BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

IN THE MATTER OF CAROLYN D. COONROD, Petitioner.	))))	PUBLIC EMPLOYEES' RETIREMENT FUND

DECISION ON MOTION FOR SUMMARY JUDGMENT

Introduction

This matter was assigned to me for review of Carolyn D. Coonrod's appeal from PERF's denial of her claim of error in the calculation of her monthly benefit. Coonrod contends that PERF is bound to pay her a higher benefit based on an erroneous statement in PERF's quarterly newsletter, orally confirmed by PERF staff. Specifically, she contends that the newsletter stated, and PERF staff confirmed, that the General Assembly had guaranteed a minimum monthly benefit of [redacted] for members who had retired by December 1, 2005. In reliance, she retired on November 1, 2005 instead of at the end of 2005. It turns out that the minimum benefit applied to members who retired by December 1, 2004. Coonrod now receives a monthly benefit of [redacted]

Both PERF and Coonrod moved for summary judgment under Ind. Code § 4-21.5-3-23, and PERF filed a reply brief. Neither party objected to any of the evidence filed by the opposing party. The time for further briefing has expired.

Findings of Undisputed Fact

1. Carolyn Coonrod began working for Logansport Community School Corporation (Logansport), and became a member of the Public Employees' Retirement Fund (PERF), on October 23, 1995 (PERF Ex. B). She was born in 1937 (PERF Ex. E).

2. On February 18, 2005, Coonrod wrote a letter to PERF stating that she would like to "retire as soon as I am vested" and inquiring when that would be. She wrote, "I would like December 22, 2005 to be my last day if I have enough days worked. If I am vested by then, could I work the rest of the year if necessary or would I have to retire on that day?" (PERF Ex. E.)

3. Apparently in response to her inquiry, PERF generated a report of her service credit history on April 23, 2005, showing 9.4167 years of service from 10/23/1995 to 03/31/2005. The report stated that Coonrod would earn ten years of

service if she maintained uninterrupted PERF-covered employment through October 23, 2005. It also stated the statutory terms for normal retirement, including that a member is eligible for normal retirement if the member is at least 65 years of age and has at least ten years of creditable service. (PERF Ex. P, p. 3; see I.C. § 5-10.2-4-1(b).)

4. Pursuant to I.C. § 5-10.2-5-34, any member who was entitled to a monthly benefit on December 1, 2003, would receive a minimum monthly pension benefit of $180.

5. The General Assembly amended I.C. § 5-10.2-5-34 in 2005. The amendment changed the eligibility date from December 1, 2003 to December 1, 2004. Specifically, the legislation amended § 5-10.2-5-34(b) as follows:

> (b) In addition to any other cost of living increase provided under this chapter, the pension portion (plus postretirement increases to the pension portion) provided by employer contributions of the monthly benefit payable after December 31, ~~2003,~~ **2005,** to a member of the public employees' retirement fund (or to a survivor or beneficiary of a member of the public employees' retirement fund) who was a retired member of the fund with at least ten (10) years of creditable service and was entitled to receive a monthly benefit on December 1, ~~2003,~~ **2004,** may not be less than [redacted]

Ind. P.L. 246-2005, Section 50.

6. PERF mailed out a newsletter to members in July 2005. Page 4 of the newsletter was headlined "**LEGISLATURE INCREASES BENEFITS.**" The first paragraph stated: "Here are changes in state laws affecting members of PERF that were passed in 2005 by the Indiana General Assembly and signed into law by Governor Daniels." One of the following paragraphs stated:

> **MINIMUM BENEFIT EXTENDED**
> The legislature extended the minimum pension amount PERF can pay to a retired member. The minimum benefit is [redacted] and affects members who are entitled to receive a monthly benefit on December 1, ***2005***. For example, a member who would normally be entitled to a [redacted] pension from PERF, as calculated under state law, would automatically receive an increase to the minimum pension amount of [redacted]

(Pet. Ex. 1, emphasis added.) This was in error. It should have said December 1, ***2004***.

7. Coonrod saw the incorrect information in the newsletter, which seemed to mean that if she retired before December 1, 2005, she would receive a minimum monthly benefit of [redacted] and that if she waited until her planned retirement date of December 22, 2005, she would miss the minimum benefit by three weeks.

8. Coonrod and her husband met with Robert Lease, Controller of Logansport, on the morning of August 15, 2005, and Coonrod showed the newsletter to Lease (Lease Aff.).

9. Lease telephoned PERF and spoke to a representative who told him that Coonrod would be eligible for the [redacted] minimum benefit if she was retired on December 1, 2005 (Lease Aff.).

10. PERF's web site includes a feature that permits submission of inquiries from members. The contact page requires the member to provide identifying information, including an email address. (PERF Ex. N.)

11. Later on August 15, 2005, Coonrod submitted the following inquiry through PERF's web site: "I will be retiring Nov. 1, 2005. I understand that I will be elegible [sic] to the [redacted] per month extended benefit. I just want reassurance that this is as I understand it as was written in the information I received." (PERF Ex. A.)

12. On August 17, 2005, the PERF communications and media department corrected the version of the July newsletter posted on PERF's web site to change "December 1, 2005" to "December 1, 2004" (Page Aff. ¶ 6).

13. Also on August 17, 2005, the PERF Call Center was notified of the error in the newsletter and the correct information was provided to the Call Center Manager (Page Aff. ¶ 7).

14. On August 17, 2005, a PERF employee prepared an email response to Coonrod's web site question. The employee advised that the information in the newsletter was a typographical error and that to be eligible for the [redacted] minimum benefit a member must have been receiving a benefit as of December 1, 2004. (PERF Ex. A.) This response should have been sent to the email address provided by Coonrod when she submitted the inquiry.

15. Coonrod did not receive the response (Coonrod Brief).[1]

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[1] The PERF Board speculates that the response was not received because Coonrod did not provide her full email address with her inquiry. (PERF Memorandum in Support of Motion for Summary Judgment at 2.) This theory appears to have merit, as the email address reported to PERF was "[redacted]" without an "@" sign or domain.

16. Apparently Coonrod submitted an application for retirement benefits with a retirement date of November 1, 2005. This application is not of record.

17. PERF sent Coonrod a letter dated October 5, 2005, stating that her retirement application had been received, processing began on August 25, 2005, and processing would take about 120 days (PERF Ex. P, page 2).

18. On October 20, 2005, Coonrod sent a letter to John Rieman at PERF, advising that she had worked for Logansport for ten years, was due to retire on November 1, 2005, and her last day would be October 28, 2005. She wrote that after submitting her paperwork, she remembered that she had worked for another school corporation for two years in 1974-1975. She requested that PERF research whether she was entitled to additional service credit. (PERF Ex. P, Pet. Ex. 10.)

19. Coonrod states that her letter also asked for confirmation of the [redacted] minimum benefit (Coonrod Aff.). However, the letter actually states: "My reason for retiring before the end of the year is to receive the extended benefit that ends December 1st" (PERF Ex. P, Pet. Ex. 10). The letter did not seek confirmation.

20. On October 31, 2005, PERF employee Eric Madsen wrote a letter responding that PERF was in the process of certifying Coonrod's years of service, a process that could take 150 days, and that she would be notified of the result (PERF Ex. G).

21. Coonrod's first regular monthly benefit check was issued on February 15, 2006, in the amount of [redacted] (PERF Ex. H).[2]

22. On March 4, 2006, Coonrod wrote a memo to Teresa Popejoy, who apparently is a Logansport employee. The memo questioned the amount of the benefit check.

23. Perhaps in response to Coonrod's memo, Lease wrote an email to Jeffry Carter at PERF explaining that Coonrod had retired based on the extended benefit information in the July 2005 newsletter, but that the newsletter on the PERF web site had been changed (Pet. Ex. 4).

24. On March 23, 2006, Lease received a call from Carter, who stated that Coonrod had not been receiving the [redacted] minimum benefit because PERF's system mistakenly read her as having 9.96 years of service rather than ten. Carter told

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[2] According to Exhibit H, there had been earlier disbursements, but they were much higher, apparently because they included retroactive amounts. It is undisputed that Coonrod's first notice that her monthly benefit would be something less than [redacted] was in February 2006.

him PERF would confirm that Coonrod would qualify, adjust her monthly payments and issue a backpay check. Lease called Coonrod to let her know. (Pet. Ex. 5.)

25. On March 24, 2006, Carter wrote an email to Lease stating that he had been premature in telling Lease (the day before) that Coonrod had been taken care of. Carter stated that he learned that the legislature "did not reauthorize the 13th check provision" and that Coonrod would not be eligible for the earlier benefit since she retired after the statutory deadline. Carter confirmed that the information in the July 2005 newsletter was not accurate. Carter promised to check with PERF's legal office. (Pet. Ex. 6.)

26. On March 31, 2006, Carter reported that he had several discussions with PERF's legal team, and that even if the newsletter was wrong, Coonrod could not receive the [redacted]benefit because she was not retired on December 1, 2004. "The newsletter was wrong but that does not change the limits set in the statute." (Pet. Ex. 7.)

