

NOTICE

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2018 IL App (4th) 170415-U

NO. 4-17-0415

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 15, 2018
Carla Bender
4th District Appellate
Court, IL

MICHAEL T. McGUE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
THE BOARD OF TRUSTEES OF THE TEACHERS’)	No. 16MR430
RETIREMENT SYSTEM OF THE STATE OF)	
ILLINOIS, an Illinois Administrative Agency; THE)	
TEACHERS’ RETIREMENT SYSTEM OF THE)	
STATE OF ILLINOIS; TONY SMITH, as President)	
and Trustee of the Board; CINDA KLICKNA, as)	
Trustee of the Board; MARK BAILEY, as Trustee of)	
the Board; MICHAEL BUSBY, as Trustee of the)	
Board; ANN DETERS, as Trustee of the Board;)	
ANDREW HIRSHMAN, as Trustee of the Board;)	
RAINEY KALAN, as Trustee of the Board; BOBY)	
LYONS, as Trustee of the Board; ALEXANDER)	
STUART, as Trustee of the Board; SONIA)	
WALWYN, as Trustee of the Board; DANILE)	
WINTER, as Trustee of the Board; RANDALL)	
WINTERS, as Trustee of the Board; and DICK)	Honorable
INGRAM, as Executive Director of the Board,)	Esteban F. Sanchez,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) plaintiff was not eligible to receive service credit toward his pension for the years he was employed with the Lake County Federation of Teachers, Local 504 because he failed to establish he was employed by a “statewide teacher organization” within the meaning of the Illinois Pension Code (40 ILCS 5/16-106(8) (West 2014)); and (2) the stipends plaintiff received, as vice president of the Illinois Federation of Teachers, were not creditable salary.

¶ 2 Plaintiff, Michael T. McGue, appeals the judgment of the circuit court affirming the administrative decision of the Board of Trustees of the Teachers' Retirement System of the State of Illinois (Board), which denied plaintiff service credit for his employment as Lake County Federation of Teachers, Local 504 (Local 504) coordinator and Illinois Federation of Teachers (IFT) vice president. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 1980, plaintiff began working as a teacher of industrial arts at Zion-Benton Township High School (Zion-Benton), in Lake County, Illinois. In 1987, plaintiff assisted Zion-Benton teachers in organizing as a union group under the American Federation of Teachers (AFT). In 1992, the Zion-Benton Federation of Teachers elected plaintiff as council president. In 1995, Local 504 elected him president and IFT elected him vice president. From 1995 to 1999, plaintiff simultaneously held the positions of teacher at Zion-Benton, president of Local 504, and vice president of IFT.

¶ 5 Plaintiff performed his Zion-Benton union work on a volunteer basis. During his 1992 to 1999 tenure as president of Local 504, plaintiff did not receive a salary; rather, he received an annual stipend of \$5000 to \$6000. As vice president of IFT, plaintiff also did not receive a salary, but he received a \$300 stipend for each IFT meeting he attended. Plaintiff attended five to six IFT meetings per year.

¶ 6 A. Local 504 Coordinator Position

¶ 7 In February 1999, plaintiff, in his capacity as president of Local 504, met with Glenn Smith, IFT's director of field operations, and Raymond Mackey, AFT's regional director, to discuss funding for a new Local 504 coordinator position that would help organize local union membership. In creating the coordinator position, AFT, IFT, and Local 504 agreed to share

funding responsibilities for the first three years of the position. AFT's share would gradually phase out, Local 504's share would increase each year until it assumed 75% responsibility, and IFT would contribute the remaining 25%. According to an administrative agreement between IFT and Local 504, IFT was to serve as the administrative agent, issuing payment to the coordinator and then billing Local 504 for the 25% IFT paid out. In later years, plaintiff's salary for the coordinator position flowed 100% from Local 504 to IFT. In its capacity as agent, IFT's responsibilities also included issuing paychecks, W-2 wage and tax statements, and administering health and retirement benefits.

