

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF TRUSTEES OF THE)
PUBLIC SCHOOL TEACHERS' PENSION)
AND RETIREMENT FUND OF CHICAGO,)
)
Plaintiff,)
)
v.)
)
BOARD OF EDUCATION)
OF THE CITY OF CHICAGO,)
)
Defendant.)

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CLERK
DOROTHY BROWN

COMPLAINT

NOW COMES the Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago, by and through their attorneys, Jacobs, Burns, Orlove, Stanton & Hernandez, and for its Complaint against the Defendant Board of Education of the City of Chicago, states as follows.

NATURE OF THE ACTION

This action is based on the failure of the Board of Education of the City of Chicago ("Board of Education") to provide payroll information and certifications necessary to calculate the pensions of retiring teachers and surviving spouses and to calculate refunds to former teachers. This failure has caused and continues to harm Plaintiff and thousands of teacher-retirees who are adversely affected by the underpayment of the pensions that they have earned teaching Chicago's public school children.

BACKGROUND AND PARTIES

1. The Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago ("Board of Trustees" or "Trustees") is a body politic and corporate with the authority to administer the Public School Teachers' Pension and Retirement Fund of Chicago

("Fund" or "Pension Fund"), and the authority to bring legal proceedings on behalf of the Fund.
40 ILCS 5/17-137, 147.

2. The Board of Education is a body politic and corporate, and is the primary employer of the teachers whose retirement benefits are paid by the Fund. 40 ILCS 5/17-105.1.

JURISDICTION, VENUE AND STANDING

3. Jurisdiction is proper in this Court under Sections 2-209(a)(1), (11), and (14) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-209(a)(1), (11), and (14), based on Defendant's failure to comply with its duties under the Illinois Pension Code.

4. Venue is proper in this Court under Section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101.

5. The Illinois Pension Code provides that legal proceedings shall be brought in the name of the Board of Trustees of the Fund. Section 40 ILCS 5/17-147.

THE STATUTORY PENSION SYSTEM FOR CHICAGO TEACHERS

6. The Illinois Pension Code provides that the Fund shall consist of contributions paid by the Board of Education, contributions deducted from the salaries of teachers, and investment returns thereon, along with other contributions that may be made to the Fund. 40 ILCS 5/17-127.

7. The Illinois Pension Code provides that pensions and refunds shall be calculated on the basis of salary records, including deductions, and provides that the appropriate officers of the Board of Education have a duty to certify salary and deduction information to the Trustees. Sections 40 ILCS 5/17-127 and 17-132.

8. Specifically, the amount of a teacher's pension depends on two factors: years of service and "average salary."

9. Service retirement pensions may not begin until service credit is validated:

“When computing service retirement pensions, the following conditions shall apply ... Service retirement pensions shall begin on the effective date of resignation, retirement, the day following the close of the payroll period for which service credit was validated, or the time the person ... attains age 55, or on a date elected by the teacher, whichever shall be the latest.”

40 ILCS 5/17-116(c)(6).

10. “Validated service” is defined as “service accredited for pension purposes under this Article.” 40 ILCS 5/17-113.

11. “Average salary” is defined as “the average annual rate of salary for the 4 consecutive years of validated service within the last 10 years of service when such average annual rate was highest.” 40 ILCS 5/17-116(c)(1).

12. The amount of employer contributions to the Fund is governed by 5/17-129, and the amount of teacher contributions is governed by 5/17-130. Teacher contributions in the amount of 9% of salary are taken from salary by means of payroll deductions. 40 ILCS 5/17-130. The Employer may, but is not required to make and incur an obligation to make these contributions on behalf of its employees. 40 ILCS 5/17-130.1. The Board of Education has “picked up” the obligation to contribute 7%, and the remaining 2% is deducted from the paychecks of the teachers.

13. The Board of Education is mandated to certify the amounts deducted at least monthly:

“An Employer shall cause the Fund to receive all teachers’ pension contributions within 15 business days of the predesignated paydays. Amount[s] not received by the fifth day shall be deemed delinquent ... *The appropriate officers of the Employer shall certify at least monthly to the Fund all amounts deducted from the salaries of contributors.* The certification shall constitute a confirmation of the accuracy of such deductions according to the provisions of this Article.” 40 ILCS 5/17-132 (emphasis supplied)

HISTORY OF THE PROBLEM

14. Prior to 2007, the Board of Education provided, at least monthly, salary information to the Pension Fund, and the Pension Fund was able to use that information to validate service and finalize and pay pensions to retired teachers. The Pension Fund also used that information to calculate estimated pensions so that active employees could plan for retirement.

15. Since March 2007, however, the Trustees have requested, but the Board of Education has failed to provide, sufficient records containing accurate and complete information regarding salary and creditable service so that pensions can be estimated and calculated properly.

16. In March 2007, the Board of Education installed a new software program called PeopleSoft. Since that time, the Board of Education has failed to provide timely certifications of amounts deducted from the salary of teachers.

17. There are over 35,000 active teachers employed by the Board of Education. Approximately 1950 teachers terminated, died, or retired in the fiscal year ending June 30, 2007. As noted above, the Fund needs certification of payroll data in order to validate the number of years of pension credit these teachers are entitled to receive, to determine the average salary component of the pension calculation, and to calculate refunds and survivor's benefits. As of July 2009, the Fund has not received the information required to finalize the pensions of all of the teachers who retired prior to June 30, 2007 or to determine the refunds due to former teachers or due to the beneficiaries of a deceased teacher. As a result, some retirees from 2007 are being paid estimated pensions and terminated or deceased employees have not received accurate refunds.

18. Approximately 530 teachers retired in or about June 2008, and approximately 345 teachers died or terminated their service in the fiscal year. The Board of Education has not

provided complete and timely payroll data to the Fund regarding any active or retired teachers for the school years beginning July 1, 2007 and ending June 30, 2008, and beginning July 1, 2008 and ending June 30, 2009. It has not provided all required monthly certifications of deductions from payroll during the 2007-2009 school years. As a result, retirees from 2008 are being paid estimated pensions and terminated or deceased employees have not received accurate refunds.

19. To date, it is estimated that the Board of Education's failure to satisfy its obligations under the statute have cost the Fund over \$300,000 in additional administrative costs and outside consultant's fees.

COUNT ONE: FOR A WRIT OF MANDAMUS

20. Plaintiffs incorporate by reference paragraphs 1-19 as though fully set forth herein.

21. Section 17-132 of the Illinois Pension Code provides, in pertinent part: "The appropriate officers of the employer shall certify at least monthly to the Fund all amounts deducted from the salaries of the contributors." 40 ILCS 5/17-132.

22. Section 17-105.1 of the Illinois Pension Code defines "Employer" as the "Board of Education ..." 40 ILCS 5/17-105.1.

23. The Board of Education has a specific legal duty under Section 17-132 of the Illinois Pension Code to certify the amounts deducted from the salaries of the contributors. 40 ILCS 5/17-132.

24. The Board of Education has been in violation of this legal duty since in or about September 2007.

WHEREFORE, the Trustees request that the Court enter a writ of mandamus compelling the Board of Education to comply with Section 17-132 of the Illinois Pension Code, 40 ILCS

5/17-132, and provide the certification and records the Trustees need to determine the correct pension credit to provide to employees of the Board of Education who are entitled to such credits under the Illinois Pension Code.

COUNT TWO: BREACH OF FIDUCIARY DUTY

25. Plaintiffs incorporate by reference paragraphs 1-24 as though fully set forth herein.

26. The Board of Education has, since September 2007, transmitted contributions for payroll to the Pension Fund, but has not provided all required certifications and payroll records to indicate whether the amount of contributions submitted is correct. As a result, information essential to the management of the Pension Fund, including certified payroll records and corresponding information as to whether payments made to the Fund are correct, is effectively under the control of the Board of Education. As a result, retirees/surviving spouses, terminated employees, and beneficiaries of deceased employees since June 1, 2007 have not received the correct monthly pensions or refunds. Similarly, the Fund cannot provide accurate pension estimates for active teachers who desire to retire.

27. Under the Pension Code, a person is a “fiduciary” with respect to a pension fund “to the extent that the person:

- exercises any discretionary authority or discretionary control respecting management of the pension fund, ... or exercises any authority or control respecting management or disposition of its assets;
- renders investment advice ...
- has any discretionary authority or discretionary responsibility in the administration of the pension fund ...”

40 ILCS 5/1-101.2.

28. A fiduciary who breaches any duty imposed by the Code

“shall be personally liable to make good to such ... pension fund any losses to it resulting from such breach ... and shall be subject to such equitable or remedial relief as the court may deem appropriate ...”

40 ILCS 5/1-114.

29. A civil action may be brought by any fiduciary to:

- “obtain appropriate relief under Section 1-114 [for breach of fiduciary duty];
- enjoin any act or practice which violates any provision of th[e] Code; or
- obtain other appropriate equitable relief to redress any such violation or to enforce any such provision.”

30. By virtue of the failure to satisfy its duty of care with respect to its obligation to transmit contributions and to certify payroll, the Board of Education has breached its fiduciary duty to the Pension Fund and its contributors.

WHEREFORE, the Pension Fund asks the Court to order the Board of Education (a) to pay interest to each retiree, surviving spouse, beneficiary and contributor entitled to a refund, at the rate of 9% per annum, or any higher rate as may be set forth in the General Interest Rate provision of the Illinois Interest Act (815 ILCS 205/4), on any sum otherwise payable by the Fund to the retiree, surviving spouse, beneficiary, or contributor, or that was delayed as a result of the Board of Education’s failure to meet such deadline or obligation as a result of the breach of fiduciary duty by the Board of Education; (b) to retain an outside accounting firm chosen by the Fund (at the Board of Education’s expense), which will provide, if necessary, a calculation and certification prepared manually from a review of each retiree’s and contributor’s wage records and personnel files; (c) to provide the required certified payroll information to the Pension Fund in the future on a monthly basis, and (d) to reimburse the Pension Fund for the extra administrative expenses it has incurred since March 2007 as a result of the breach of fiduciary duty by the Board of Education.

COUNT THREE: FOR A DECLARATORY JUDGMENT AND INJUNCTION

31. Plaintiffs incorporate by reference paragraphs 1-30 as though fully set forth herein.

32. 735 ILCS 5/2-701(a) provides, in pertinent part:

“The court may, in cases of actual controversy, make binding declarations of rights ...including the determination, at the instance of anyone interested in the controversy, of the construction of any statute ... and a declaration of the rights of the parties interested.”

33. 735 ILCS 5/2-701(c) provides, in pertinent part:

“If further relief based upon a declaration of right becomes necessary or proper after the declaration has been made, application may be made by petition to any court having jurisdiction for an order ... to show cause why the further relief should not be granted forthwith...”

34. In meetings with Fund personnel during the past year, Board of Education personnel have indicated a position that the Board of Education will not be able to certify payroll data to the Fund on a monthly basis.

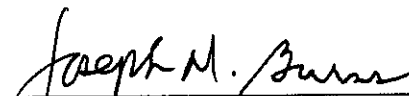
35. Thus, an actual controversy exists as to the Board of Education’s responsibility under the statute, including its responsibility to certify payroll data, specifically all amounts it has deducted from the salaries of teachers for pension contributions under 40/ILCS 5/17-132.

WHEREFORE, the Trustees request the Court to declare that the Board of Education is required by the Illinois Pension Code to certify at least monthly its deductions from payroll, and provide records of salaries paid to teachers in a form that can be used by the Fund to process pension applications and to provide pension estimates, and require, as further relief, the Board of Education (a) to pay interest to each retiree, surviving spouse, beneficiary and contributor entitled to a refund, at the rate of 9% per annum, or any higher rate as may be set forth in the General Interest Rate provision of the Illinois Interest Act (815 ILCS 205/4), on any sum otherwise payable by the Fund to the retiree, surviving spouse, beneficiary, or contributor, or that

was delayed as a result of the Board of Education's failure to meet such deadline or obligation as a result of the breach of fiduciary duty by the Board of Education; (b) to provide the required payroll information and certifications to the Pension Fund in the future on a monthly basis, and (c) to reimburse the Pension Fund for the extra administrative expense it has incurred since March 2007 as a result of the Board of Education's failure to comply with its duty under the Pension Code.

Respectfully submitted,

Board of Trustees of the
Public School Teachers' Pension
and Retirement Fund of Chicago

By: 
Joseph M. Burns
One of Plaintiff's Attorneys

Joseph M. Burns
James D. O'Connell
Anita Tanay
Taylor E. Muzzy
Jacobs, Burns, Orlove, Stanton & Hernandez
122 S. Michigan Ave., Suite 1720
Chicago, IL 60603-6145
312-372-1646
Firm No. 90406