

**BEFORE THE EXECUTIVE DIRECTOR  
OF THE INDIANA STATE TEACHERS' RETIREMENT FUND**

GARY BOEBINGER,	)	INDIANA STATE TEACHERS
Petitioner,	)	RETIREMENT FUND
	)	
v.	)	
	)	
INDIANA STATE TEACHERS'	)	
RETIREMENT FUND,	)	
Respondent.	)	

**FINAL ORDER**

The Board of Trustees ("Board") of the Indiana State Teachers' Retirement Fund (TRF) is the ultimate authority in administrative appeals brought by TRF members under IC 4-21.5-3-28 and 550 IAC 2-2-2.5. In the TRF Statement of Board Governance, the Board delegates to the Executive Director the authority to conduct a final authority proceeding, or a review of decision points by the administrative law judge (ALJ), to issue a final order in this matter.

1. The ALJ issued a Decision and Recommended Order on Motions for Summary Judgment ("Recommended Order") in this matter on March 15, 2011, granting TRF's motion for summary judgment and denying Petitioner's motion for summary judgment.
2. Copies of the Recommended Order have been delivered to the parties.
3. On March 30, 2011, the Board received Petitioner's objection to the ALJ's Recommended Order. Petitioner stated, "[PERF cites] Indiana state law requiring them not to [change Petitioner's benefit election]. I guess then, I am questioning the basic efficacy & general fairness of such a law, my arguments notwithstanding."

Administrative agencies are not authorized to pass on the validity of a law enacted by the Indiana General Assembly.

4. It has been more than fifteen (15) days since having receiving the ALJ's Recommended Order.

NOW THEREFORE the Recommended Order of the Administrative Law Judge is affirmed.

DATED April 6, 2011



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Steve Russo, Executive Director  
Indiana State Teachers' Retirement Fund  
One North Capitol, Suite 001  
Indianapolis, IN 46204

**CERTIFICATE OF SERVICE**

I certify that on the 6<sup>th</sup> day of April, 2011, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

Distribution:

Gary Boebinger

Thomas N. Davidson, General Counsel  
Jaclyn M. Brinks, Staff Attorney  
Indiana State Teachers' Retirement Fund  
One North Capitol, Suite 001  
Indianapolis, Indiana 46204

Laureanne Nordstrom  
Administrative Law Judge  
P.O. Box 47487  
Indianapolis, IN 46247



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Steve Russo, Executive Director  
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(317) 232-3868

**BEFORE AN ADMINISTRATIVE LAW JUDGE  
FOR THE TEACHERS RETIREMENT FUND**

IN THE MATTER OF     )  
GARY BOEBINGER,     )  
Petitioner.            )

**DECISION AND RECOMMENDED ORDER ON  
MOTIONS FOR SUMMARY JUDGMENT**

**Introduction**

Gary Boebinger appeals the initial determination of the Teachers' Retirement Fund (TRF) denial of his request to change his benefit election.

Pursuant to the schedule agreed to by the parties and ordered by the ALJ, TRF filed a motion for summary judgment on December 15, 2010, and Boebinger filed a cross-motion for summary judgment on January 11, 2011. TRF filed a response in opposition to Boebinger's cross-motion on January 31, 2011. Neither party requested a hearing, so the motions are ripe for ruling.

**Findings of Undisputed Material Fact**

1. Gary Boebinger became a member of TRF on or about September 9, 1969.
2. On or about June 16, 2005, Boebinger submitted a TRF Application for Retirement Benefits, electing Option B-1 and naming Donna Ann Boebinger, his wife, as his co-survivor.
3. Boebinger retired from covered service on June 1, 2005.
4. On or about August 1, 2005, Boebinger's initial benefit payment was scheduled to begin.
5. On or about September 27, 2010, Boebinger notified TRF that Boebinger wanted to appeal his benefit election. TRF denied Boebinger's request because it did not meet one of the statutory exceptions for a change of benefit election.
6. In a letter dated September 29, 2010, Boebinger requested administrative review of his benefit election.
7. In a letter dated October 5, 2010, TRF issued its initial determination upholding Boebinger's benefit election at retirement and denying Boebinger's change of benefit election request.
8. On or about October 18, 2010, Boebinger filed a timely appeal of TRF's initial determination.
9. Boebinger has not provided TRF with a death certification, proof of dissolution of marriage, or a marriage certificate to change his benefit election.

10. TRF was created by the Indiana General Assembly as a public trust fund to administer benefits pursuant to Indiana pension laws written and adopted by the Indiana General Assembly.
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## Conclusions of Law

### Legal Standard

Summary judgment “shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law.” Ind. Code §4-21.5-3-23(b).

As with motions under Ind. Trial Rule 56, a genuine issue of material fact exists where facts concerning an issue which would dispose of litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue. The party moving for summary judgment bears the burden of making a *prima facie* showing that there is no genuine issue of material fact and requirements, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact by setting forth specifically designated facts. *Indiana-Kentucky Electric Corp. v. Indiana Dept. of Environmental Management*, 820 N.E.2d 771, 776 (Ind. App. 2005).

Contrary to federal practice, a moving party cannot simply allege that the absence of evidence on a particular element is sufficient to entitle that party to summary judgment – it must prove that no dispute exists on all issues. *Dennis v. Greyhound Lines, Inc.*, 831 N.E.2d 171, 173 (Ind. App. 2005), citing *Jarboe v. Landmark Community Newspapers*, 644 N.E.2d 118 (Ind. 1994).

When the parties have filed cross-motions for summary judgment, each motion is considered separately to determine whether the moving party is entitled to judgment as a matter of law, construing the facts most favorably to the non-moving party in each instance. *Keaton and Keaton v. Keaton*, 842 N.E.2d 816, 819 (Ind. 2006); *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 160 (Ind. 2005).

An ALJ’s review of an agency’s initial determination is *de novo*, without deference to the initial determination. *Indiana Dept. of Natural Resources v. United Refuse Company Inc.*, 615 N.E.2d 100, 103-104 (Ind. 1993); *Branson v. Public Employees’ Retirement Fund*, 538n N.E.2d 11,13 (Ind. App. 1989).

### Evidence

No party has raised an objection to the admissibility of the evidence submitted.

### Genuine disputes of material fact

No party has argued that there is a genuine dispute of material fact.

### Issue presented

The question presented is whether TRF unjustly denied Boebinger’s retirement option or change of beneficiary election.

## Discussion

The TRF is mandated to comply with retirement fund law. Ind. Code § 5-10.2-2-1.5(1). The retirement fund law governing TRF is referred to as TRF's "plan document" and includes Ind. Code §§ 5-10.2 and 5-10.4, Title 550 of the Indiana Administrative Code, and TRF Board of Trustees resolutions. TRF lacks discretion to deviate from restrictions placed upon the administration of a member's retirement benefit by retirement fund law. See Ind. Code § 5-10.2-2-1 (a).

Retirement fund law allows a retired member to change his retirement option or beneficiary designation if: 1) the member is receiving a retirement benefit and the member's beneficiary dies; 2) the member and the member's beneficiary have been parties in an action for dissolution of marriage in which a final order has been issued after the member's first benefit payment is made; or 3) the member's designated beneficiary is not the member's current spouse or the member has not designated a beneficiary. Ind. Code § 5-10.2-4-7.2(b). TRF is required by federal and state law to administer benefits in accordance with its plan documents set forth in Ind. Code §§ 5-10.2 and 5-10.4, Title 550 of the Indiana Administrative Code, and TRF Board of Trustees resolutions. See 26 U.S.C. § 401(a); Ind. Code §§ 5-10.2-2-1 (a) and 5-10.2-2-1.5 (a).

Petitioner has not provided TRF with a death certificate, proof of dissolution of marriage, or a marriage certificate to change his benefit election. Thus, TRF correctly concluded that Indiana law does not allow it to honor Boebinger's request to change his retirement option or beneficiary designation. Boebinger essentially concedes this. Instead, Boebinger argues that the law is "arbitrary, unfair, inconsiderate, and wrong." He does not cite authority for his argument. However, the administrative law judge does not have the authority to pass on the validity of a statute. *Sunshine Promotions, Inc. v. Ridlen*, 483 N.E.2d 761, 765 (Ind. App. 1985). Furthermore, the U.S. Supreme Court recently endorsed the policy reasons behind a rule restricting a pension plan to its own plan documents in determining whether to honor a beneficiary designation. *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 129 S.Ct. 865 (2009).

## Recommended Order

TRF's motion for summary judgment is granted, and petitioner Gary Boebinger's motion for summary judgment is denied. TRF's initial determination to deny Boebinger's request to change his retirement option or beneficiary designation is affirmed.

March 15, 2011



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Laureanne Nordstrom  
Administrative Law Judge  
PO Box 47487  
Indianapolis, IN 46247  
(317)859-4658

## STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW

The undersigned administrative law judge is not the ultimate authority, but was designated by the TRF Board to hear this matter pursuant to Ind. Code. § 4-21.5-3-9 (a). Under Ind. Code §4-21.5-3-

27(a), this order becomes a final order when affirmed under Ind. Code § 4-21.5-3-29, which provides in pertinent part:

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order: (1) affirming; (2) modifying; or (3) dissolving; the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that: (1) identifies the basis of the objection with reasonable particularity; and (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.


(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 59df) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.


This means that any party who objects to this decision and recommended order must, within 15 days after service, file a written objection with the TRF Board, c/o Thomas N. Davidson, General Counsel, 143 W. Market Street, Indianapolis In, 46204. The written objection must state the basis of the objection with reasonable particularity.

#### CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document on the following persons, by U.S. Postal Service first-class mail, on the 15 day of March, 2011:

Gary Boebinger

  
Thomas N. Davidson  
General Counsel  
Teachers' Retirement Fund  
143 W. Market Street  
Indianapolis, IN 46204

  
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Laureanne Nordstrom  
Administrative Law Judge