¶ 8 Local 504 structured the coordinator position as a pass-through arrangement that allowed it to offer the coordinator full benefits in addition to a competitive salary. In a memo to the Local 504 steering committee, Smith expressed a condition of AFT and IFT providing financial support as AFT and IFT giving final approval of the successful candidate to ensure proper use of their money. However, Smith stated that only in his "wildest imagination [could he] envision having to exercise this type of discretionary veto."

¶ 9 On February 25, 1999, the Local 504 *ad hoc* hiring committee posted the coordinator position on the Local 504 website. The job description provided the local coordinator would be a "full-time employee of the Local 504 Executive Board" and the position "require[d] travel on a daily basis throughout Lake County."

¶ 10 Plaintiff applied and in the spring of 1999, became the first coordinator for Local 504. Plaintiff entered into an employment contract naming Local 504 as "Employer" and bearing the signature Local 504 Vice President, Sue Greene. The Local 504 steering committee set plaintiff's salary each year, as no one at IFT possessed such authority. Plaintiff in turn reported his salary to IFT's bookkeeper for accounting purposes. Upon becoming Local 504

coordinator, plaintiff took a leave of absence from his teaching position at Zion-Benton, which he annually renewed.

¶ 11 Smith told plaintiff that he would not be part of the IFT pension trust program as Local 504 coordinator. However, plaintiff could “continue to pay into an Illinois State Retirement System for which the [Local 504] [c]oordinator may be eligible.” As a teacher at Zion-Benton, plaintiff paid into the Teachers’ Retirement System of the State of Illinois (TRS) and continued to pay into TRS when he took the Local 504 coordinator position. Each year, from 1980 to 2013, plaintiff annually received TRS member benefit statements and documents showing the amount he paid into TRS. The documents contained disclaimer language stating final benefits were subject to revision upon retirement.

¶ 12 B. TRS Retirement Process

¶ 13 On March 11, 2013, in anticipation of his retirement, plaintiff resigned as coordinator for Local 504. On March 21, 2013, plaintiff finalized his retirement from Zion-Benton. Plaintiff also resigned from his positions as Local 504 president and IFT vice president (effective March 15, 2013). Plaintiff subsequently submitted his retirement paperwork to TRS. TRS sent plaintiff several forms to fill out and return. TRS also requested a supplementary report from any employer providing reported salary for plaintiff.

¶ 14 Due to large increases in his salary during certain years, TRS conducted an audit. On August 9, 2013, TRS notified plaintiff, in a final staff disposition, that it did not consider the earnings reported by IFT for his service as Local 504 coordinator or IFT vice president eligible for TRS benefits. TRS stated, “there is no statutory provision allowing employees of a local entity to obtain TRS membership merely because their salary is paid on a pass through basis by a statewide employer.” TRS also did not consider plaintiff’s IFT vice president stipends income

for benefit purposes. TRS informed plaintiff it would refund the contributions made by IFT and recalculate his retirement benefits. Plaintiff, however, withdrew his retirement claim. Plaintiff subsequently resumed employment with Local 504 with expanded duties, an annual salary of \$330,000, and the title of president rather than coordinator.

¶ 15 C. Review of the TRS Final Staff Disposition

¶ 16 In November 2013, plaintiff appealed the TRS final staff disposition denying him benefits. Ultimately, the TRS Claims Hearing Committee (Committee) determined plaintiff ineligible to receive service credit for his time as Local 504 coordinator. The Committee concluded (1) the definition of a “statewide teacher organization” within section 16-106(8) of the Illinois Pension Code (Pension Code) (40 ILCS 5/16-106(8) (West 2014)), was not unconstitutionally vague; (2) Local 504, AFT, and IFT are not the same organization; (3) Local 504 is not a “statewide teacher organization” under section 16-106(8) of the Pension Code (40 ILCS 5/16-106(8) (West 2014)); (4) plaintiff as Local 504 coordinator worked for Local 504, not IFT; (5) the stipends plaintiff received as IFT vice president are not creditable salary; and (6) estoppel failed to bar the TRS decision to deny plaintiff credit for his time as Local 504 coordinator.

