member Board, which governs the agency, may sue and be sued "to protect any right of the retirement system." 40 ILCS 5/16-163; 40 ILCS 5/16-171. But the article does not authorize the Board to launch constitutional attacks on legislation to vindicate the constitutional rights of TRS' annuitants or anyone else. TRS' status with respect to the trust fund it administers "is purely as fiduciary trustee for the benefit of TRS members." *Board of Directors v. Teachers' Retirement System*, 50 Ill. Ct. Cl. 396, 400 (1998). As the statutory scheme makes clear, TRS does not have a personal interest in the funds it administers. 40 ILCS 5/16-101 (TRS is created "for the purpose of providing retirement annuities and other benefits for teachers, annuitants and beneficiaries. All of [TRS'] business shall be transacted, its funds invested, and its assets held in such name.").

Even TRS concedes that it "cannot unilaterally refuse to comply with a statute on the ground [*sic*] that it is unconstitutional." C 711, n. 1. Similarly, TRS lacks power to unilaterally attack the 2007 Act's constitutionality, as it has in this action. See, *e.g.*, *Bargo v. Rauner*, No. 17-2142 (7th Cir. 2018) (plaintiff lacked standing to challenge Illinois' pension protection clause under federal law because his alleged injury—higher taxes and fewer social services—is borne by millions of Illinoisans, making his injury too generalized). Accordingly, even if the 2007 Act is unconstitutional special legislation, as the Board contends, TRS is not a part of the class that bears an unconstitutional burden. Thus, the Board lacks standing to challenge the 2007 Act.

II. The 2007 Act Is Not Unconstitutional Special Legislation

The 2007 Act does not qualify as unconstitutional special legislation because the Board has failed to identify similarly situated third parties who were denied the option Piccioli exercised and because setting an expiration date for public benefits protects TRS' fisc. The prohibition against special legislation emanates from Section 13 of article IV of the Illinois Constitution, which provides: "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13.

Statutes carry a strong presumption of constitutionality. *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 324 (2005). This presumption mandates that the

Board, as the party challenging the 2007 Act's constitutionality, bears the burden of proving the statute's constitutional failures. *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 148 (2006) ("*Schiller*"). This Court upholds a challenged statute, if possible, and reviews *de novo* a trial court's decision to invalidate a law as unconstitutional special legislation. *Id.* at 148.

The General Assembly has broad discretion to enact statutory classifications. Those classifications need not be accurate, harmonious or precise so long as they achieve the legislative objective. *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 372 (1985). The special legislation clause prohibits only those classifications that arbitrarily discriminate in favor of a select group without a reasonable basis. *Big Sky Excavating*, 217 Ill. 2d at 235. Furthermore, a statute is unconstitutional special legislation *only* if (1) it confers a special benefit on one person or group while excluding "others that are similarly situated," and (2) the legislative classification is arbitrary. *Schiller*, 221 Ill. 2d at 149-50, 154.

To prevail on the first prong of this test, a party challenging a law under the special legislation clause must "clearly identif[y]" the similarly situated persons who were supposedly denied a benefit. *Id.* at 153. If the record does not clearly identify such individuals, the party attacking the statute cannot meet its burden of proof regarding the first prong. *Schiller*, 221 Ill. 2d at 153; *Big Sky Excavating*, 217 Ill. 2d at 237. *Big Sky Excavating* was brought by two Illinois businesses that sought to represent a class of business customers of the telecommunications

carrier Illinois Bell Telephone Company. *Id.* at 230. This Court rebuffed the plaintiffs' special legislation argument under the first prong of the constitutional analysis explaining that "[i]f any telecommunications carrier believed that [the challenged legislation] afforded Illinois Bell an advantage it was denied, there is no evidence of it in the record before us." *Id.* at 237. Rather, the plaintiffs' arguments focused on the harm *consumers* would suffer under the challenged law. *Id.* This Court reasoned that because consumers are not similarly situated to the telecommunications carriers from which they buy services, "their harm is not relevant to the question of the law's discriminatory effect." *Id.*

To prevail on the second prong in a case such as this, which involves no fundamental right or suspect classification, the party arguing unconstitutionality must show that no legitimate government interest justifies the classification. *Crusius*, 216 Ill. 2d at 325. In other words, if this Court can reasonably conceive of any facts that justify distinguishing the class that the statute benefits from the class that it does not, the law stands. *Id.*

Schiller is directly on point. There, lawmakers amended section 7-2c of the Illinois School Code ("Section 7-2c") to permit the annexation of specific farmland. *Schiller*, 221 Ill. 2d at 134-38. That annexation would make the farmland's anticipated development more lucrative to its owner Howard Ohlhausen. *Id.* at 135. The legislative debates plainly revealed that Section 7-2c was designed to "take[] care of a local concerning in Will County." *Id.*

Once effective, Section 7-2c contained *two* effective date limitations. First, it targeted Ohlhausen's land by requiring narrow size, tax and other criteria—many of which had to be satisfied by Section 7-2c's effective date. *Id.* at 136. Second, to qualify for annexation under Section 7-2c, an annexation petition had to be on file by Section 7-2c's effective date. *Id.*

The state education superintendent granted Ohlhausen's request by detaching the parcel from Cook County school districts and attaching it to Will County schools. *Id.* at 138-39. The school districts sued arguing that Section 7-2c was unconstitutional special legislation because it aimed to benefit only Ohlhausen. *Id.* at 139. The trial court agreed and struck down Section 7-2c specifically because of its aggressive and, in the lower court's view, arbitrary effective date limitations, which rendered Section 7-2c obsolete on its own effective date. *Id.* at 141.

On direct appeal, this Court reversed. Despite the multiple effective date limitations, this Court upheld Section 7-2c. *Id.* at 148-56. Indeed, in this Court's estimation, Section 7-2c passed both parts of the two-pronged special legislation analysis. *Id.*

Concerning the first prong, although *Schiller* acknowledged that the amendment was solely designed to benefit Ohlhausen and that it was reasonable to assume that only he profited from it, the school districts had failed to show that a similarly situated landowner was denied a privilege. *Id.* at 151. *Schiller* highlights that the schools themselves did not claim to be similarly situated to

Ohlhausen. *Id.* at 152. Instead, the schools argued that owners of vacant land adjacent to Ohlhausen's were excluded because they did not have petitions on file when the amendment took effect. *Id.* at 152-53. This Court rejected that contention by explaining that nothing in the record revealed another landowner who, like Ohlhausen, had actually applied for a boundary modification:

[T]he mere fact that this property exists is not enough to satisfy plaintiffs' burden without any additional evidence that those unnamed property owners could have benefitted from section 7-2c but for the effective-date limitation. No evidence is in the record that these owners sought to convert their farmland into residential areas, desired the Village of Frankfort to annex their property, or additionally sought a school district boundary change. There is no evidence in the record of anyone similarly situated to Ohlhausen, i.e., any other property owner who sought a boundary change under similar circumstances. Thus, plaintiffs have not met their burden under the first part of the twofold inquiry.

Id. at 154.

As to the second prong, *Schiller* reasoned that the legislative classification withstood the rational basis test because the record included some support for the assertion that future schoolchildren in the area could benefit from attending Will County's school districts. *Id.* at 154-56.

Like *Schiller*, the instant case reaches this Court on direct appeal after the lower court decreed legislation unconstitutional only because of an effective date limitation. The trial court's order sweepingly holds that the inclusion of "an effective-date eligibility cutoff" *per se* renders legislation unconstitutional. A 40 ("The Court further holds that the 2007 Act[] . . . violated the Special Legislation Clause because it contained an effective-date eligibility cutoff."). Tellingly, neither

this Court nor other Illinois reviewing courts have used the term "effective-date eligibility cutoff" in a published decision. In any event, *Schiller's* approval of a law containing two effective date limitations belies the lower court's holding that such restrictions are unconstitutional as a matter of law. Compare *Schiller*, 221 Ill. 2d at 149-156, with C 769-70. Indeed, the 2007 Act contains only one effective date limitation—the requirement that a TRS applicant "is certified as a teacher." Pub. Act 94-1111 (eff. Feb. 27, 2007) amending 40 ILCS 5/16-106 (i); A 30.

Like Section 7-2c in *Schiller*, the 2007 Act's effective date limitation passes constitutional muster because nothing in this record suggests that anyone except Piccioli actually tried to apply for retroactive pension benefits offered by the 2007 Act, nor does the record support any notion that someone was denied that benefit due to the cutoff date or other limiting language found in the statute. The Board's failure to clearly identify the similarly situated persons who were supposedly denied a benefit dooms its argument. *Schiller*, 221 Ill. 2d at 153; *Big Sky Excavating*, 217 Ill. 2d at 237.

The trial court's order, likewise, does not identify union employees similarly situated to Piccioli. A 2-7. The order vaguely suggests that purely hypothetical employees of statewide teachers unions who became certified public school teachers and taught after the 2007 Act's effective date would be similarly

situated.⁶ A 6. That suggestion is misplaced. If those hypothetical employees had relevant prior union service they, unlike Piccioli, made no attempt to apply for TRS membership by meeting the statutory requirements of certification, classroom teaching and making contributions to obtain benefits before the cutoff. That is, those employees had the option, but declined, to seek TRS membership under conditions available to Piccioli. Thus, existence of such imaginary employees, like the hypothetical abutting landowners in *Schiller*, cannot sustain the Board's burden under the first prong of the special legislation analysis.

If, on the other hand, those hypothetical union employees were new hires, they would have no prior union service which they could be precluded from purchasing retroactively. So they would not be disadvantaged by the 2007 Act. Instead, until the General Assembly removed employees of teachers unions from TRS eligibility,⁷ new union staff members were free to become TRS members and earn pension credit prospectively.

While the record reveals that some IEA employees had some of the credentials necessary to purchase past service credit under the 2007 Act, this

⁶ The order fails to name or further describe any individuals that would have applied for TRS benefits had they not missed the cutoff date, instead ambiguously suggesting, in a parenthetical, that such individuals were disclosed on the record. A 2-7. But this appellate record does not identify anyone who wanted to, but for timing reasons could not, apply. *Cf.* C 301-308 (stipulation confirming that IEA staffers were qualified to apply for TRS membership under the 2007 Act but failing to indicate that any of them wished or tried to qualify).

⁷ The legislature removed teachers union staffers from TRS eligibility via another provision of the 2012 Act. Pub. Act 97-0651 (eff. Jan. 5, 2012) amending 40 ILCS 5/16-106(8).

appellate record does not identify a single IEA employee who was interested in joining TRS under the 2007 Act but was prevented from doing so due to the 2007 Act's deadline. See C 301; C 236. Critically, the Board expressly concedes that

none [of the IEA] employees [with college degrees who could have obtained a teacher certification] took steps to meet the 2007 Act's teaching certification and service conditions and then [] appl[ie]d to become TRS members to receive retroactive pension benefits based on their prior IEA employment.

C 649. Further, the record identifies seven IFT employees who were eligible to take advantage of the 2007 Act. C 595-96. Four of them claimed credit under the State Employees Retirement System and three, including Piccioli, obtained a teaching certificate and sought TRS service credits to be earned prospectively under a law in place since the eighties. C 595-96; C 315. Only Piccioli made the requisite monetary contributions for benefits, under the 2007 Act, for pre-June 2007 union service. C 315. Steven Preckwinkle, Piccioli's boss, opted to earn TRS credit on an ongoing basis but declined to seek TRS service credit for pre-June 2007 work because the requisite contributions were "too costly." C 542-44; C 519; see A 30.

Moreover, the Board cannot satisfy the second prong of the special legislation test. Even if, *arguendo*, this Court concludes that the Board can satisfy the first prong because the hypothetical union staffers who met the certification and teaching requirements after the cutoff were similarly situated to Piccioli, the 2007 Act's differing treatment of persons meeting those criteria before and after

the cutoff is not arbitrary. Rather, the 2007 Act's deadline was reasonably necessary to limit, and keep count of, those who qualify to receive annuities from TRS' finite funds. In short, the cutoff is fiscally responsible and was rationally related to the legitimate government interest of preserving pension rights especially in late 2006 and 2007 when a recession was brewing and Illinois entered a pension "crisis." *E.g. Heaton v. Quinn*, 2015 IL 118585, ¶¶ 66, 87.

To be sure, time related cutoffs are commonplace in the pension arena. See, *e.g.*, 40 ILCS 5/16-133.4; 40 ILCS 5/16-135; see also C 672-75 (providing examples of legislation establishing timeframes that govern eligibility to receive benefits). Indeed, the distinction between so-called tier 1 and tier 2 benefits turns entirely on whether a public employee met specific criteria on a given date. *E.g. Heaton*, 2015 IL 118585, ¶¶ 66, 87; see also Pub. Act 96-889 (eff. Apr. 14, 2010). Given Illinois' pension woes, expiration dates for pension benefits are perfectly rational, if not critical.

The General Assembly reasonably could have decided to offer public sector union employees the option of buying pension credit for their union service in order to retain experienced workers and discourage them from taking more lucrative jobs elsewhere. See, *e.g.*, Patricia E. Dilley, *Hope We Die Before We Get Old: The Attack on Retirement*, 12 ELDER L.J. 245, 253 (2004) (explaining that employers used the promise of pensions to retain valuable employees and stabilize their work force). Limiting such offers to current employees was reasonable because the legislature could have perceived a

temporary need to guard against attrition. Had the legislature not included a cutoff and so extended the right to purchase past service credit indefinitely, lawmakers would have permanently expanded pension rights and potentially exacerbated TRS' financial problems that included underfunding of pension obligations. See *Porter v. Jolliff*, 199 Ill. 2d 510, 523 (2002) (holding that limiting custodial claims under the Probate Act to immediate family members was not arbitrary because expanding the group that can make claims would exacerbate the problem of too many potential claimants jockeying to receive distributions); see also C 225 (testimony from TRS' representative deponent confirming that, in past years, the General Assembly has given less money to TRS than the agency deems necessary to meet future obligations).

The trial court cited just one case in its single paragraph analysis of the special legislation issue. See A 5-6. But that decision, *Board of Education v. Peoria Federation of Support Staff, Security/Police/Policeman's Benevolent & Protective Association Unit No. 114*, 2013 IL 114853 ("*Board of Education*") clearly is distinguishable. The legislation in that case applied the more labor-friendly Illinois Public Labor Relations Act ("IPLRA") to security guards employed by a school's police department that existed on the legislation's effective date even though unionized security guards employed by school police departments that might be created after that date would be subject to the Illinois Educational Labor Relations Act ("IELRA"). The dispute was driven by the question of

whether the guards had a right to arbitrate, a right that only the IPLRA, but not the IELRA, conferred.

Board of Education explored whether it was arbitrary for the legislation to treat current school security guards differently from guards who might be employed by future school police departments. *Board of Education*, 2013 IL 114853 at ¶¶ 43-60. The Court ruled unconstitutional the temporal dichotomy between current and future guards because the Court could not fathom a justification for setting a deadline to limit the pool of eligible beneficiaries on the legislation's effective date. *Id.* at ¶ 59. After looking to the IPLRA's policy statement, which specifically referenced granting essential employees a right to arbitrate, the Court concluded that the stated policy would not be advanced if guards with future school districts were denied arbitration protection. *Id.*

Applying that analysis here yields a different result. The Pension Code's policy supports distinguishing between union employees who were certified to teach, had teaching and union service, and made certain contributions by the 2007 Act's effective date and other employees who met those requirements after the effective date. TRS' Pension Code provisions seek to "provid[e] retirement annuities and other benefits for teachers, annuitants and beneficiaries." 40 ILCS 5/16-101. That pension promise depends on the number of TRS participants and the scope of their rights. Cutting off eligibility for benefits represents a reasonable attempt at protecting TRS' funds in order to deliver on the Pension Code's promise of paying retirement annuities. Even if the General Assembly

harbored another objective, the fact that a plausible government interest justified a cutoff means the 2007 Act passes constitutional muster. *E.g. Crusius*, 216 Ill. 2d at 325.

Moreover, while the guards for future school police departments in *Board of Education* were forever denied the protections of the IPLRA, future union employees could enjoy the benefits of TRS membership even after the 2007 Act's effective date. See *Board of Education*, 2013 IL 114853 at ¶¶ 41-60. Indeed, future union employees would *ipso facto* lack past union service for which to buy retirement credit. In other words, future employees would not be similarly situated to employees, like Piccioli, who had nearly a decade of union service that could translate into pension credit. Nor are union employees with prior union service who met the certification, teaching and payment requirements only after the 2007 Act's effective date similar to *Board of Education's* future guards, because, in the instant case, latecomers had the option of doing what Piccioli did.

This appellate record does not support the Board's claim that some employees might not have known that the 2007 Act gave them an option to purchase past service credit before the effective date. Indeed, this record does not reveal a single person who wanted to take advantage of the 2007 Act but was time barred. In a constitutional analysis such as this, this Court should not assume that someone was disadvantaged, nor should the Court presume ignorance of the law. *Schiller*, 221 Ill. 2d 130, 153; see also *People v. Bocclair*,

202 Ill. 2d 89, 104-5 (2002) ("it is well settled that all citizens are presumptively charged with knowledge of the law."). In sum, the 2007 Act does not violate the special legislation clause because the Board has failed to prove that the statute bestows a special benefit on Piccioli while excluding similarly situated others. The Board also failed to demonstrate that the bestowment of benefits was arbitrary.

III. The 2012 Act Violates the Pension Protection Clause

The 2012 Act unequivocally stripped Piccioli of all his vested pension rights he had acquired by purchasing, under the 2007 Act, nearly 10 years of service credit. As this Court admonished in *Heaton*, because the State is self-interested whenever it modifies its own financial obligations, courts do not extend the same deference to legislative decisions lowering the State's pension liability as they do to other enactments. *Heaton*, 2015 IL 118585, ¶ 64.

Article XIII, section 5, of the Illinois Constitution—known as the pension protection clause—provides that "[m]embership in any pension or retirement system of the State, any unit of local government or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5. This Court's recent pension jurisprudence confirms that the legislature lacks the power to unilaterally diminish any benefit that flows from membership in a public retirement system. *Kanerva v. Weems*, 2014 IL 115811; *Heaton*, 2015 IL 118585. Simply put, benefits of TRS membership must be paid in full. *Jones v.*

Municipal Employees' Annuity & Benefit Fund of Chicago, 2016 IL 119618, ¶ 43.

Significantly, the right to purchase service credit for related service, even before joining a public pension system, falls squarely within the aegis of the pension protection clause. *Buddell v. Board of Trustees*, 118 Ill. 2d 99, 101-05. *Buddell* held that the legislature could not cancel an employee's option of purchasing service credit for military service if the employee had served in the military prior to joining the public pension system even though employee had not yet purchased the credit. *Id.* Critically, the clause's protections are triggered the moment an employee starts working in a position covered by the retirement system, not at retirement. *Heaton*, 2015 IL 118585, ¶ 46. In other words, once a person begins working as a teacher and joins TRS, any later changes to the Pension Code that would decrease the benefits of TRS membership cannot extend to that person. *Id.* While underfunded pension liabilities present a legitimate State concern and attaining pension stability constitutes a laudable government goal, the legislature may not unilaterally diminish pension benefits. *Id.* ¶ 47. Even exigent circumstances cannot justify decreasing pension rights. *Id.* ¶ 56.

But that is precisely what the 2012 Act did when it declared unconstitutional and "void *ab initio*" Piccioli's pension rights for service credit he purchased for pre-June 2007 union service. Pub. Act 97-0651 (eff. Jan. 5, 2012) amending 40 ILCS 5/16-106. The 2012 Act entirely eradicates Piccioli's right to

receive pension annuities attendant to his pre-2007 union service. It is axiomatic that such a wholesale elimination of vested pension benefits violates the pension protection clause.

CONCLUSION

David Piccioli respectfully requests that this Court reverse the lower court's grant of summary judgment for the Board, and enter summary judgment in his favor and direct the Board to restore all of his TRS benefits under the 2007 Act.

Respectfully submitted,

/s/ Esther J. Seitz

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Attorney for Plaintiff-Appellant

Dated May 15, 2018

CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the 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 to be appended to the brief under Rule 342(a) is 26 pages.

/s/ Esther J. Seitz

APPENDIX

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Carolyn Taft Grosboll
SUPREME COURT CLERK

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IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

DAVID PICCIOLI,

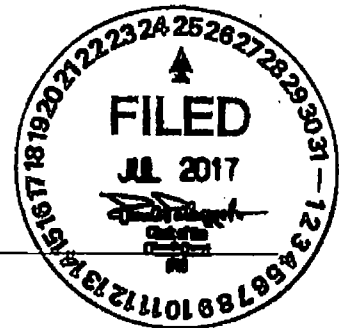
Plaintiff,

v.

No.: 2015-MR-43

BOARD OF TRUSTEES OF THE TEACHERS'
RETIREMENT SYSTEM, and Christopher A.
Koch, Sharon Leggett, Mark Bailey, Michael
Busby, Rainy Kaplan, Cinda Klickna, Bob
Lyons, Cynthia O' Neill, and Sonia Walwyn, as
Trustees of the Teachers' Retirement System,

Defendants.



Final Judgment Order

This matter is before the Court on the parties' cross-motions for summary judgment. Based on the parties' pleadings, evidentiary submissions, briefs and arguments, the Court finds and adjudges as follows. Defendant's motion for summary judgment is granted. Plaintiff's motion for summary judgment is denied.

Legal Standard

A motion for summary judgment should be granted when the pleadings, depositions, admissions and affidavits, taken in the light most favorable to the non-movant, establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005; *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34.

Factual Background

Public Act 94-1111 (the "2007 Act") amended the Pension Code by adding a

final paragraph to Section 16-106. 40 ILCS 5/16-106. That amendment permitted employees of a statewide teachers union who were certified teachers and members of the Teachers' Retirement System ("TRS") before the 2007 Act became law to obtain service credits in TRS for their employment with the union before becoming TRS members. This provision of the 2007 Act was drafted by the Illinois Federation of Teachers ("IFT"). Before the 2007 Act was signed into law and took effect on February 27, 2007, IFT advised its employees that if they were not already TRS members, they could become TRS members and take advantage of the 2007 Act's benefits by becoming certified as substitute teachers (which required having a bachelor's degree) and teaching for at least one day as a substitute teacher before the 2007 Act took effect.

David Piccioli, an IFT employee who worked as a legislative lobbyist, obtained a substitute teaching certificate in December 2006 and provided one day of substitute teaching in the Springfield public school system on January 22, 2007, thereby becoming a TRS member. He then made the application and contributions to TRS specified by the 2007 Act.

Five years after the 2007 Act became law, the General Assembly enacted Public Act 97-651 (the "2012 Act"). Section 97 of the 2012 Act, entitled "retroactive repeal," declared the last paragraph of Section 16-106 of the Pension Code added by the 2007 Act unconstitutional and void *ab initio*, and it directed TRS, upon application, to refund the contributions (plus TRS's investment earnings on them) of anyone who obtained service credits under that provision of the 2007 Act. After

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passage of the 2012 Act, and before he retired, Piccioli requested and obtained a refund from TRS of his contributions to obtain the service credits provided by the 2007 Act (plus TRS's investment earnings on those contributions). Piccioli brought this suit challenging the constitutionality of the 2012 Act. His principal argument is that he acquired a vested interest in the service credits in TRS he obtained under the 2007 Act, protected by the Pension Clause (art. XIII, § 5) and Contract Clause (art. I, § 16) of the Illinois Constitution, and that the 2012 Act is unconstitutional to the extent it retroactively repealed, or revoked, that interest. (Piccioli did not allege that if the 2012 Act is valid in that respect, the remedy it prescribed for refunding his contributions pursuant to the 2007 Act plus TRS's investment earnings on them, is unconstitutional.)

TRS, named as a defendant and represented by the Attorney General, defended the validity of the 2012 Act and alleged that the 2007 Act was unconstitutional. TRS asserts, in particular, that the 2007 Act violated the Special Legislation Clause of the Illinois Constitution (art. IV, § 13), and that the 2012 Act therefore validly repealed the 2007 Act and directs TRS to refund Piccioli's corresponding contributions, plus earnings on them. Following discovery, the parties file cross-motions for summary judgment.

Rulings

As a preliminary matter, the Court does not accept Piccioli's contention that the TRS lacks standing to defend the 2012 Act's declaration that the 2007 Act was unconstitutional. TRS did not unilaterally treat either Act as being

unconstitutional, but instead complied with both statutes until this litigation was filed. It was only when Piccioli sued TRS and challenged its compliance with the 2012 Act (which declared the 2007 Act unconstitutional and void *ab initio*) that TRS defended that claim by alleging that the 2012 Act was valid because the 2007 Act was, in fact, unconstitutional. TRS complied with the 2007 Act by allowing Piccioli into TRS and complied with the 2012 Act, upon enactment. In these circumstances, the Court finds that TRS has standing to defend the actions the 2012 Act directed it to take, as well as the General Assembly's reason for requiring it to take those actions. In addition, denying the TRS the ability to defend the 2012 Act on the ground that the 2007 Act was unconstitutional would put the Court in the position of potentially having to enforce an unconstitutional law due to the lack of an adversary relationship between the parties on that issue. The Court declines to do so. Of note, the Attorney General indicated at a May 11, 2017, hearing its intention not to seek to intervene on the standing issue because of the Court's indication that TRS does have standing to defend the suit.

The Court further holds that the 2007 Act's amendment to the Pension Code that added the last paragraph of Section 16-106 violated the Special Legislation Clause because it contained an effective-date eligibility cutoff. Pursuant to that provision of the 2007 Act, the pension benefits it authorized for employment with a statewide teachers union before the union employee became a TRS member were not available for anyone who met the 2007 Act's other eligibility criteria — being certified as a public school teacher and providing teaching service, thus becoming a

TRS member — *after* the 2007 Act was signed into law and took effect. Plaintiffs have not explained why only individuals who met these criteria before the 2007 Act became law are unique with respect to any legitimate legislative purpose, nor have they identified any rational reason why the benefits available under the 2007 Act should be limited to such persons, and not be available to other individuals (including those disclosed in the record) who met those criteria after the 2007 Act became law. The Court concludes, therefore, that under the Supreme Court's holding in *Board of Education of Peoria School District No. 150 v. Peoria Federation of Support Staff, Security/Policeman's Benevolent & Protective Association Unit*, 2013 IL 114853, ¶¶ 43-60, the 2007 Act's amendment to the Pension Code adding the final paragraph of Section 16-106 is unconstitutional special legislation.

