

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas A. Kline, :
Petitioner :
 :
v. : No. 974 C.D. 2008
 : Submitted: October 24, 2008
Public School Employees' Retirement :
Board, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: November 25, 2008

Thomas A. Kline (Kline) appeals from an order of the Commonwealth of Pennsylvania, Public School Employees' Retirement Board (Board) denying his request to have his school service treated as Class T-D service credit. We reverse for the following reasons.

Kline was employed as a teacher by the Delaware County Intermediate Unit (Delaware County) from September 1998 through July 2002 and was an active member in the Pennsylvania Public School Employees' Retirement System (PSERS). He was classified by PSERS as a Class T-C member rather than

a Class T-D member¹ because he did not elect Class T-D membership for which he would have had to mail to PSERS an Act 92001-9 membership class election by December 31, 2001. Kline's last day of active service for Delaware County was on June 14, 2002. As an active employee of a school district, he could not again elect to be a Class T-D member; however, if he obtained a new teaching position with a break in service, he could then become a Class T-D member. At issue in this case is whether there was a break in service which would allow him to become a Class T-D member.

The parties in this case have stipulated to the following facts. On July 23, 2002, Kline interviewed with Lower Merion School District (Lower Merion) and was offered a position with Lower Merion on July 25, 2002, which he accepted. He tendered his resignation to Delaware County that same day by submitting a letter of resignation indicating that he was going to be taking a similar position at Lower Merion. Lower Merion did not formally approve Kline's employment until its August 19, 2002 board meeting, the same date on which Kline began working at Lower Merion.

During the summer of 2002, Kline received the balance of his contract salary with Delaware County so that he was paid from September 2001 through August 2002 under his contract with Delaware County.² When he began teaching

¹ A Class T-D membership provides a 25% greater benefit than a Class T-C membership. Kline's contribution rate as a Class T-C member was 6.25%.

² Kline was a "10 over 12" teacher which meant he earned and was employed by Delaware County for a 12-month year even though he only had to teach during the regular school year, which was September through June.

at Lower Merion, he received his first pay in September 2002 and there was an increase in his salary over what he had been paid by Delaware County. Because Kline earned and was paid the same salary from Delaware County from January to August 2002, PSERS treated the salary he received during that period as part of the 2001-2002 school year for which he received a full year of service credit as though he worked during July and August 2002 for Delaware County. Additionally, when Kline began working at Lower Merion, he was treated as a Class T-D PSERS member with Class T-D withholdings deducted from his paychecks unlike his previous status as a Class T-C employee at Delaware County. On January 4, 2006, PSERS notified Kline that there had been an error in his membership status and returned money to him.

Kline requested that PSERS reclassify his membership as Class T-D which PSERS denied by letter dated April 10, 2007. The letter explained that his request was denied and he would remain in the Class T-C membership because there had been no break in his service sufficient for him to renew his membership in PSERS as a Class T-D member. Kline appealed the decision, and a hearing was held before a hearing examiner.

At the hearing, PSERS' presented the testimony of Michelle Sellers (Sellers), PSERS' Retirement Administrator, who stated that there was no break in contributions received by PSERS from Kline from one school district to the next. She specified that there was no break in his PSERS membership. However, on cross-examination, Sellers explained that just because Kline did not work for Delaware County and continued to receive paychecks and make contributions into

PSERS, it could have meant that it was an arrangement he made with Delaware County to receive paychecks during the summer. She explained that some teachers worked September to June but still received paychecks over the summer months out of which would come their PSERS contribution which would show a continuous contribution. Kline did not appear at the hearing to testify regarding his resignation from Delaware County.

Based on that testimony and stipulated facts, it was PSERS' position that because Kline had a prearranged employment relationship with Lower Merion, even though his contract had not been formally approved, and his benefits continued without a break during the summer of 2002, his membership in PSERS continued without a break in service. It relied on 24 Pa. C.S. §8305(c)(1),³ which provided that only a person who became a school employee and an active member on or after July 1, 2001, would be classified as a Class T-D member upon payment of regular member contributions. Because Kline did not "become" a new employee, but continued to be a teacher, he did not qualify now. PSERS also pointed out that Kline's contributions continued throughout the summer and he

³ 24 Pa. C.S. §8305(c)(1) provides:

- (a) A person who becomes a school employee and an active member, or a person who becomes a multiple service member who is a State employee and a member of the State Employees' Retirement System, on or after the effective date of this subsection shall be classified as a Class T-D member upon payment of regular member contributions. Any prior school service credited as Class T-C service shall be credited as Class T-D service, subject to the limitations contained in paragraph (4).

was given the opportunity to rebut the reason for making those contributions as well as the date of his resignation, but did not show at the hearing.

Kline's position was that he had a break in service during the summer of 2002 and he did not actually "become" an employee of Lower Merion until the appointment was approved by the Lower Merion School District Board of Directors on August 19, 2002. Kline also argued that he did not have a guaranteed position for the 2002-2003 school year when he resigned from Delaware County, but rather he had an offer contingent upon the approval of the Lower Merion School Board.

Initially, the hearing examiner found that there was no evidence in the record that Kline would *not* have resigned if he had not been accepted by Lower Merion prior to July 25, 2002, although he understood that his contract would actually have to be formally approved. Had there been evidence to the contrary, the outcome might have been different. However, the hearing examiner stated that if he were to follow Kline's logic, any teacher that had not previously elected the Class T-D status could make a pre-arrangement with their existing school district to resign and then "become" reemployed by a new school district. That would defeat the purpose of 24 Pa. C.S. §8305(c)(1) and the deadline requirement that had been set forth for choosing that class of membership. The hearing examiner then determined that Kline's request for Class T-D membership for his employment by Lower Merion should be denied because he had a pre-arranged employment situation on July 25, 2002, and "[t]here is no indication in the record that [Kline] would have retired on July 25, 2002 if he did not have the agreement

of the staff at the Lower Merion School District that he had a position effective September 2002. He therefore did not ‘become’ a school employee as he had continuously been one.” Kline filed exceptions to the hearing examiner’s decision which the Board denied. This appeal followed.⁴

Kline contends that the Board erred in determining that he did not “become” a school employee entitled to Class T-D membership when he became employed by Lower Merion. He argues that he qualified for Class T-D membership status under 24 Pa. C.S. §8305(c)(1) because he did not become a school employee at Lower Merion until his position was approved by the Lower Merion School Board on August 19, 2002, and he ceased being an employee at Delaware County upon his resignation. We agree.

Although PSERS contends that Kline had a seamless transition from his job with Delaware County to his job with Lower Merion such that there was no break in service, while there may have been the strong likelihood that he would be hired, there was no guarantee that Kline would be approved by the Lower Merion School Board and have a job to go to after he tendered his resignation. Only when his position was approved by the school board was his job secured because the school board could have changed its mind and not have approved his teaching position. In that case, Kline would have been without a job at Delaware County, too. Therefore, from the date of his resignation on July 25, 2002, until the date he

⁴ Our scope of review of the Board’s decision is limited to determining whether it committed an error of law, whether constitutional rights were violated, or whether necessary factual findings are supported by substantial evidence. *Cannonie v. Public School Employees’ Retirement System*, 952 A.2d 706 (Pa. Cmwlth. 2008).

was hired by Lower Merion on August 19, 2002, Kline had a break in service as he was unemployed, and just because he still was making contributions to PSERS was irrelevant for the reason testified to by Sellers.

Because Kline had a break in service, he “became” a school employee under 24 Pa. C.S. §8305(c)(1) who was entitled to Class T-D membership. Accordingly, the order of the Board is reversed.

DAN PELLEGRINI, JUDGE

Judge Simpson did not participate in the decision of this case.

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ORDER

AND NOW, this 25th day of November, 2008, the order of the Public School Employees' Retirement Board dated May 7, 2008, is reversed.

DAN PELLEGRINI, JUDGE