27. On April 21, 2006, Carter repeated this determination in a letter to Coonrod (Pet. Ex. 8).

28. On May 12, 2006, Coonrod wrote a letter to Representative Eric Gutwein setting out the history and her reliance on the $180 benefit, and asking for his consideration (PERF Ex. K).

29. On June 2, 2006, PERF State Attorney Linda Villegas wrote a letter to Coonrod stating that her letter to Representative Gutwein would be treated as a claim of error under I.C. § 5-10.3-8-5. Villegas's letter went on to say that after review, it was determined that the calculation of her benefit was correct. "The error in the newsletter does not expand the coverage of the statute." (PERF Ex. I.)

30. Coonrod requested review of the determination by letter dated June 12, 2006 (PERF Ex. J, Pet. Ex. 9).

Analysis

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). This mirrors T.R. 56(C). The standard for summary judgment under that rule is well-established:

> A party seeking summary judgment bears the burden to make a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. Once the

> moving party satisfies this burden through evidence designated to the trial court pursuant to Trial Rule 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial. The court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. . . . A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue.

McDonald v. Lattire, 844 N.E.2d 206, 210 (Ind. App. 2006).

In this case, both parties contend that the material facts are not in dispute, and I agree. Therefore, the case presents the legal question of whether Coonrod is entitled to the $180 minimum monthly benefit based on the error in PERF's newsletter, confirmation of that error by a PERF employee, and Coonrod's reliance on the error in deciding to retire on November 1, 2005, instead of December 22, 2005, as she originally planned.

It is clear that by statute, Coonrod is not eligible for the $180 minimum monthly benefit, and could never have been eligible for it. The statute providing that benefit, I.C. § 5-10.2-5-34(b), applies only to members who were entitled to receive benefits on December 1, 2004. Coonrod was not eligible to receive benefits until October 23, 2005.

Instead, Coonrod argues that PERF should be bound by its erroneous representations that the benefit had been extended to members who retired by December 1, 2005. In legal terms, she is invoking the doctrine of equitable estoppel.

> Equitable estoppel is available if one party, through its representations or course of conduct, knowingly misleads or induces another party to believe and act upon his conduct in good faith and without knowledge of the facts. The elements of equitable estoppel are: (1) a representation or concealment of a material fact, (2) made by a person with knowledge of the fact and with the intention that the other party act upon it, (3) to a party ignorant of the fact, (4) which induces the other party to rely or act upon it to his detriment. The reliance element has two prongs: (1) reliance in fact and (2) right of reliance. In addition, estoppel exists only as between the same parties or those in legal privity with them.

Wabash Grain, Inc. v. Smith, 700 N.E.2d 234, 237 (Ind. App. 1998) (citations and quotation marks omitted).

Equitable estoppel cannot ordinarily be applied against governmental entities. City of Crown Point v. Lake County, 510 N.E.2d 684, 687 (Ind. 1987). The reason for this is two-fold. "If the government could be estopped, then dishonest, incompetent or negligent public officials could damage the interests of the public. At the same time, if the government were bound by its employees' unauthorized representations, then government, itself, could be precluded from functioning." Samplawski v. City of Portage, 512 N.E.2d 456, 459 (Ind. App. 1987).

Estoppel "may be appropriate where the party asserting estoppel has detrimentally relied on the governmental entity's affirmative assertion or on its silence where there was a duty to speak." Equicor Development, Inc. v. Westfield-Washington Township Plan Commission, 758 N.E.2d 34, 39 (Ind. 2001). The appellate courts have used "public interest" or "public policy" in justifying this exception, but what constitutes the public interest is not well defined. Samplawski, 512 N.E.2d at 459. But there are some clear principles that can be distilled from the cases.

First, estoppel is particularly inappropriate where a party claiming to be ignorant of the facts had access to the correct information or where government could be precluded from functioning if it were bound by employees' unauthorized representations. U.S. Outdoor Advertising Co., Inc. v. Indiana Department of Transportation, 714 N.E.2d 1244, 1259-60 (Ind. App. 1999). All persons are charged with knowledge of rights and remedies prescribed by statute, and statutory procedures cannot be circumvented by unauthorized acts and statements of officers, agents or staff. Id., citing Middleton Motors, Inc. v. Indiana Department of State Revenue, 380 N.E.2d 79, 81 (Ind. 1978); DenniStarr Environmental, Inc. v. Indiana Dept. of Environmental Management, 741 N.E.2d 1284, 1289-1290 (Ind. App. 2001).