Rule 18 Findings

In accordance with Supreme Court Rule 18, the Court specifically finds as follows:

The 2007 Act's amendment to the Pension Code adding a final paragraph to Section 16-106 is declared unconstitutional on its face and void in its entirety because it violates the Special Legislation Clause of the Illinois Constitution;

That provision of the 2007 Act cannot reasonably be construed in a manner that would preserve its validity;

That provision of the 2007 Act can be, and hereby is, severed from the remainder of the 2007 Act (the validity of which is not before the Court, and as to which the Court makes no ruling);

A finding of unconstitutionality is necessary to the Court's judgment, which cannot reasonably rest on an alternative ground; and

TRS, represented by the Attorney General, has participated in the proceedings.

Conclusion

For the foregoing reasons, the Court declares the amendment to Section 16-106 of the Pension Code, adding the last paragraph to Section 16-106 (40 ILCS 5/16-106), unconstitutional and void *ab initio*.

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IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

FILED

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DAVID PICCIOLI,

Plaintiff,

v.

BOARD OF TRUSTEES OF THE TEACHERS'
RETIREMENT SYSTEM, *et al.*,

Defendants.



Clerk of the
Circuit Court

Case No. 2015 MR 43

ORDER

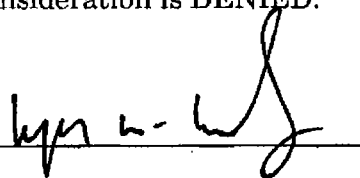
This matter having come before the Court on the plaintiff's motion pursuant to Section 2-1203 of the Code of Civil Procedure for reconsideration of the judgment in the defendants' favor (which was entered on the Court's docket on July 25, 2017), the Court having considered the motion, the parties' legal memoranda, and the oral arguments of counsel, and being fully advised in the premises;

It is hereby ordered that the motion for reconsideration is **DENIED**.

Date:

10/13/17

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Prepared by:

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FILED

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT, MAR 23 2015
SANGAMON COUNTY, ILLINOIS

FR 4

[Signature]
Clerk of the
Circuit Court

David PICCIOLI

Plaintiffs,

v.

BOARD OF TRUSTEES OF THE TEACHERS'
RETIREMENT SYSTEM OF THE STATE OF
ILLINOIS, and Christopher A. Koch, Sharon
Leggett, Mark Bailey, Michael Busby, Rainy
Kaplan, Cinda Klickna, Bob Lyons, Cynthia
O'Neill and Sonia Walwyn, as Trustees of TRS,
Defendants.

Case No. 2015 MR 00043

ANSWER AND AFFIRMATIVE DEFENSES

The Board of Trustees of the Teachers' Retirement System of the State of Illinois (the "TRS") and its Trustees (collectively "Defendants"), for their answer to the Amended Complaint filed by Plaintiff David Piccioli, state as follows:

1. Plaintiff David Piccioli ("Piccioli") is a former certified teacher and employee of the Illinois Federation of Teachers having retired in December, 31, 2012.

ANSWER: Defendants admit that Piccioli is a former certified teacher and employee of the Illinois Federation of Teachers. Defendants deny that Piccioli retired on December 31, 2012, and state that he retired on December 29, 2012.

2. Defendant Teachers Retirement System of Illinois ("TRS") is an agency created by the Illinois Pension Code and is charged with administration of pension benefits for qualified employees in fields of public education.

ANSWER: Defendants admit that the TRS is an agency established by Illinois law and governed by the Illinois Pension Code, and that its responsibilities include the administration of annuities and other statutory benefits for certain individuals, most of whom are certified teachers in Illinois' public primary and secondary schools, as well as their spouses and dependents. Defendants deny any inconsistent allegations in paragraph 2.

3. Defendants Christopher A. Koch, Sharon Leggett, Mark Bailey, Michael Busby, Rainy Kaplan, Cinda Klickna, Bob Lyons, Cynthia O'Neill and Sonia Walwyn ("Trustees") are members of the Board of Trustees of TRS who administer the pension system.

ANSWER: Admit.

4. This court has jurisdiction over this action pursuant to 735 ILCS 5/2-701 pertaining to declaratory relief, 735 ILCS 5/11-101 *et seq.* pertaining to injunctive relief.

ANSWER: Admit.

5. Venue lies in Sangamon County, Illinois, pursuant to §2-103 of the Illinois Code of Civil Procedure, 735 ILCS §5/2-103, which requires actions against a public entity to be brought in the county where its principal office is located.

ANSWER: Admit.

6. The Illinois Federation of Teachers ("IFT") is a statewide labor organization that represents members of the TRS as those terms are defined in the Illinois Pension Code. (40 ILCS 5/16-106).

ANSWER: Defendants admit that the IFT is a statewide teacher organization, as that term is used in Section 16-106(8) of the Pension Code, and that the IFT represents some TRS members. Defendants deny any inconsistent allegations in paragraph 6.

7. In April, 2007, Piccioli was employed in the Springfield Public School District 186 as a substitute teacher.

ANSWER: Defendants admit that Piccioli was employed by Springfield Public School District 186 as a substitute teacher for one day in the 2006-2007 school year. Defendants deny that Piccioli did so in April 2007, and state that he did so on January 22, 2007.

8. By virtue of his employment as a teacher, Piccioli was entitled to enroll in TRS in accordance with the definition of teacher in the Illinois Pension Code. (40 ILCS 5/16-106).

ANSWER: Defendants admit that Piccioli was enrolled as a TRS member following his certification as a substitute teacher on December 8, 2006 and his one day of employment as a substitute teacher in Springfield Public School District 186 on January 22, 2007. The remainder

of Paragraph 8 consists of legal conclusions to which no answer is required, and to the extent any answer to those allegations is required, Defendants deny them.

9. On February 27, 2007, the Governor signed Senate Bill 36 into law which immediately became effective as P.A. 94-1111.

ANSWER: Admit.

10. Under provisions of P.A. 94-1111, a teacher like plaintiff Piccioli was granted rights to establish service credit, at his personal expense, for similar employment prior to becoming certified as a teacher as follows:

A person who is a teacher as described in item (8) of this Section may establish service credit for similar employment prior to becoming certified as a teacher if he or she (i) is certified as a teacher on or before the effective date of this amendatory Act of the 94th General Assembly, (ii) applies in writing to the system within 6 months after the effective date of this amendatory Act of the 94th General Assembly, and (iii) pays to the system contributions equal to the normal costs calculated from the date of first full-time employment as described in item (8) to the date of payment, compounded annually at the rate of 8.5% per year for periods before the effective date of this amendatory Act of the 94th General Assembly and for subsequent periods at a rate equal to the System's actuarially assumed rate of return on investments. However, credit shall not be granted under this paragraph for any such prior employment for which the applicant received credit under any other provision of this Code.

P.A. 94-1111, amending 40 ILCS 5/16-106. (effective 02/27/2007).

ANSWER: Defendants admit that Paragraph 10 correctly quotes portions of Public Act 94-1111. The remaining allegations of Paragraph 10 consists of legal conclusions to which no answer is required, and to the extent any answer to those allegations is required, Defendants deny them. Further answering, Defendants deny that the above-quoted provision of P.A. 94-1111 was valid.

11. Within six months after the effective date of P.A. 94-1111, plaintiff Piccioli submitted his irrevocable election to become a participant and enrolled in the Teachers' Retirement System beginning on June 1, 2007.

ANSWER: Defendants admit that on May 21, 2007, TRS received from Piccioli an Irrevocable Election to Become a Member of the Teachers' Retirement System. Defendants

deny any inconsistent allegations in paragraph 11.

12. Plaintiff Piccioli made all of the contributions required by the amendment in P.A. 94-1111 necessary to establish service credit for prior qualifying employment covering the time period of December 1997 through May 2007 together with all of the employer and employee contributions and the interest as required by law in the approximate sum of \$192,000.00.

ANSWER: Defendants admit that, after the effective date of P.A. 94-1111, Piccioli made contributions to the TRS based on the terms of P.A. 94-1111 for his service as an IFT employee before being certified as a substitute teacher, including interest calculated at the prescribed rate, and that his contributions, made in several installments, totaled about \$192,668. Defendants deny any inconsistent allegations in paragraph 12. Further answering, Defendants state that the TRS refunded these contributions, plus an additional amount representing the TRS's investment rate of return applied to the balance of these contributions, to Piccioli in June 2012 pursuant the refund request he made in May 2012.

13. Beginning in June, 2007 and continuing until he retired effective December 31, 2012, plaintiff Piccioli paid to TRS all contributions (both employer and employee) for service credit being earned from and after June 1, 2007 until the date of his retirement totaling approximately \$172,000.00.

