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**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF RUTH F. MARTIN
DOCKET NO.: 2011-26
CLAIM OF RUTH F. MARTIN

ORDER

The Public School Employees' Retirement Board ("Board") has before it a Motion to Dismiss filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal. PSERS's Motion to Dismiss requests that Ruth F. Martin's ("Claimant") Request for Administrative Hearing on the issue of purchasing creditable nonschool service for eleven (11) months that she worked as a county nurse in the State of New York be dismissed for legal insufficiency appearing on the face of the request.

PSERS filed its Answer and Motion to Dismiss on December 19, 2011, and served a copy by First Class Mail on Claimant, as required by the General Rules of Administrative Practice and Procedure. 1 Pa.Code §§ 33.32, 33.35-33.36. By letter dated December 19, 2011, PSERS notified Claimant that she had ten days to respond to PSERS's motion pursuant to 1 Pa. Code § 35.179. Claimant's response, therefore, had to be filed on or before December 29, 2012. 1 Pa.Code §§ 31.11, 31.12 and 33.34. Claimant did not file a response.

Section 35.54 of the Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.54, authorizes a respondent to file with its answer a motion to dismiss a complaint because of legal insufficiency appearing on the face of the complaint. In the absence of disputed material facts, the Board has the authority to decide the legal issues in dispute without an evidentiary hearing. *United Healthcare Benefits Trust v. Insurance Commission of Pennsylvania*, 620 A.2d 81 (Pa. Cmwlth. 1993); *Mellinger v. Dep't of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987). Further, the Administrative Agency Law, 2 Pa.C.S. § 101 et seq., provides that, while the parties generally must be

given the opportunity to submit briefs prior to an adjudication by a Commonwealth agency, the decision whether to hear oral argument is discretionary with the agency. 2 Pa. C.S. § 506. Therefore, the Board may properly decide PSERS's Motion based on the pleadings alone.

Claimant worked for eleven (11) months as a county nurse in the State of New York. Claimant requests that she be permitted to purchase creditable nonschool service for that time.

Section 8304(b)(6) of the Public School Employees Retirement Code, 24 Pa.C.S. § 8101 et seq. ("Retirement Code"), limits creditable nonschool service credit to "[p]revious service as a county employee as a nurse." It also provides that "[f]or every three years or major fraction thereof in previous work experience, an individual may buy one year of creditable service, not to exceed a total of five years." 24 Pa.C.S. § 8304(b)(6). PSERS's Regulations similarly provide that a minimum of one year of service must be purchased: "Previous nonschool service as a nurse in the employ of a county may be purchased by an active member as follows: For every 3 years or major fraction thereof in previous work experience, an individual may buy 1 year of creditable service, not to exceed a total of 5 years." 22 Pa. Code § 213.4(h).

The law in this matter is clear. Section 8304(b)(6) of the Retirement Code and Section 213.4(h) of PSERS's Regulations require that a member buy at least one year of service as a county nurse. To purchase one year, the member must have a minimum of "three years or major fraction thereof" in experience. 24 Pa.C.S. § 8304(b)(6). PSERS has consistently interpreted the law to require as much. See PSERS Comprehensive Benefit Calculations Manual (July 11, 2008) at § 1.5.4.6 (directing that a member must have a minimum of 1.5 years (that is, a major fraction of three years) of Pennsylvania county nurse service to purchase one year of nonschool creditable service with PSERS).

In addition, the ability to purchase such service is limited to service with a Pennsylvania county. See 24 Pa.C.S. § 8304(b)(6). Indeed, where out-of-state service is acceptable, the Retirement Code makes that clear:

(b) Limitations on nonschool service.--Creditable nonschool service credit shall be limited to:

* * *

(3) Service in any public school or public educational institution *in any state other than this Commonwealth* or in any territory or area under the jurisdiction of the United States. 24 Pa.C.S. § 8304(b)(3) (emphasis added).

There is no such language in Section 8304(b)(6) with respect to county nurses. Nor does PSERS interpret the Retirement Code to allow the purchase of out-of-state county nurse service. See PSERS Comprehensive Benefit Calculations Manual (July 11, 2008) at § 1.5.4.6 ("Who is eligible to purchase service credit for county nurse service? A person who: • has previous work experience as a nurse employed by a Pennsylvania county[.]") Pennsylvania courts give "substantial deference" to an agency's interpretation of a statute that the agency "is charged with implementing and enforcing[.]" *Schuylkill Township v. Pa. Builders Ass'n*, 7 A.3d 249, 252 (Pa. 2010) (citation omitted).

Accordingly, the Retirement Code prohibits the Board from: (1) granting Claimant creditable nonschool service as a county nurse for any period less than one year, which requires a minimum of "three years or major fraction thereof" in previous experience; *and* (2) allowing Claimant to buy back any nonschool service for work she did as a county nurse outside of Pennsylvania.

Claimant argues in her appeal and request for an administrative hearing that it is discriminatory to decline her request to purchase credit for out-of-state service as a county nurse, but allow others to purchase credit for out-of-state service. Although constitutional arguments may, and sometimes must, be raised at the level of administrative adjudication in order to preserve the right to raise them on appeal, the determination of the constitutionality of a provision in the Retirement Code is not a function the Board possesses. See *Borough of Greentree v. Board of Property Assessments, Appeals & Review*, 328 A.2d 819 (Pa. 1974). *Newlin Corp. v. Commonwealth, Dept. of Environmental Resources*, 579 A.2d 996 (Pa. Cmwlth. 1990). Regardless, Claimant does not have the minimum service time required to

purchase out-of-state credit or county nurse credit. See 24 Pa.C.S. §§ 8304 (b)(3), (b)(6) and (c). Thus, even if Claimant had a meritorious constitutional claim, it fails.

The material facts at issue in this appeal are not in dispute. In the absence of disputed material facts, this Board has the authority to decide legal issues without an evidentiary hearing. See *United Healthcare Benefits Trust v. Insurance Commissioner of Pennsylvania*, 620 A.2d 81 (Pa. Cmwlth. 1993); *Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987).

Accordingly, PSERS' Motion to Dismiss is granted with prejudice, and Claimant's request to purchase eleven (11) months of nonschool service that she rendered as a county nurse in the State of New York is denied.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 3/9/2012

By: Melva S. Vogler
Melva S. Vogler, Chairman