Second, courts will not apply estoppel in cases involving unauthorized use of public funds. City of Crown Point, 510 N.E.2d at 688; Samplawski, 512 N.E.2d at 459; Cablevision of Chicago v. Colby Cable Corp., 417 N.E.2d 348, 354 (Ind. App. 1981) (courts "particularly unsolicitous of estoppel" where "unauthorized acts of public officials somehow implicate government spending powers").

Third, estoppel may be permitted only where the pertinent limits on governmental authority are not clear and unambiguous. City of Crown Point, 510 N.E.2d at 688; Cablevision of Chicago, 417 N.E.2d at 356.

The undisputed facts, construed most favorably to Coonrod, are that the PERF newsletter erroneously reported that the $180 minimum benefit would be available to employees who retired before December 1, 2005. An unidentified PERF employee confirmed this erroneous report in a conversation with Lease who was calling on Coonrod's behalf. Coonrod submitted a web site inquiry seeking to

confirm this information but did not receive a response. Two days later, PERF corrected the version of the newsletter on its web site, but Coonrod did not see it. She decided to retire on November 1, 2005, instead of her planned retirement on December 22, 2005, in reliance on the misinformation from PERF. Even after she retired and began receiving a lower benefit, a PERF employee stated that an error had been made and told her it would be fixed. Only after further review was Coonrod informed that her benefit had been calculated correctly and the information she relied on was erroneous. On these facts, equitable estoppel cannot be applied as a matter of law.

The minimum benefit statute is clear and unambiguous—at least as applied to Coonrod's situation—with no governmental discretion involved. PERF and its employees do not have discretion to extend the minimum benefit provided by I.C. § 5-10.2-5-34(b) to members who retired after December 1, 2004. Coonrod cannot claim ignorance of the law, as she was charged with equal knowledge of the statute's provisions.

Furthermore, erroneously promising the statute's benefit to Coonrod implicated the expenditure of public funds, as well as the assets of a pension fund shared by all of its members.

Finally, it would not be in the interests of the public or fund members to enforce erroneous statements by PERF. The fund is large and the statutes governing its operation can be complex. Financial decisions regarding the fund are based in part on projections of benefits as set forth by statute. It would be highly contrary to the public and fund members' interests to bind PERF to every error, whether typographical or substantive, that its employees might make in attempting to answer members' questions about the law or their circumstances.

Even if equitable estoppel could be applied to PERF, it would not apply on the facts of this case. First, as noted above, Coonrod was constructively aware of the actual terms of the statute, so she cannot claim that she was ignorant of the true facts.

Second, her reliance on PERF's erroneous information was not significantly detrimental. She planned to retire on December 22, 2005, but retired less than two months earlier on November 1, 2005. Any detriment that she suffered is limited to the difference in benefit that she would have received had she waited that two months. Borrowing from the related concept of promissory estoppel, relief is measured by the extent of the reliance rather than the terms of the broken promise. See First National Bank of Logansport v. Logan Manufacturing Co., 577 N.E.2d 949, 956 (Ind. 1991); Jarboe v. Landmark Community Newspapers of Indiana, Inc., 644 N.E.2d 118, 121-22 (Ind. 1994.). Equity requires only that Coonrod be restored

to the position she would have held had she not relied on PERF's promise. To award her the $[redacted] minimum benefit would be an unjust enrichment.

Conclusion

There is no genuine dispute of material fact and PERF is entitled to judgment as a matter of law. PERF's motion for summary judgment is GRANTED and Coonrod's motion for summary judgment is DENIED. PERF'S denial of Coonrod's claim of error is AFFIRMED.

DATED: November 18, 2006.

Wayne E. Uhl
Administrative Law Judge
8710 North Meridian Street, Suite 200
Indianapolis, Indiana 46260-5388
(317) 844-3830

STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW

The undersigned administrative law judge is not the ultimate authority, but was designated by the PERF Board to hear this matter pursuant to I.C. § 4-21.5-3-9(a). Under I.C. § 4-21.5-3-27(a), this order becomes a final order when affirmed under I.C. § 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:
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> (1) affirming;
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> (2) modifying; or
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> (3) dissolving;
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> 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.
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> (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 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

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, postage prepaid, on November 18, 2006:

Carolyn D. Coonrod (by certified mail, return receipt requested)
[redacted]

Linda I. Villegas, Staff Counsel (by certified mail, return receipt requested)
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Wayne E. Uhl
Administrative Law Judge