ANSWER: Defendants admit that from June 2007 through December 2012, the TRS received contributions for Piccioli's employment as an IFT employee after he was enrolled as a TRS member following his one day of serving as a substitute teacher in Springfield Public School District 186, and that these contributions equaled about \$172,000. Defendants deny any inconsistent allegations in paragraph 13.

14. In total, plaintiff Piccioli paid to TRS approximately \$365,000.00 for the statutorily mandated contributions for the purchase of his service credits upon which his retirement annuity is calculated.

ANSWER: Defendants incorporate by reference their answers to paragraphs 12 and 13 and deny any inconsistent allegations in paragraph 14.

15. Pursuant to P.A. 94-1111, and Plaintiffs [sic] purchase of past service credits,

2015 MR 43 page 4

Piccioli had vested pension rights protected by the Illinois Constitution.

ANSWER: Deny.

16. On January 5, 2012, a new legislative bill was enacted into law as P.A. 97-0651. Section 97 of that bill provides as follows:

Section 97. Retroactive repeal. This amendatory Act of the 97th General Assembly hereby repeals and declares void *ab initio* the last paragraph of Section 16-106 of the Illinois Pension Code as contained in Public Act 94-1111 as that paragraph furnishes no vested rights because it violates multiple provisions of the 1970 Illinois Constitution, including, but not limited to, Article VIII, Section 1. Upon receipt of an application within 6 months after the effective date of this amendatory Act of the 97th General Assembly, the System shall immediately refund any contributions made by or on behalf of a person to receive service credit pursuant to the text set forth in Public Act 94-1111, as well as any amount determined by the Board to be equal to the investment earned by the System on those contributions since their receipt.

ANSWER: Defendants admit that Public Act 97-0651 became law according to its terms on January 5, 2012, and that paragraph 16 correctly quotes portions of P.A. 97-0651.

17. The express terms of Section 97 of P.A. 97-0651 declared as repealed and void *ab initio* the last paragraph of Section 16-106 of the Illinois Pension Code that was originally enacted as part of P.A. 94-1111 which is the section that authorized plaintiff Piccioli to purchase earlier service credit for the time period from December, 1997 through May 31, 2007.

ANSWER: Defendants admit that Section 97 of P.A. 97-0651 repealed and declared void *ab initio* the paragraph of Section 16-106 of the Illinois Pension Code added by P.A. 94-1111 pursuant to which Piccioli purported to acquire a right to TRS pension benefits based on his service as an IFT employee before being certified as a substitute teacher. The remaining allegations of paragraph 17 consist of legal conclusions to which no answer is required, and to the extent any answer to those allegations is required, Defendants deny them.

18. As a consequence of the enactment of P.A. 97-0651, TRS cancelled the service credit purchased by plaintiff Piccioli prior to June 1, 2007.

ANSWER: Defendants admit that when the TRS calculated Piccioli's pension upon his retirement in December 2012, it did not include service credit for Piccioli's IFT employment

before he was certified as a substitute teacher, and that before Piccioli's retirement, the TRS, at Piccioli's request, refunded the contributions (and investment earnings calculated thereon) made for such service based on the terms of P.A. 94-1111. The remaining allegations of paragraph 18 consist of legal conclusions to which no answer is required, and to the extent any answer to those allegations is required, Defendants deny them.

19. In accordance with Section 97 of P.A. 97-0651, plaintiff Piccioli was required to apply for an immediate refund of the contributions he made together with certain investment gains earned by TRS in order to avoid a forfeiture of the amounts he had previously paid.

ANSWER: Defendants admit that Section 97 of P.A. 97-0651 provided that Piccioli could apply by July 5, 2012 for a refund of the contributions made for the purchase of optional service credits for his employment as an IFT employee before he was certified as a substitute teacher, as well as a refund of the TRS's investment earnings calculated on those contributions, and that he applied for such a refund in May 2012. The remaining allegations of paragraph 19 consist of legal conclusions to which no answer is required, and to the extent any answer to those allegations is required, Defendants deny them.

20. There is an actual controversy between Plaintiff and Defendants concerning the Constitutional limitations on the challenged legislation and the power of TRS to enforce the law.

ANSWER: Paragraph 20 consists of legal conclusions to which no answer is required.

21. The issuance of a declaratory ruling by this court would end the legal controversy over the Constitutional law questions.

ANSWER: Paragraph 21 consists of legal conclusions to which no answer is required.

22. The Constitution of the State of Illinois provides in relevant part:

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

Illinois Constitution, Article XIII, Section 5 (1970);

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.
Illinois Constitution, Article I, Section 16 (1970); and:

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

Illinois Constitution, Article II, Section 1 (1970)

ANSWER: Defendants admit that Paragraph 22 correctly quotes portions of the Illinois Constitution.

23. Based on the provisions of the Illinois Constitution quoted above, the General Assembly had no power to pass Section 97 of this legislation that would deprive Plaintiff of the pension benefit that Piccioli had purchased prior to the enactment of P.A. 97-0651.

ANSWER: Deny.

24. Passage of Section 97 of P.A. 97-0651 violates the separation of powers provision of the Constitution in that it attempts to rule on the constitutionality of a bill previously passed by the General Assembly that was enacted as P.A. 94-1111.

ANSWER: Deny.

25. This court should declare Section 97 of P.A. 97-0651 to be unconstitutional under each of the provisions of the Constitution set forth above.

ANSWER: Deny.

26. Plaintiff Piccioli is entitled to have his pension benefits restored and to be returned to the position he held prior to the enactment of P.A. 97-0651.

ANSWER: Deny.

27. Plaintiff is prepared to tender to Defendant Teachers' Retirement System all of the proceeds refunded to him pursuant to P.A. 97-0651 at the time that his pension benefits are restored in order to return the parties to the status quo prior to the unconstitutional actions of Defendants.

ANSWER: Defendants lack knowledge sufficient to form a belief as to the truth of the allegations of paragraph 27 and accordingly deny them.

AFFIRMATIVE DEFENSES

Defendants further answer by alleging the following affirmative defenses:

Affirmative Defense No. 1 – Waiver and Estoppel

1. Defendants incorporate by reference their answers to paragraphs 1 through 27 of Piccioli's complaint.

2. By submitting his application for a refund, pursuant to the terms of P.A. 97-651, of the contributions (plus calculated investment earnings) for his optional service credits relating to his IFT employment before he was certified as a substitute teacher, and by receiving that refund (which reduced the TRS's assets available for investments and to pay annuities and other benefits), both without ever asserting any claim that P.A. 97-651 was unconstitutional, Piccioli has waived any ability and is estopped to assert that P.A. 97-651 is unconstitutional.

Affirmative Defense No. 2 – Laches

3. Defendants incorporate by reference their answers to paragraphs 1 through 27 of Piccioli's complaint and paragraph 2 of Defendants' affirmative defenses.

4. Piccioli unreasonably delayed in bringing this suit after P.A. 97-651 became law, and the TRS has been prejudiced by that delay in various ways, including, without limitation, by making a refund to Piccioli pursuant to his request and consequently being unable to invest those refunded monies to pay annuities and other benefits.

5. Piccioli's claim for relief against Defendants — pursuant to which he would tender to the TRS the refund he received in 2012 (presumably supplemented by an amount corresponding to the earnings the TRS would have made on those monies if they had not been refunded to Piccioli), the TRS would be required to restore the optional service credit corresponding to that refund, and the TRS would be required to pay Piccioli additional amounts, including greater annuities going forward as well as amounts corresponding to the difference between the annuity payments he received since retiring in December 2012 and what he would have received with those optional service credits — is barred by laches.

WHEREFORE, Defendants pray for entry of judgment in their favor and such other relief
as is warranted in the circumstances.

Date: March 23, 2015

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General


Attorney for Defendants

Richard S. Huszagh
Kate Costello
Long X. Truong
Assistant Attorneys General
100 W. Randolph Street, 11th Floor
Chicago, IL 60601
(312) 814-3000

Certificate of Filing and Service

The undersigned, an attorney, certifies that on March 23, 2015, he caused the foregoing Answer and Affirmative Defenses to be filed with the Clerk of the Circuit Court of Sangamon County and a copy thereof to be served by e-mail and by first class mail in postage-prepaid envelopes deposited in the U.S. Mail at 1760 Wabash Avenue, Springfield, Illinois, addressed to:

Carl R. Draper
FELDMANWASSER
1307 S. Seventh St.
Springfield, IL 62703
cdraper@feldman-wasser.com

Cary Collins
Tom Radja
1710 White Oak
Hoffman Estates, IL 60192
cjcollins4@aol.com


Bilal Aziz

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

DAVID PICCIOLI,

Plaintiff,

v.

No.: 2015-MR-43

BOARD OF TRUSTEES OF THE
TEACHERS RETIREMENT SYSTEM,
and Christopher A. Koch, Sharon
Leggett, Mark Bailey, Michael Busby,
Rainy Kaplan, Cinda Klickna, Bob
Lyons, Cynthia O' Neill and Sonia
Walwyn, as Trustees of TRS,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' REQUESTS FOR ADMISSION

Now comes David Piccioli, Plaintiff herein, by his attorney Carl R. Draper,
pursuant to Illinois Supreme Court Rule 216, and hereby responds to the following
Requests for Admission.

REQUESTS FOR ADMISSION

1. Admit that from 1997 to 2012, you were employed by the Illinois Federation
of Teachers ("IFT").

RESPONSE: Plaintiff admits this request.

2. Admit that you registered for a 90-day substitute teaching certificate in
December 2006.

RESPONSE: Plaintiff admits this request.

3. Admit that on December 14, 2006, you submitted your application to become a participant in TRS pursuant to Senate Bill 36.

RESPONSE: Plaintiff admits this request but does not remember the exact date.

4. Admit that on January 16, 2007, you received a 90-day substitute teaching certificate.

RESPONSE: Plaintiff admits this request but does not remember the exact date.

5. Admit that, on January 22, 2007, you taught as a substitute teacher for one day for Springfield Public School District 186.

RESPONSE: Plaintiff admits this request but does not remember the exact date.

6. Admit that you had never taught as a teacher in any school prior to January 22, 2007.

RESPONSE: Plaintiff admits this request. I have never taught at any elementary or secondary school in Illinois that is covered by TRS. However, I did teach two non-credit courses in photography at Illinois Valley Community College in Oglesby, Illinois. The time frame for this was approximately 1981 to 1983.

7. Admit that you did not teach as a teacher in any school after January 22, 2007.

RESPONSE: Plaintiff admits this request.

8. Admit that your total gross salary from your service as a teacher was \$93.

RESPONSE: Plaintiff objects to this request on the basis that it is not relevant and would not lead to the discovery of relevant information but admits the facts stated in this request.

9. Admit that your total net salary from your service as a teacher was \$79.69.

RESPONSE: Plaintiff objects to this request on the basis that it is not relevant and would not lead to the discovery of relevant information but admits the facts stated in this request.

10. Admit that on May 14, 2007, you applied to receive service credit in the Teachers' Retirement System for prior teacher union service with the IFT.

RESPONSE: Plaintiff admits this request but does not remember the exact date.

11. Admit that you made contributions required by Senate Bill 36 as calculated by the TRS in order to purchase TRS service credit for your employment at IFT from December 1997 to May 2007.

RESPONSE: Plaintiff admits this request.

12. Admit that you made contributions totaling approximately \$192,000 to purchase TRS service credit for approximately ten years of employment at IFT before becoming a TRS member (from December 1997 to May 2007).

RESPONSE: Plaintiff admits this request.

13. Admit that you paid to TRS all contributions for service credit from June 2007 until your retirement.

RESPONSE: Plaintiff admits this request. TRS records may indicate that IFT paid 50% of the annuity as the employer of record; however, it was my money.

14. Admit that on May 16, 2012, you sent a formal request, as provided by House Bill 3813, for a refund of your contributions for service credit under Senate Bill 36.

RESPONSE: Plaintiff admits that he sent the request that was required by law in order to avoid forfeiture of over \$192,000 plaintiff had paid to the Teachers' Retirement System. The amount requested was principal plus earned interest per House Bill 3813.

15. Admit that TRS paid the refund requested by your May 16, 2012 letter.

RESPONSE: Plaintiff admits that TRS paid a refund as required by House Bill 3813 but affirmatively alleges that the request for refund was neither voluntary nor adequate consideration for the pension benefits that I lost.

16. Admit that you retired from the IFT on December 28, 2012.

RESPONSE: Plaintiff admits this request.

17. Admit that, after your retirement from IFT in 2012, you began receiving a retirement annuity from TRS.

RESPONSE: Plaintiff admits the allegations of this request, but the amount of retirement was substantially lower due to the cancellation of prior years of service credit that I had purchased that were taken from me based upon House Bill 3813.

18. Admit that, after your retirement from IFT in 2012, TRS used an average salary of \$170,824.98 to calculate your retirement annuity.

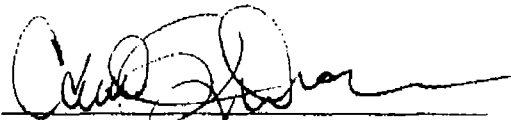
RESPONSE: Plaintiff admits this request.

19. Admit that, after your retirement from IFT in 2012, TRS used a total service credit of 7.895 years to calculate your retirement annuity.

RESPONSE: Plaintiff admits this request.

Respectfully Submitted,

DAVID PICCIOLI, Plaintiff



Carl R. Draper, Attorney

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the attached instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters as the undersigned certifies as aforesaid that he/she verily believes the same to be true.

DATED:

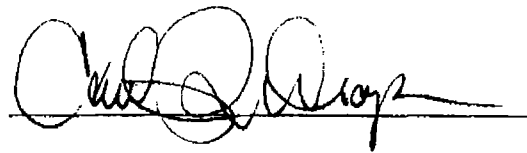
1-22-16David R. Piccioli

CERTIFICATE OF SERVICE

The undersigned of FELDMANWASSER hereby certifies that a copy of the foregoing document was served upon each of the addressees hereinafter set forth by enclosing the same in an envelope plainly addressed to each of the said addresses, with postage fully prepaid, and depositing same in a U.S. Mail Box in Springfield, Illinois on this 22nd day of January, 2016.

Richard Huszagh
Assistant Attorney General
100 W. Randolph Street, 11th Floor
Chicago, IL 60601

and by e-mail to rhuszagh@atg.state.il.us.



Public Act 094-1111

SB0036 Enrolled

LRB094 04134 AMC 34155 b

AN ACT concerning public employee benefits.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Pension Code is amended by changing Sections 14-103.05, 14-104, 16-106, 16-158, and 17-133 as follows:

(40 ILCS 5/14-103.05) (from Ch. 108 1/2, par. 14-103.05)

Sec. 14-103.05. Employee.

(a) Any person employed by a Department who receives salary for personal services rendered to the Department on a warrant issued pursuant to a payroll voucher certified by a Department and drawn by the State Comptroller upon the State Treasurer, including an elected official described in subparagraph (d) of Section 14-104, shall become an employee for purpose of membership in the Retirement System on the first day of such employment.

A person entering service on or after January 1, 1972 and prior to January 1, 1984 shall become a member as a condition of employment and shall begin making contributions as of the first day of employment.

A person entering service on or after January 1, 1984 shall, upon completion of 6 months of continuous service which is not interrupted by a break of more than 2 months, become a member as a condition of employment. Contributions shall begin the first of the month after completion of the qualifying period.

The qualifying period of 6 months of service is not applicable to: (1) a person who has been granted credit for service in a position covered by the State Universities Retirement System, the Teachers' Retirement System of the State of Illinois, the General Assembly Retirement System, or the Judges Retirement System of Illinois unless that service has

Public Act 094-1111

SB0036 Enrolled

LRB094 04134 AMC 34155 b

employee who was laid off but returned to State employment under circumstances in which the employee is considered to have been in continuous service for purposes of determining seniority may establish creditable service for the period of the layoff, provided that (1) the applicant applies for the creditable service under this subsection (q) within 6 months after the effective date of this amendatory Act of the 94th General Assembly, (2) the applicant does not receive credit for that period under any other provision of this Code, (3) at the time of the layoff, the applicant is not in an initial probationary status consistent with the rules of the Department of Central Management Services, and (4) the total amount of creditable service established by the applicant under this subsection (q) does not exceed 3 years. For service established under this subsection (q), the required employee contribution shall be based on the rate of compensation earned by the employee on the date of returning to employment after the layoff and the contribution rate then in effect, and the required interest shall be calculated from the date of returning to employment after the layoff to the date of payment.

(Source: P.A. 94-612, eff. 8-18-05.)

