

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STEVE RAMOS; SCOTT ARMSTRONG, and JAMES WILLIAMS	:	
Petitioners	:	
v.	:	No. 150 MD 2016
	:	
ALLENTOWN EDUCATION ASSOCIATION; PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM; and ALLENTOWN SCHOOL DISTRICT,	:	
Respondents.	:	

PRELIMINARY OBJECTIONS AND MOTION TO DISMISS

AND NOW, come Respondents, the Public School Employees' Retirement System ("PSERS"), by and through their attorney, Jennifer A. Mills, Esquire, pursuant to Pennsylvania Rule of Civil Procedure 1028(a) to file "Preliminary Objections and Motion to Dismiss" in response to the Petition for Review in the Nature of a Complaint for Declaratory and Equitable Relief ("Petition") and Application for Summary Relief ("Application") filed by Steven Ramos, Scott Armstrong and James Williams ("Petitioners") in the above-captioned matter as follows:

A. PRELIMINARY OBJECTION ON THE GROUND OF LEGAL INSUFFICIENCY DUE TO PETITIONER’S FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

1. This Court lacks jurisdiction over PSERS because the Petitioners have failed to exhaust administrative remedies.

2. The Public School Employees' Retirement Board (“Board”), which transacts business under the name of PSERS, 24 Pa.C.S. § 8521(f), is an independent administrative board of the Commonwealth of Pennsylvania. 24 Pa.C.S. § 8501(a). The Board is charged with the administration of PSERS pursuant to the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq., (“Retirement Code”). *See* 24 Pa.C.S. §§ 8502(a), 8502, 8521; 22 Pa. Code §201.1 et seq.

3. The Board has exclusive and primary jurisdiction regarding the interpretation of the Retirement Code and the administration of member accounts, subject to appellate judicial review. 2 Pa. C.S. § 702; 24 Pa.C.S. § 8501(a).

4. With respect to its claims against PSERS in the Petition and the Application, Petitioners request this Honorable Court to determine that PSERS improperly granted retirement credit under the Retirement Code to the Allentown Education Association (“AEA”) President, Debra A. Tretter, for non-school service related to AEA-related activities and to remove such credited service from her

account.

5. Petitioners argue that release time under the collective bargaining agreement between the Allentown School District and AEA violates the Retirement Code, PSERS' approved leave of absence guidelines and the Pennsylvania Constitution.

6. As alleged in the Petition and Application, Ms. Trotter is being reported to PSERS as an active member and not as a member on an approved leave of absence or leave with collective bargaining unit.¹

7. The doctrines of primary administrative jurisdiction and exhaustion of remedies, including appeal from final administrative adjudications, require any evidentiary determination be made at the administrative agency level. *Lawrie v. Public School Employees' Retirement Board*, 595 A.2d 752 (Pa.Cmwlt. 1991); *Packler v. State Employees' Retirement System*, 408 A.2d 1091 (Pa. 1979);

¹ Section 8506(b) of the Retirement Code, 24 Pa.C.S. § 8506(b), requires employers to “furnish service and compensation records as well as other information requested by the board and shall maintain and preserve such records as the board may require for the expeditious discharge of its duties.” In accordance with such mandate, PSERS relies on the information provided by an employer absent good cause to question the information reported.

Dotterer v. School district of the City of Allentown et al., 92 A.3d 875 (Pa.Cmwlth. 2014).²

8. Petitioners' claim that an active member of PSERS is not entitled to receive credited service is a claim that arises exclusively under the province of the Retirement Code and the Board's primary and exclusive jurisdiction. 24 Pa.C.S. §§ 8102 (relating to the definition of "school employee"), 8301 (relating to mandatory and optional membership), and 8302 (relating to credited school service). *See also*, 22 Pa. Code §§ 201.3a. and 201.4a. (relating to nonadjudicatory and adjudicatory benefit appeals and request for administrative hearing).

9. Petitioners have failed to allege any facts which show that Petitioners pursued an administrative remedy with PSERS or even reported its claims to PSERS to investigate.

10. Consequently, neither PSERS nor the Board have made an evidentiary determination at the administrative agency level regarding the circumstances of Ms. Trotter's employment with the Allentown School District and whether she is entitled to receive credited service.

² The Retirement Board has adopted the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 et seq., with regard to administrative proceedings before the Retirement Board. 22 Pa. Code § 201.1.

11. Petitioners have failed to allege facts which establish the lack of any other adequate remedy at law or in equity to address the conduct forming the basis of the Petition and Application.

12. Petitioners must pursue the required administrative remedy with the Board before invoking the jurisdiction of this Honorable Court. Thus, Petitioners fail to state a claim upon which relief can be granted.

13. “Preliminary objections should be sustained in cases where it is clear and free from doubt that the facts pled are legally insufficient to establish a right to relief.” *Dotterer*, 92 A.3d at 880.

14. For these reasons, the Petition and Application are legally insufficient and should be dismissed.

WHEREFORE, PSERS respectfully requests that this Honorable Court **SUSTAIN** the foregoing Preliminary Objections and **DISMISS** the Petition and Application.

Respectfully submitted,

Dated: March 24, 2016

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