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I. Introduction

R.C. 3307.01(C) states that all “teachers” as defined in R.C. 3307.01(B) are members of STRS. A “teacher” is defined as:

- (1) Any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which the person is required to have a license issued pursuant to section 3319.22 to 3319.31 of the Revised Code.
- (2) ***
- (3) ***
- (4) Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof ***.

Rather than focus on whether Relators were “teachers” as defined in R.C. 3307.01(B), when they worked for ECS, both Respondent State Teacher Retirement System Board (“STRSB”) and the lower court focused on whether Relators were independent contractors. But as the State Teachers Retirement System’s (“STRS”) own materials point out:

Hiring a teacher *** as an independent contractor or through a temporary agency does not relieve the obligation for member and employer contributions on earnings. Primary criterion cited in Attorney General Opinions and IRS Guidelines for distinguishing between independent contractor and employee is the right of the employer to control the “mode and manner” of the work performed.

If the teaching duties performed by an independent contractor are the same as those performed by teachers under employment contracts, then there is no difference for STRS Ohio purposes. (Additional Records, p.57.)

The lower court erred when it found the record contained “some evidence” to support STRSB’s finding that Relators were not teachers under R.C. 3307.01(B)(4), but were independent contractors. The record shows Relators were “teachers” as defined in R.C. 3307.01(B)(4) and were employees not independent contractors. Throughout this process, ESC—the Employer—has maintained that it considered Relators employees and not independent

contractors. Further, even if Relators were independent contractors, they were still eligible to participate in STRS because they were performing the same duties as teachers, as specified in STRS's own materials.

II. Statement of Facts

1. Background and procedural posture.

Appellants-Relators, John Nese, Donald Williams, Catherine Miles, and other similarly situated teachers were employed by Respondent Jefferson County Educational Service Center ("ESC") through the Virtual Learning Academy ("VLA"). Relators filed this action seeking a writ of mandamus requiring Appellee-Respondent, STRSB to accept contributions for services they performed as teachers for the VLA through the ESC.

ESC employed Relators to teach students through the VLA. (Amended Complaint, ¶16; ESC Answer, ¶16.) In accordance with R.C. 3307.26 and 3307.28, Relators and ESC submitted contributions to STRS based upon compensation Relators earned because of the employment. (Amended Complaint, ¶16; ESC Answer, ¶16.)

In October 2008, STRS notified a number of teachers who had been employed by the ESC, including Relators, that their contributions would no longer be accepted, and that any contributions that had already been made would be returned, without interest. The memo stated in relevant part that:

In a recent STRS review of the VLA program, they have concluded that the VLA Faculty position is not a qualifying STRS position. The Jefferson County Educational Service Center has been directed by STRS to no longer deduct contributions effective immediately.

In addition, the Jefferson County Educational Service Center has been notified that all previous contributions made by VLA Faculty will be refunded. Those checks are expected to be forthcoming from STRS within the coming months." (Amended Complaint, ¶21.)

In the letter, STRS did not provide a reason for refusing contributions from teachers employed by the ESC. In fact, nowhere in the Record or the Additional Records of ESC did STRS ever determine Relators were not “teachers” for purposes of STRS, nor did STRS provide any evidence to support a denial of contributions for Relators’ services with the ESC through the VLA. Because of these actions, and the lack of an appeal process, Relators sought a writ of mandamus.

2. Explanation of the VLA.

When providing services to Ohio school districts, the VLA is not set up as a community or charter school. Rather, it is organized under Ohio Adm.Code Chapter 3301-35. (Amended Complaint, ¶3; ESC Answer, ¶3.) That Chapter sets forth the standards for elementary and secondary schools. Specifically, the VLA is set up as an “educational option” under Ohio law. (Amended Complaint, ¶3; ESC Answer ¶3.) Ohio Adm.Code 3301-35-01(B)(10) states in relevant part:

(10) “Educational options” means learning experiences or activities that are designed to extend, enhance, supplement, or serve as an alternative to classroom instruction and meet the personalized and individualized needs of each student. Educational options are offered in accordance with the model for credit flexibility adopted by the state board of education (education.ohio.gov), local board of education policy and with parental approval. Such options may include, but are not limited to:

(a) “Distance learning” - systematic instruction in which the instructor and/or student participate by mail or electronic media.

(b) ***

(c) “Independent study” - an educational activity involving advanced or in-depth work that an individual student pursues under the direction of a *credentialed member of the school staff*.

(d) ***

(e) ***

(f) ***

(g) ***

(h) “Tutorial program” - an educational activity involving work by an individual student under the direction of a *credentialed teacher*. (Emphasis added.)

The VLA offers over ninety courses to students in kindergarten through 12th grade that are aligned with Ohio's academic content standards, which is rooted in the national standards. (Amended Complaint, ¶8; ESC Answer, ¶8, Additional Records of ESC ("Additional Records"), p.4.)

If an Ohio school district wants to participate in the VLA and make it part of the school district's curriculum offering, the local school board must pass a resolution to participate. (Amended Complaint, ¶9; ESC Answer ¶9.) The school district then has the choice of using its own teachers to teach the courses or to use the ESC pool of VLA teachers. (Amended Complaint, ¶9; ESC Answer, ¶9.) If the school district uses its own teachers, the teachers are issued paychecks directly by the school district's treasurer. (Amended Complaint, ¶9; ESC Answer, ¶9.) If the school district uses the ESC pool of VLA teachers, the ESC treasurer issues the paychecks. (Amended Complaint, ¶9; ESC Answer, ¶9.)

Individuals who want to work for ESC through the VLA must: (1) hold valid teaching licenses in the disciplines they will teach; (2) hold Highly Qualified Teaching certifications; (3) have BCI and FBI background checks; and (4) be technologically capable. (Amended Complaint, ¶10; ESC Answer, ¶10, Record, p.43.) If individuals meet these criteria, they then participate in professional development training and are provided a mentor. The individuals are permitted to work with students after the training is conducted. (Record, p.43.) Once the professional developmental training is completed, students are assigned either by the school district requesting that a specific teacher be matched with their student, or the school district asks the ESC to match any teacher with their student. (Amended Complaint, ¶11; ESC Answer, ¶11; Record, p. 44.)

Individuals employed by the VLA are generally paid \$210 per student per full course year and \$105 per student per semester course. (Record, p.5.) A semester contains 18 units of instruction and a full course year contains 36 units of instruction. The teacher is paid when one of the following occurs: (1) the student completes the course; (2) the student's license expires; or (3) the school district withdraws a student from a course. (Amended Complaint, ¶14; ESC Answer, ¶14; Record, p.44.)

The teacher's fees are the financial responsibility of participating school districts and are paid on a per student per course basis. (Amended Complaint, ¶15; ESC Answer, ¶15.) In addition, once an agreement is in place between the school district and the ESC, the school district must also pay a license fee for each student enrolled in the VLA.

All of the employer and employee contributions submitted to STRS by Relators and ESC were earned during Relators' service with the ESC and through the VLA under the educational option plan.

3. ESC's direction and control of Relators.

The evidence shows ESC maintained significant ability to direct and control Relators' activities while they performed services for ESC through VLA. In response to STRS's questions, evidence was presented showing ESC monitored the teachers' work by checking the teachers' accounts to ensure they were logging in every day; that all messages were responded to; and that all lessons were graded. (Record, p.5.) ESC provided a lab for the use of teachers or students who did not have access to a computer. (Record, p.5) ESC also stated that the teachers signed a form agreeing to accept students through VLA and were put on the ESC payroll when the teachers received their first students. (Record, p.5). Further, teachers were assigned mentors who evaluated each teacher twice a year using a performance evaluation that was created using the

NEA [National Education Association] Guide to Teaching Online Courses and the NACOL National Standards for Quality Online Teaching. (Record, p.43.) Teacher evaluations are part of the record in this case. (Additional Records, p.13-42.)

The Additional Records submitted by ESC also show the specific direction and control of the daily activities of VLA teachers. Teachers were required to log onto the system every day of the year; communicate with students via e-mail and outline expectations; contact ESC if students were not logging in or performing well; provide technical assistance; attend yearly professional development programs; and perform other assigned duties. (Additional Records, p.12.)

Further, ESC has made clear in this litigation, through its admissions and briefs, that it did not consider Relators to be independent contractors. (*See, e.g.*, ESC Answer, ¶¶4, 5, 6; Brief of Defendant-Respondent Jefferson County Educational Service Center Governing Board, pp.3-4.)

4. ESC's payment of Relators.

As for payment, the evidence shows ESC issued an IRS Form 1099 to Relator Williams in only one year—2004. In the other years he was issued a W-2. (Additional Records, pp.43-46.) Relator Nese received no 1099 forms but was issued W-2s in 2006, 2007, 2008, and 2009. (Additional Records, pp.47-48.) Relator Miles received 1099s in a few years but also received W-2 forms in five different years. (Additional Records, pp. 49-52.)

III. Argument

A. Public pension statutes must be liberally construed.

In *State ex rel. Teamsters Local Union 377 v. City of Youngstown*, 50 Ohio St.2d 200, 364 N.E.2d 18 (1977), this Court held that pension statutes are to be liberally construed. *Id.* at 205, 364 N.E.2d at 21. The Court more recently explained, “Ambiguous statutory provisions [in

pension statutes] must be construed liberally in favor of the interests of public employees and their dependents that the pension statutes were designed to protect.” (Alteration in original.) (Internal quotations and citations omitted.) *State ex rel. Moss v. Ohio State Highway Patrol Retirement System* 97 Ohio St.3d 198, 202, 777 N.E.2d 259, 262 (2002).

Under R.C. 3307.01(B), STRSB has the authority, in cases of doubt, to determine whether a person is a teacher under the statute. Its decisions shall be final. *Id.* Mandamus is the appropriate remedy to challenge STRSB’s decision. See, *State ex rel. Mallory v. Pub. Emp. Retirement Bd.*, 82 Ohio St.3d 235, 239, 694 N.E.2d 1356, 1360 (1998).

To be entitled to a writ of mandamus Relators must show that STRSB abused its discretion when it determined they were not teachers as defined in R.C. 3307.01(B). STRSB abused its discretion if it acted in an unreasonable, arbitrary, or unconscionable manner. *State ex rel. Mallory v. Pub. Emp. Retirement Bd.*, 82 Ohio St.3d 235, 239, 694 N.E.2d 1356, 1360 (1998).

2. Proposition of Law 1: Relators were “teachers” as defined in R.C. 3307.01(B)(4) while performing services for ESC.

R.C. 3307.01(B)(4) defines a “teacher” for STRSB purposes as:

Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, and the university of Toledo[.]

There is no evidence that STRSB considered the applicability of this definition when it found Relators were not eligible for membership in STRS when teaching VLA students. In fact, while Relators argued below that they were “teachers” under R.C. 3307.01(B)(4), (Brief of Plaintiffs-Relators in Support of Complaint in Mandamus, pp.7-8), Respondent STRSB did not argue

otherwise in its opening brief below; its opening brief limited its analysis to Relators' status under R.C. 3307.01(B)(1) and as independent contractors.

In its objections to the Magistrate's decision, STRSB argued, for the first time, that Relators were not teachers under R.C. 3307.01(B)(4), but in doing so, it erred in its reading of the statute. STRSB read the statute to require that the teacher's activity be "*wholly controlled and managed* ***." (Emphasis in original.) (STRSB's Objections to the Magistrate's Decision, p.5.) But as the dissent below noted, R.C. 3307.01(B)(4) does not require that the teacher's activity be wholly controlled or managed by the school or agency; it states that a person is a teacher for STRS purposes *if the school or agency* is wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof."

Judge Bryant noted the error in STRSB's reasoning in dissent, writing, "Accordingly, the issue is not whether the teacher is wholly controlled and managed but whether the agency for which the teacher works is wholly controlled and managed by a state or a political subdivision, an issue not disputed by STRSB's objections." (Decision, p.9, Bryant, P. J., concurring in part and dissenting in part.)

Thus, there is no evidence to support STRSB's conclusion that Relators were not teachers under R.C. 3307.01(B)(4), and STRSB never properly disputed the Magistrate's finding in that respect, ((Magistrate's Decision, p.17) so it has waived any such argument. STRSB abused its discretion and the writ should issue.

3. Proposition of Law 2: Relators were employees, not independent contractors.

Until STRSB filed its Answer, it had never provided a written reason as to why it denied Relators' contributions made for their teaching service with the VLA. STRSB's Answer made clear it had determined Relators were independent contractors, and for that reason, not members

of STRS under R.C. 3307.01 (Answer, ¶¶4, 5, 6.) STRSB's determination is without evidentiary support and it contradicts STRSB's directives, Ohio law, and ESC's position throughout this case.

STRS has issued a fact sheet that explains that a member is not an independent contractor if they answer "Yes" to *any* of the following questions:

1. Are there other STRS Ohio members on staff who perform the same or similar duties under employment contracts?
2. Is the individual performing the duties of a teacher, administrator, psychologist, tutor or other STRS Ohio-covered position on a full-time or regular basis?
3. Under the agreement, does the school define the hours or days to be worked, regulate how the work is to be performed, or supply the facilities and materials to do the job?
4. Do you, as the employer, treat the individual like an employee?
5. Does the individual have a direct supervisor who is an employee of the school?
6. Is there an element of permanency in the relationship? (Brief of Plaintiffs-Relators in Support of Complaint in Mandamus, Ex. A.)

Here, the evidence shows answers of "yes" to at least two of these questions. ESC treated Relators as employees because it issued them W-2s. (Additional Records, pp.43-52) Further, ESC extensively regulated and controlled how Relators performed their work for VLA and provided facilities where they could perform their work if they desired. (Record, pp.5, 43; Additional Records, pp.12-42.) Thus, under STRSB's own fact sheet, Relators were employees, not independent contractors. To take a contrary position, after the fact, and without any specific investigation relative to these teachers, is an abuse of discretion by STRSB.

The same is true under the common law test for independent contractor status. This Court has explained that the "[t]he chief test in determining whether one is an employee or an independent contractor is the right to control the manner or means of performing the work." *Bobik v. Industrial Com'n.*, 146 Ohio St. 187, 64 N.E.2d 829, (1946), at paragraph one of

syllabus. “If such right is in the employer, the relationship is that of employer and employee”. *Id.* at paragraph two of the syllabus. The evidence shows unequivocally that ESC maintained the right to control Relators’ performance of their work and gave them specific, detailed instructions on how to perform their work, right down to what their daily activities had to be.

Further, as was detailed below, STRSB never directed any inquiry to ESC to determine Relators’ status. The questions STRSB submitted were made in the investigation of the status of another teacher. (Brief of Plaintiffs-Relators in Support of Complaint in Mandamus, pp.13-14.) Thus, STRSB had no evidence directly related to Relators on which to base its determination.

The evidence does not support STRSB’s determination that Relators and the other affected individuals were independent contractors. To the contrary, the evidence shows that Relators and the other affected teachers were employees, not independent contractors as they were employed to provide teaching services to students through the VLA (Amended Complaint, ¶16; ESC Answer, ¶16); were not employed under bilateral contracts (Record, p.9); were on the ESC payroll (Record, p.9); had ESC labs available to them if they did not have access to a computer (Record, p.9); received W-2 forms rather than 1099 forms (Additional Records, pp. 43-53); and were monitored and regulated in how their work was to be performed (Record, p.9). Thus, in light of STRSB’s own Fact Sheet, there was no evidence to support its determination.

Further, as the dissent below pointed out, some of the factors relied upon related to independent contractor status are not likely to exist because of the very nature of the ESC and VLA. For example, the majority opinion cited the fact that Relators determine their own workplace and hours. (Decision, p.4.) Those circumstances are inherent to the VLA system and are common in many modern work place situations, which unquestionably involve the relationship of employer and employee. That said, relevant factors such as control of the day-to-

day duties of these teachers do exist here. Control must be viewed, as the dissent recognized, through the lens of the manner in which services are provided and the changing nature of the work environment.

4. Proposition of Law 3: Even if Relators were independent contractors, they were still members of STRS because they were performing the same services as teachers under contract.

R.C. Chapter 3307 does not specifically address independent contractors—unlike other Ohio retirement systems. *See* R.C. 145.01(A) and 145.012(A)(1). However, the STRS Employers Manual makes clear that independent contractor status does not, in and of itself, establish that a person is not a teacher under R.C. 3307.01(B). (Additional Records, p.57.) The relevant section states:

Hiring a teacher *** as an independent contractor or through a temporary agency does not relieve the obligation for member and employer contributions on earnings. Primary criterion cited in Attorney General Opinions and IRS Guidelines for distinguishing between independent contractor and employee is the right of the employer to control the “mode and manner” of the work performed.

If the teaching duties performed by an independent contractor are the same as those performed by teachers under employment contracts, then there is no difference for STRS Ohio purposes. (Additional Records, p.57.)

This is consistent with STRSB’s representations to the Ohio Valley Educational Service Center. (Additional Records, p.2)

For purposes of the ESC, VLA, services can be performed by teachers hired by ESC or teachers employed by the home district of the enrolled student. (Amended Complaint, ¶9, ESC Answer ¶9.) If the school district uses its own teachers, the teachers are issued paychecks directly by the school district’s treasurer. (Amended Complaint, ¶9, ESC Answer, ¶9.) If the school district uses the ESC pool of VLA teachers, the ESC treasurer issues the paychecks. (Amended Complaint ¶9, ESC Answer ¶9.)

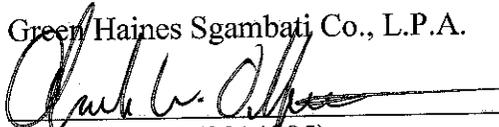
So, even if Relators were independent contractors, they were performing the same services as teachers employed under teaching contracts and were eligible for membership in STRS while performing those services. (Additional Records, p.57.) This result is mandated by STRS's own statement. (Additional Records, p.57.) Thus, STRSB had no evidence to support its conclusion that Relators were not eligible to participate in STRS even if they were, in fact, independent contractors.

IV. Conclusion

STRSB abused its discretion when it determined Relators were not teachers under R.C. 3307.01(B) and thus, not eligible to participate in STRS. This Court should reverse the court of appeal's judgment and issue the writ of mandamus.

Respectfully submitted,

Green Haines Sgambati Co., L.P.A.



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Certificate of Service

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APPENDIX

In the Supreme Court of Ohio

STATE OF OHIO EX REL. JOHN NESE,
DONALD WILLIAMS, AND CATHERINE
MILES

Appellants

-vs-

STATE TEACHERS RETIREMENT SYSTEM
BOARD OF OHIO AND JEFFERSON COUNTY
EDUCATIONAL SERVICE CENTER
GOVERNING BOARD

Appellees

) Supreme Court of Ohio

) Case No. **12-0251**

)
) On Appeal from the Court of
) Appeals of Ohio, Tenth Appellate
) District Case NO. 09AP-1161
)
)
)

Notice of Appeal

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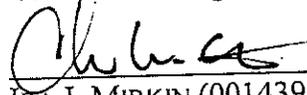
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SUPREME COURT OF OHIO

Appellants-Relators, John Nese, Donald Williams, and Catherine Miles, appeal to the Supreme Court of Ohio from the judgment of the Court of Appeals of Ohio, Tenth Appellate District, entered in Case No. 09AP-1161, on December 30, 2011 and decision entered on December 29, 2011. This case originated in the Court of Appeals and is an appeal as of right under Sup.Ct. Prac. R. 2.1(A)(1).

Respectfully submitted,

Green Haines Sgambati Co., L.P.A.

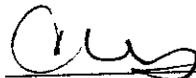


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On February 9, 2012, a copy of the foregoing was served by regular U.S. Mail upon Michael DeWine, Attorney General, John E. Patterson, Assistant Attorney General, and Catherine J. Calko, Assistant Attorney General, 30 E. Broad Street, 26th Floor, Columbus, Ohio 43215; and R. Brent Minney, Pepple & Waggoner, Ltd., 5005 Rockside Road, Suite 260, Cleveland, Ohio 44131.



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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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OHIO

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CLERK OF COURTS

State of Ohio ex rel. John Nese,
Donald Williams and Catherine Miles,

Relators,

v.

State Teachers Retirement System
Board of Ohio and Jefferson County
Educational Service Center Governing
Board,

Respondents.

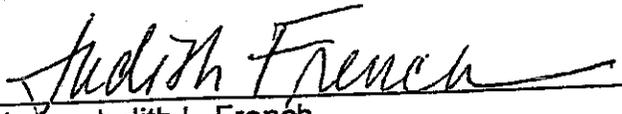
No. 09AP-1161

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 29, 2011, the first and second objections to the decision of the magistrate are sustained and the third objection is overruled. The findings of fact of the magistrate are approved and adopted by the court as its own, however we do not adopt the magistrate's conclusions of law, but, consistent with this decision, we conclude STRB did not abuse its discretion in concluding relators are independent contractors, and it is the judgment and order of this court that the requested writ of mandamus is denied. Costs shall be assessed against relators.

Within three (3) days from the filing hereof, the clerk of this court is hereby ordered to serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.



Judge Judith L. French



Judge Susan Brown

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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2011 DEC 29 PM 12:32
CLERK OF COURTS

State of Ohio ex rel. John Nese,
Donald Williams and Catherine Miles,

Relators,

v.

State Teachers Retirement System
Board of Ohio and Jefferson County
Educational Service Center Governing
Board,

Respondents.

No. 09AP-1161

(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 29, 2011

Green Haines Sgambati Co., L.P.A., Stanley J. Okusewsky, III, and Ira J. Mirkin, for relators.

Michael DeWine, Attorney General, and John E. Patterson and Catherine J. Calko, for respondent State Teachers Retirement Board of Ohio.

Peeples & Waggoner, Ltd., and R. Brent Minney, for respondent Jefferson County Educational Service Center Governing Board.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

FRENCH, J.

{¶1} Relators, John Nese, Donald Williams, and Catherine Miles, commenced this original action requesting a writ of mandamus that orders respondent State Teachers Retirement Board of Ohio ("STRB") to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent Jefferson County Educational Service Center Governing Board ("JCESC") for teaching service with the Virtual Learning Academy ("VLA"). Relators further seek a writ of mandamus that orders respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC with the VLA.

{¶2} Pursuant to Civ.R. 53 and Section (M), Loc.R. 12 of the Tenth Appellate District, this matter was referred to a magistrate who issued the appended decision, including findings of fact and conclusions of law. The magistrate determined STRB abused its discretion in concluding relators were independent contractors and thus not entitled to contribute to STRB for the compensation earned from their employment with JCESC and the VLA.

{¶3} Respondent STRB filed objections to the magistrate's conclusions of law:

[1.] The Magistrate erred in substituting judgment for that of the Board in interpreting STRS statutes.

[2.] The Magistrate erred in applying the abuse of discretion standard of review.

[3.] Failure to join those individuals similarly situated prejudiced STRB.

{¶4} Because STRB's first and second objections are interrelated, we address them jointly. Together they assert that the magistrate improperly applied the abuse of discretion standard, instead substituting his opinion for that of STRB in determining whether relators were independent contractors. According to STRB, the record contains "some evidence" to support its finding that relators do not meet the definition of teachers under R.C. 3307.01(B)(4).

{¶5} R.C. 3307.01(B) grants to STRB, "[i]n all cases of doubt," the authority to "determine whether any person is a teacher, and its decision shall be final." While construing identical language granting to the public employees retirement system ("PERS") board the power to decide whether an individual is an "employee" for purposes of PERS membership, the Supreme Court of Ohio confirmed that, to be entitled to mandamus, an applicant "must establish that the board abused its discretion by denying her request for PERS service credit. * * * The board abused its discretion if it acted in an unreasonable, arbitrary, or unconscionable manner." *State ex rel. Mallory v. Pub. Emps. Retirement Sys.*, 82 Ohio St.3d 235, 239, 1998-Ohio-380 (citations omitted). See also *State ex rel. State Teachers Retirement Bd. v. W. Geauga Local School Dist. Bd. of Edn.* (1998), 131 Ohio App.3d 150, 161 (stating "that STRB's decision as to whether someone is a teacher under R.C. 3307.01(B) is subject to review by the judiciary under an abuse of discretion standard"), appeal dismissed, 87 Ohio St.3d 1220, 1999-Ohio-15. This court has declined to find an abuse of discretion where there is some evidence to support a

board's decision. *State ex rel. Curtin v. Ohio Pub. Emps. Retirement Sys.*, 10th Dist. No. 09AP-801, 2011-Ohio-2536, ¶19.

{¶6} STRB did not abuse its discretion by determining that relators are independent contractors because there is some evidence to support its decision. Relators determine their own workplace and work hours. They do not have contracts for ongoing employment. Rather, they are paid on a per-student, per-credit-hour basis. They do not receive fringe benefits, and two of the relators received at least one 1099 form for tax purposes. All of this evidence supports STRB's conclusion that relators are independent contractors.

{¶7} To be sure, there is evidence to support a contrary conclusion. JCESC has the ability and obligation to monitor relators, and there is evidence in the record to show that periodic evaluations are performed. JCESC has set standards, including, for example, a requirement that each teacher log into the system daily. And, while two of the relators received at least one 1099 form, all three of the relators received W-2's for at least some of the tax years. From this evidence, STRB might have concluded that relators are not independent contractors.

{¶8} In similar cases, this court has declined to substitute our judgment for that of a retirement-system board charged with making the determination. For example, we denied a request for mandamus where the PERS board determined that a part-time magistrate was an independent contractor, and the Supreme Court of Ohio affirmed. See *State ex rel. Schaengold v. Ohio Pub. Emps. Retirement Sys.*, 114 Ohio St.3d 147, 2007-

Ohio-3760. We also denied a request for mandamus where the PERS board determined that an individual who hauled gravel for a township was an independent contractor where the individual set his own hours, used his own equipment, and did not receive fringe benefits, and the township had reported the majority of his income on a 1099 form. *State ex rel. Peyton v. Schumacher* (Nov. 16, 2000), 10th Dist. No. 00AP-78.

{¶9} In light of that authority, we sustain STRB's first and second objections to the magistrate's decision.

{¶10} STRB's third objection contends the magistrate erred in refusing to join indispensable parties to this action. STRB suggests that the absence of such parties prejudiced it because not only was certain information unavailable to it, but their absence leaves STRB subject to "substantial risk of incurring double, multiple or otherwise inconsistent obligations." (Objections, 6.) STRB's contentions are unpersuasive.

{¶11} As relators appropriately note, "[m]ere avoidance of multiple litigation is not a sufficient basis to render one an indispensable party." *Layne v. Huffman* (1974), 43 Ohio App.2d 53, 59, affirmed (1975), 42 Ohio St.2d 287. Moreover, STRB does not indicate what specific information it needed, but was unable to procure for the purpose of this litigation involving these relators. Lastly, we must assume "the STRB will implement the decision of the highest prevailing court consistently to all STRS members and beneficiaries." *Smith v. State Teachers Retirement Bd.* (Feb. 5, 1998), 10th Dist. No. 97APE07-943, citing *State ex rel. Horvath v. State Teachers Retirement Bd.* (Mar. 31, 1995), 10th Dist. No. 94APE07-988.

{¶12} Accordingly, we overrule STRB's third objection.

{¶13} Following independent review pursuant to Civ.R. 53, we conclude the magistrate has properly determined the pertinent facts, and we adopt them as our own. We do not adopt the magistrate's conclusions of law, but, consistent with this decision, we conclude STRB did not abuse its discretion in concluding relators are independent contractors. As a result, we deny the request for a writ of mandamus.

*Objections overruled in part and sustained in part;
writ denied.*

BROWN, J., concurs.

BRYANT, P.J., concurs in part and dissents in part.

BRYANT, J., concurring in part and dissenting in part.

{¶14} As the parties agree, the issue turns on the definition of teacher in R.C. 3307.01(B)(4) and whether relators were employed in a school or other institution wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision. Focusing in its objections on whether relators were "employed" with JCESC, STRB asserts the teachers were independent contractors, not employees.

{¶15} In addressing that issue, the magistrate relied on the common law definition of independent contractor in *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 301. *Berge* sets out the analysis to be used in determining whether the employer retained control of, or the right to control, the mode and manner of doing the work contracted. If the right to control is present, the relationship is that of principal and agent, or master and servant; if not, the independent contractor appellation is appropriate.

Here, the magistrate appropriately concluded relators are employees, pointing to the various ways JCESC either exercises control or retains the right to exercise control over relators.

{¶16} Part of my difficulty with STRB's arguments lies in its imposing the traditional attributes of a teacher on the less than traditional and, in light of technological advances, a likely increasingly common approach to teaching. What constitutes control will vary with the circumstances, and the circumstances here are considerably different than those of the more traditional classroom and make the factors STRB cites not pertinent to determining whether relators are employees. In the circumstances surrounding the JCESC and the VLA, a contract may not be the most efficient way to engage teachers, since attendance, unlike in the traditional setting, is not guaranteed. Relators nonetheless are not left to come and go as they like but "sign a form agreeing to be on board to take on VLA students on an as needed basis." (Stip. Evidence, 5.) Similarly, setting hours to be worked, as in a traditional school, also would prove ineffective because the times when the students may be available differ from the set schedule of a more traditional classroom. Indeed, JCESC points out that "VLA runs for 365 days and we have students enroll every day of the year – each student works at their own pace." (Stip. Evidence, 5.) Moreover, given the nature of the teaching, teachers may work from home, but JCESC offers "our lab here at the office if teachers or students do not have access to their own computer." (Stip. Evidence, 5.)

{¶17} Unlike most members of STRS, relators are not paid a salary, as would be common in more traditional school settings. Again, the nature of the teaching environment, including the unknown numbers of students for the year, suggests that relators be compensated for the courses taught, and JCESC confirms that it monitors the work of its teachers. Although the stipulated evidence includes remarks about lapses in some teachers' habits, the failures of some teachers do not determine whether JCESC's teachers, as a group, are independent contractors or employees. What is more, failures will occur despite the ability of an employer to control the work of its employees.

{¶18} Finally, I recognize JCESC originally considered relators to be independent contractors and accordingly provided them form 1099s for tax purposes. At some point, perhaps as the VLA progressed and JCESC exerted more control, JCESC determined relators to be employees, provided them W-2s for tax purposes, and paid the employer's portion of relators' contributions to STRS. The change is significant.

{¶19} I acknowledge the cases the majority cites, but those cases do not determine the issue before us or preclude our determining STRB abused its discretion in deciding relators are not employees and, as a result, not teachers. Thus, in *State ex rel. Mallory v. Pub. Employees Retirement Bd.*, 82 Ohio St.3d 235, 1998-Ohio-380, the Supreme Court concluded the respondent abused its discretion in determining Mallory was not a public employee for purposes of PERS membership. Similarly here, STRB abused its discretion. The factors STRB cites to demonstrate a lack of the requisite control do not address the relevant factors in determining whether relators are employees

in the setting in which they render teaching services, because the factors the majority relies on, by the very nature of JCESC, VLA, and other educational providers like them, are not likely to exist as part of the control the employer exerts over teachers. Although JCESC, despite the nature of the teaching services at issue, could have provided fringe benefits, the absence of benefits alone does not support STRB's decision.

{¶20} Lastly, in response to STRB's focus on the language from R.C. 3307.01(B)(4), "wholly controlled and managed," the board's attention is misplaced. R.C. 3307.01(B)(4) defines a teacher to be one employed in any school or institution or other agency if the agency is "wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof." Accordingly, the issue is not whether the teacher is wholly controlled and managed but whether the agency for which the teacher works is wholly controlled and managed by a state or political subdivision, an issue not disputed in STRB's objection.

{¶21} In the final analysis, although I agree with the majority's disposition of STRB's third objection, I conclude STRB abused its discretion in deciding relators were not teachers: the faculty members were required to log into the system on a daily basis to grade, answer questions, and answer emails and were monitored in that respect, were required to participate in faculty professional development training programs, and were assigned a mentor that evaluates the teachers. I would overrule STRB's objections, adopt the magistrate's decision, and grant the writ per the magistrate's recommendation.

APPENDIX

IN THE COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT

State of Ohio ex rel. John Nese,
Donald Williams and Catherine Miles,

Relators,

v.

State Teachers Retirement System
Board of Ohio and Jefferson County
Educational Service Center Governing
Board,

Respondents.

No. 09AP-1161

(REGULAR CALENDAR)

MAGISTRATE'S DECISION

Rendered on May 27, 2011

Green Haines Sgambati Co., L.P.A., Stanley J. Okusewsky, III, and Ira J. Mirkin, for relators.

Michael DeWine, Attorney General, and John E. Patterson, for respondent State Teachers Retirement Board of Ohio.

Peeple & Waggoner, Ltd., and R. Brent Minney, for respondent Jefferson County Educational Service Center Governing Board.

IN MANDAMUS

{¶22} In this original action, relators John Nese, Donald Williams, and Catherine Miles ("relators") request a writ of mandamus ordering respondent State Teachers Retirement Board of Ohio ("STRB") to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent Jefferson County Educational Service Center Governing Board ("JCESC") for teaching service with the Virtual Learning Academy ("VLA"). Relators also seek a writ of mandamus ordering respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC for teaching service with the VLA.

Findings of Fact:

{¶23} 1. The VLA is an internet-based educational delivery system designed for K-12, providing alternative educational options for credit deficiencies, alternative programs, home schooling, home bound instruction, and 2002 summer school programs.

{¶24} 2. JCESC described the VLA as a curriculum option utilized by participating school districts, but it is not a school, so the students remain part of the average daily membership count of the local district.

{¶25} 3. Relator John Nese is a teacher in the Indian Creek Local School District and is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the State Teachers Retirement System ("STRS") pursuant to R.C. 3307.01(C).

{¶26} 4. Nese was employed by JCESC to provide teaching service through the VLA from the 2005-2006 fiscal year through the 2007-2008 fiscal year.

{¶27} 5. Relator Donald Williams is a teacher in the Edison Local School District and is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the STRS pursuant to R.C. 3307.01(C).

{¶28} 6. Williams was employed by JCESC to provide teaching services through the VLA from the 2004-2005 fiscal year through the 2007-2008 fiscal year.

{¶29} 7. Relator Catherine Miles was a teacher in the Edison Local School District until her retirement at the end of the 2008-2009 school year. She is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the STRS pursuant to R.C. 3307.01(C).

{¶30} 8. Miles was employed by JCESC to provide teaching services through the VLA from the 2004-2005 fiscal year through the 2007-2008 fiscal year.

{¶31} 9. Contributions were submitted to STRS by relators and JCESC based upon relators' compensation earned from their services through the VLA in accordance with R.C. 3307.26 and 3307.28.

{¶32} 10. In October and December 2008, STRS returned contributions to JCESC derived from payments made through the VLA. STRS considered the contributions as "unauthorized contributions" and returned the employer and employee shares.

{¶33} 11. In December 2009, relators filed the instant mandamus action asserting that STRB abused its discretion in finding that relators were not teachers and refusing to accept their contributions to STRS from their employment with JCESC and the VLA.

Conclusions of Law:

{¶34} The issue is whether STRB abused its discretion in concluding that relators were independent contractors and therefore, not entitled to contribute to STRS for the compensation earned from their employment with JCESC and the VLA. For the reasons that follow, the magistrate finds that STRB abused its discretion.

{¶35} "[M]andamus is an appropriate remedy where no statutory right of appeal is available to correct an abuse of discretion by an administrative body." *State ex rel. Mager v. State Teachers Retirement Sys.*, 123 Ohio St.3d 195, 2009-Ohio-4908, ¶11, quoting *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, ¶14. In this case, because relators do not have a statutory right to appeal from STRB's decision to deny them their VLA contributions to STRS, relators may seek to remedy STRB's alleged abuse of discretion through a petition for a writ of mandamus. "'An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable.'" *State ex rel. Ackerman v. State Teachers Retirement Bd.*, 117 Ohio St.3d 268, 2008-Ohio-863, ¶16, quoting *State ex rel. Stiles v. School Emps. Retirement Sys.*, 102 Ohio St.3d 156, 2004-Ohio-2140, ¶13.

{¶36} STRB manages the teachers retirement system and determines benefit eligibility. See R.C. 3307.04. Pursuant to R.C. 3307.01(B)(5), "[i]n all cases of doubt, the state teachers retirement board shall determine whether any person is a teacher, and its decision shall be final." In addition to the declaration in R.C. 3307.01(B), that STRB's determination is final, courts pay due deference to the reasonable administrative

construction of the rule and statute. *State ex rel. Palmer v. State Teachers Retirement Bd.* (1993), 90 Ohio App.3d 497, 502.

{¶37} R.C. 3307.01(B) defines "teacher" as follows:

(B) "Teacher" means all of the following:

(1) Any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which the person is required to have a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code;

* * *

(4) Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, and the university of Toledo[.]

{¶38} Ohio courts have interpreted R.C. 3307.01(B)(1) as having four requirements for someone to be considered a teacher eligible for STRS membership: "(1) the individual must be paid from public funds, (2) the individual must be employed in the public schools of the state, (3) the individual must be employed under any type of contract described in R.C. 3319.08, and (4) the individual must occupy a position for which a certificate is required under R.C. 3319.22 to 3319.31. Courts have held that all four conditions must be met for someone to qualify as a teacher under the statute." *State ex rel. State Teachers Retirement Bd. v. West Geauga Local School Dist. Bd. of Edn.* (1998), 131 Ohio App.3d 150, 159. See also *State Teachers Retirement Sys. Bd. v.*

Cuyahoga Falls Bd. of Edn. (1985), 26 Ohio App.3d 45, 46; *State ex rel. Yovich v. Cuyahoga Falls Bd. of Edn.* (June 23, 1992), 10th Dist. No. 91AP-1325.

{¶39} STRB argues that relators fail to meet two of these requirements—that they were not employed in a public school and do not have a contract. STRB argues that the records supplied by respondent JCESC include an explanation of the origin of the VLA which explicitly states that the "VLA is not a school. It is a curriculum option utilized by school districts to service their students." Thus, STRB argues, if the VLA is not a school, relators cannot meet the second requirement to be a teacher. However, relators were employed by JCESC, not the VLA and the W-2s they received were from the JCESC, not the VLA.

{¶40} STRB also argues that, even if the VLA qualifies as a school, relators did not work in a school building, and thus, they do not qualify. However, the record provides that JCESC provides the JCESC Lab if any VLA teacher or student does not have access to a computer, but most teachers and students work from home. Additionally, in *State Teachers Retirement Sys. Bd. v. Cuyahoga Falls*, the Ninth District Court of Appeals found home instructors were teachers for purposes of membership in STRS. STRB's argument does not have merit.

{¶41} STRB argues that relators fail to meet the requirement that an individual must be employed under any type of contract described in R.C. 3319.08. R.C. 3319.08(A) requires "[t]he board of education of each city, exempted village, local, and joint vocational school district and the governing board of each educational service center

shall enter into written contracts for the employment and reemployment of all teachers. Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts." R.C. 3319.08(A) provides an exception to the written contract when the board adopts a motion or resolution to employ a teacher under a limited or continuing contract and the teacher accepts the employment.

{¶42} In this case, the record provides a statement from the attorney for JCESC that no contracts between JCESC and relators exist. Relators contend in their reply brief to this court, that JCESC adopted a resolution to employ relators, however, there is nothing in the record to support this contention. The minutes of the April 24, 2001 meeting of JCESC approving the VLA are in the record, but those minutes do not indicate a motion or resolution to employ relators under a limited or continuing contract.

{¶43} Moreover, relators were paid by the specific job. They were paid \$250 for a one-credit course and \$125 for a half-credit course. The lack of contract or evidence of a resolution means relators do not meet the four requirements of the definition of teacher pursuant to R.C. 3307.01(B)(1).

{¶44} On July 13, 2000, the statute was amended as part of Senate Bill 190. See S.B. 190. The definition of "teacher" was changed and section (4) was added to R.C. 3307.01(B), as stated above, as follows:

Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, and the university of Toledo[.]

{¶45} Relators fall within this definition. They are teachers employed by an institution or other agency wholly controlled and managed and supported in whole or in part by any political subdivision. The record supports the finding that JCESC has the ability to monitor or direct the work of the teachers by checking on a teacher's work account, whether the teacher is responding to students, grading lessons, etc. The record contains Faculty Performance Rubrics of relators. Furthermore, school districts have been found to be political subdivisions. See *Price v. Austintown Local School Dist. Bd. of Edn.*, 178 Ohio App.3d 256, 2008-Ohio-4514. The Montgomery County Educational Service Center has been found to be a political subdivision for R.C. 2744.02 purposes. See *Quinn v. Montgomery County Educational Serv. Ctr.*, 2nd Dist. No. Civ.A. 20596, 2005-Ohio-808. Thus, pursuant to R.C. 3307.01(B)(4), relators fit within the definition of teacher.

{¶46} STRB also argues that relators are independent contractors and therefore, not eligible for membership in STRS. STRB relies on the standard discussed by this court in *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 301, as follows:

*** Independent-contractor status is determined by the right to control. The analysis inquires whether the employer retained control of, or the right to control, the mode and manner of doing the work contracted for. If so, the relationship is that of principal and agent or master and servant. If the employer did not retain control but is interested merely in the ultimate result to be accomplished, the relationship is that of independent contractor. Factors to be considered include control over the details and quality of the work, the hours worked, selection of materials, tools, and

personnel used, the routes traveled, the length of employment, the type of business, the method of payment, and any pertinent agreements or contracts.

(Citations omitted.) See also *Bobik v. Indus. Comm.* (1946), 146 Ohio St. 187.

{¶47} STRB relied upon several factors in concluding that relators are independent contractors: (1) the fact that there are no written contracts and they are paid by the job, (2) relators did not receive benefits such as health insurance, (3) relators set their own hours, (4) relators did not use onsite laboratories, (5) JCESC did not provide supervision or evaluation regarding specific students, but rather, evaluated relators two or three times per year on their performance, and (6) initially, JCESC reported earnings with 1099 forms.

{¶48} Pursuant to *Berge*, the independent contractor analysis inquiry is whether the employer retained control of, or the right to control, the mode and manner of doing the work contracted. If so, the relationship is that of principal and agent or master and servant. Here, the record contained the duties of the VLA faculty. Each faculty member was required to log into the system on a daily basis to grade, answer questions, answer e-mails, etc. The JCESC monitors the teachers and checks on their daily logging into the accounts. Many times teachers were removed because they were not logging into the account every day. The duties are specifically outlined. The VLA teachers are required to participate in a VLA faculty professional development training program during the summer prior to being assigned any students. Each teacher is assigned a mentor that evaluates the teachers using an evaluation that was created by following the NEA Guide

to Teaching Online Courses and the NACOL National Standards for Quality Online Teaching. Teachers are either suspended or terminated if their evaluation is below satisfactory.

{¶49} Other factors to be considered include that JCESC provides laboratories for the teachers or students to use if necessary. Nese did not have any 1099s in the record, Williams only had one 1099 in the record for 2004, which did not match the amount that was "unauthorized" in his STRS account for 2004-2005, and Miles had 1099s for 2003, 2004, 2005, and 2008. For all other years, W-2s were received. The fact that relators received both W-2s and 1099s (and Nese did not receive any 1099s) does not indicate independent contractor status.

{¶50} Furthermore, the STRS Employer Manual advises employers that hiring independent contractors does not relieve employers of the obligation for member and employer contributions on earnings. It states, as follows:

Hiring a teacher or administrator as an independent contractor or through a temporary agency does not relieve the obligation for member and employer contributions on earnings. Primary criterion cited in Attorney General Opinions and IRS Guidelines for distinguishing between independent contractor and employee is the right of the employer to control the "mode and manner" of the work performed.

If the teaching duties performed by an independent contractor are the same as those performed by teachers under employment contracts, then there is no difference for STRS Ohio purposes. In all cases of doubt, the State Teachers Retirement Board shall determine whether a person is a teacher for STRS Ohio purposes.

{¶51} Given the record, the fact that relators fit within the definition of R.C. 3307.01(B)(4), and STRS policy regarding independent contractors, the evidence fails to support STRB's finding that relators are not members of STRS for the employment with JCESC and teaching at the VLA.

{¶52} Accordingly, for all the above reasons, it is the magistrate's decision that this court issue a writ of mandamus ordering STRB to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent JCESC for teaching service with the VLA.

{¶53} It is further the magistrate's decision that the writ order respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC for teaching service with the VLA.

/s/ Kenneth W. Macke

KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

FILED
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State of Ohio ex rel. John Nese,
Donald Williams and Catherine Miles,

Relators,

v.

No. 09AP-1161

State Teachers Retirement System
Board of Ohio and Jefferson County
Educational Service Center Governing
Board,

(REGULAR CALENDAR)

Respondents.

MAGISTRATE'S DECISION

Rendered on May 27, 2011

Green Haines Sgambati Co., L.P.A., Stanley J. Okusewsky, III, and Ira J. Mirkin, for relators.

Michael DeWine, Attorney General, and John E. Patterson, for respondent State Teachers Retirement Board of Ohio.

Peeples & Waggoner, Ltd., and R. Brent Minney, for respondent Jefferson County Educational Service Center Governing Board.

IN MANDAMUS

In this original action, relators John Nese, Donald Williams, and Catherine Miles ("relators") request a writ of mandamus ordering respondent State Teachers Retirement Board of Ohio ("STRB") to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent Jefferson County Educational Service Center Governing Board ("JCESC")

for teaching service with the Virtual Learning Academy ("VLA"). Relators also seek a writ of mandamus ordering respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC for teaching service with the VLA.

Findings of Fact:

1. The VLA is an internet-based educational delivery system designed for K-12, providing alternative educational options for credit deficiencies, alternative programs, home schooling, home bound instruction, and 2002 summer school programs.

2. JCESC described the VLA as a curriculum option utilized by participating school districts, but it is not a school, so the students remain part of the average daily membership count of the local district.

3. Relator John Nese is a teacher in the Indian Creek Local School District and is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the State Teachers Retirement System ("STRS") pursuant to R.C. 3307.01(C).

4. Nese was employed by JCESC to provide teaching service through the VLA from the 2005-2006 fiscal year through the 2007-2008 fiscal year.

5. Relator Donald Williams is a teacher in the Edison Local School District and is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the STRS pursuant to R.C. 3307.01(C).

6. Williams was employed by JCESC to provide teaching services through the VLA from the 2004-2005 fiscal year through the 2007-2008 fiscal year.

7. Relator Catherine Miles was a teacher in the Edison Local School District until her retirement at the end of the 2008-2009 school year. She is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the STRS pursuant to R.C. 3307.01(C).

8. Miles was employed by JCESC to provide teaching services through the VLA from the 2004-2005 fiscal year through the 2007-2008 fiscal year.

9. Contributions were submitted to STRS by relators and JCESC based upon relators' compensation earned from their services through the VLA in accordance with R.C. 3307.26 and 3307.28.

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11. In December 2009, relators filed the instant mandamus action asserting that STRB abused its discretion in finding that relators were not teachers and refusing to accept their contributions to STRS from their employment with JCESC and the VLA.

Conclusions of Law:

The issue is whether STRB abused its discretion in concluding that relators were independent contractors and therefore, not entitled to contribute to STRS for the compensation earned from their employment with JCESC and the VLA. For the reasons that follow, the magistrate finds that STRB abused its discretion.

" '[M]andamus is an appropriate remedy where no statutory right of appeal is available to correct an abuse of discretion by an administrative body.' " *State ex rel. Mager v. State Teachers Retirement Sys.*, 123 Ohio St.3d 195, 2009-Ohio-4908,

¶11, quoting *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, ¶14. In this case, because relators do not have a statutory right to appeal from STRB's decision to deny them their VLA contributions to STRS, relators may seek to remedy STRB's alleged abuse of discretion through a petition for a writ of mandamus. " 'An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable.' " *State ex rel. Ackerman v. State Teachers Retirement Bd.*, 117 Ohio St.3d 268, 2008-Ohio-863, ¶16, quoting *State ex rel. Stiles v. School Emps. Retirement Sys.*, 102 Ohio St.3d 156, 2004-Ohio-2140, ¶13.

STRB manages the teachers retirement system and determines benefit eligibility. See R.C. 3307.04. Pursuant to R.C. 3307.01(B)(5), "[i]n all cases of doubt, the state teachers retirement board shall determine whether any person is a teacher, and its decision shall be final." In addition to the declaration in R.C. 3307.01(B), that STRB's determination is final, courts pay due deference to the reasonable administrative construction of the rule and statute. *State ex rel. Palmer v. State Teachers Retirement Bd.* (1993), 90 Ohio App.3d 497, 502.

R.C. 3307.01(B) defines "teacher" as follows:

(B) "Teacher" means all of the following:

(1) Any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which the person is required to have a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code;

(4) Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including

Central state university, Cleveland state university, and the university of Toledo[.]

Ohio courts have interpreted R.C. 3307.01(B)(1) as having four requirements for someone to be considered a teacher eligible for STRS membership: "(1) the individual must be paid from public funds, (2) the individual must be employed in the public schools of the state, (3) the individual must be employed under any type of contract described in R.C. 3319.08, and (4) the individual must occupy a position for which a certificate is required under R.C. 3319.22 to 3319.31. Courts have held that all four conditions must be met for someone to qualify as a teacher under the statute." *State ex rel. State Teachers Retirement Bd. v. West Geauga Local School Dist. Bd. of Edn.* (1998), 131 Ohio App.3d 150, 159. See also *State Teachers Retirement Sys. Bd. v. Cuyahoga Falls Bd. of Edn.* (1985), 26 Ohio App.3d 45, 46; *State ex rel. Yovich v. Cuyahoga Falls Bd. of Edn.* (June 23, 1992), 10th Dist. No. 91AP-1325.

STRB argues that relators fail to meet two of these requirements—that they were not employed in a public school and do not have a contract. STRB argues that the records supplied by respondent JCESC include an explanation of the origin of the VLA which explicitly states that the "VLA is not a school. It is a curriculum option utilized by school districts to service their students." Thus, STRB argues, if the VLA is not a school, relators cannot meet the second requirement to be a teacher. However, relators were employed by JCESC, not the VLA and the W-2s they received were from the JCESC, not the VLA.

STRB also argues that, even if the VLA qualifies as a school, relators did not work in a school building, and thus, they do not qualify. However, the record provides that JCESC provides the JCESC Lab if any VLA teacher or student does not

have access to a computer, but most teachers and students work from home. Additionally, in *State Teachers Retirement Sys. Bd. v. Cuyahoga Falls*, the Ninth District Court of Appeals found home instructors were teachers for purposes of membership in STRS. STRB's argument does not have merit.

STRB argues that relators fail to meet the requirement that an individual must be employed under any type of contract described in R.C. 3319.08. R.C. 3319.08(A) requires "[t]he board of education of each city, exempted village, local, and joint vocational school district and the governing board of each educational service center shall enter into written contracts for the employment and reemployment of all teachers. Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts." R.C. 3319.08(A) provides an exception to the written contract when the board adopts a motion or resolution to employ a teacher under a limited or continuing contract and the teacher accepts the employment.

In this case, the record provides a statement from the attorney for JCESC that no contracts between JCESC and relators exist. Relators contend in their reply brief to this court, that JCESC adopted a resolution to employ relators, however, there is nothing in the record to support this contention. The minutes of the April 24, 2001 meeting of JCESC approving the VLA are in the record, but those minutes do not indicate a motion or resolution to employ relators under a limited or continuing contract.

Moreover, relators were paid by the specific job. They were paid \$250 for a one-credit course and \$125 for a half-credit course. The lack of contract or evidence of a resolution means relators do not meet the four requirements of the definition of teacher pursuant to R.C. 3307.01(B)(1).

On July 13, 2000, the statute was amended as part of Senate Bill 190. See S.B. 190. The definition of "teacher" was changed and section (4) was added to R.C. 3307.01(B), as stated above, as follows:

Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, and the university of Toledo[.]

Relators fall within this definition. They are teachers employed by an institution or other agency wholly controlled and managed and supported in whole or in part by any political subdivision. The record supports the finding that JCESC has the ability to monitor or direct the work of the teachers by checking on a teacher's work account, whether the teacher is responding to students, grading lessons, etc. The record contains Faculty Performance Rubrics of relators. Furthermore, school districts have been found to be political subdivisions. See *Price v. Austintown Local School Dist. Bd. of Edn.*, 178 Ohio App.3d 256, 2008-Ohio-4514. The Montgomery County Educational Service Center has been found to be a political subdivision for R.C. 2744.02 purposes. See *Quinn v. Montgomery County Educational Serv. Ctr.*, 2nd Dist. No. Civ.A. 20596, 2005-Ohio-808. Thus, pursuant to R.C. 3307.01(B)(4), relators fit within the definition of teacher.

STRB also argues that relators are independent contractors and therefore, not eligible for membership in STRS. STRB relies on the standard discussed by this court in *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 301, as follows:

*** Independent-contractor status is determined by the right to control. The analysis inquires whether the employer

retained control of, or the right to control, the mode and manner of doing the work contracted for. If so, the relationship is that of principal and agent or master and servant. If the employer did not retain control but is interested merely in the ultimate result to be accomplished, the relationship is that of independent contractor. Factors to be considered include control over the details and quality of the work, the hours worked, selection of materials, tools, and personnel used, the routes traveled, the length of employment, the type of business, the method of payment, and any pertinent agreements or contracts.

(Citations omitted.) See also *Bobik v. Indus. Comm.* (1946), 146 Ohio St. 187.

STRB relied upon several factors in concluding that relators are independent contractors: (1) the fact that there are no written contracts and they are paid by the job, (2) relators did not receive benefits such as health insurance, (3) relators set their own hours, (4) relators did not use onsite laboratories, (5) JCESC did not provide supervision or evaluation regarding specific students, but rather, evaluated relators two or three times per year on their performance, and (6) initially, JCESC reported earnings with 1099 forms.

Pursuant to *Berge*, the independent contractor analysis inquiry is whether the employer retained control of, or the right to control, the mode and manner of doing the work contracted. If so, the relationship is that of principal and agent or master and servant. Here, the record contained the duties of the VLA faculty. Each faculty member was required to log into the system on a daily basis to grade, answer questions, answer e-mails, etc. The JCESC monitors the teachers and checks on their daily logging into the accounts. Many times teachers were removed because they were not logging into the account every day. The duties are specifically outlined. The VLA teachers are required to participate in a VLA faculty professional development training program during the summer prior to being assigned any students. Each teacher is assigned a

mentor that evaluates the teachers using an evaluation that was created by following the NEA Guide to Teaching Online Courses and the NACOL National Standards for Quality Online Teaching. Teachers are either suspended or terminated if their evaluation is below satisfactory.

Other factors to be considered include that JCESC provides laboratories for the teachers or students to use if necessary. Nese did not have any 1099s in the record, Williams only had one 1099 in the record for 2004, which did not match the amount that was "unauthorized" in his STRS account for 2004-2005, and Miles had 1099s for 2003, 2004, 2005, and 2008. For all other years, W-2s were received. The fact that relators received both W-2s and 1099s (and Nese did not receive any 1099s) does not indicate independent contractor status.

Furthermore, the STRS Employer Manual advises employers that hiring independent contractors does not relieve employers of the obligation for member and employer contributions on earnings. It states, as follows:

Hiring a teacher or administrator as an independent contractor or through a temporary agency does not relieve the obligation for member and employer contributions on earnings. Primary criterion cited in Attorney General Opinions and IRS Guidelines for distinguishing between independent contractor and employee is the right of the employer to control the "mode and manner" of the work performed.

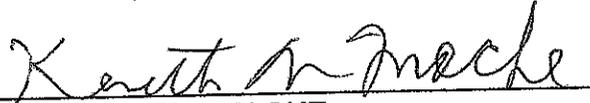
If the teaching duties performed by an independent contractor are the same as those performed by teachers under employment contracts, then there is no difference for STRS Ohio purposes. In all cases of doubt, the State Teachers Retirement Board shall determine whether a person is a teacher for STRS Ohio purposes.

Given the record, the fact that relators fit within the definition of R.C. 3307.01(B)(4), and STRS policy regarding independent contractors, the evidence fails

to support STRB's finding that relators are not members of STRS for the employment with JCESC and teaching at the VLA.

Accordingly, for all the above reasons, it is the magistrate's decision that this court issue a writ of mandamus ordering STRB to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent JCESC for teaching service with the VLA.

It is further the magistrate's decision that the writ order respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC for teaching service with the VLA.


KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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State of Ohio ex rel. John Nese,
Donald Williams and Catherine Miles,

Relators,

v.

State Teachers Retirement System
Board of Ohio and Jefferson County
Educational Service Center Governing
Board,

Respondents.

No. 09AP-1161

(REGULAR CALENDAR)

DECISION

Rendered on December 29, 2011

Green Haines Sgambati Co., L.P.A., Stanley J. Okusewsky, III, and Ira J. Mirkin, for relators.

Michael DeWine, Attorney General, and John E. Patterson and Catherine J. Calko, for respondent State Teachers Retirement Board of Ohio.

Peeples & Waggoner, Ltd., and R. Brent Minney, for respondent Jefferson County Educational Service Center Governing Board.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

FRENCH, J.

{¶1} Relators, John Nese, Donald Williams, and Catherine Miles, commenced this original action requesting a writ of mandamus that orders respondent State Teachers Retirement Board of Ohio ("STRB") to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent Jefferson County Educational Service Center Governing Board ("JCESC") for teaching service with the Virtual Learning Academy ("VLA"). Relators further seek a writ of mandamus that orders respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC with the VLA.

{¶2} Pursuant to Civ.R. 53 and Section (M), Loc.R. 12 of the Tenth Appellate District, this matter was referred to a magistrate who issued the appended decision, including findings of fact and conclusions of law. The magistrate determined STRB abused its discretion in concluding relators were independent contractors and thus not entitled to contribute to STRB for the compensation earned from their employment with JCESC and the VLA.

{¶3} Respondent STRB filed objections to the magistrate's conclusions of law.

[1.] The Magistrate erred in substituting judgment for that of the Board in interpreting STRS statutes.

[2.] The Magistrate erred in applying the abuse of discretion standard of review.

[3.] Failure to join those individuals similarly situated prejudiced STRB.

{¶4} Because STRB's first and second objections are interrelated, we address them jointly. Together they assert that the magistrate improperly applied the abuse of discretion standard, instead substituting his opinion for that of STRB in determining whether relators were independent contractors. According to STRB, the record contains "some evidence" to support its finding that relators do not meet the definition of teachers under R.C. 3307.01(B)(4).

{¶5} R.C. 3307.01(B) grants to STRB, "[i]n all cases of doubt," the authority to "determine whether any person is a teacher, and its decision shall be final." While construing identical language granting to the public employees retirement system ("PERS") board the power to decide whether an individual is an "employee" for purposes of PERS membership, the Supreme Court of Ohio confirmed that, to be entitled to mandamus, an applicant "must establish that the board abused its discretion by denying her request for PERS service credit. * * * The board abused its discretion if it acted in an unreasonable, arbitrary, or unconscionable manner." *State ex rel. Mallory v. Pub. Emps. Retirement Sys.*, 82 Ohio St.3d 235, 239, 1998-Ohio-380 (citations omitted). See also *State ex rel. State Teachers Retirement Bd. v. W. Geauga Local School Dist. Bd. of Edn.* (1998), 131 Ohio App.3d 150, 161 (stating "that STRB's decision as to whether someone is a teacher under R.C. 3307.01(B) is subject to review by the judiciary under an abuse of discretion standard"), appeal dismissed, 87 Ohio St.3d 1220, 1999-Ohio-15. This court has declined to find an abuse of discretion where there is some evidence to support a

board's decision. *State ex rel. Curtin v. Ohio Pub. Emps. Retirement Sys.*, 10th Dist. No. 09AP-801, 2011-Ohio-2536, ¶19.

{¶6} STRB did not abuse its discretion by determining that relators are independent contractors because there is ~~some evidence~~ to support its decision. Relators determine their own workplace and work hours. They do not have contracts for ongoing employment. Rather, they are paid on a per-student, per-credit-hour basis. They do not receive fringe benefits, and ~~two of the relators received at least one 1099 form for tax purposes.~~ All of this evidence supports STRB's conclusion that relators are independent contractors.

{¶7} To be sure, there is evidence to support a contrary conclusion. JCESC has the ability and obligation to monitor relators, and there is evidence in the record to show that periodic evaluations are performed. JCESC has set standards, including, for example, a requirement that each teacher log into the system daily. And, while two of the relators received at least one 1099 form, all three of the relators received W-2's for at least some of the tax years. From this evidence, STRB might have concluded that relators are not independent contractors.

{¶8} In similar cases, this court has declined to substitute our judgment for that of a retirement-system board charged with making the determination. For example, we denied a request for mandamus where the PERS board determined that a part-time magistrate was an independent contractor, and the Supreme Court of Ohio affirmed. See *State ex rel. Schaengold v. Ohio Pub. Emps. Retirement Sys.*, 114 Ohio St.3d 147, 2007-

Ohio-3760. We also denied a request for mandamus where the PERS board determined that an individual who hauled gravel for a township was an independent contractor where the individual set his own hours, used his own equipment, and did not receive fringe benefits, and the township had reported the majority of his income on a 1099 form. *State ex rel. Peyton v. Schumacher* (Nov. 16, 2000), 10th Dist. No. 00AP-78.

{¶9} In light of that authority, we sustain STRB's first and second objections to the magistrate's decision.

{¶10} STRB's third objection contends the magistrate erred in refusing to join indispensable parties to this action. STRB suggests that the absence of such parties prejudiced it because not only was certain information unavailable to it, but their absence leaves STRB subject to "substantial risk of incurring double, multiple or otherwise inconsistent obligations." (Objections, 6.) STRB's contentions are unpersuasive.

{¶11} As relators appropriately note, "[m]ere avoidance of multiple litigation is not a sufficient basis to render one an indispensable party." *Layne v. Huffman* (1974), 43 Ohio App.2d 53, 59, affirmed (1975), 42 Ohio St.2d 287. Moreover, STRB does not indicate what specific information it needed, but was unable to procure for the purpose of this litigation involving these relators. Lastly, we must assume "the STRB will implement the decision of the highest prevailing court consistently to all STRS members and beneficiaries." *Smith v. State Teachers Retirement Bd.* (Feb. 5, 1998), 10th Dist. No. 97APE07-943, citing *State ex rel. Horvath v. State Teachers Retirement Bd.* (Mar. 31, 1995), 10th Dist. No. 94APE07-988.

{¶12} Accordingly, we overrule STRB's third objection.

{¶13} Following independent review pursuant to Civ.R. 53, we conclude the magistrate has properly determined the pertinent facts, and we adopt them as our own. We do not adopt the magistrate's conclusions of law, but, consistent with this decision, we conclude STRB did not abuse its discretion in concluding relators are independent contractors. As a result, we deny the request for a writ of mandamus.

*Objections overruled in part and sustained in part;
writ denied.*

BROWN, J., concurs.

BRYANT, P.J., concurs in part and dissents in part.

BRYANT, J., concurring in part and dissenting in part.

{¶14} As the parties agree, the issue turns on the definition of teacher in R.C. 3307.01(B)(4) and whether relators were employed in a school or other institution wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision. Focusing in its objections on whether relators were "employed" with JCESC, STRB asserts the teachers were independent contractors, not employees.

{¶15} In addressing that issue, the magistrate relied on the common law definition of independent contractor in *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 301. *Berge* sets out the analysis to be used in determining whether the employer retained control of, or the right to control, the mode and manner of doing the work contracted. If the right to control is present, the relationship is that of principal and agent, or master and servant; if not, the independent contractor appellation is appropriate.

Here, the magistrate appropriately concluded relators are employees, pointing to the various ways JCESC either exercises control or retains the right to exercise control over relators.

{¶16} Part of my difficulty with STRB's arguments lies in its imposing the traditional attributes of a teacher on the less than traditional and, in light of technological advances, a likely increasingly common approach to teaching. What constitutes control will vary with the circumstances, and the circumstances here are considerably different than those of the more traditional classroom and make the factors STRB cites not pertinent to determining whether relators are employees. In the circumstances surrounding the JCESC and the VLA, a contract may not be the most efficient way to engage teachers, since attendance, unlike in the traditional setting, is not guaranteed. Relators nonetheless are not left to come and go as they like but "sign a form agreeing to be on board to take on VLA students on an as needed basis." (Stip. Evidence, 5.) Similarly, setting hours to be worked, as in a traditional school, also would prove ineffective because the times when the students may be available differ from the set schedule of a more traditional classroom. Indeed, JCESC points out that "VLA runs for 365 days and we have students enroll every day of the year – each student works at their own pace." (Stip. Evidence, 5.) Moreover, given the nature of the teaching, teachers may work from home, but JCESC offers "our lab here at the office if teachers or students do not have access to their own computer." (Stip. Evidence, 5.)

{¶17} Unlike most members of STRS, relators are not paid a salary, as would be common in more traditional school settings. Again, the nature of the teaching environment, including the unknown numbers of students for the year, suggests that relators be compensated for the courses taught, and JCESC confirms that it monitors the work of its teachers. Although the stipulated evidence includes remarks about lapses in some teachers' habits, the failures of some teachers do not determine whether JCESC's teachers, as a group, are independent contractors or employees. What is more, failures will occur despite the ability of an employer to control the work of its employees.

{¶18} Finally, I recognize JCESC originally considered relators to be independent contractors and accordingly provided them form 1099s for tax purposes. At some point, perhaps as the VLA progressed and JCESC exerted more control, JCESC determined relators to be employees, provided them W-2s for tax purposes, and paid the employer's portion of relators' contributions to STRS. The change is significant.

{¶19} I acknowledge the cases the majority cites, but those cases do not determine the issue before us or preclude our determining STRB abused its discretion in deciding relators are not employees and, as a result, not teachers. Thus, in *State ex rel. Mallory v. Pub. Employees Retirement Bd.*, 82 Ohio St.3d 235, 1998-Ohio-380, the Supreme Court concluded the respondent abused its discretion in determining Mallory was not a public employee for purposes of PERS membership. Similarly here, STRB abused its discretion. The factors STRB cites to demonstrate a lack of the requisite control do not address the relevant factors in determining whether relators are employees

in the setting in which they render teaching services, because the factors the majority relies on, by the very nature of JCESC, VLA, and other educational providers like them, are not likely to exist as part of the control the employer exerts over teachers. Although JCESC, despite the nature of the teaching services at issue, could have provided fringe benefits, the absence of benefits alone does not support STRB's decision.

{¶20} Lastly, in response to STRB's focus on the language from R.C. 3307.01(B)(4), "wholly controlled and managed," the board's attention is misplaced. R.C. 3307.01(B)(4) defines a teacher to be one employed in any school or institution or other agency if the agency is "wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof." Accordingly, the issue is not whether the teacher is wholly controlled and managed but whether the agency for which the teacher works is wholly controlled and managed by a state or political subdivision, an issue not disputed in STRB's objection.

{¶21} In the final analysis, although I agree with the majority's disposition of STRB's third objection, I conclude STRB abused its discretion in deciding relators were not teachers: the faculty members were required to log into the system on a daily basis to grade, answer questions, and answer emails and were monitored in that respect, were required to participate in faculty professional development training programs, and were assigned a mentor that evaluates the teachers. I would overrule STRB's objections, adopt the magistrate's decision, and grant the writ per the magistrate's recommendation.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. John Nese,
Donald Williams and Catherine Miles,

Relators,

v.

State Teachers Retirement System
Board of Ohio and Jefferson County
Educational Service Center Governing
Board,

Respondents.

No. 09AP-1161

(REGULAR CALENDAR)

MAGISTRATE'S DECISION

Rendered on May 27, 2011

Green Haines Sgambati Co., L.P.A., Stanley J. Okusewsky, III, and Ira J. Mirkin, for relators.

Michael DeWine, Attorney General, and John E. Patterson, for respondent State Teachers Retirement Board of Ohio.

Peeples & Waggoner, Ltd., and R. Brent Minney, for respondent Jefferson County Educational Service Center Governing Board.

IN MANDAMUS

{¶22} In this original action, relators John Nese, Donald Williams, and Catherine Miles ("relators") request a writ of mandamus ordering respondent State Teachers Retirement Board of Ohio ("STRB") to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent Jefferson County Educational Service Center Governing Board ("JCESC") for teaching service with the Virtual Learning Academy ("VLA"). Relators also seek a writ of mandamus ordering respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC for teaching service with the VLA.

Findings of Fact:

{¶23} 1. The VLA is an internet-based educational delivery system designed for K-12, providing alternative educational options for credit deficiencies, alternative programs, home schooling, home bound instruction, and 2002 summer school programs.

{¶24} 2. JCESC described the VLA as a curriculum option utilized by participating school districts, but it is not a school, so the students remain part of the average daily membership count of the local district.

{¶25} 3. Relator John Nese is a teacher in the Indian Creek Local School District and is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the State Teachers Retirement System ("STRS") pursuant to R.C. 3307.01(C).

{¶26} 4. Nese was employed by JCESC to provide teaching service through the VLA from the 2005-2006 fiscal year through the 2007-2008 fiscal year.

{¶27} 5. Relator Donald Williams is a teacher in the Edison Local School District and is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the STRS pursuant to R.C. 3307.01(C).

{¶28} 6. Williams was employed by JCESC to provide teaching services through the VLA from the 2004-2005 fiscal year through the 2007-2008 fiscal year.

{¶29} 7. Relator Catherine Miles was a teacher in the Edison Local School District until her retirement at the end of the 2008-2009 school year. She is a "teacher" pursuant to R.C. 3307.01(B) and a "member" in the STRS pursuant to R.C. 3307.01(C).

{¶30} 8. Miles was employed by JCESC to provide teaching services through the VLA from the 2004-2005 fiscal year through the 2007-2008 fiscal year.

{¶31} 9. Contributions were submitted to STRS by relators and JCESC based upon relators' compensation earned from their services through the VLA in accordance with R.C. 3307.26 and 3307.28.

{¶32} 10. In October and December 2008, STRS returned contributions to JCESC derived from payments made through the VLA. STRS considered the contributions as "unauthorized contributions" and returned the employer and employee shares.

{¶33} 11. In December 2009, relators filed the instant mandamus action asserting that STRB abused its discretion in finding that relators were not teachers and refusing to accept their contributions to STRS from their employment with JCESC and the VLA.

Conclusions of Law:

{¶34} The issue is whether STRB abused its discretion in concluding that relators were independent contractors and therefore, not entitled to contribute to STRS for the compensation earned from their employment with JCESC and the VLA. For the reasons that follow, the magistrate finds that STRB abused its discretion.

{¶35} " '[M]andamus is an appropriate remedy where no statutory right of appeal is available to correct an abuse of discretion by an administrative body.'" *State ex rel. Mager v. State Teachers Retirement Sys.*, 123 Ohio St.3d 195, 2009-Ohio-4908, ¶11, quoting *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, ¶14. In this case, because relators do not have a statutory right to appeal from STRB's decision to deny them their VLA contributions to STRS, relators may seek to remedy STRB's alleged abuse of discretion through a petition for a writ of mandamus. "'An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable.'" *State ex rel. Ackerman v. State Teachers Retirement Bd.*, 117 Ohio St.3d 268, 2008-Ohio-863, ¶16, quoting *State ex rel. Stiles v. School Emps. Retirement Sys.*, 102 Ohio St.3d 156, 2004-Ohio-2140, ¶13.

{¶36} STRB manages the teachers retirement system and determines benefit eligibility. See R.C. 3307.04. Pursuant to R.C. 3307.01(B)(5), "[i]n all cases of doubt, the state teachers retirement board shall determine whether any person is a teacher, and its decision shall be final." In addition to the declaration in R.C. 3307.01(B), that STRB's determination is final, courts pay due deference to the reasonable administrative

construction of the rule and statute. *State ex rel. Palmer v. State Teachers Retirement Bd.* (1993), 90 Ohio App.3d 497, 502.

{¶37} R.C. 3307.01(B) defines "teacher" as follows:

(B) "Teacher" means all of the following:

(1) Any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which the person is required to have a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code;

* * *

(4) Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, and the university of Toledo[.]

{¶38} Ohio courts have interpreted R.C. 3307.01(B)(1) as having four requirements for someone to be considered a teacher eligible for STRS membership: "(1) the individual must be paid from public funds, (2) the individual must be employed in the public schools of the state, (3) the individual must be employed under any type of contract described in R.C. 3319.08, and (4) the individual must occupy a position for which a certificate is required under R.C. 3319.22 to 3319.31. Courts have held that all four conditions must be met for someone to qualify as a teacher under the statute." *State ex rel. State Teachers Retirement Bd. v. West Geauga Local School Dist. Bd. of Edn.* (1998), 131 Ohio App.3d 150, 159. See also *State Teachers Retirement Sys. Bd. v.*

Cuyahoga Falls Bd. of Edn. (1985), 26 Ohio App.3d 45, 46; *State ex rel. Yovich v. Cuyahoga Falls Bd. of Edn.* (June 23, 1992), 10th Dist. No. 91AP-1325.

{¶39} STRB argues that relators fail to meet two of these requirements—that they were not employed in a public school and do not have a contract. STRB argues that the records supplied by respondent JCESC include an explanation of the origin of the VLA which explicitly states that the "VLA is not a school. It is a curriculum option utilized by school districts to service their students." Thus, STRB argues, if the VLA is not a school, relators cannot meet the second requirement to be a teacher. However, relators were employed by JCESC, not the VLA and the W-2s they received were from the JCESC, not the VLA.

{¶40} STRB also argues that, even if the VLA qualifies as a school, relators did not work in a school building, and thus, they do not qualify. However, the record provides that JCESC provides the JCESC Lab if any VLA teacher or student does not have access to a computer, but most teachers and students work from home. Additionally, in *State Teachers Retirement Sys. Bd. v. Cuyahoga Falls*, the Ninth District Court of Appeals found home instructors were teachers for purposes of membership in STRS. STRB's argument does not have merit.

{¶41} STRB argues that relators fail to meet the requirement that an individual must be employed under any type of contract described in R.C. 3319.08. R.C. 3319.08(A) requires "[t]he board of education of each city, exempted village, local, and joint vocational school district and the governing board of each educational service center

shall enter into written contracts for the employment and reemployment of all teachers. Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts." R.C. 3319.08(A) provides an exception to the written contract when the board adopts a motion or resolution to employ a teacher under a limited or continuing contract and the teacher accepts the employment.

{¶42} In this case, the record provides a statement from the attorney for JCESC that no contracts between JCESC and relators exist. Relators contend in their reply brief to this court, that JCESC adopted a resolution to employ relators, however, there is nothing in the record to support this contention. The minutes of the April 24, 2001 meeting of JCESC approving the VLA are in the record, but those minutes do not indicate a motion or resolution to employ relators under a limited or continuing contract.

{¶43} Moreover, relators were paid by the specific job. They were paid \$250 for a one-credit course and \$125 for a half-credit course. The lack of contract or evidence of a resolution means relators do not meet the four requirements of the definition of teacher pursuant to R.C. 3307.01(B)(1).

{¶44} On July 13, 2000, the statute was amended as part of Senate Bill 190. See S.B. 190. The definition of "teacher" was changed and section (4) was added to R.C. 3307.01(B), as stated above, as follows:

Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, and the university of Toledo[.]

{¶45} Relators fall within this definition. They are teachers employed by an institution or other agency wholly controlled and managed and supported in whole or in part by any political subdivision. The record supports the finding that JCESC has the ability to monitor or direct the work of the teachers by checking on a teacher's work account, whether the teacher is responding to students, grading lessons, etc. The record contains Faculty Performance Rubrics of relators. Furthermore, school districts have been found to be political subdivisions. See *Price v. Austintown Local School Dist. Bd. of Edn.*, 178 Ohio App.3d 256, 2008-Ohio-4514. The Montgomery County Educational Service Center has been found to be a political subdivision for R.C. 2744.02 purposes. See *Quinn v. Montgomery County Educational Serv. Ctr.*, 2nd Dist. No. Civ.A. 20596, 2005-Ohio-808. Thus, pursuant to R.C. 3307.01(B)(4), relators fit within the definition of teacher.

{¶46} STRB also argues that relators are independent contractors and therefore, not eligible for membership in STRS. STRB relies on the standard discussed by this court in *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App.3d 281, 301, as follows:

* * * Independent-contractor status is determined by the right to control. The analysis inquires whether the employer retained control of, or the right to control, the mode and manner of doing the work contracted for. If so, the relationship is that of principal and agent or master and servant. If the employer did not retain control but is interested merely in the ultimate result to be accomplished, the relationship is that of independent contractor. Factors to be considered include control over the details and quality of the work, the hours worked, selection of materials, tools, and

personnel used, the routes traveled, the length of employment, the type of business, the method of payment, and any pertinent agreements or contracts.

(Citations omitted.) See also *Bobik v. Indus. Comm.* (1946), 146 Ohio St. 187.

{¶47} STRB relied upon several factors in concluding that relators are independent contractors: (1) the fact that there are no written contracts and they are paid by the job, (2) relators did not receive benefits such as health insurance, (3) relators set their own hours, (4) relators did not use onsite laboratories, (5) JCESC did not provide supervision or evaluation regarding specific students, but rather, evaluated relators two or three times per year on their performance, and (6) initially, JCESC reported earnings with 1099 forms.

{¶48} Pursuant to *Berge*, the independent contractor analysis inquiry is whether the employer retained control of, or the right to control, the mode and manner of doing the work contracted. If so, the relationship is that of principal and agent or master and servant. Here, the record contained the duties of the VLA faculty. Each faculty member was required to log into the system on a daily basis to grade, answer questions, answer e-mails, etc. The JCESC monitors the teachers and checks on their daily logging into the accounts. Many times teachers were removed because they were not logging into the account every day. The duties are specifically outlined. The VLA teachers are required to participate in a VLA faculty professional development training program during the summer prior to being assigned any students. Each teacher is assigned a mentor that evaluates the teachers using an evaluation that was created by following the NEA Guide

to Teaching Online Courses and the NACOL National Standards for Quality Online Teaching. Teachers are either suspended or terminated if their evaluation is below satisfactory.

{¶49} Other factors to be considered include that JCESC provides laboratories for the teachers or students to use if necessary. Nese did not have any 1099s in the record, Williams only had one 1099 in the record for 2004, which did not match the amount that was "unauthorized" in his STRS account for 2004-2005, and Miles had 1099s for 2003, 2004, 2005, and 2008. For all other years, W-2s were received. The fact that relators received both W-2s and 1099s (and Nese did not receive any 1099s) does not indicate independent contractor status.

{¶50} Furthermore, the STRS Employer Manual advises employers that hiring independent contractors does not relieve employers of the obligation for member and employer contributions on earnings. It states, as follows:

Hiring a teacher or administrator as an independent contractor or through a temporary agency does not relieve the obligation for member and employer contributions on earnings. Primary criterion cited in Attorney General Opinions and IRS Guidelines for distinguishing between independent contractor and employee is the right of the employer to control the "mode and manner" of the work performed.

If the teaching duties performed by an independent contractor are the same as those performed by teachers under employment contracts, then there is no difference for STRS Ohio purposes. In all cases of doubt, the State Teachers Retirement Board shall determine whether a person is a teacher for STRS Ohio purposes.

{¶51} Given the record, the fact that relators fit within the definition of R.C. 3307.01(B)(4), and STRS policy regarding independent contractors, the evidence fails to support STRB's finding that relators are not members of STRS for the employment with JCESC and teaching at the VLA.

{¶52} Accordingly, for all the above reasons, it is the magistrate's decision that this court issue a writ of mandamus ordering STRB to accept employer and employee contributions to the retirement fund based upon relators' compensation earned from employment with respondent JCESC for teaching service with the VLA.

{¶53} It is further the magistrate's decision that the writ order respondent JCESC to make employer contributions to STRB based upon relators' compensation earned from employment with JCESC for teaching service with the VLA.

/s/ Kenneth W. Macke

KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3307. State Teachers Retirement System (Refs & Annos)
Definitions

R.C. § 3307.01

3307.01 Definitions

Currentness

As used in this chapter:

(A) "Employer" means the board of education, school district, governing authority of any community school established under Chapter 3314. of the Revised Code, a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code, college, university, institution, or other agency within the state by which a teacher is employed and paid.

(B) "Teacher" means all of the following:

(1) Any person paid from public funds and employed in the public schools of the state under any type of contract described in section 3319.08 of the Revised Code in a position for which the person is required to have a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code;

(2) Any person employed as a teacher by a community school or a science, technology, engineering, and mathematics school pursuant to Chapter 3314. or 3326. of the Revised Code;

(3) Any person having a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code and employed in a public school in this state in an educational position, as determined by the state board of education, under programs provided for by federal acts or regulations and financed in whole or in part from federal funds, but for which no licensure requirements for the position can be made under the provisions of such federal acts or regulations;

(4) Any other teacher or faculty member employed in any school, college, university, institution, or other agency wholly controlled and managed, and supported in whole or in part, by the state or any political subdivision thereof, including Central state university, Cleveland state university, and the university of Toledo;

(5) The educational employees of the department of education, as determined by the state superintendent of public instruction.

In all cases of doubt, the state teachers retirement board shall determine whether any person is a teacher, and its decision shall be final.

"Teacher" does not include any eligible employee of a public institution of higher education, as defined in section 3305.01 of the Revised Code, who elects to participate in an alternative retirement plan established under Chapter 3305. of the Revised Code.

(C) "Member" means any person included in the membership of the state teachers retirement system, which shall consist of all teachers and contributors as defined in divisions (B) and (D) of this section and all disability benefit recipients, as defined in section 3307.50 of the Revised Code. However, for purposes of this chapter, the following persons shall not be considered members:

- (1) A student, intern, or resident who is not a member while employed part-time by a school, college, or university at which the student, intern, or resident is regularly attending classes;
- (2) A person denied membership pursuant to section 3307.24 of the Revised Code;
- (3) An other system retirant, as defined in section 3307.35 of the Revised Code, or a superannuate;
- (4) An individual employed in a program established pursuant to the "Job Training Partnership Act," 96 Stat. 1322 (1982), 29 U.S.C.A. 1501.
- (D) "Contributor" means any person who has an account in the teachers' savings fund or defined contribution fund.
- (E) "Beneficiary" means any person eligible to receive, or in receipt of, a retirement allowance or other benefit provided by this chapter.
- (F) "Year" means the year beginning the first day of July and ending with the thirtieth day of June next following, except that for the purpose of determining final average salary under the plan described in sections 3307.50 to 3307.79 of the Revised Code, "year" may mean the contract year.
- (G) "Local district pension system" means any school teachers pension fund created in any school district of the state in accordance with the laws of the state prior to September 1, 1920.
- (H) "Employer contribution" means the amount paid by an employer, as determined by the employer rate, including the normal and deficiency rates, contributions, and funds wherever used in this chapter.
- (I) "Five years of service credit" means employment covered under this chapter and employment covered under a former retirement plan operated, recognized, or endorsed by a college, institute, university, or political subdivision of this state prior to coverage under this chapter.
- (J) "Actuary" means the actuarial consultant to the state teachers retirement board, who shall be either of the following:
- (1) A member of the American academy of actuaries;
 - (2) A firm, partnership, or corporation of which at least one person is a member of the American academy of actuaries.
- (K) "Fiduciary" means a person who does any of the following:
- (1) Exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;
 - (2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;
 - (3) Has any discretionary authority or responsibility in the administration of the system.
- (L)(1) Except as provided in this division, "compensation" means all salary, wages, and other earnings paid to a teacher by reason of the teacher's employment, including compensation paid pursuant to a supplemental contract. The salary, wages, and other earnings shall be determined prior to determination of the amount required to be contributed to the teachers' savings fund or defined contribution fund under section 3307.26 of the Revised Code and without regard to whether any of the salary, wages, or other earnings are treated as deferred income for federal income tax purposes.

(2) Compensation does not include any of the following:

(a) Payments for accrued but unused sick leave or personal leave, including payments made under a plan established pursuant to section 124.39 of the Revised Code or any other plan established by the employer;

(b) Payments made for accrued but unused vacation leave, including payments made pursuant to section 124.13 of the Revised Code or a plan established by the employer;

(c) Payments made for vacation pay covering concurrent periods for which other salary, compensation, or benefits under this chapter are paid;

(d) Amounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the teacher or the teacher's family, or amounts paid by the employer to the teacher in lieu of providing the insurance;

(e) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the employer, use of the employer's property or equipment, and reimbursement for job-related expenses authorized by the employer, including moving and travel expenses and expenses related to professional development;

(f) Payments made by the employer in exchange for a member's waiver of a right to receive any payment, amount, or benefit described in division (L)(2) of this section;

(g) Payments by the employer for services not actually rendered;

(h) Any amount paid by the employer as a retroactive increase in salary, wages, or other earnings, unless the increase is one of the following:

(i) A retroactive increase paid to a member employed by a school district board of education in a position that requires a license designated for teaching and not designated for being an administrator issued under section 3319.22 of the Revised Code that is paid in accordance with uniform criteria applicable to all members employed by the board in positions requiring the licenses;

(ii) A retroactive increase paid to a member employed by a school district board of education in a position that requires a license designated for being an administrator issued under section 3319.22 of the Revised Code that is paid in accordance with uniform criteria applicable to all members employed by the board in positions requiring the licenses;

(iii) A retroactive increase paid to a member employed by a school district board of education as a superintendent that is also paid as described in division (L)(2)(h)(i) of this section;

(iv) A retroactive increase paid to a member employed by an employer other than a school district board of education in accordance with uniform criteria applicable to all members employed by the employer.

(i) Payments made to or on behalf of a teacher that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended. For a teacher who first establishes membership before July 1, 1996, the annual compensation that may be taken into account by the retirement system shall be determined under division (d)(3) of section 13212 of the "Omnibus Budget Reconciliation Act of 1993," Pub. L. No. 103-66, 107 Stat. 472.

(j) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(k) Anything of value received by the teacher that is based on or attributable to retirement or an agreement to retire.

(3) The retirement board shall determine by rule both of the following:

(a) Whether particular forms of earnings are included in any of the categories enumerated in this division;

(b) Whether any form of earnings not enumerated in this division is to be included in compensation.

Decisions of the board made under this division shall be final.

(M) "Superannuate" means both of the following:

(1) A former teacher receiving from the system a retirement allowance under section 3307.58 or 3307.59 of the Revised Code;

(2) A former teacher receiving a benefit from the system under a plan established under section 3307.81 of the Revised Code, except that "superannuate" does not include a former teacher who is receiving a benefit based on disability under a plan established under section 3307.81 of the Revised Code.

For purposes of sections 3307.35 and 3307.353 of the Revised Code, "superannuate" also means a former teacher receiving from the system a combined service retirement benefit paid in accordance with section 3307.57 of the Revised Code, regardless of which retirement system is paying the benefit.

Credits

(2007 H 119, eff. 9-29-07; 2006 H 478, eff. 7-1-06; 2005 H 16 § 2.01, eff. 8-1-05; 2005 H 16 § 1, eff. 5-6-05; 2004 S 133, eff. 8-1-05; 2004 S 2, eff. 6-9-04; 2003 H 95, eff. 9-26-03; 2002 S 247, eff. 10-1-02; 2001 H 405, eff. 12-13-01; 2001 S 164, eff. 11-20-01; 2000 S 190, eff. 7-13-00; 1998 H 673, eff. 12-8-98; 1998 H 648, eff. 9-16-98; 1997 H 215, eff. 6-30-97; 1996 H 586, eff. 3-31-97; 1996 S 82, eff. 3-7-97; 1996 S 230, eff. 10-29-96; 1996 H 450, eff. 10-29-96; 1992 S 346, eff. 7-29-92; 1991 H 180, H 382, S 3; 1990 S 240; 1989 H 293; 1986 H 502; 1984 S 378; 1983 H 410; 1982 S 530; 1981 H 113; 1979 H 204; 1978 H 813, S 245; 1976 H 268; 1974 H 1034; 1973 H 430; 1971 H 100; 132 v H 847; 131 v H 225; 130 v H 590; 128 v 157; 127 v 299; 126 v 1047; 1953 H 1; GC 7896-1)

Notes of Decisions (29)

Current through all 2011 laws and statewide issues and 2012 File 80 of the 129th GA (2011-2012).

End of Document

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Notes Of Decisions (29)

Prior service credit

Employee of coroner's office formerly employed by municipal university is not entitled to prior service credit or retroactive membership in public employees retirement system. State ex rel. Tye v. Public Emp. Retirement Bd. (Ohio 1978) 55 Ohio St.2d 80, 377 N.E.2d 1012, 9 O.O.3d 80.

Retirement date

RC 3307.37 prohibits a state university from mandatorily requiring the retirement of a member of the state teachers' retirement system at an age lower than seventy years. Spinak v. University of Akron (Franklin 1981) 3 Ohio App.3d 388, 445 N.E.2d 692, 3 O.B.R. 453. Colleges And Universities ↪ 8.1(1)

Under this section, school year 1941-1942 commenced on September 1, 1941, and ended on August 31, 1942; hence where application to retire was filed subsequent to September 1, 1941, retirement became effective on August 31, 1942. Poehls v. Young (Ohio 1945) 144 Ohio St. 604, 60 N.E.2d 316, 30 O.O. 213.

A member of the teachers retirement system who dies on the same date for which an application for retirement was effective has not become eligible for benefits and such member's accumulated contribution should be paid to the designated beneficiary or member's estate. 1954 OAG 4361.

Contributions

The state teacher's retirement board has an obligation to accept contributions from a school board and employee who filed a grievance and was awarded \$4,030 when the board improperly posted an athletic director's supplemental contract position, thus depriving the employee of the opportunity to apply since the amount is a type of compensation under the statute. State ex rel. Cicero v. State Teachers Retirement Bd. (Franklin 1991) 77 Ohio App.3d 823, 603 N.E.2d 1102.

Compensation calculation

In addressing application for service retirement pension filed by state university professor, State Teachers Retirement System Board (STRB) abused its discretion by not including in calculation of professor's final average salary (FAS) full amount paid to professor in particular year pursuant to administrative exception to statutory limitation on compensation in calculation of FAS, providing that compensation that would otherwise be excluded in calculating FAS may be included in calculation of FAS if same percentage increase was paid to other employees and if no more than one-half of employees made application for retirement, where during year in question university switched from quarter system to semester system, as result of switch two of professor's summer salaries were reported in same fiscal year, all professors who taught that summer would have been similarly paid, no more than one-half of employee applied for retirement in that year, compensation on which FAS is based encompasses more than salary and includes "other benefits paid," and letter sent to professor indicated that payments in such year were regarded as salary increase. State ex rel. Hanzely v. State Teachers Retirement System Bd. of Ohio (Ohio App. 10 Dist., Franklin, 10-19-2004) No. 03AP-1125, 2004-Ohio-5537, 2004 WL 2341715, Unreported. Colleges And Universities ↪ 8(3)

Where a school superintendent receives a lump sum retroactive salary increase at the time of her retirement and where the early retirement agreement includes a waiver of any and all other claims arising from the superintendent's employment, it is error for a trial court to enter summary judgment declaring the lump sum payment to be "termination pay" which must be excluded from the state teachers retirement system computation of "final average salary," since reasonable minds could find the lump sum payment was for services actually rendered. Norris v. State Teachers Retirement System of Ohio (Cuyahoga 1987) 35 Ohio App.3d 92, 520 N.E.2d 5.

OAC 3307-1-26, which determines above-average wage increases in the final years of employment as related to retirement or an agreement to retire is invalid as it is a legislative determination of compensation and excludes items intended to be included in the definition of compensation pursuant to RC 3307.01(V)(2)(f).

State, ex rel. Schumacher, v. State Teachers Retirement Bd. (Franklin 1989) 65 Ohio App.3d 623, 584 N.E.2d 1294.

In calculating "final average salary" pursuant to RC 3307.01(J), (1) a partial year does not mean a contract year, according to that provision and a written agreement which indicates a period less than a full school

year, and (2) extrinsic evidence may not be introduced to show the source of income in a written agreement; therefore, a portion of a partial year high salary set off by a portion of the lowest three-year high salary is properly calculated in the "final average salary." *Hager v State Teachers Retirement System*, No. 85AP-475 (10th Dist Ct App, Franklin, 9-17-85).

Pursuant to RC 3307.01(V) and 3309.01(V), as enacted in 1986 H 502, eff. 4-24-86, compensation upon which contributions to the state teachers retirement system and the school employees retirement system, respectively, are based does not include amounts paid by the employer to provide health insurance for the member or his family or amounts paid by the employer to the member in lieu of providing such insurance. OAG 86-041.

Prior to the enactment of 1986 H 502, eff. 4-24-86, a fringe benefit paid for by an employer on behalf of an employee was not subject to contributions to either the state teachers retirement system or the school employees retirement system where the amount paid was not, at the time paid, subject to the employee's possession and control, unless the payment for such benefit was the statutory duty of the employee. OAG 86-041.

Where an employee's earnings, or basis of his contribution to the state teachers retirement system, include the amount of the employee's contribution, whether paid by the employee or "picked up" by the employer, then such "pick up" may be included in computing final average salary. OAG 82-097.

"Pick up" payments made to the state teachers' retirement system by an employer on behalf of an employee are not included in adjusted gross income and are accordingly not subject to the Ohio personal income tax. OAG 78-065.

The three retirement boards may not change statutorily defined calculation methods for superannuated pensions in order to simplify cases involving joint service credit and contributions in two or more systems; each system must remain separate. 1956 OAG 7476.

Where a member of the state teachers retirement system is retired after August 31, 1955, under provisions of RC 3307.01(K)(1), interest credited on his contributions, made on or prior to August 31, 1955, shall be computed up to and including such date at the rate of four per cent per annum, compounded annually, and interest shall be computed thereafter, both as to such contributions and as to contributions made thereafter, at the rate of three per cent per annum, compounded annually. 1956 OAG 7002.

In computing the "final average salary" as defined in the teachers retirement act, the total earned compensation as an employed teacher during the ten calendar years preceding retirement should be divided by the number of years in which such compensation as a teacher was earned and received. 1921 OAG p 349.

Member, defined

Auxiliary services teachers who taught in a private, nonsectarian school were not "teachers" qualified for membership in the State Teachers Retirement System (STRS); while they were paid from public funds, they never worked in any facility owned or operated by local school district, the district did not exercise any supervision over their performance of their duties at the private school, and there was no evidence that they ever entered into actual contracts with the district. *State ex rel. State Teachers Retirement Bd. v. W. Geauga Local School Dist. Bd. of Edn.* (Ohio App. 11 Dist., 10-01-1998) 131 Ohio App.3d 150, 722 N.E.2d 93, appeal allowed 84 Ohio St.3d 1487, 705 N.E.2d 367, appeal dismissed as improvidently allowed 87 Ohio St.3d 1220, 718 N.E.2d 928, 1999-Ohio-15. Schools ↪ 146(3)

A joint memorandum between the state teachers retirement system (STRS) and the public employees retirement system (PERS) seeking to transfer certain employees from PERS membership to STRS membership is a "rule" and may not be implemented unless the procedures set forth in RC 111.15 are followed. *Ohio Assn. of Cty. Bds. of Mental Retardation & Developmental Disabilities v. Pub. Emp. Retirement Sys.* (Ohio Com.Pl. 1990) 61 Ohio Misc.2d 836, 585 N.E.2d 597. Administrative Law And Procedure ↪ 410 Schools ↪ 146(1) States ↪ 64.1(1)

Substitute teachers and home instructors are "teachers" for purposes of RC Ch 3307 notwithstanding a board of education's argument that these individuals are casual employees under RC 3319.10 for whom no

retirement contributions need be made. Board of State Teachers Retirement System of Ohio v. Cuyahoga Falls City School Dist. Bd. of Educ. (Summit 1985) 26 Ohio App.3d 45, 498 N.E.2d 167, 26 O.B.R. 218.

Pursuant to RC 3307.35(C), a person who retires under STRS, is a superannuate, and is employed as a teacher, as defined in RC 3307.01(B), is employed in a position requiring that person to make contributions to STRS. Therefore, pursuant to RC 3307.05(E), that person cannot be a candidate for, or serve as, a retired teacher member of the STRB. However, that person is qualified under RC 3307.07 to vote for retired teacher members of the STRB. OAG 04-040.

Pursuant to RC 3307.01(C) and RC 3307.35(C), a person who retires under the State Teachers Retirement System (STRS), is a superannuate, and is employed as a teacher, as defined in RC 3307.01(B), is not a member of STRS. Therefore, pursuant to RC 3307.05(D) and RC 3307.07, that person cannot vote for, be a candidate for, or serve as a contributing member of the State Teachers Retirement Board (STRB). OAG 04-040.

Teachers employed in education programs operated by county mental retardation and developmental disabilities boards pursuant to RC Ch 3323 are members of the state teachers retirement system under RC 3307.01(B) and 3307.01(E). OAG 88-069.

Teachers who are engaged under personal service contracts with the department of mental health and mental retardation are "employed" by the department for the purposes of RC Ch 3307 if the department exercises control over the mode and manner in which the teachers perform their work. The department must deduct employee contributions and pay employer contributions to the state teachers retirement system for all individuals employed as "teachers" as defined in RC 3307.01(B). OAG 79-015.

Moneys paid by a board of education into the salary escrow account under RC 3307.51 as amended by 1976 H 268, eff. 8-20-76, are subject to the provisions of RC Ch 135 in respect to active deposits. Any interest arising from such deposit shall, under terms of RC 135.21, be credited to the general fund of the board of education. OAG 76-053.

A teacher regularly employed by a board of education who holds a teacher's certificate issued pursuant to RC 3319.22 to 3319.31, and who is an employee in the "head start" program of the Economic Opportunities Act, is not a teacher in the latter employment for purposes of contributing membership in the state teachers retirement system. (Ed. note: see definition of "teacher" in RC 3307.012.) OAG 66-124.

Employees of a state university who are paid out of a state university rotary fund are public employees within the meaning of RC Ch 145, but they are not eligible for membership in the public employees retirement system if the board of trustees or other managing body of the university has agreed by formal resolution to accept all requirements and obligations imposed by RC 3309.01 to 3309.68. OAG 65-79.

Limits on retirees

The prohibition in RC 124.85 against an individual becoming a member of a state or municipal public retirement system if he is receiving benefits under another system operates as an exception to the requirement in RC 3307.01 and 3307.51 that all teachers be members of the state teachers retirement system. OAG 76-075.

Individuals receiving emeritus compensation from state assisted institutions of higher learning receive such pay as a supplemental retirement benefit and are not subject to the employment restrictions imposed by RC 3307.381 and 3307.401. OAG 65-207.

Year, defined

School board had authority to agree with its employees to different "contract year" than "school year" so long as no substantial statutory rights were thereby affected; since certificated school personnel performed their duties each "contract year" within single statutory "school year," board's use of "contract year" different from statutory "school year" was not abuse of school board's discretion. Meyer v. Chagrin Falls Exempted Village School Dist. Bd. of Educ. (Cuyahoga 1983) 9 Ohio App.3d 320, 460 N.E.2d 269, 9 O.B.R. 587. Schools § 135(1)

Citing References (163)

Title	Date	NOD Topics	Type
<p>1. Emp. Discrim. Coord. Analysis of State Law s 39:70, Retirement benefits Emp. Discrim. Coord. Analysis of State Law</p> <p>While the discrimination prohibitions that apply to all terms and conditions of employment (State L § 39:55) may be reasonably construed to cover discrimination in the...</p>	2012	—	Other Secondary Source
<p>2. OH Jur. 3d Pensions & Retirement Systems s 63, Generally OH Jur. 3d Pensions & Retirement Systems</p> <p>The Ohio Code contains detailed provisions for a State Teachers Retirement System, which are a clear recognition by the state of the fact that the mere payment of wages to teachers...</p>	2012	—	Other Secondary Source
<p>3. OH Jur. 3d Pensions & Retirement Systems s 70, Powers and duties-Fiscal and fiduciary responsibilities OH Jur. 3d Pensions & Retirement Systems</p> <p>The members of the State Teachers Retirement Board are trustees of the several funds created by statute, with the full power to invest funds. The Board and other fiduciaries must...</p>	2012	—	Other Secondary Source
<p>4. OH Jur. 3d Pensions & Retirement Systems s 73, Generally OH Jur. 3d Pensions & Retirement Systems</p> <p>Membership in the State Teachers Retirement System consists of all teachers, contributors, and all disability benefit recipients. A "teacher" means all of the following: any person...</p>	2012	—	Other Secondary Source
<p>5. OH Jur. 3d Pensions & Retirement Systems s 74, Persons excluded or exempted from membership OH Jur. 3d Pensions & Retirement Systems</p> <p>A student, intern, or resident who is not a member while employed part-time by a school, college, or university at which the student, intern, or resident is regularly attending...</p>	2012	—	Other Secondary Source
<p>6. OH Jur. 3d Pensions & Retirement Systems s 80, Return of accumulated contributions OH Jur. 3d Pensions & Retirement Systems</p> <p>Subject to exceptions, a member participating in the service credits benefit plan who ceases to be a teacher for any cause other than death, retirement, receipt of a disability...</p>	2012	—	Other Secondary Source
<p>7. OH Jur. 3d Pensions & Retirement Systems s 93, Subsequent employment of retirant OH Jur. 3d Pensions & Retirement Systems</p> <p>Subject to the terms of multiple statutes, a superannuate or other system retirant may be employed as a teacher. An "other system retirant" means a member or former member of the...</p>	2012	—	Other Secondary Source
<p>8. OH Jur. 3d Pensions & Retirement Systems s 99, Statement of prior service OH Jur. 3d Pensions & Retirement Systems</p> <p>Each employee is required to file a detailed statement showing sex, title, compensation, duties, date of birth, and all prior service as an employee or such other service as comes...</p>	2012	—	Other Secondary Source
<p>9. OH Jur. 3d Pensions & Retirement Systems s 156, Health insurance for retirants OH Jur. 3d Pensions & Retirement Systems</p> <p>The State Highway Patrol Retirement Board may enter into an agreement with insurance companies, health insuring corporations, or government agencies authorized to do business in...</p>	2012	—	Other Secondary Source

Title	Date	NOD Topics	Type
<p>10. State ex rel. Nese v. State Teachers Retirement Sys. Bd. of Ohio 2011 WL 6923145, *1+ , Ohio App. 10 Dist.</p> <p>EDUCATION - Compensation and Benefits. STRB's finding that independent contractors were not entitled to contribute to fund did not constitute an abuse of discretion.</p>	Dec. 29, 2011	—	Case
<p>11. Baldwin's Ohio Practice Domestic Relations Law s 29:53, State benefits-Methods of division Baldwin's Ohio Practice Domestic Relations Law</p> <p>See also Text § 29:54, State benefits—Methods of division—QDRO and Text § 29:59, State benefits—Methods of division—Legislative changes—DOPO. In Sprankle v. Sprankle, the court...</p>	2011	—	Other Secondary Source
<p>12. Ohio School Law s 11:6, Membership in STRS-Persons required to be members Ohio School Law</p> <p>Any teacher or other person employed in Ohio's public schools is required to be a member of STRS if he is (1) employed under a type of contract described in RC 3319.08, (2) paid...</p>	2011	—	Other Secondary Source
<p>13. Ohio School Law s 11:7, Membership in STRS-Exclusion from membership Ohio School Law</p> <p>The state teachers retirement board is authorized to deny the right to contribute or membership to any class of teachers whose compensation is partly paid by the state, who are not...</p>	2011	—	Other Secondary Source
<p>14. Ohio School Law s 11:10, Mandatory contributions by members-Contribution rate, payroll deduction Ohio School Law</p> <p>Each member must contribute a minimum of 8 per cent of his compensation to the teachers' savings fund. The state teachers retirement board can increase the rate to not more than 10...</p>	2011	—	Other Secondary Source
<p>15. Ohio School Law s 11:16, Pick-ups of employee contributions-Fringe benefit pick-up Ohio School Law</p> <p>An employer may pick up all or part of the required teacher contributions to STRS without reducing employees' salaries. The amount picked up may be included in calculating final...</p>	2011	—	Other Secondary Source
<p>16. Ohio School Law s 11:35, Amount of retirement benefits-Final average salary Ohio School Law</p> <p>For purposes of computing retirement benefits, the member's final average salary is the sum of the compensation during the three highest-paid years for which STRS contributions...</p>	2011	—	Other Secondary Source
<p>17. State ex rel. Baird v. State Teachers Retirement Sys. 2011 WL 1314907, *1+ , Ohio App. 10 Dist.</p> <p>EDUCATION - Compensation and Benefits. School guidance counselor was not precluded from making election for defined benefit plan under State Teachers Retirement System.</p>	Apr. 07, 2011	—	Case
<p>18. Brookwood Presbyterian Church v. Ohio Dept. of Edn. 940 N.E.2d 1256, 1261 , Ohio</p> <p>EDUCATION - Community School Sponsorship. DOE's decision that church was not an "education-oriented entity," and, thus, was ineligible to sponsor community schools, was appealable.</p>	Nov. 30, 2010	—	Case

Title	Date	NOD Topics	Type
19. Brief of Appellee James J. RICE, Jr., Plaintiff-Appellant, v. Antoinette RICE, Defendant-Appellee. 2010 WL 6793855, *1, Ohio App. 8 Dist.	Oct. 06, 2010	—	Brief
20. Defendants Brief in Opposition to Plaintiffs Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment ALTERNATIVES UNLIMITED-SPECIAL, INC., et al., v. OHIO DEPARTMENT OF EDUCATION. 2010 WL 7154902, *1, Ohio Ct.Cl.	Sep. 03, 2010	—	Motion
21. Sue Ellen May's Response Brief to Akron Board of Education's Motion Fo Summary Judgemnt Sue Ellen MAY, Plaintiff, v. PSI ASSOCIATES, INC., et al., Defendants. 2010 WL 5099683, *5099683+, Ohio Com.Pl.	Jun. 17, 2010	—	Motion
22. Akron Board of Education's Response to Brief in Support Sue Ellen MAY, Plaintiff, v. PSI AFFILIATES, INC., et al., Defendants. 2010 WL 5099684, *5099684+, Ohio Com.Pl.	Jun. 17, 2010	—	Motion
23. Plaintiff's Renewed Motion to Dismiss and/or Supplement to Plaintiff's Motion for Summary Judgment Sue Ellen MAY, Plaintiff, v. PSI ASSOCIATES, INC., et al. 2010 WL 5099685, *5099685, Ohio Com.Pl.	May 19, 2010	—	Motion
24. Plaintiff's Brief in Support of Her Motion for Summary Judgment Against Defendant Akron Board of Education Sue Ellen MAY, Plaintiff, v. PSI AFFILIATES, INC., et al, Defendants. 2010 WL 5099686, *5099686+, Ohio Com.Pl.	May 17, 2010	—	Motion
25. Merit Brief of Appellants Richard Cordray and the Ohio Department of Education Richard CORDRAY, Ohio Attorney General, et al., Plaintiffs-Appellants, v. THE INTERNATIONAL PREPARATORY SCHOOL, et al., Defendant-Appellees. 2010 WL 371709, *371709+, Ohio	Jan. 19, 2010	—	Brief
26. Memorandum in Support of Jurisdiction of Appellant Roselyn Mercuri Linda FISCHBACH, Appellee, v. Roselyn MERCURI, Appellant. 2009 WL 3753223, *3753223, Ohio	Oct. 26, 2009	—	Brief
27. Intervenor May's Motion to Dismiss Akron Board of Education's Mandamus Appeal of Strb's Final Deterination for Untimeliness and Lack of Subject-Matter... Sue Ellen MAY, Plaintiff, v. PSI ASSOCIATES, INC., et al, Defendants. 2009 WL 7227332, *7227332, Ohio Com.Pl.	Aug. 05, 2009	—	Motion
28. Motion of the Defendant State Teachers Retirement Board of Ohio to Dismiss the Motion to Reconsider the Court's Order of September 11, 2008 As Moot; t... Sue Ellen MAY, Plaintiff, v. PSI AFFILIATES, INC., et al., Defendants. 2009 WL 7227333, *7227333+, Ohio Com.Pl.	Aug. 04, 2009	—	Motion
29. May v. PSI Affiliates, Inc. 2009 WL 1799006, *1, Ohio App. 9 Dist. Background: Registered nurse employed by private staffing company to work in city's public schools brought action against board of education (BOE) and her employer seeking, among...	Jun. 24, 2009	—	Case

Title	Date	NOD Topics	Type
30. Final Appealable Order May v. PSI Affiliates, Inc. 2008 WL 5377298, *5377298+, Ohio Com.Pl. This matter is before the Court upon Third-Party Defendant, State Teachers Retirement Board's ("STRB"), motion for Judgment on the Pleadings and setting this motion and STRB's...	Sep. 11, 2008	—	Case
31. State ex rel. Gill v. School Emps. Retirement Sys. 2008 WL 2026447, *9+, Ohio App. 10 Dist. {¶ 1} Relator, William J. Gill, Jr., has filed this original action requesting that this court issue a writ of mandamus ordering respondents, School Employees Retirement System...	May 13, 2008	—	Case
32. Greater Heights Academy v. Zelman 522 F.3d 678, 681, 6th Cir.(Ohio) EDUCATION - Parties. Charter schools were political subdivisions and could not assert due process claim against state in federal court.	Apr. 18, 2008	—	Case
33. Motion of Defendants for Partial Dismissal of Plaintiff's Complaint Kris COOPER, Plaintiff, v. MOSAICA EDUCATION, INC., et al., Defendants. 2008 WL 1987092, *1987092, S.D.Ohio	Mar. 20, 2008	—	Motion
34. Response of Defendant, State Teachers Retirement Board of Ohio to Defendant, Akron Board of Education's Memorandum in Opposition Sue Ellen MAY, Plaintiff, v. PSI AFFILIATES, INC., et al., Defendants. 2008 WL 8181394, *8181394+, Ohio Com.Pl.	Feb. 28, 2008	—	Motion
35. Memorandum in Opposition to Defendant State Teachers Retirement Board's Motion for Judgment on the Pleadings and a Protective Order Sue Ellen MAY, Plaintiff, v. PSI AFFILIATES, INC., et al., Defendants. 2008 WL 5414530, *1+, Ohio Com.Pl.	Jan. 23, 2008	—	Motion
36. Complaint Original Action In Mandamus STATE EX REL. Sue Ellen May, Plaintiff, v. AKRON BOARD OF EDUCATION, Defendants. 2007 WL 4600359, *4600359, Ohio Com.Pl.	Oct. 10, 2007	—	Petition
37. Motion of Third Party Defendant State Teachers Retirement System of Ohio for Judgment on the Pleadings and for an Order Setting this Motion and Defend... Sue Ellen MAY, Plaintiff, v. PSI AFFILIATES, INC., et al., Defendants. 2007 WL 5882231, *1+, Ohio Com.Pl.	Feb. 01, 2007	—	Motion
38. Complaint for a Writ of Mandamus Sue Ellen MAY 3029 Doxey Drive Akron, Ohio 44312, Relator, v. AKRON BOARD OF EDUCATION 70 North Broadway Akron, Ohio 44308, Respondent. 2006 WL 3888867, *3888867, Ohio	Dec. 18, 2006	—	Petition
39. Motion to Dismiss GREATER HEIGHTS ACADEMY, et al, Plaintiffs, v. Dr. Susan Zave ZELMAN et al, Defendants. 2006 WL 2321734, *2321734, S.D.Ohio	Jun. 30, 2006	—	Motion
40. Answer, Affirmative Defenses, and Counterclaims of Defendants Linda FISCHBACH, Plaintiff, v. Roselyn MERCURI, et al., Defendants. 2006 WL 6448546, *6448546+, Ohio Com.Pl.	May 26, 2006	—	Petition

Title	Date	NOD Topics	Type
41. Memorandum in Opposition to Jurisdiction of Appellee Keith Kleve THERMO-RITE MANUFACTURING CO., Appellant, v. Keith KLEVE, Appellee. 2005 WL 5431895, *5431895, Ohio	May 04, 2005	—	Petition
42. Plaintiff's Motion for Order Compelling Defendants to Enroll Her into STRS Susan MAY, Plaintiff, v. PSI ASSOCIATES, INC., et al., Defendants. 2005 WL 6563268, *6563268, Ohio Com.Pl.	Feb. 04, 2005	—	Motion
43. Schaffter v. Rush 2004 WL 2808909, *2808909, Ohio App. 9 Dist. Background: Former husband filed action for civil contempt against former wife for failure to pay him part of her state teacher's pension, as required under divorce decree. The...	Dec. 08, 2004	—	Case
44. Damon F. Asbury 2004 Ohio Op. Atty. Gen. 2-370, 2-370 R.C. 3307.39 does not authorize the State Teachers Retirement Board to establish an employer contribution in excess of the maximum rate of fourteen percent established under R.C....	2004	—	Administrative Decision
45. Order and Notice of Pretrial Conference May v. PSI Associates, Inc. 2004 WL 5489636, *5489636+, Ohio Com.Pl. This matter is before the Court upon separate motions for summary judgment filed by Plaintiff, Susan May ("May"), and Defendant, Akron Public Schools ("APS"). APS responds to...	Nov. 22, 2004	—	Case
46. Plaintiff's Reply to Defendant Akron Bd. of Educ.'s Opposition to Plaintiff's Motion for Summary Judgment Susan MAY, Plaintiff, v. PSI ASSOCIATES, INC., et al., Defendants. 2004 WL 5492753, *5492753, Ohio Com.Pl.	Nov. 16, 2004	—	Motion
47. Damon F. Asbury 2004 Ohio Op. Atty. Gen. 2-356, 2-356+ 1. Pursuant to R.C. 3307.01(C) and R.C. 3307.35(C), a person who retires under the State Teachers Retirement System (STRS), is a superannuate, and is employed as a teacher, as...	2004	—	Administrative Decision
48. State ex rel. Hanzely v. State Teachers Retirement System Bd. of Ohio 2004 WL 2341715, *2341715+, Ohio App. 10 Dist. Background: Professor at state university, who applied for service retirement pension, sought writ of mandamus ordering State Teachers Retirement System Board (STRB) to vacate its...	Oct. 19, 2004	4. Compensation calculation	Case
49. Defendant, Akron Public Schools', Opposition to Plaintiff's Motion for Summary Judgment Susan MAY, Plaintiff, v. PSI AFFILIATES, INC., et al., Defendants. 2004 WL 5492530, *5492530+, Ohio Com.Pl.	Oct. 15, 2004	—	Motion
50. Plaintiff Sue Ellen May's Motion for Summary Judgment Against Defendant City of Akron Board of Education Susan MAY, Plaintiff, v. PSI ASSOCIATES, INC., et al., Defendants. 2004 WL 5492752, *5492752+, Ohio Com.Pl.	Sep. 17, 2004	—	Motion
51. Brief of Appellant Keith KLEVE, Plaintiff-Appellant, v. THERMO-RITE MANUFACTURING CO., Defendant-Appellee. 2004 WL 5494000, *5494000, Ohio App. 9 Dist.	Aug. 27, 2004	—	Brief
52. Motion for Summary Judgment Susan MAY, Plaintiff, v. PSI AFFILIATES, INC., et al., Defendants. 2004 WL 5492531, *5492531+, Ohio Com.Pl.	Apr. 01, 2004	—	Motion

Title	Date	NOD Topics	Type
53. First Brief of Appellant/Cross-Appellee Public Employees Retirement Board State ex rel. Omia Nadine Van DYKE, Appellee/Cross-Appellant, v. PUBLIC EMPLOYEES RETIREMENT BOARD and Board of Commissioners of Franklin County, Appe... 2003 WL 23514858, *23514858, Ohio	Jan. 21, 2003	—	Brief
54. Defendant Akron Board of Education's Amended Answer to Plaintiff's First Amended Complaint and Crossclaim Susan MAY, Plaintiff, v. PSI ASSOCIATES, INC., et al., Defendants. 2003 WL 25675882, *25675882, Ohio Com.Pl.	2003	—	Petition
55. Merit Brief of Appellant Bonnie Cosby Bonnie COSBY, Appellant, v. Faye COSBY, Appellee. 2001 WL 34552432, *34552432+, Ohio	Dec. 07, 2001	—	Brief
56. Bakota v. Bakota 2001 WL 542330, *1, Ohio App. 9 Dist. Defendant-appellant, John Bakota ("John"), appeals the decision of the Summit County Court of Common Pleas granting plaintiff-appellee, Lori Bakota ("Lori"), a divorce from...	May 23, 2001	—	Case
57. Memorandum in Support of Jurisdiction of Appellant Bonnie Cosby Bonnie COSBY, Appellant, v. Faye COSBY, Appellee. 2001 WL 34558832, *34558832, Ohio	Apr. 05, 2001	—	Petition
58. Plaintiffs' Reply Memorandum to Defendant City of Dayton, Defendant City of Fairborn, Defendant City of Springfield, Defendant City of Sidney and Defe... Jackie WRIGHT, et al., Plaintiffs, v. CITY OF DAYTON, et al., Defendants. 2001 WL 36094612, *36094612, Ohio Com.Pl.	2001	—	Motion
59. State ex rel. Smith v. City of Bay Village 2000 WL 263266, *5, Ohio App. 8 Dist. Relator, Joseph Smith, has filed a complaint for a writ of mandamus in an attempt to compel the respondents, the City of Bay Village, T. Richard Martin (President of the Bay...	Mar. 06, 2000	—	Case
60. State ex rel. State Teachers Retirement Bd. v. W. Geauga Local School Dist. Bd. of Edn. 718 N.E.2d 928, 928+, Ohio The cause is dismissed, sua sponte, as having been improvidently allowed.	Nov. 17, 1999	—	Case
61. Reply Brief of Defendants-Appellants Mary Ann Gaetano and Catherine Ann Miller STATE, ex rel. State Teachers' Retirement Board, Plaintiff-Appellee, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, Defendant-Appellee, Mary... 1999 WL 33841181, *33841181+, Ohio	Jun. 08, 1999	—	Brief
62. Amended Merit Brief of Plaintiff-Appellee State Teachers Retirement Board STATE, ex rel. State Teachers Retirement Board, Plaintiff-Appellee, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et. al., Defendant-Appell... 1999 WL 33841182, *33841182+, Ohio	May 24, 1999	—	Brief
63. Merit Brief of Defendant-Appellee West Geauga Local School District Board of Education STATE, ex rel. State Teachers Retirement Board, Plaintiff, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al., Defendants, (Mary Ann Gaet... 1999 WL 33841183, *33841183+, Ohio	May 21, 1999	—	Brief

Title	Date	NOD Topics	Type
64. Merit Brief of Intervening Third Party Defendant-Appellee, Hawken School STATE, ex rel. State Teachers Retirement Board, Plaintiff-Appellee, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al., Defendant-Appellee... 1999 WL 33841184, *33841184+, Ohio	May 10, 1999	—	Brief
65. Merit Brief of Defendants-Appellants Mary Ann Gaetano and Catherine Ann Miller STATE, ex rel. State Teachers' Retirement Board, Plaintiff-Appellee, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, Defendant-Appellee, Mary... 1999 WL 33841179, *33841179+, Ohio	Apr. 12, 1999	—	Brief
66. Intervening Third Party Defendant-Appellee Hawken School's Memorandum in Opposition to Jurisdictional Memorandum of Defendants-Appellants Gaetano and M... State, ex rel. State Teachers Retirement Board, Plaintiff-Appellant, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, Defendant-Appellee, Mary... 1998 WL 34276698, *34276698+, Ohio	Dec. 10, 1998	—	Petition
67. Memorandum Opposing Jurisdiction of Defendant-Appellee West Geauga Local School District Board of Education STATE, ex rel. State Teachers Retirement Board, Plaintiff, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al., Defendants. (Mary Ann Gaet... 1998 WL 34276534, *34276534+, Ohio	Dec. 09, 1998	—	Petition
68. Memorandum of Defendants-Appellants Mary Ann Gaetano and Catherine Ann Miller in Support of Jurisdiction State, ex rel. State Teachers' Retirement Board, Plaintiff-Appellant, v. WEST GEAUGA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, Defendant-Appellee, Mar... 1998 WL 34276694, *34276694+, Ohio	Nov. 10, 1998	—	Petition
69. State ex rel. State Teachers Retirement Bd. v. W. Geauga Local School Dist. Bd. of Edn. ↗ 722 N.E.2d 93, 93+, Ohio App. 11 Dist. EDUCATION - Compensation and Benefits. Auxiliary services teachers were not "teachers" qualified for membership in retirement system.	Oct. 01, 1998	5. Member, defined	Case
70. State ex rel. Horvath v. State Teachers Retirement Bd. 697 N.E.2d 644, 654, Ohio EDUCATION - Compensation and Benefits. Legislation delaying crediting of interest earned on mandatory contributions to State Teachers Retirement System (STRS) until retirement did...	Aug. 19, 1998	—	Case
71. State ex rel. Shumway v. Ohio State Teachers Retirement Bd. 1998 WL 270184, *1+, Ohio App. 10 Dist. Appellant, Richard Shumway, appeals to this court from the trial court's decision of July 18, 1997, denying his petition for a writ of mandamus. On November 10, 1994, appellant...	May 28, 1998	—	Case
72. Services included in computing period of service for purpose of teachers' seniority, salary, tenure, or retirement benefits, 56 A.L.R.5th 493 This annotation collects and analyzes those cases in which courts have examined the various services performed by teachers in order to determine whether these services should be...	1998	—	ALR

Title	Date	NOD Topics	Type
73. Reply Merit Brief of Appellant State ex rel Theodore J. Horvath STATE OF OHIO ex rel. Theodore J. Horvath, Appellant, v. THE STATE TEACHERS RETIREMENT BOARD, Appellee. 1998 WL 34262770, *34262770, Ohio	Feb. 17, 1998	—	Brief
74. Smith v. State Teachers Retirement Bd. 1998 WL 54362, *2+, Ohio App. 10 Dist. This matter is before this court upon the appeal of Nancy A. Smith, Jane Linscott, Louis Papes and Joseph Kerner, appellants, from the June 19, 1997 decision and entry of the...	Feb. 05, 1998	—	Case
75. Merit Brief of Appellant State ex rel Theodore J. Horvath STATE OF OHIO ex rel. Theodore J. Horvath, Appellant, v. THE STATE TEACHERS RETIREMENT BOARD, Appellee. 1997 WL 33709129, *33709129+, Ohio	Nov. 24, 1997	—	Brief
76. Brief of Appellee State Teachers Retirement Board STATE, ex rel. Joseph Kerner, Appellant, v. STATE TEACHERS RETIREMENT BD., Appellee. 1997 WL 33709107, *33709107+, Ohio	Sep. 11, 1997	—	Brief
77. Merit Brief of Appellant Diane Mallory STATE, ex rel. Diane Mallory, Appellant, v. PUBLIC EMPLOYEES RETIREMENT BOARD, et al., Appellees. 1997 WL 33708752, *33708752, Ohio	Apr. 18, 1997	---	Brief
78. State ex rel. Swartzlander v. State Teachers Retirement Bd. 690 N.E.2d 36, 39, Ohio App. 10 Dist. EDUCATION - Compensation and Benefits. Retired employee was not entitled to writ of mandamus ordering State Teachers Retirement Board to recalculate his service retirement...	Dec. 31, 1996	—	Case
79. Nordhaus v. Nordhaus 1996 WL 740896, *3, Ohio App. 3 Dist. Defendant-appellant, Sharon K. Nordhaus, appeals from the judgment entry of divorce entered by the Common Pleas Court of Putnam County and is contesting the trial court's division...	Dec. 20, 1996	—	Case
80. Gucciardo v. Gucciardo 1996 WL 761989, *3, Ohio App. 11 Dist. The instant appeal stems from a final judgment of the Domestic Relations Division of the Lake County Court of Common Pleas. Appellant, the State Teachers Retirement System...	Nov. 29, 1996	—	Case
81. State ex rel. Shumway v. State Teachers Retirement Bd. 683 N.E.2d 70, 73+, Ohio App. 10 Dist. EDUCATION - College And University Faculties. Professor was not entitled to declaratory judgment on judicial review of pension calculation.	Sep. 26, 1996	—	Case
82. Brief of Appellee in Opposition to Jurisdiction Jan MUCZYK, et al., Plaintiffs-Appellants, v. CLEVELAND STATE UNIVERSITY, Defendant-Appellee. 1996 WL 33578978, *33578978+, Ohio	Aug. 01, 1996	—	Brief
83. Muczyk v. Cleveland State Univ. 675 N.E.2d 1283, 1285+, Ohio App. 8 Dist. Pensions and Benefits. Term "calendar year" as used in statute governing retirement incentive plans for members of State Teachers Retirement System denotes period of 12 consecutive...	May 20, 1996	—	Case

Title	Date	NOD Topics	Type
84. Dockus v. Dockus 1996 WL 243689, *2, Ohio App. 5 Dist. This action commenced on July 7 1994, when Appellee June Dockus filed a complaint for divorce in the Stark County Court of Common Pleas, Domestic Relations Division, after...	Apr. 08, 1996	—	Case
85. Richard E. Schumacher 1996 Ohio Op. Atty. Gen. 2-6, 2-6 Pursuant to R.C. 145.297(C)(1)(a), an elected official of an employing unit who is also an employee of that employing unit may not participate in a retirement incentive plan...	1996	—	Administrative Decision
86. Brief for Appellants SHIRLEY, Margaret, individually and as copersonal representative of the estate of Loren M. Shirley, deceased, and C. Thomas Wagner, as copersonal repr... 1995 WL 17806367, *17806367+, Ind.	Dec. 27, 1995	---	Brief
87. Shirley v. Russell 69 F.3d 839, 843, 7th Cir.(Ind.) Widow of retired teacher who was killed in automobile accident brought action against driver of truck involved in collision and driver's employer, and after admitting alleged...	Nov. 07, 1995	—	Case
88. Meyer v. Meyer 1994 WL 592497, *12+, Ohio App. 9 Dist. These causes were heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made: Defendant Christopher Meyer has appealed...	Oct. 26, 1994	---	Case
89. The Honorable Alan R. Mayberry 1994 Ohio Op. Atty. Gen. 2-268, 2-268 A general health district board member who receives payment under R.C. 3709.02, as amended in Am. S.B. 297, 119th Gen. A. (1992) (eff. April 16, 1993), receives no "earnable..."	1994	—	Administrative Decision
90. Appellants' Reply Brief THE STATE OF OHIO ex. rel. Janene J. Chavis, et al., Plaintiffs-Relators-Appellants, v. SYCAMORE COMMUNITY SCHOOL DISTRICT BOARD OF EDUCATION, Defenda... 1994 WL 16177835, *16177835+, Ohio	Jun. 22, 1994	—	Brief
91. Merit Brief of Appellee Sycamore Community School District Board of Education THE STATE OF OHIO ex. rel. Janene J. Chavis, et al., Plaintiffs-Relators-Appellants, v. SYCAMORE COMMUNITY SCHOOL DISTRICT BOARD OF EDUCATION, Defenda... 1994 WL 16177834, *16177834+, Ohio	Jun. 03, 1994	—	Brief
92. Appellants' Brief THE STATE OF OHIO ex. rel. Janene J. Chavis, et al., Plaintiffs-Relators-Appellants, v. SYCAMORE COMMUNITY SCHOOL DISTRICT BOARD OF EDUCATION, Defenda... 1994 WL 16177833, *16177833+, Ohio	May 05, 1994	---	Brief
93. McAuliffe v. Bd. of Pub. Emp. Retirement Sys. of Ohio 638 N.E.2d 617, 620+, Ohio App. 10 Dist. Public Employee. Village solicitor was not a public employee entitled to participate in Public Employee Retirement System.	Mar. 01, 1994	—	Case
94. Enrick v. Teachers Ins. and Annuity Ass'n of America 1993 WL 548423, *2, Ohio App. 11 Dist. Mary Lou Enrick appeals, and Ling Liang cross-appellant appeals, from the order of the court of common pleas imposing a constructive trust on state teacher retirement benefits...	Dec. 30, 1993	—	Case