(40 ILCS 5/16-106) (from Ch. 108 1/2, par. 16-106)

Sec. 16-106. Teacher. "Teacher": The following individuals, provided that, for employment prior to July 1, 1990, they are employed on a full-time basis, or if not full-time, on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term:

(1) Any educational, administrative, professional or other staff employed in the public common schools included within this system in a position requiring certification under the law governing the certification of teachers;

(2) Any educational, administrative, professional or other staff employed in any facility of the Department of

Public Act 094-1111

SB0036 Enrolled

LRB094 04134 AMC 34155 b

Children and Family Services or the Department of Human Services, in a position requiring certification under the law governing the certification of teachers, and any person who (i) works in such a position for the Department of Corrections, (ii) was a member of this System on May 31, 1987, and (iii) did not elect to become a member of the State Employees' Retirement System pursuant to Section 14-108.2 of this Code; except that "teacher" does not include any person who (A) becomes a security employee of the Department of Human Services, as defined in Section 14-110, after June 28, 2001 (the effective date of Public Act 92-14), or (B) becomes a member of the State Employees' Retirement System pursuant to Section 14-108.2c of this Code;

(3) Any regional superintendent of schools, assistant regional superintendent of schools, State Superintendent of Education; any person employed by the State Board of Education as an executive; any executive of the boards engaged in the service of public common school education in school districts covered under this system of which the State Superintendent of Education is an ex-officio member;

(4) Any employee of a school board association operating in compliance with Article 23 of the School Code who is certificated under the law governing the certification of teachers;

(5) Any person employed by the retirement system who:

(i) was an employee of and a participant in the system on August 17, 2001 (the effective date of Public Act 92-416), or

(ii) becomes an employee of the system on or after August 17, 2001;

(6) Any educational, administrative, professional or other staff employed by and under the supervision and control of a regional superintendent of schools, provided such employment position requires the person to be certificated under the law governing the certification of

Public Act 094-1111

SB0036 Enrolled

LRB094 04134 AMC 34155 b

teachers and is in an educational program serving 2 or more districts in accordance with a joint agreement authorized by the School Code or by federal legislation;

(7) Any educational, administrative, professional or other staff employed in an educational program serving 2 or more school districts in accordance with a joint agreement authorized by the School Code or by federal legislation and in a position requiring certification under the laws governing the certification of teachers;

(8) Any officer or employee of a statewide teacher organization or officer of a national teacher organization who is certified under the law governing certification of teachers, provided: (i) the individual had previously established creditable service under this Article, (ii) the individual files with the system an irrevocable election to become a member, and (iii) the individual does not receive credit for such service under any other Article of this Code;

(9) Any educational, administrative, professional, or other staff employed in a charter school operating in compliance with the Charter Schools Law who is certificated under the law governing the certification of teachers.

(10) Any person employed, on the effective date of this amendatory Act of the 94th General Assembly, by the Macon-Piatt Regional Office of Education in a birth-through-age-three pilot program receiving funds under Section 2-389 of the School Code who is required by the Macon-Piatt Regional Office of Education to hold a teaching certificate, provided that the Macon-Piatt Regional Office of Education makes an election, within 6 months after the effective date of this amendatory Act of the 94th General Assembly, to have the person participate in the system. Any service established prior to the effective date of this amendatory Act of the 94th General Assembly for service as an employee of the Macon-Piatt Regional Office of Education in a birth-through-age-three

Public Act 094-1111

SB0036 Enrolled

LRB094 04134 AMC 34155 b

pilot program receiving funds under Section 2-389 of the School Code shall be considered service as a teacher if employee and employer contributions have been received by the system and the system has not refunded those contributions.

An annuitant receiving a retirement annuity under this Article or under Article 17 of this Code who is employed by a board of education or other employer as permitted under Section 16-118 or 16-150.1 is not a "teacher" for purposes of this Article. A person who has received a single-sum retirement benefit under Section 16-136.4 of this Article is not a "teacher" for purposes of this Article.

A person who is a teacher as described in item (8) of this Section may establish service credit for similar employment prior to becoming certified as a teacher if he or she (i) is certified as a teacher on or before the effective date of this amendatory Act of the 94th General Assembly, (ii) applies in writing to the system within 6 months after the effective date of this amendatory Act of the 94th General Assembly, and (iii) pays to the system contributions equal to the normal costs calculated from the date of first full-time employment as described in item (8) to the date of payment, compounded annually at the rate of 8.5% per year for periods before the effective date of this amendatory Act of the 94th General Assembly and for subsequent periods at a rate equal to the System's actuarially assumed rate of return on investments. However, credit shall not be granted under this paragraph for any such prior employment for which the applicant received credit under any other provision of this Code.

(Source: P.A. 92-14, eff. 6-28-01; 92-416, eff. 8-17-01; 92-651, eff. 7-11-02; 93-320, eff. 7-23-03.)

(40 ILCS 5/16-158) (from Ch. 108 1/2, par. 16-158)

Sec. 16-158. Contributions by State and other employing units.

(a) The State shall make contributions to the System by

Public Act 094-1111

SB0036 Enrolled

LRB094 04134 AMC 34155 b

Section 99. Effective date. This Act takes effect upon becoming law.

Public Act 097-0651

HB3813 Enrolled

LRB097 13613 AMC 58149 b

AN ACT concerning public employee benefits.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Pension Code is amended by changing Sections 1-114, 1-135, 3-110, 4-108, 5-214, 6-209, 8-138, 8-226, 8-233, 9-219, 11-134, 11-215, 11-217, 15-107, 16-106, and 17-134 as follows:

(40 ILCS 5/1-114) (from Ch. 108 1/2, par. 1-114)

Sec. 1-114. Liability for Breach of Fiduciary Duty. (a) Any person who is a fiduciary with respect to a retirement system or pension fund established under this Code who breaches any duty imposed upon fiduciaries by this Code, including, but not limited to, a failure to report a reasonable suspicion of a false statement specified in Section 1-135 of this Code, shall be personally liable to make good to such retirement system or pension fund any losses to it resulting from each such breach, and to restore to such retirement system or pension fund any profits of such fiduciary which have been made through use of assets of the retirement system or pension fund by the fiduciary, and shall be subject to such equitable or remedial relief as the court may deem appropriate, including the removal of such fiduciary.

(b) No person shall be liable with respect to a breach of

Public Act 097-0651

HB3813 Enrolled

LRB097 13613 AMC 58149 b

Section 97. Retroactive repeal. This amendatory Act of the 97th General Assembly hereby repeals and declares void ab initio the last paragraph of Section 16-106 of the Illinois Pension Code as contained in Public Act 94-1111 as that paragraph furnishes no vested rights because it violates multiple provisions of the 1970 Illinois Constitution, including, but not limited to, Article VIII, Section 1. Upon receipt of an application within 6 months after the effective date of this amendatory Act of the 97th General Assembly, the System shall immediately refund any contributions made by or on behalf of a person to receive service credit pursuant to the text set forth in Public Act 94-1111, as well as any amount determined by the Board to be equal to the investment earned by the System on those contributions since their receipt.

Section 98. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect upon becoming law.

APPEAL TO THE ILLINOIS SUPREME COURT
FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

DAVID PICCIOLI,

Plaintiff-Appellant,

v.

BOARD OF TRUSTEES OF THE TEACHERS
RETIREMENT SYSTEM, and Christopher A.
Koch, Sharon Leggett, Mark Bailey, Michael
Busby, Rainy Kaplan, Cinda Klickna, Bob
Lyons, Cynthia O' Neill, and Sonia Walwyn, as
Trustees of TRS,

Defendants-Appellees.

No.: 2015 – MR – 43

FILED
NOV 09 2017
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Donald R. Leggett
Clerk of the
Circuit Court

NOTICE OF APPEAL

Plaintiff-Appellant, David Piccioli, by his attorney Esther J. Seitz of Hinshaw & Culbertson LLP, appeals to the Illinois Supreme Court under Illinois Supreme Court Rule 302(a)(1) from the following orders entered by the Circuit Court of Sangamon County:

1. The order of July 25, 2017 granting Defendants-Appellees' motion for summary judgment and denying Plaintiff-Appellant's motion for summary judgment;
2. The order of October 13, 2017 denying Plaintiff-Appellant's motion to reconsider.

As required by Illinois Supreme Court Rule 303(b)(3), a copy of the circuit court's findings made in compliance with Illinois Supreme Court Rule 18 are attached. By this appeal, Plaintiff-Appellant will ask the Illinois Supreme Court to reverse the orders of July 25, 2017 and October 13, 2017.

No. 2015-MR-43
Page 1 of 2

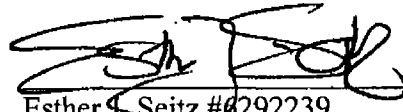
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DAVID PICCIOLI, Plaintiff-Appellant,

BY:



Esther S. Seitz #0292239
Hinshaw & Culbertson LLP
400 So. Ninth Street, Suite 200
Springfield, IL 62701
Telephone: (217) 467-4941
Fax: (217) 528-0075
eseitz@hinshawlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served in accordance with Supreme Court Rule 11 on this 9th day of November, 2017, as follows:

ORIGINAL FILED VIA HAND DELIVERY:

Clerk of the Circuit Court
Sangamon County
200 South Ninth Street
Springfield, IL 62701

COPIES EMAILED TO:

Rhuszagh@atg.state.il.us

Lbautista@atg.state.il.us

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Chicago, IL 60601

Laura Bautista
Assistant Attorney General
Office of the Attorney General
500 South 2nd Street
Springfield, IL 62706



IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

DAVID PICCIOLI,

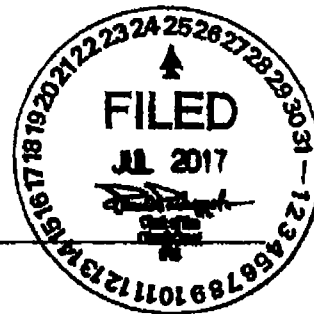
Plaintiff,

v.

No.: 2015-MR-43

BOARD OF TRUSTEES OF THE TEACHERS'
RETIREMENT SYSTEM, and Christopher A.
Koch, Sharon Leggett, Mark Bailey, Michael
Busby, Rainy Kaplan, Cinda Klickna, Bob
Lyons, Cynthia O' Neill, and Sonia Walwyn, as
Trustees of the Teachers' Retirement System,

Defendants.



Final Judgment Order

This matter is before the Court on the parties' cross-motions for summary judgment. Based on the parties' pleadings, evidentiary submissions, briefs and arguments, the Court finds and adjudges as follows. Defendant's motion for summary judgment is granted. Plaintiff's motion for summary judgment is denied.

Legal Standard

A motion for summary judgment should be granted when the pleadings, depositions, admissions and affidavits, taken in the light most favorable to the non-movant, establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005; *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34.

Factual Background

Public Act 94-1111 (the "2007 Act") amended the Pension Code by adding a

final paragraph to Section 16-106. 40 ILCS 5/16-106. That amendment permitted employees of a statewide teachers union who were certified teachers and members of the Teachers' Retirement System ("TRS") before the 2007 Act became law to obtain service credits in TRS for their employment with the union before becoming TRS members. This provision of the 2007 Act was drafted by the Illinois Federation of Teachers ("IFT"). Before the 2007 Act was signed into law and took effect on February 27, 2007, IFT advised its employees that if they were not already TRS members, they could become TRS members and take advantage of the 2007 Act's benefits by becoming certified as substitute teachers (which required having a bachelor's degree) and teaching for at least one day as a substitute teacher before the 2007 Act took effect.

David Piccioli, an IFT employee who worked as a legislative lobbyist, obtained a substitute teaching certificate in December 2006 and provided one day of substitute teaching in the Springfield public school system on January 22, 2007, thereby becoming a TRS member. He then made the application and contributions to TRS specified by the 2007 Act.

Five years after the 2007 Act became law, the General Assembly enacted Public Act 97-651 (the "2012 Act"). Section 97 of the 2012 Act, entitled "retroactive repeal," declared the last paragraph of Section 16-106 of the Pension Code added by the 2007 Act unconstitutional and void *ab initio*, and it directed TRS, upon application, to refund the contributions (plus TRS's investment earnings on them) of anyone who obtained service credits under that provision of the 2007 Act. After

passage of the 2012 Act, and before he retired, Piccioli requested and obtained a refund from TRS of his contributions to obtain the service credits provided by the 2007 Act (plus TRS's investment earnings on those contributions). Piccioli brought this suit challenging the constitutionality of the 2012 Act. His principal argument is that he acquired a vested interest in the service credits in TRS he obtained under the 2007 Act, protected by the Pension Clause (art. XIII, § 5) and Contract Clause (art. I, § 16) of the Illinois Constitution, and that the 2012 Act is unconstitutional to the extent it retroactively repealed, or revoked, that interest. (Piccioli did not allege that if the 2012 Act is valid in that respect, the remedy it prescribed for refunding his contributions pursuant to the 2007 Act plus TRS's investment earnings on them, is unconstitutional.)

TRS, named as a defendant and represented by the Attorney General, defended the validity of the 2012 Act and alleged that the 2007 Act was unconstitutional. TRS asserts, in particular, that the 2007 Act violated the Special Legislation Clause of the Illinois Constitution (art. IV, § 13), and that the 2012 Act therefore validly repealed the 2007 Act and directs TRS to refund Piccioli's corresponding contributions, plus earnings on them. Following discovery, the parties file cross-motions for summary judgment.

Rulings

As a preliminary matter, the Court does not accept Piccioli's contention that the TRS lacks standing to defend the 2012 Act's declaration that the 2007 Act was unconstitutional. TRS did not unilaterally treat either Act as being

unconstitutional, but instead complied with both statutes until this litigation was filed. It was only when Piccioli sued TRS and challenged its compliance with the 2012 Act (which declared the 2007 Act unconstitutional and void *ab initio*) that TRS defended that claim by alleging that the 2012 Act was valid because the 2007 Act was, in fact, unconstitutional. TRS complied with the 2007 Act by allowing Piccioli into TRS and complied with the 2012 Act, upon enactment. In these circumstances, the Court finds that TRS has standing to defend the actions the 2012 Act directed it to take, as well as the General Assembly's reason for requiring it to take those actions. In addition, denying the TRS the ability to defend the 2012 Act on the ground that the 2007 Act was unconstitutional would put the Court in the position of potentially having to enforce an unconstitutional law due to the lack of an adversary relationship between the parties on that issue. The Court declines to do so. Of note, the Attorney General indicated at a May 11, 2017, hearing its intention not to seek to intervene on the standing issue because of the Court's indication that TRS does have standing to defend the suit.

The Court further holds that the 2007 Act's amendment to the Pension Code that added the last paragraph of Section 16-106 violated the Special Legislation Clause because it contained an effective-date eligibility cutoff. Pursuant to that provision of the 2007 Act, the pension benefits it authorized for employment with a statewide teachers union before the union employee became a TRS member were not available for anyone who met the 2007 Act's other eligibility criteria — being certified as a public school teacher and providing teaching service, thus becoming a

TRS member — *after* the 2007 Act was signed into law and took effect. Plaintiffs have not explained why only individuals who met these criteria before the 2007 Act became law are unique with respect to any legitimate legislative purpose, nor have they identified any rational reason why the benefits available under the 2007 Act should be limited to such persons, and not be available to other individuals (including those disclosed in the record) who met those criteria after the 2007 Act became law. The Court concludes, therefore, that under the Supreme Court's holding in *Board of Education of Peoria School District No. 150 v. Peoria Federation of Support Staff, Security/Police/Man's Benevolent & Protective Association Unit*, 2013 IL 114853, ¶¶ 43-60, the 2007 Act's amendment to the Pension Code adding the final paragraph of Section 16-106 is unconstitutional special legislation.

Rule 18 Findings

In accordance with Supreme Court Rule 18, the Court specifically finds as follows:

The 2007 Act's amendment to the Pension Code adding a final paragraph to Section 16-106 is declared unconstitutional on its face and void in its entirety because it violates the Special Legislation Clause of the Illinois Constitution;

That provision of the 2007 Act cannot reasonably be construed in a manner that would preserve its validity;

That provision of the 2007 Act can be, and hereby is, severed from the remainder of the 2007 Act (the validity of which is not before the Court, and as to which the Court makes no ruling);

A finding of unconstitutionality is necessary to the Court's judgment, which cannot reasonably rest on an alternative ground; and

TRS, represented by the Attorney General, has participated in the proceedings.

Conclusion

For the foregoing reasons, the Court declares the amendment to Section 16-106 of the Pension Code, adding the last paragraph to Section 16-106 (40 ILCS 5/16-106), unconstitutional and void *ab initio*.

Date:

7/24/17

Enter:

by m. h. h. f.

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

FILED

OCT 13 2017

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DAVID PICCIOLI,

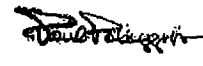
Plaintiff,

v.

BOARD OF TRUSTEES OF THE TEACHERS'
RETIREMENT SYSTEM, *et al.*,

Defendants.

Case No. 2015 MR 43

 Clerk of the
Circuit Court

ORDER

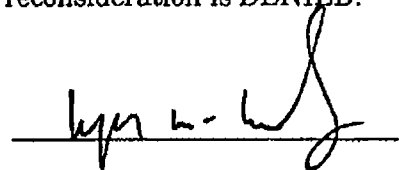
This matter having come before the Court on the plaintiff's motion pursuant to Section 2-1203 of the Code of Civil Procedure for reconsideration of the judgment in the defendants' favor (which was entered on the Court's docket on July 25, 2017), the Court having considered the motion, the parties' legal memoranda, and the oral arguments of counsel, and being fully advised in the premises;

It is hereby ordered that the motion for reconsideration is DENIED.

Date:

10/13/17

Enter:



Prepared by:

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NO. 122905

IN THE
ILLINOIS SUPREME COURT

DAVID PICCIOLI,)	
)	
Plaintiff-Appellant,)	Direct Appeal from the
)	Circuit Court of the
v.)	Seventh Judicial Circuit
)	Sangamon County, IL
)	
BOARD OF TRUSTEES OF THE)	Case No. 2015 MR 43
TEACHER'S RETIREMENT SYSTEM,)	
<i>et al.</i> ,)	The Honorable Ryan M. Cadagin,
)	Judge Presiding.
Defendants-Appellees.)	

PROOF OF FILING AND SERVICE

I certify that on May 15, 2018, I electronically filed this Plaintiff-Appellant's Brief and Appendix with the Clerk of the Supreme Court of Illinois by using odyssey EFileIL system. I also certify that, counsel for the other participant in this appeal, Defendants-Appellees, Board of Trustees of the Teacher's Retirements System, *et al.*:

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is not registered as a service contact on the Odyssey EFileIL system and that copies were emailed and mailed to him at the above-address and emails.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on

information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Esther J. Seitz

Esther J. Seitz #6292239
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E-FILED
5/15/2018 11:19 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK