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Since the Acts of 1935, Ch. 319, supra, does not contain a provision controlling this situation, a report concurred in by a majority of such committee is valid and binding.

Griffin et al. v. Pearce et al. (1918), 187 Ind. 287, 119 N. E. 8.

From the foregoing authorities, it is my opinion that a prevailing wage scale concurred in by two of the three members of the committee would be the legally established prevailing wage scale.

OFFICIAL OPINION NO. 27

April 2, 1954

Mr. Cecil Bolinger
Executive Secretary
Public Employes' Retirement Fund
707 Board of Trade Building
Indianapolis 4, Indiana

Dear Mr. Bolinger:

Your letter of January 21, 1954 has been received and reads as follows:

"We request your official opinion on certain aspects of Chapter 259, Acts of 1951 which we will illustrate by certain hypothetical cases as follows:

"Miss A is a teacher in the Elkhart City Schools. She is a member of the Indiana State Teachers Retirement Fund with 10 years of service. On January 1, 1954 she leaves the service of the Elkhart City Schools and accepts a clerical position with the Purdue University, which position is covered by the Public Employes' Retirement Fund. The Elkhart School City is not a participating municipality in the Public Employes' Retirement Fund.

"Miss A applies for transfer of membership from the Teachers' Retirement Fund to the Public Employes' Retirement Fund.
"Against what unit of government should the costs of Miss A's 10 years of prior service, as a member to the Teachers' Retirement Fund be billed on transfer to the Public Employes' Retirement Fund?

"Miss B is a teacher in the Elkhart City Schools and also a member of the Indiana State Teachers' Retirement Fund with 10 years of service. On January 1, 1954 she leaves the teaching profession and accepts a position with the Kosciusko County Welfare Department, who is a member of this fund. The Elkhart School City is not. Miss B applies for transfer of membership from the Teachers' Retirement Fund to the Public Employes' Retirement Fund.

"Against what unit of government shall the costs of Miss B's ten years of prior service as a member of the Teachers' Retirement Fund be billed on transfer of membership to the Public Employes' Retirement Fund?"

An examination of each of your questions reveals that they are identical, except that in the first hypothetical case the teacher's new employment is with Purdue University, a state institution, while in the second hypothetical case, the teacher's new employment is with the Kosciusko County Welfare Department. However, in view of the results of this opinion, hereinafter stated, such distinction is not material.

The Public Employes' Retirement Act, same being the Acts of 1945, Ch. 340, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1601 et seq., in most respects makes provisions for particular governmental agencies which become participating members of the fund, to make annual payments into the Public Employes' Retirement Fund, over a number of years agreed upon, covering the employer's liability for prior service of employees on their becoming members of the Public Employes' Retirement Fund. For instance, as to municipalities, this is covered by the Acts of 1945, Ch. 340, Sec. 23, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1623. Another illustration is the provision covering members of the State Board of Agriculture and/or the State Fair Board in the Acts of 1947, Ch. 16, Secs. 1, 2,
No such provision is made in the separate supplemental statute authorizing transfers of membership and credits due teachers from the State Teachers’ Retirement Fund to the Public Employes’ Retirement Fund. This statute is found in the Acts of 1951, Ch. 259, as found in Burns’ Indiana Statutes (1951 Repl.), Sections 60-1635 to 60-1638, inclusive. Section 1 of Ch. 259, supra, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1635, reads as follows:

“Any present or future member of the Public Employes’ Retirement Fund who previous to his or her present employment earned creditable service under the Indiana State Teachers’ Retirement Fund and has not withdrawn his contribution, may elect to receive credit for such service provided that such member shall authorize his or her contribution transferred from Indiana State Teachers' Retirement Fund to the Public Employes' Retirement Fund. Such contributions shall be credited to the member’s account in the same manner as regular monthly contributions.”

Section 2 of Ch. 259, supra, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1636, is as follows:

“Any present or future member of the Public Employes’ Retirement Fund who previous to his present employment earned creditable service under the Indiana State Teachers' Retirement Fund may elect to receive credit for such service, if he has withdrawn his contributions from the Indiana State Teachers' Retirement Fund, upon payment to the Public Employes' Retirement Fund of the amount withdrawn and the transfer from the Teachers' Fund of an amount equal to the amount withheld, if any, pursuant to the provisions of the Indiana State Teachers' Retirement Fund Act.”

Section 4 of Ch. 259, supra, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1638, provides as follows:

“Upon notice from the Board of Trustees of the Public Employes’ Retirement Fund that any specified
person has elected to avail themselves of the provisions of Sec. 1 (§ 60-1635) or 2 (§ 60-1636) of this act the Board of Trustees of the Indiana State Teachers' Retirement Fund shall direct its Secretary to determine the amount to be transferred and the Secretary shall issue the necessary voucher to the Auditor of State for the preparation of a warrant payable to the Public Employees' Retirement Fund for the proper amount."

Section 3 of the above statute is not material to our question.

In construing the meaning of a statute the courts will look to the general provisions and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567, 24 N. E. (2d) 776.

Section 1 of the above-quoted statute applies to members of the Indiana State Teachers' Retirement Fund who have accredited service in said fund, but who have not withdrawn their contributions to said fund. That section of the statute, when considered with Section 4, supra, of said statute, authorizes the trustees of the Indiana State Teachers' Retirement Fund to pay over to the Public Employees' Retirement Fund the 100 per cent contribution of the teacher so remaining in said Teachers' Retirement Fund at the time of such teacher becoming a member of the Public Employees' Retirement Fund.

Section 2 of the above-quoted statute applies to teachers who had accredited service as a member of the Indiana State Teachers' Retirement Fund, but who have withdrawn their membership therein and withdrawn so much of their contributions thereto permissible under the Teachers' Retirement Act. This amount of permissible withdrawal might vary with the applicable provisions of the particular Teachers' Retirement statute under which the teacher held membership. (1949 O. A. G., page 428, No. 112.) Under the later amendments to the Teachers' Retirement Statute, the tables for such withdrawal on ceasing to be a member are identical. For a comparison of the same see: Acts of 1953, Ch. 149, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4506 (e); Acts of 1947, Ch. 353, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4506 (e).
those last-referred to statutes, the suggested teachers with ten years of service could withdraw 100 per cent of their contributions; with less than ten years of service, the percentage of withdrawal is reduced proportionately on the basis of a sliding scale. So, a teacher who had only eight years of service accredited to the Teachers’ Retirement Fund could withdraw only 90 per cent of the amount contributed under the above last-referred to statute, which would leave the other 10 per cent remaining in the Teachers’ Retirement Fund.

Therefore, Section 2 of the above-quoted statute makes provision that such former member of the Indiana State Teachers’ Retirement Fund, who has withdrawn her membership, and withdrawn her contributions to such fund, must upon becoming a member of the Public Employes’ Retirement Fund pay over to said latter retirement fund such amount so withdrawn from the Teachers’ Retirement Fund, and the words in said section of the statute “and the transfer from the Teachers’ Fund of an amount equal to the amount withheld, if any, pursuant to the provisions of the Indiana State Teachers’ Retirement Fund,” is used in this statute to facilitate and require the transfer by the Indiana State Teachers’ Retirement Fund to the Public Employes’ Retirement Fund only that amount of contributions of the teacher, if any, which was withheld by the Indiana State Teachers’ Retirement Fund at the time the teacher withdrew her membership and contributions from said fund. In the illustrated case, above-mentioned, it would be the 10 per cent of contributions of the teacher which the Indiana State Teachers’ Retirement Fund failed to give to the teacher on her retirement after eight years of service.

Appropriations by the state are provided by the Acts of 1945, Ch. 340, Sec. 21, as amended, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1621, which, in part, provides:

“The amount to be appropriated by the state for any biennium for the purposes of this act (§§ 60-1601—60-1626) shall be computed on an actuarially funded basis and be equal to the sum of the following:

* * *

“(b) For prior service pensions—the amount, determined by the board on the recommendation of the
actuary, which is required to accumulate reserve for such pensions, such reserves to be not less than the aggregate reserves which would be accumulated by the setting aside of a level annual amount over his assumed period of membership service with respect to each individual to whom such pension has been credited.

* * *

"The amounts necessary for prior service pensions and employer's membership pensions shall be submitted to the Budget Committee as one item, 'Public Employees' Benefit Fund,' and the requests for administrative expense shall be submitted as operating expenses of other state departments are submitted."

From the foregoing, it is clear that there is no provision in the supplemental statute as to teachers becoming members of the Public Employees' Retirement Fund, nor in the general statutes above referred to as the Public Employees' Retirement Fund, which requires the Elkhart City School Corporation, the former employer, to pay to the Public Employees' Retirement Fund any sums of money for prior service of said teacher, on her becoming a member of the Public Employees' Retirement Fund. Since no such provision is made, we are not authorized to read into the Act such a requirement, and I am, therefore, of the opinion the Public Employees' Retirement Fund would have no recourse for billing said political subdivision of the State of Indiana for such matching funds based on prior service of said teacher.

OFFICIAL OPINION NO. 28

April 14, 1954

Dr. F. W. Quackenbush
State Chemist and Seed Commissioner
Department of Agricultural Chemistry
Purdue University
Lafayette, Indiana

Dear Mr. Quackenbush:

This is in reply to your letter in which you requested an Official Opinion as to the following: