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

IN RE: ACCOUNT OF LOIS B. RONEY  
DOCKET NO. 2007-24  
CLAIM OF LOIS B. RONEY

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Opinion and Recommendation of the Hearing Examiner in the above-referenced matter. We note that none of the parties filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Hearing Examiner's Findings of Fact, Discussion, Conclusions of Law, and Recommendation. Accordingly, we hereby adopt them as our own.

IT IS HEREBY ORDERED that Claimant's request to purchase both her 1992 through 1997 service at the Jakarta International School and her 2000 to 2004 service at the International Schools Group – Dhahran elementary school is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 6/11/2009

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

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

IN RE:  
ACCOUNT OF LOIS B. RONEY  
CLAIM OF LOIS B. RONEY

LEGAL OFFICE APR 3 2009

DOCKET NO. 2007-06

Michael L. Bangs  
Hearing Examiner  
429 South 18<sup>th</sup> Street  
Camp Hill, PA 17011

September 24, 2008

David W. Speck, Esquire  
Counsel for PSERS

William K. Roney  
Representative for Claimant

**OPINION OF THE HEARING EXAMINER**

**Findings of Fact**

1. Lois B. Roney ("Claimant") was a member of the Public School Employees' Retirement System ("PSERS") by virtue of her employment with the Pennsylvania public school system. (Exhibits PSERS -10, 11)
2. Claimant was employed by the Saudi Arabian International School - Dhahran from August 22, 1983 through May 27, 1987. (Exhibits PSERS -1,3)
3. Claimant was employed by the Saudi Arabian International School - Riyadh from August of 1987 through June of 1989. (Exhibit PSERS -2)
4. On April 15, 1990, Claimant completed a Certification of Out-of-State Service to purchase her prior Riyadh service. (Exhibit PSERS -2)

5. On October 29, 1990, Claimant completed a Certification of Out-of-State Service to purchase her prior Dhahran service. (Exhibit PSERS –1)

6. On December 5, 1990, PSERS sent a letter to Claimant indicating that they had received her request to purchase service credit, but that she needed to provide them with proof both that her retirement contributions had been withdrawn, and proof of entitlement to a retirement benefit, before they could further process her request. (Exhibit PSERS –4)

7. PSERS denied Claimant's request to purchase her prior Dhahran service in a letter dated November 30, 1992. (Exhibit PSERS –6)

8. On September 27, 1993, the PSERS Appeals Committee denied Claimant's request to purchase her prior Dhahran service. (Exhibit PSERS –8)

9. On April 23, 2007, Claimant submitted an Application for Credit for United States Government Service for her prior service as a teacher in the International Schools Group – Dhahran Elementary School (“Dhahran elementary school”), from 2000 through 2004. (Exhibit PSERS –9)

10. Also on April 23, 2007, Claimant submitted an Application for Credit for United States Government Service for her prior service as a teacher at the Jakarta International School from August of 1992 through June of 1997. (Exhibit PSERS –10)

11. On October 10, 2007, PSERS denied Claimant's request to purchase the 1983 through 1989 service because she failed to file a request for an administrative hearing from the Appeals Committee denial of September 27, 1993. (Exhibit PSERS –11)

12. In the same October 10, 2007 letter, PSERS also denied Claimant's requests for prior service from 1992 through 1997 and from 2000 to 2004 because she was not an employee

of an agency or department of the United States Government; she was given thirty days to appeal this decision. (Exhibit PSERS-11)

13. Claimant filed a Request for an Administrative Hearing limited to the issues of the purchase of her prior service at the Jakarta International school from 1992 through 1997, and the purchase of her prior service at the Dhahran elementary school from 2000 to 2004. (NT 29)<sup>1</sup>

14. Neither the Jakarta International school nor the Dhahran elementary school are Department of Defense schools (“DoD schools”). (NT 29)

15. Both the Jakarta International school and the Dhahran elementary school are primarily funded through tuition that they charge the students. (NT 29)

16. In order to purchase credit for time as a teacher in an overseas school, PSERS requires proof that the teacher was considered a federal government employee for that service. (NT 34)

17. On September 8, 2008, Claimant signed a Power of Attorney, allowing her husband, William K. Roney, to represent her at the administrative hearing on this case. (Exhibit Claimant -1)

18. On September 24, 2008, a hearing on the above matter was held before Independent Hearing Examiner Michael L. Bangs, Esquire.

### **Discussion**

PSERS was created by the legislature and can grant no rights beyond those specifically set forth in the Retirement Code. Hughes vs. Public School Employees’ Retirement System, 622

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<sup>1</sup> Citations to “NT” refer to the transcribed Notes of Testimony from the hearing before the Hearing Examiner on September 24, 2008.

A.2d 701 (Pa. Cmwlth. 1995); alloc. den. 668 A.2d 1139 (Pa. 1995). While a member is entitled to a liberal construction of the Retirement Code, he has only those rights that were created by the retirement benefit statutes, and none beyond. Cosgrove v. State Employees' Retirement Board, 665 A.2d 870 (Pa. Cmwlth. 1995).

The Retirement Code allows for the purchase of creditable nonschool service “as an administrator, teacher, or instructor in the field of public school education for any agency or department of the government of the United States whether or not such area was under the jurisdiction of the United States.” 24 Pa.C.S. §8304(b)(4). In Shafer v. State Employees' Retirement Board, 548 Pa. 320, 696 A.2d 1186 (1997)<sup>2</sup>, the Pennsylvania Supreme Court interpreted an identical provision in the State Employees' Retirement Code. The Shafer Court denied the Appellant's claim that he should be permitted to purchase his prior service in Egypt, on the basis that he failed to satisfy the requirement that “a member who provides service as a teacher or instructor for a foreign university [must] establish the existence of an employer/employee relationship with an agency or department of the United States government before he can purchase creditable nonstate service for that service.” Id. at 331, 696 A.2d at 1191.

The Retirement Code defines “employer” as: “any governmental entity directly responsible for the employment and payment of the school employee and charged with the responsibility of providing public education within this Commonwealth.” 24 Pa.C.S. §8102. “School employee” is defined as “any person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer,

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<sup>2</sup> Because the Court was interpreting an identical provision of the State Employees' Retirement Code, this case is equally applicable to the interpretation of the provision in the Public School Employees' Retirement Code. See, Estate of Rosenstein v. Public School Employees' Retirement System, 685 A.2d 624, 626 (Pa. Commw. 1996).

administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis.” Id.

PSERS’ interpretation of the Retirement Code is entitled to great deference. Panko v. Public School Employees’ Retirement System, 492 A.2d 805 (Pa. Cmwlth. 1985). PSERS has interpreted §8304(b)(4) of the Retirement Code to require proof that the teacher was considered a federal government employee for that service. The burden of proof and persuasion is on the Claimant. Wingert v. State Employees’ Retirement Board, 138 Pa. Cmwlth. 43, 589 A.2d 269 (1991). Under the Shafer holding and PSERS’ interpretation of the Retirement Code, Claimant must provide proof that during her employment at the Jakarta International school and at the Dhahran elementary school, she had an employer/employee relationship with an agency or department of the United States government.<sup>3</sup>

In attempting to satisfy this burden of proof, Claimant submitted a letter from the Head of Organizational Development at the Jakarta International School, Joseph Comacchio. (Exhibit Claimant –3). The letter stated that the Jakarta school is an independent, nonprofit educational institution sanctioned by the Indonesian Government. Additionally, the only stated connections to the United States is that the Board of Patrons (equivalent to a Board of Trustees) contained representatives from the United States, and that it is the “school of choice” for children of the American Embassy and the US Military. While the letter stated that the Jakarta school has filled

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<sup>3</sup> The Shafer Court also set forth the following factors to analyze in determining whether a person is an employee or an independent contractor: control of manner work is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation or business; skill required for performance; whether one employed is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by the time or by the job; whether work is party of the regular business of the employer, and also the right to terminate the employment at any time.” Shafer at 333-334, 696 A.2d at 1192. While there is no allegation that Claimant was acting as an independent contractor, these factors can be considered in analyzing whether her employment was for the United States or for a private institution.

the role of a Department of Defense school (“DoD school”), it is not actually a DoD school, as Indonesia does not permit DoD schools within its borders.

In regard to the Dhahran elementary school, Claimant produced a letter from the school Superintendent, Norma Hudson, stating that the school follows a US curriculum, and is the “school of choice” for children of employees the American Consulate, US military, and other US Government employees. (Exhibit Claimant –5). This letter also stated that since DoD schools are not permitted to operate in Saudi Arabia, the Dhahran elementary school has filled the role of a DoD school.

Claimant also presented a letter from Keith Miller, the Director of the Office of Overseas Schools for the United States Department of State, which stated that both the Jakarta International school and the Dhahran elementary school provided education for children of American government employees, as well as children of American employees from the private sector, and that both schools received grant support from the United States Department of State. (Exhibit Claimant-6). Additionally, Mr. Miller stated that both schools perform the function of a DoD school, and follow American curriculums taught by American teachers.

While the evidence appears to indicate that both the Jakarta school and the Dhahran elementary school have connections to the United States, it does not meet the burden of establishing an employer/employee relationship. Although both schools fulfilled the role of DoD schools, the critical distinction is that neither school was controlled by the United States government (as Department of Defense schools obviously are). The schools were both private schools, funded by student tuition. Clearly, Claimant was an employee of the schools themselves and not an employee of the United States. The schools did serve children of

employees of the United States government, but also served children of United States private sector employees, and charged tuition to both. There is no evidence that the United States had any direct responsibility or control over Claimant's work, or even over the schools themselves. There is also no evidence that Claimant received her wages from the United States in any way. While it is clear that both schools received some funding from the United States, this is not sufficient.<sup>4</sup> The connection of both the Jakarta International school and Dhahran elementary school to the United States is tenuous at both, and certainly does not rise to the level that Claimant's positions at either could be considered in the role as an employee of the United States.

#### **Conclusions of Law**

1. PSERS was created by the legislature and can grant no rights beyond those contained in the Retirement Code. Hughes vs. Public School Employees' Retirement System, 622 A.2d 701 (Pa. Cmwlth. 1995); *alloc. den.* 668 A.2d 1139 (Pa. 1995).
2. PSERS' interpretation of the Retirement Code is entitled to great deference. Panko v. Public School Employees' Retirement System, 492 A.2d 805 (Pa. Cmwlth. 1985).
3. Claimant bears the burden of establishing those facts upon which she relies in order to prevail. Wingert v. State Employees' Retirement Board, 138 Pa. Cmwlth. 43, 589 A.2d 269 (1991).
4. The Retirement Code allows for the purchase of creditable nonschool service "as an administrator, teacher, on instructor in the field of public school education for any agency or

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<sup>4</sup> . In Shafer, the Appellant was paid directly by the United States Embassy for his employment as a teacher in Egypt, but he had contractually agreed that this did not make him a government employee. Shafer at 335, 696 A.2d at 1193.

department of the government of the United States whether or not such area was under the jurisdiction of the United States.” 24 Pa.C.S. §8304(b)(4).

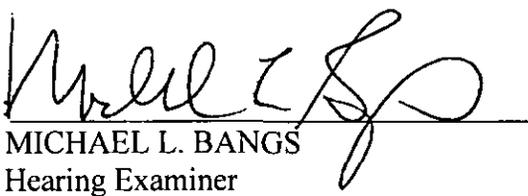
5. In order to satisfy the Retirement Code and allow for the purchase of prior service, there must be proof that the prior service an employer/employee relationship with an agency or department of the United States government. Shafer v. State Employees’ Retirement Board, 548 Pa. 320, 696 A.2d 1186 (1997).

6. Claimant did not satisfy her burden of proof that she was an employee of the United States; rather, the evidence indicates that her service with both the Jakarta school and the Dhahran elementary school was as an employee of these private schools.

**Recommendation**

This Hearing Examiner recommends that Claimant’s request to purchase both her 1992 through 1997 service at the Jakarta International School and her 2000-2004 service at the International Schools Group – Dhahran elementary school be DENIED.

Respectfully submitted,

BY:   
MICHAEL L. BANGS  
Hearing Examiner

Date: 3/31/09