¶ 17 Plaintiff filed exceptions to the recommended decision with the Board. Before the Board, the parties stipulated to the relevant facts and the facts therefore are not in dispute. On March 30, 2016, the Board issued its final administrative decision adopting the Committee’s recommended decision. In May 2016, plaintiff appealed the decision of the Board in the Sangamon County circuit court. On May 3, 2017, the circuit court upheld the decision of the Board, thus affirming the denial of service credit under the pension code for the time plaintiff worked for Local 504.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, plaintiff seeks service credit from TRS for his time as Local 504 coordinator and IFT vice president. Plaintiff argues (1) the term “statewide teacher organization” as used in section 16-106(8) of the Pension Code is unconstitutionally vague; (2) the Board erroneously denied him service credit for the years he was employed as Local 504 coordinator because the Board’s finding that plaintiff did not work for a “statewide teacher organization” was clearly erroneous; (3) the Board erroneously denied plaintiff service credit for stipends he received as vice president of IFT; and (4) the Board erroneously failed to find estoppel acted as a bar to TRS denying plaintiff service credit for the years he worked as Local 504 coordinator. We address these issues in turn.

¶ 21 A. Standard of Review

¶ 22 In administrative review cases, we review the Board’s decision rather than the decision of the circuit court. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386, 925 N.E.2d 1131, 1142 (2010). When reviewing administrative agency decisions, this court considers factual questions under the manifest weight standard, questions of law *de novo*, and mixed questions of law and fact for clear error. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210-11, 886 N.E.2d 1011, 1018 (2008). We turn first to the constitutional argument.

¶ 23 B. Constitutional Vagueness

¶ 24 There is no dispute about whether plaintiff worked for Local 504. Thus, plaintiff’s eligibility for service credit during his tenure as Local 504 coordinator turns on whether Local 504 is a “statewide teacher organization.” See 40 ILCS 5/16-106(8) (West 2014).

Plaintiff asserts the term “statewide teacher organization” is unconstitutionally vague because the Pension Code fails to define the term. The Board in turn argues that the Illinois legislature is not required to define every term in a statute but rather we look to the ordinary meaning of terms to determine if Local 504 is a “statewide teacher organization.”

¶ 25 Whether a “statewide teacher organization” as defined in section 16-106(8) of the Pension Code is unconstitutionally vague is a question of law, reviewed *de novo*. See *People v. Jones*, 223 Ill. 2d 569, 596, 861 N.E.2d 967, 983 (2006) (constitutionality is a pure question of law, reviewed *de novo*).

¶ 26 The Pension Code sets forth rules and regulations for administering retirement benefits to Illinois state employees. 40 ILCS 5/1-101 *et seq.* (West 2016). Within the state’s retirement system, TRS administers retirement benefits to Illinois teachers. 40 ILCS 5/16-101 (West 2016). Section 16-106(8) defines “teacher,” in relevant part, as follows:

“(8) Any officer or employee of a *statewide teacher organization* or officer of a national teacher organization who is certified under the law governing certification of teachers, provided: (i) the individual had previously established creditable service under this Article, (ii) the individual files with the system an irrevocable election to become a member before the effective date of this amendatory Act of the 97th General Assembly, (iii) the individual does not receive credit for such service under any other Article of this Code, and (iv) the individual first became an officer or employee of the teacher organization and becomes a member before the effective date of this amendatory Act of the 97th General Assembly[.]” (Emphasis added.) 40 ILCS 5/16-106(8) (West 2014).

The Pension Code does not define “statewide teacher organization.” Therefore, plaintiff argues the statute is unconstitutionally vague. When determining whether a statute is unconstitutional, we start with the presumption that all statutes are constitutional. See *General Motors Corp. v. State Motor Vehicle Review Board*, 224 Ill. 2d 1, 24, 862 N.E.2d 209, 225 (2007). Thus, plaintiff bears the burden of rebutting the presumption of constitutionality. *Id.*

¶ 27 A statute is unconstitutionally vague only if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the decision-maker rather than any objective criteria or facts. *Id.*

¶ 28 In Illinois, courts adhere to the well-settled principle that when interpreting a statute, the primary rule is to give effect to the intention of the legislature. *Cinkus*, 228 Ill. 2d at 216. The Illinois legislature is not constitutionally required to define every given term in a statute. *Homeward Bound Services, Inc. v. Illinois Department of Insurance*, 365 Ill. App. 3d 267, 274, 848 N.E.2d 589, 594 (2006). In the event a term is undefined, courts look to the language of the statute itself, and give that language its plain and ordinary meaning. *Cinkus*, 228 Ill. 2d at 216.