Title	Date	NOD Topics	Type
95. State ex rel. Palmer v. State Teachers Retirement Bd. 629 N.E.2d 1377, 1379+ , Ohio App. 10 Dist. Retirement Credit. Employment as part-time graduate teaching assistant did not qualify as teaching service for which teacher could purchase service credits.	Sep. 23, 1993	—	Case
96. The Honorable Gregory A. White 1992 Ohio Op. Atty. Gen. 2-253 A county board of mental retardation and developmental disabilities is not a "political subdivision" for purposes of R.C. 9.833 and, accordingly, is not authorized by R.C. 9.833...	1992	—	Administrative Decision
97. State ex rel. Yovich v. Board of Educ. of Cuyahoga Falls City School Dist. 1992 WL 142263, *1+ , Ohio App. 10 Dist. This case presents an appeal by appellant, John Yovich, from a decision of the common pleas court granting summary judgment in favor of appellee Cuyahoga Falls City School District...	Jun. 23, 1992	—	Case
98. Richard E. Schumacher 1992 Ohio Op. Atty. Gen. 2-70 + A member of the Public Employees Retirement System who, pursuant to a collective bargaining agreement entered into under R.C. Chapter 4117, is placed on a leave of absence that is...	1992	—	Administrative Decision
99. State ex rel. Cicero v. State Teachers Retirement Bd. 603 N.E.2d 1102, 1102+ , Ohio App. 10 Dist. Teacher brought action regarding acceptance of employee and employer retirement contributions based on arbitrator award. The Franklin County Court of Common Pleas entered...	Oct. 24, 1991	3. Contributions	Case
100. Brief of Relator/Appellee STATE, Ex Rel. Elizabeth C. Ruff Relator/Appellee, v. PUBLIC EMPLOYEES RETIREMENT BOARD, Respondent/Appellant. 1991 WL 11239936, *11239936+ , Ohio	Aug. 16, 1991	—	Brief
101. Canterbury v. Southwestern Ohio Institutional Television Ass'n 1991 WL 227768, *1+ , Ohio App. 2 Dist. Plaintiffs-appellants Gary Canterbury and Mark Souders (Employees) appeal from a summary judgment rendered in favor of defendant-appellee Southwestern Ohio Instructional Television...	Jul. 24, 1991	—	Case
102. The Honorable David W. Norris 1990 Ohio Op. Atty. Gen. 2-321 + A county board of mental retardation and developmental disabilities may establish a cash payment retirement incentive program as a form of compensation to its employees, regardless...	1990	—	Administrative Decision
103. Ohio Assn. of Cty. Bds. of Mental Retardation & Developmental Disabilities v. Pub. Emp. Retirement Sys. 585 N.E.2d 597, 602 , Ohio Com.Pl. Employees of county board of mental retardation and developmental disabilities sued State Teachers Retirement System (STRS) and Public Employees Retirement System (PERS), seeking...	Jul. 25, 1990	5. Member, defined	Case
104. State, ex rel. Schumacher, v. State Teachers Retirement Bd. 584 N.E.2d 1294, 1295+ , Ohio App. 10 Dist. Retired teachers brought action seeking a declaration and a writ of mandamus in connection with a computation of their retirement benefits. The Court of Common Pleas, Franklin...	Dec. 14, 1989	4. Compensation calculation	Case

Title	Date	NOD Topics	Type
105. Geno Natalucci-Persichetti 1989 Ohio Op. Atty. Gen. 2-181 1. The Ohio Department of Youth Services is a public agency having administrative control and direction of schools that it operates in its institutions. 2. Elementary and secondary...	1989	—	Administrative Decision
106. C. James Grothaus 1988 Ohio Op. Atty. Gen. No. 88-069 + Teachers employed in education programs operated by county boards of mental retardation and developmental disabilities pursuant to R.C. Chapter 3323 are members of the State...	1988	—	Administrative Decision
107. C. James Grothaus 1988 Ohio Op. Atty. Gen. No. 88-073 1. Under R.C. 145.37(B)(5) and R.C. 3307.41(B)(5), the paying retirement system is generally not authorized to reduce the amount of credit certified to it by another system. 2....	1988	—	Administrative Decision
108. Matter of Pinetree Partners, Ltd. 87 B.R. 481, 483 , Bankr.N.D. Ohio Debtor and debtor in possession commenced adversary proceeding seeking to subordinate or recharacterize claims of lender and return of monies paid by debtor to lender. The...	Apr. 28, 1988	—	Case
109. C. James Grothaus 1987 Ohio Op. Atty. Gen. No. 87-071 + 1. Pursuant to division (A) of R.C. 3307.021, a member of the State Teachers Retirement System may purchase up to five years of service credit, which shall be considered as the...	1987	—	Administrative Decision
110. William S. McLaughlin C. James Grothaus Thomas R. Anderson 1987 Ohio Op. Atty. Gen. No. 87-044 Persons who receive an allowance, pension, or benefit under R.C. Chapters 145, 3307, or 3309 are entitled, upon receiving such allowance, pension, or benefit for twelve months, to...	1987	—	Administrative Decision
111. Norris v. State Teachers Retirement System of Ohio 520 N.E.2d 5, 6 , Ohio App. 8 Dist. Retired school superintendent sought declaration that teachers' retirement system underestimated her final average salary in determining her pension. The Court of Common Pleas,...	Mar. 09, 1987	4. Compensation calculation	Case
112. The Honorable John E. Meyers 1986 Ohio Op. Atty. Gen. 2-537 R.C. 3307.512 entitles a current member of the State Teachers Retirement System, who was prevented from making contributions under R.C. 3307.51 because of an absence due to his own...	1986	—	Administrative Decision
113. The Honorable Jeffrey M. Welbaum 1986 Ohio Op. Atty. Gen. 2-214 + 1. Prior to the enactment of Am.H.B. 502, 116th Gen.A. (1986) (eff. April 24, 1986), a fringe benefit paid for by an employer on behalf of an employee was not subject to...	1986	—	Administrative Decision
114. William S. McLaughlin 1986 Ohio Op. Atty. Gen. 2-249 + Employees at Ohio State University who perform billing and fee collection services of a clerical nature for a professional association comprised of physicians who maintain private...	1986	—	Administrative Decision

Title	Date	NOD Topics	Type
<p>115. Hager v. State Teachers Retirement System of Ohio 1985 WL 10161, *1+ , Ohio App. 10 Dist.</p> <p>This case is on appeal from a decision of the trial court holding that appellee's final average salary, pursuant to R.C. 3307.01(J), is \$36,352.99. Appellant, State Teachers...</p>	Sep. 17, 1985	—	Case
<p>116. Brinkman v. Gilligan 610 F.Supp. 1288, 1295 , S.D.Ohio</p> <p>Desegregation case, concerning Dayton public school system, was brought against Ohio Department of Education and Board of Education and against various state officials, seeking...</p>	May 24, 1985	—	Case
<p>117. Raymond R. Galloway 1985 Ohio Op. Atty. Gen. 2-44</p> <p>1. A regional organization for civil defense created pursuant to R.C. 5915.07 is not a county agency. (1954 Op.Atty Gen. No. 4224, p. 460, approved and followed.) 2. A regional...</p>	1985	—	Administrative Decision
<p>118. Board of State Teachers Retirement System of Ohio v. Cuyahoga Falls City School Dist. Bd. of Educ. ↗ 498 N.E.2d 167, 168+ , Ohio App. 9 Dist.</p> <p>Board of State Teachers Retirement System filed declaratory judgment action against school district seeking declaration of the district's responsibility with respect to remitting...</p>	Feb. 27, 1985	5. Member, defined	Case
<p>119. Board of the State Teachers Retirement System of Ohio v. Cuyahoga Falls City School District Board of Education 1983 WL 4071, *1 , Ohio App. 9 Dist.</p> <p>This cause was heard March 21, 1983, upon the record in the trial court, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed...</p>	Apr. 27, 1983	—	Case
<p>120. Meyer v. Chagrin Falls Exempted Village School Dist. Bd. of Educ. 460 N.E.2d 269, 270+ , Ohio App. 8 Dist.</p> <p>School librarian brought action against school board and individual board members, claiming that they had wrongfully terminated her employment. The trial court, Cuyahoga County,...</p>	Mar. 17, 1983	7. Year, defined	Case
<p>121. James L. Sublett 1982 Ohio Op. Atty. Gen. 2-269, 2-269+</p> <p>Where an employee's earnings, or basis of his contribution to the State Teachers Retirement System, include the amount of the employee's contribution, whether paid by the employee...</p>	1982	—	Administrative Decision
<p>122. Appeal of Ford 446 N.E.2d 214, 215 , Ohio App. 10 Dist.</p> <p>Appeal was taken from a judgment of the Franklin County Court of Common Pleas, affirming a decision of the State Personnel Board of Review finding that it had no jurisdiction over...</p>	Jun. 15, 1982	—	Case
<p>123. D'Amato v. Campbell City School District Board of Education 1982 WL 6116, *2 , Ohio App. 7 Dist.</p> <p>This matter was commenced in the lower court as a complaint for declaratory judgment. The appellant, who was plaintiff in the trial court, is the widow of Nicholas D'Amato. Mr....</p>	Apr. 08, 1982	—	Case
<p>124. Spinak v. University of Akron 445 N.E.2d 692, 694+ , Ohio App. 10 Dist.</p> <p>University appealed from an order of the Court of Claims granting summary judgment to university professor in his action alleging that he was unlawfully terminated solely due to...</p>	Nov. 03, 1981	2. Retirement date	Case

Title	Date	NOD Topics	Type
125. Penick v. Columbus Bd. of Ed. 663 F.2d 24, 28 , 6th Cir.(Ohio) In a school desegregation case, the United States District Court for the Southern District of Ohio, 429 F.Supp. 229, ordered system-wide desegregation, and school board appealed. ...	Oct. 21, 1981	—	Case
126. Penick v. Columbus Bd. of Ed. 519 F.Supp. 925, 932 , S.D.Ohio In school desegregation suit, following trial on issue of liability, the United States District Court for the Southern District of Ohio, Eastern Division, 429 F.Supp. 229, ordered...	Jan. 08, 1981	—	Case
127. The Honorable Arthur M. Elk 1980 Ohio Op. Atty. Gen. 2-257 A county board of mental retardation is an 'employer' for purposes of R.C. 145.01(D) and as such must bear financial responsibility for any delinquent contributions owed PERS...	1980	—	Administrative Decision
128. Herrick v. Lindley 391 N.E.2d 729, 731+ , Ohio Upon remand, 44 Ohio St.2d 128, 339 N.E.2d 626, the Court of Common Pleas of Franklin County declared certain amendments relating to the Public Employees Retirement System and...	Jul. 03, 1979	—	Case
129. Timothy B. Moritz, M.D. 1979 Ohio Op. Atty. Gen. 2-45 + 1. Teachers who are engaged under personal service contracts with the Department of Mental Health and Mental Retardation are 'employed' by the Department for purposes of R.C....	1979	—	Administrative Decision
130. Penick v. Columbus Bd. of Ed. 583 F.2d 787, 817 , 6th Cir.(Ohio) In desegregation suit, following trial on issue of liability the United States District Court for the Southern District of Ohio, Eastern Division, 429 F.Supp. 229, Robert M....	Jul. 14, 1978	—	Case
131. State ex rel. Tye v. Public Emp. Retirement Bd. 377 N.E.2d 1012, 1013 , Ohio City employee sought mandamus to have court order the Public Employees Retirement Board to grant a prior service credit in the Public Employees Retirement System for his service...	Jul. 12, 1978	1. Prior service credit	Case
132. State v. Ferguson 1976 WL 190142, *2 , Ohio App. 10 Dist. Relator has filed a mandamus action in this court, praying that respondent be compelled to issue warrants on the treasurer of the state to pay vouchers for work rendered by 43...	Aug. 12, 1976	—	Case
133. Huss v. State Personnel Board of Review 1975 WL 181212, *3+ , Ohio App. 10 Dist. This matter involves the appeal of a judgment of the Common Pleas Court of Franklin County dismissing an appeal to that court of an order of the State Personnel Board of Review,...	Mar. 11, 1975	—	Case
134. Zartman v. Board of Ed. of Lakota Local School Dist. 293 N.E.2d 575, 575 , Ohio Com.Pl. Action was brought against Board of Education to recover damages for breach of contract to reemploy plaintiff as schoolteacher for 1970-1971 school year. The Court of Common...	Apr. 24, 1972	—	Case

Title	Date	NOD Topics	Type
135. State Teachers Retirement Bd. v. Board of Tax Appeals 202 N.E.2d 418, 418 , Ohio Proceeding on application for real estate tax exemption. The Board of Tax Appeals denied the application and its decision was affirmed by the Court of Appeals. The Supreme Court...	Nov. 25, 1964	—	Case
136. Poehls v. Young 60 N.E.2d 316 , Ohio Actions by Louisa Poehls against one Young and others and the Board of Education of the City of Youngstown, and by one Miller against the same defendants to recover salaries which...	Mar. 21, 1945	2. Retirement date	Case
137. OH ST § 145.01; 145.01 Definitions OH ST § 145.01	—	—	Statute
138. OH ST § 145.37; 145.37 Coordinating membership in state retirement systems; combining contributions and service credits OH ST § 145.37	—	—	Statute
139. OH ST § 145.383; 145.383 Member holding multiple covered positions retiring from less than all positions OH ST § 145.383	—	—	Statute
140. OH ST § 3305.01; 3305.01 Definitions OH ST § 3305.01	—	—	Statute
141. OH ST § 3307.061; 3307.061 Actions resulting in vacancy or removal; appeal OH ST § 3307.061	—	—	Statute
142. OH ST § 3307.261; 3307.261 Employer to make contributions for teacher on disability leave OH ST § 3307.261	—	—	Statute
143. OH ST § 3307.351; 3307.351 Member holding multiple covered positions retiring from less than all positions OH ST § 3307.351	—	—	Statute
144. OH ST § 3307.501; 3307.501 Final average salary OH ST § 3307.501	—	—	Statute
145. OH ST § 3309.343; 3309.343 Member holding multiple covered positions retiring from less than all positions OH ST § 3309.343	—	—	Statute
146. OH ST § 3309.35; 3309.35 Coordinating membership in the state retirement systems; combining contributions and service credits OH ST § 3309.35	—	—	Statute
147. OH ADC 3307-4-01; 3307-4-01 Membership and contribution OH ADC 3307-4-01	—	—	Regulation
148. OH ADC 3307-5-01; 3307-5-01 Alternative retirement plans OH ADC 3307-5-01	—	—	Regulation
149. OH ADC 3307-6-01; 3307-6-01 Compensation for services to teacher professional organizations OH ADC 3307-6-01	—	—	Regulation
150. OH ADC 3307-10-01; 3307-10-01 Faculty practice plan OH ADC 3307-10-01	—	—	Regulation
151. OH ADC 3307:1-1-01; 3307:1-1-01 Definitions OH ADC 3307:1-1-01	—	—	Regulation
152. OH ADC 3307:1-2-01; 3307:1-2-01 Service credit OH ADC 3307:1-2-01	—	—	Regulation

Title	Date	NOD Topics	Type
153. OH ADC 3307:1-3-02; 3307:1-3-02 Purchase of service credit OH ADC 3307:1-3-02	—	—	Regulation
154. OH ADC 3307:1-3-03; 3307:1-3-03 Determination of purchasable service credit under section 3307.74 of the Revised Code OH ADC 3307:1-3-03	—	—	Regulation
155. OH ADC 3307:1-3-07; 3307:1-3-07 Other Ohio public service OH ADC 3307:1-3-07	—	—	Regulation
156. OH ADC 3307:1-3-11; 3307:1-3-11 Payroll deductions for purchase and restoration of credit OH ADC 3307:1-3-11	—	—	Regulation
157. OH ADC 3307:1-4-01; 3307:1-4-01 Compensation includible in the determination of final average salary OH ADC 3307:1-4-01	—	—	Regulation
158. OH ADC 3307:1-6-01; 3307:1-6-01 Determination of temporary supplementary benefit fund OH ADC 3307:1-6-01	—	—	Regulation
159. OH ADC 3307:1-11-02; 3307:1-11-02 Health care services - eligibility OH ADC 3307:1-11-02	—	—	Regulation
160. OH ADC 3307:2-1-01; 3307:2-1-01 Definitions OH ADC 3307:2-1-01	—	—	Regulation
161. OH ADC 3307:2-3-01; 3307:2-3-01 Election by new members OH ADC 3307:2-3-01	—	—	Regulation
162. OH ADC 3307:2-5-02; 3307:2-5-02 Distributions from the defined contribution plan OH ADC 3307:2-5-02	—	—	Regulation
163. OH ADC 3307:2-5-03; 3307:2-5-03 Distributions from the combined plan OH ADC 3307:2-5-03	—	—	Regulation