¶ 29 In interpreting the plain and ordinary meaning of the statute, we look to the commonly understood definitions of its terms. Merriam-Webster’s Dictionary defines “statewide” as “affecting or extending throughout all parts of a state.” Merriam-Webster’s Collegiate Dictionary 1219 (11th ed. 2003). We find the term “statewide” plain and unambiguous. Therefore, we conclude a “statewide teacher organization” under the Pension Code means any organization whose primary purpose is to serve the entire geographical area of Illinois, rather than a small, defined geographical area.

¶ 30 The way TRS interprets the statute supports our conclusion. Historically, TRS only considers IFT and Illinois Education Association to be statewide teacher organizations. We note, the primary objectives of IFT are to improve the status of Illinois teachers, educational workers and other workers, to provide for better educational opportunities for all citizens of Illinois, and secure favorable state and national legislation and policies. IFT constitutes a “statewide teacher organization” where its primary purpose is to serve teachers throughout the state of Illinois.

¶ 31 In contrast, Local 504’s primary objective, as laid out in its constitution, is to “unite the education profession in Lake County ***.” There is no indication in the constitution or bylaws that the purpose of Local 504 is to serve the state of Illinois as a whole. Accordingly, we conclude Local 504 is not a “statewide teacher organization” where its primary focus is limited to Lake County.

¶ 32 Although the statute fails to define “statewide teacher organization,” we conclude the plain and unambiguous language is not so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the decision maker. Plaintiff has failed to demonstrate the statutory language is unconstitutionally vague. Therefore, we affirm the Board’s plain-language interpretation of “statewide teacher organization” under the Pension Code.

¶ 33 C. Service Credit Eligibility

¶ 34 Plaintiff next argues the Board erroneously determined him ineligible for service credit as Local 504 coordinator when it decided Local 504 was not a “statewide teacher organization” under the Pension Code. Specifically, plaintiff asserts (1) Local 504, IFT, and AFT are one entity; (2) IFT, not Local 504 employed plaintiff; and (3) Local 504 is a “statewide teacher organization” under the Pension Code. The Board argues Local 504 is not a “statewide

teacher organization,” and employees of Local 504 are not eligible for service credit under the Pension Code.

¶ 35 A mixed question of law and fact occurs “where the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard.” *Provena*, 236 Ill. 2d at 387. Here, because the Board considered whether the facts satisfied the statutory definition of creditable salary in regard to plaintiff’s employment as Local 504 coordinator and IFT vice president, the clear error standard applies. Under the clearly erroneous standard, we give deference to the agency in interpreting and applying the statutes it administers, unless we have a “definite and firm conviction that a mistake has been committed.” *Cinkus*, 228 Ill. 2d at 211 (quoting *AFM Messenger Service, Inc., v. Department of Employment Security*, 198 Ill. 2d 380, 395, 763 N.E.2d 272, 282 (2001)).

¶ 36 1. *Local 504, IFT, and AFT as one entity*

¶ 37 Plaintiff argues a “statewide teacher organization” employed him because Local 504, AFT, and IFT are one organization. The Board, relying on the bylaws and constitution of each organization, concluded Local 504, AFT, and IFT are separate organizations.

¶ 38 As established above, IFT is a “statewide teacher organization.” Plaintiff therefore argues that he was eligible for service credit as Local 504 coordinator because AFT, IFT, and Local 504 are one same organization. Plaintiff argues AFT, IFT, and Local 504 are closely intertwined because the organizations coordinate with each other to achieve common goals. IFT and Local 504 shared office space in Gurnee, Illinois, and plaintiff in his capacity as Local 504 coordinator assisted at IFT and AFT conventions.

¶ 39 We agree with the Board that adopting the assertion that all three organizations are one entity pursuant to the Pension Code would lead to absurd results. An employee who is a

member of AFT or Local 504 is not eligible for Illinois pension benefits simply because IFT is a “statewide teacher organization.” The three organizations share common goals and coordinate their efforts but they are separate entities. AFT, IFT, and Local 504 each have their own constitution, bylaws, and executive board. AFT, IFT, and Local 504 are three separate entities that are able to initiate and be subject to lawsuits, enter into agreements, and purchase property. According to its bylaws, Local 504 “shall maintain *affiliation*” with AFT and IFT, but Local 504 is free to refuse an offer of assistance from either. (Emphasis added.) Accordingly, we conclude the Board’s determination that plaintiff was not an employee of a “statewide teacher organization” because Local 504, IFT, and AFT were not one organization was not clearly erroneous.

¶ 40 Plaintiff asserts the Board’s reliance on information from the website deprived him of due process and a fair hearing. Plaintiff urges that, because no party made the website information of record, the decision must be reversed. In support of his position, plaintiff directs us to the cases of *Des Plaines Currency Exchange Inc. v. Knight*, 29 Ill. 2d 244, 194 N.E.2d 89 (1963), and *Emerald Performance Materials, LLC v. Illinois Pollution Control Board*, 2016 IL App (3d) 150526, 64 N.E.3d 672.

¶ 41 Although consideration of information outside the record did not occur in that case, *Des Plaines* does stand for the proposition that an administrative agency must base its decision on matters of record. *Des Plaines Currency Exchange, Inc.*, 29 Ill. 2d at 247. In *Emerald*, the Pollution Control Board imposed the exact reduction requirement recommended by a draft report—issued after the close of the evidence—that the company involved in the proceeding had no opportunity to respond to or address. *Emerald Performance Materials, LLC*, 2016 IL App (3d) 150526, ¶ 32. However, in this case we are unconvinced the Board based its

decision on the website information. It appears the Board mentioned the website information to point out the consistency between the website and the conclusion it reached after considering the constitution and the bylaws.

¶ 42 Also, much of the website information mentioned by the Board is, in one way or another, stated in the constitution or bylaws. Ultimately, the vast majority of the information constituted cumulative evidence. See *People v. Becker*, 239 Ill. 2d 215, 240, 940 N.E.2d 1131, 1145 (2010) (consideration of improperly admitted evidence that is cumulative or that duplicates properly admitted evidence is harmless error). Moreover, plaintiff fails to make a clear argument as to how the alleged consideration of the website information prejudiced him. Finally, as pointed out by the circuit court, “Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him or her.” 735 ILCS 5/3-111(b) (West 2012). Plaintiff fails to make such a showing.

¶ 43 *2. IFT as Plaintiff's Employer*

¶ 44 In the alternative, plaintiff asserts IFT—rather than Local 504—employed him, making his work as Local 504 coordinator eligible for service credit. Specifically, plaintiff argues IFT (1) created and crafted the Local 504 coordinator position; (2) partially funded the local coordinator position; (3) interviewed plaintiff for the position; (4) held veto power over the candidate selected for the position; (5) paid his salary and administered any benefits for the position; (6) issued all W-2 wage and tax statements; and (7) supervised his work. In spite of these facts, the Board determined plaintiff failed to show he worked for IFT and denied him service credit for his time as Local 504 coordinator.

¶ 45 While IFT did help create the Local 504 coordinator position, it did so along with AFT and Local 504. Smith, as director of field operations for IFT, interviewed plaintiff, along with the AFT regional director and the Local 504 hiring committee. Although IFT and AFT had a say in the final hiring decision, IFT foresaw no interference unless Local 504 chose an unfit candidate. As Smith stated, only in his “wildest imagination [could he] envision having to exercise this type of discretionary veto.”

¶ 46 According to the job description for the Local 504 coordinator position posted on the Local 504 website, it intended the coordinator to be a “full-time employee of the Local 504 Executive Board.” Plaintiff, upon accepting the position, entered into a contract that named Local 504 as “Employer” and bore the signature of Local 504 Vice President, Sue Greene. IFT acted as administrative agent for the agreement between Local 504 and IFT.

¶ 47 The structure and funding of the Local 504 coordinator position involved a pass-through arrangement, making the job appear more attractive to candidates where the position offered full benefits and a competitive salary. After paying the coordinator salary on a pass-through basis, Local 504 reimbursed IFT for the money IFT fronted to fund the local coordinator position. This pass-through arrangement, however, did nothing to convert the coordinator from local to statewide. Here, the board's rejection of plaintiff's contention that the nature of his work, or the source of funding for his position, entitled him to service credit for his time as Local 504 coordinator is similar to *Falato v. Teachers' Retirement System of Illinois*, 209 Ill. App. 3d 419, 568 N.E.2d 233 (1991).

¶ 48 The plaintiff in *Falato* taught music full time in a public school, but a private company employed and paid him. *Id.* at 420-21. The plaintiff argued he met the definition of “teacher” under the Pension Code. *Id.* at 424. The court rejected his claim for service credit

holding that where a person fails to show a TRS member employer employs him, he is not a “teacher” under the Pension Code. *Id.* at 424-25. Similar to the plaintiff in *Falato*, plaintiff worked to further the goals of IFT and received a salary facilitated by a pass-through arrangement between IFT and Local 504, but Local 504 employed plaintiff.

¶ 49 Plaintiff alleged that IFT and its President supervised his work as Local 504 coordinator. Specifically, plaintiff asserts IFT directed his performance regarding which school districts to organize. While plaintiff worked closely with IFT and its employees, the Local 504 steering committee oversaw his day-to-day activities.

¶ 50 IFT and Local 504 work closely together to achieve common goals. That close relationship however fails to make plaintiff an IFT employee. Local 504 employed plaintiff in his capacity as Local 504 coordinator. We find the Board’s decision to deny plaintiff service credit under the Pension Code was not clearly erroneous where IFT never employed plaintiff. Accordingly, we affirm the final administrative decision of the Board.

¶ 51 3. *Local 504 as a “Statewide Teacher Organization”*

¶ 52 Finally, we address plaintiff’s claim that the Board decision finding Local 504 did not constitute a “statewide teacher organization” was clearly erroneous.

¶ 53 Plaintiff argues Local 504 is a “statewide teacher organization” because as Local 504 coordinator he worked to further the goals of Local 504, the state, and the national organization. Plaintiff also asserts that in his capacity as Local 504 coordinator, he traveled outside Lake County and devoted significant time toward achieving IFT objectives.

¶ 54 An important consideration in determining if Local 504 is a “statewide teacher organization is the nature and purpose of Local 504. As laid out in its constitution, the purpose of Local 504 is to “unite the education profession in Lake County.” We note, there is no

suggestion in the Local 504 constitution or bylaws that the purpose of the work of Local 504 extends beyond Lake County boundaries. Moreover, we find support for our position in the name of Local 504. The name Lake County Federation of Teachers implies its jurisdiction is limited to Lake County.

¶ 55 Although plaintiff encourages us to look to the travel in which plaintiff engaged as pivotal, we decline to do so. Plaintiff occasionally traveling outside Lake County to perform his duties as Local 504 coordinator fails to transform Local 504 into a “statewide teacher organization.” Irrespective of where his travels took him, plaintiff worked for Local 504. At all times, his efforts involved meeting the needs of teacher members in Lake County. Thus, we find unpersuasive the fact that plaintiff on occasion traveled outside the county for work. Finally, the job description for Local 504 coordinator bolsters the finding that Local 504 is not a “statewide teacher organization.” The job description outlines that the position “requires travel on a daily basis throughout Lake County.” Local 504 is not a TRS member employer and therefore, the board correctly determined plaintiff to be ineligible for service credit for his time as Local 504 coordinator. We find the Board’s determination that Local 504 was not a “statewide teacher organization” was not clearly erroneous.

¶ 56 Plaintiff again asserts the Board’s reliance on information from Local 504’s website deprived him of due process and a fair hearing. On this question, we reference paragraphs 40 through 42 to support our finding that the Board’s use of information from the website was harmless. See *Becker*, 239 Ill. 2d at 240. Plaintiff fails to make a clear argument as to how information on the website regarding the council makeup of Local 504 prejudiced him. In adopting the Committee’s recommended decision, the Board primarily relied on the constitutions and bylaws of each organization, not the information found on Local 504’s website.

Thus, we decline to find the Board's use of information from Local 504's website deprived plaintiff of a fair hearing or due process of law.

¶ 57 D. Stipends as Creditable Salary

¶ 58 As vice president of IFT, plaintiff received a \$300 stipend for each IFT meeting he attended. IFT never reported the stipends as creditable salary to TRS. Plaintiff argues the Board's determination that the stipends were not salary was clearly erroneous. We disagree.

¶ 59 Under section 16-121 of the Pension Code, "salary" is defined as "[t]he actual compensation received by a teacher during any school year and recognized by the system in accordance with rules of the board." 40 ILCS 5/16-121 (West 2016). The relevant administrative rules further spell out which types of compensation are creditable and non-creditable for retirement purposes. 80 Ill. Adm. Code 1650.450(b), (c) (eff. Jan. 25, 2011). Specifically, expense reimbursements, expense allowances, or fringe benefits are deemed non-creditable compensation and are not recognized as "salary." 80 Ill. Adm. Code 1650.450(c)(3) (eff. Jan. 25, 2011).

¶ 60 We conclude the Board properly found plaintiff's IFT vice president stipends for travel expenses related to attendance at IFT meetings were not creditable. The stipends are comparable to the noncreditable compensation provided for in the administrative rules. 80 Ill. Adm. Code 1650.450(c)(3) (eff. Jan 25, 2011). Plaintiff himself stated the stipends were given to him, so that he could "travel around the state at the request of the IFT president on his behalf *** to meetings [that the president] could not attend." There is no evidence the stipends were anything other than periodic payments to offset expenses related to attendance at IFT meetings.

¶ 61 Accordingly, we find plaintiff is not eligible for service credit for his IFT stipends because the stipends were neither salary nor creditable compensation. Therefore, the Board's decision was not clearly erroneous and we affirm.

¶ 62 E. Estoppel

¶ 63 Finally, plaintiff argues the doctrines of equitable and promissory estoppel operate to prevent the denial of service credit. In reviewing the Board's decision, we determine whether a violation occurred in the application of the law to the established facts. We review the decision of the Board for clear error.

¶ 64 1. *Equitable Estoppel*

¶ 65 Generally, public policy disfavors application of equitable estoppel to bar state action. *McDonald v. Illinois Department of Human Service*, 406 Ill. App. 3d 792, 803, 952 N.E.2d 21, 30 (2010). We apply equitable estoppel only where "(1) doing so would be necessary to prevent fraud and injustice and (2) the state itself induced a private actor's reliance." *Id.*

¶ 66 Plaintiff argues equitable estoppel precluded the denial of service credit because during his tenure as Local 504 coordinator, TRS accepted his retirement contributions without questioning the creditability of his service. Plaintiff also asserts that forms and letters from TRS provided assurances of his eligibility for pension benefits. Plaintiff argues he relied on these acts by TRS to his prejudice.

¶ 67 Plaintiff paid into a valid retirement pension account with TRS while teaching at Zion-Benton. During his time as IFT vice president and Local 504 coordinator, TRS received contributions on behalf of plaintiff from IFT, a "statewide teacher organization." Therefore, it would have been routine, consistent, and appropriate for TRS to accept contributions on behalf

of plaintiff without question. Plaintiff makes no suggestion of fraud and fails to prove how an injustice arises if equitable estoppel is not applied.

¶ 68 The benefit estimates provided to plaintiff contained unambiguous disclaimer language warning potential recipients to avoid relying on the estimates prior to TRS conducting a final audit. Specifically, the member benefit statement stated as follows:

“This is an estimate. Every effort has been made to provide you accurate information regarding your benefits. The estimate is based upon a number of assumptions; including, your eligibility to receive an annuity, outstanding balances, your age, etc. However, revisions due to error, omissions, change in assumptions, or future laws governing benefits administered by TRS may affect your final benefit amount.”

¶ 69 Other documents plaintiff relied on contained similar disclaimer language. A January 25, 2013, letter to plaintiff stated, “TRS does not endorse or accept any benefit estimates produced by your employer, or any other organization, business or government entity.” Each TRS benefits report plaintiff received contained the following disclaimer language:

“**Important Reminder.** In preparing this Benefits Report, every effort has been made to provide accurate information. However, any projected information is approximate. All information is subject to revision due to errors, omissions, or future changes in the rules and laws governing the Teachers’ Retirement System. In addition, salaries reported to TRS are subject to audit to determine

compliance with reporting rules and procedures.” (Bolded in original.)

¶ 70 TRS relies on employers to self-report service for each employee entitled to credit. An employee who contributes, but holds a position for which he is not entitled to credit, is incapable of converting an ineligible position into an eligible one. Plaintiff relied on documents and forms that on their face included cautionary language. Plaintiff therefore fails to establish the reasonableness of his reliance on the TRS information. Given the multiple disclaimers and the inability of plaintiff to point to any fraud, we are unable to find any injustice or inducement. We find the Board was not estopped from denying plaintiff service credit for his time as Local 504 coordinator.

¶ 71 *2. Promissory Estoppel*

¶ 72 To establish a claim for promissory estoppel against TRS, plaintiff must establish (1) an unambiguous promise by TRS; (2) his reliance on that promise; (3) TRS expected and foresaw his reliance on that promise; and (4) his reliance on the promise to his detriment.

Newton Tractor Sales, Inc., v. Kubota Tractor Corp., 233 Ill. 2d 46, 51, 906 N.E.2d 520, 523-24 (2009).

¶ 73 Plaintiff argues that while he worked as Local 504 coordinator, TRS engaged in conduct that constituted a promise to him that he was eligible to receive benefits for his work at Local 504. Plaintiff identifies the conduct as accepting his contributions and failing to raise the issue of eligibility. In order to give rise to promissory estoppel, plaintiff must establish TRS made him a promise of his eligibility for retirement benefits as Local 504 coordinator. As noted, on multiple occasions, plaintiff received statements from TRS with disclaimer language cautioning that his benefits were subject to change. In light of the obvious effort to communicate

the mutability of his benefits, it is not reasonable to conclude TRS foresaw plaintiff relying on routine documents as a promise of eligibility for benefits.

¶ 74 IFT provided the closest thing to a promise when Smith told plaintiff that he would not be part of the IFT pension plan, but that he could continue to pay into an Illinois retirement plan in which he may be eligible. According to plaintiff, he “intended to stay in the pension system, but it wasn’t even in [his] field of thought whether it had to be IFT, [Local 504], AFT or whatever at the time.” In circumstances such as these, TRS relies on accurate reporting by employers of salaries of employees eligible for service credit. TRS is not responsible for any promises IFT made to plaintiff, or for plaintiff’s own failure to ensure he could continue to contribute to his TRS account after he accepted the Local 504 coordinator position.

¶ 75 The Illinois General Assembly has specifically excluded employees of local unions from eligibility for TRS benefits under the Pension Code. See 40 ILCS 5/16-106(8) (West 2014). Allowing plaintiff to receive service credit for his time as Local 504 coordinator would require TRS to violate Illinois law and provide plaintiff with a benefit for which he is not eligible. We note TRS never wholly denied plaintiff’s benefits. The time plaintiff spent teaching is not at issue, and he may receive pension benefits for those years. We therefore find that the Board was not estopped from denying plaintiff service credit as Local 504 coordinator. The Board’s decision was not clearly erroneous.

¶ 76 III. CONCLUSION

¶ 77 For the reasons stated, we affirm the circuit court’s judgment affirming the Board’s decision. In doing so, we thank the circuit court for its thorough consideration and explanation of its decision.

¶ 78 Affirmed.