

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of )  
M M. W ) OAH No. 11-0197-TRS  
 ) Agency No. 2011-010

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**DECISION**

**I. Introduction**

M W appealed the Division of Retirement and Benefits’ denial of her request for service credits toward retirement under the Teachers’ Retirement System (TRS) for a period of substitute teaching before she became a permanent teacher. Because the law applicable at the time she worked as a substitute more than 20 years ago did not entitle substitutes to accrue service credits, her appeal is denied. Since the appeal is denied on the merits, there is no need to reach the question of whether her appeal should be time barred under the doctrine of laches.

**II. Facts**

M W obtained a teaching certificate from the State of Alaska in April 1989, which authorized her to be employed as a teacher in Elementary Education and K12/Art.<sup>1</sup> At the time, she was employed by the No Name School District to provide before and after school child care.<sup>2</sup> Her intent was to become a teacher with the District.<sup>3</sup> Teaching jobs were scarce, and because Ms. W did not immediately obtain a teaching position, she remained in the child-care position. When first grade teacher T D left at mid-year for a one-semester sabbatical, Ms. W applied to be a long-term substitute for Ms. D.<sup>4</sup>

On January 17, 1990, Ms. W signed a contract with the District to teach first grade at No Name Community School.<sup>5</sup> The contract term was 96 days to serve as a “[l]ong term substitute for T D.”<sup>6</sup> The contract was the District’s form contract, and it referred to Ms. W as “TEACHER,” placed Ms. W on the regular teaching salary schedule, and noted that “[t]he term ‘TEACHER’ as employed herein is defined in the relevant portions of the Alaska Statutes, Title 14.”<sup>7</sup> It also required that Ms. W must hold a valid Alaska Teaching Certificate during the term

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<sup>1</sup> Agency Record at 11.  
<sup>2</sup> W testimony.  
<sup>3</sup> *Id.*  
<sup>4</sup> *Id.*  
<sup>5</sup> Agency Record at 2.  
<sup>6</sup> *Id.*  
<sup>7</sup> *Id.*

of the contract.<sup>8</sup>

Although the form contract contained a provision authorizing the District to deduct employee contributions to TRS, Ms. W's paystubs show that no such deductions occurred for the period of her substitute work.<sup>9</sup> Before Ms. W became employed as a long-term substitute, she was a member of the Public Employees' Retirement System (PERS), and her paystubs for that service show that PERS deductions were made up until January 26, 1990.<sup>10</sup> Between January 26, 1990, and June 25, 1990, no deductions were made for TRS or PERS.<sup>11</sup> The only retirement-related deductions made during this time were for social security.<sup>12</sup>

In the fall of 1990, the District hired Ms. W into a regular teaching position.<sup>13</sup> The District notified TRS that Ms. W was a newly hired teacher, eligible for TRS membership as of August 29, 1990. Ms. W received a TRS handbook, and then began receiving notifications from TRS of the amount of contributions that were being made to her retirement account, beginning with her first paycheck in September 1990.<sup>14</sup>

TRS is a tiered system, meaning that the first tiers offer more benefits than later tiers.<sup>15</sup> A member's tier is determined by when the member first becomes eligible for service credits.<sup>16</sup> By entering the system in the fall of 1990, Ms. W joined TRS Tier II. Had she been a member during the time she was a long-term substitute, she would have been in TRS Tier I, which would have given her additional benefits.<sup>17</sup>

Ms. W knew that the school district was not giving her TRS service credit during the time that she served as a long-term substitute.<sup>18</sup> She asked her principal whether she could receive service credit for her service during that time.<sup>19</sup> Her principal informed her that TRS service

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<sup>8</sup>

*Id.*

<sup>9</sup> Agency Record at 8-9.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 26, 36.

<sup>14</sup> *Id.* at 27; 42, AS 14.25.

<sup>15</sup> AS 14.25

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* The specific additional benefits for Tier I identified during the hearing were that members of Tier I are eligible for full retirement with health care after 20 years of service and would receive a 10 percent cost of living benefit if they remained in Alaska after retirement. For Tier II, although a member could retire after 20 years, the member would receive full health care only at age 65 or after 25 years of service, and would receive the cost of living benefit only at age 65. Blankenship testimony.

<sup>18</sup> W testimony.

<sup>19</sup> *Id.*

credit was not available for service as a long-term substitute.<sup>20</sup> Ms. W did not pursue the matter any further at that time.

In April 2011, the Division of Retirement and Benefits received inquiries from Ms. W asking that she be given TRS credit as a teacher for the 0.53 year's service covering Ms. D's position in 1990.<sup>21</sup> On April 25, 2011, Division Director Jim Puckett formally denied Ms. W's request, explaining that the TRS statutes' definition of "full-time teacher" explicitly excluded substitute teachers.<sup>22</sup> Ms. W filed a timely Notice of Appeal contesting this decision.<sup>23</sup>

During the proceedings, the Division filed a Motion for Summary Adjudication and a Motion to Strike Settlement Agreement. The Motions were denied on August 9, 2011. A hearing was held on September 9, 2011. Following the one-day hearing, the record was held open. Closing arguments were delivered on October 20, 2011.

### III. Discussion

- A. *Ms. W is not entitled to service credit for her service as a long-term substitute because a long-term substitute is not a full-time or part-time teacher within the meaning of the TRS laws.*

The question in this case is whether Ms. W is entitled to service credit under TRS for her service as a long-term substitute in 1990. In 1990, as now, membership in TRS was limited by statute:

“[T]eacher” or “member” means a person eligible to participate in the system and who is covered by the system, limited to

(A) a certificated full-time or part-time elementary or secondary teacher, a certificated school nurse, or a certificated person in a position requiring a teaching certificate as a condition of employment in a public school of the state;

(B) the commissioner of education and all supervisory positions in the Department of Education;<sup>[24]</sup>

The statute also defined both “full-time teacher” and “part-time teacher.” In both cases, substitute teachers were explicitly excluded from the definition:

“[F]ull-time teacher” means a teacher occupying a position requiring teaching on a regular basis for the normal work period per day or week at a teaching assignment, excluding teaching as an assistant or graduate

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<sup>20</sup>

*Id.*

<sup>21</sup>

Agency Record at 19, 34.

<sup>22</sup>

*Id.* at 16 (citing AS 14.25.220(23) and AS 14.25.220(19)).

<sup>23</sup>

*Id.* at 2.

<sup>24</sup>

AS 14.25.220(40) (1989).

assistant or teaching on a substitute, temporary, or per diem basis;

...

“[P]art-time teacher” means a teacher occupying a position requiring teaching on a regular basis for at least 50 percent of the normal workweek at a teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary, or per diem basis;<sup>[25]</sup>

The statutory exclusion of any substitute or temporary teacher from membership in TRS would seem to put an end to this case because Ms. W admits that for the half-year in dispute, she was a substitute teacher. Ms. W notes, however, that she was required by Department of Education regulation to have a teaching certificate as a condition of being employed as a substitute for more than 20 days.<sup>26</sup> She argues that under AS 14.25.220(40), a “member” includes an employee required to have a certificate as a condition of employment. Because she was required to have a certificate to be a long-term substitute, she was, in her view, a member of TRS.

Ms. W’s interpretation implies a conflict within the statutory scheme—that the provisions defining full-time or part-time teacher take substitute or temporary teachers out of TRS. Under her interpretation, another provision, the definition of member, puts long-term substitutes in TRS. Thus, these two provisions are in conflict. The rules of statutory construction, however, require that the terms of a statute should be harmonized if possible to avoid a conflict.<sup>27</sup> Here, the interpretation put forth by the administrator successfully harmonizes these provisions to avoid the conflict.

Under the administrator’s interpretation, the paragraph defining “teacher or member,” paragraph 40, deals first with full-time or part-time teachers, who are in TRS. “Full-time teachers” and part-time teachers” are defined in paragraphs 18 and 27. These two paragraphs address all teachers whose jobs require “teaching on a regular basis”—in other words, all employees who are regularly teaching in the classroom. All classroom teachers are in TRS except for substitutes, graduate assistants, or other temporary employees. For the purposes of this

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<sup>25</sup> AS 14.25.220(18) and (27) (1989). The exclusion of employees employed “on a substitute, temporary, or per diem basis” was described in the 1990 TRS Information Handbook. Record at 53. The Handbook did not provide an exception to this rule for a substitute required to have a teaching certificate or a long-term substitute. *Id.*

<sup>26</sup> See 4 AAC 18.021 (1990). In addition, Ms. W’s contract required that she have a teaching certificate. Agency Record at 6.

<sup>27</sup> *Kodiak Island Borough v. Exxon Corp.*, 991 P.2d 757, 761 (Alaska 1999) (“When we engage in statutory construction, we must, whenever possible, ‘interpret[] each part or section of a statute with every other part or section, so as to create a harmonious whole.’” (quoting *Rydwell v. Anchorage Sch. Dist.*, 864 P.2d 526, 528 (Alaska 1993))).

case, the most important aspect of the first clause of paragraph 40 is that it governs all classroom teachers—those employees in a position “requiring teaching on a regular basis”—and tells us who among those classroom teachers are in TRS, and who among them are not.<sup>28</sup>

The definition of “member” then moves on to address employees who are not governed by the terms “full-time teacher” or “part-time teacher.”<sup>29</sup> This means those employees who are not in positions “requiring teaching on a regular basis.” The administrator explains that this category of members includes “school psychologists, speech pathologists, school counselors, and school librarians, just to name a few.”<sup>30</sup> Employees who fit in this grouping are in TRS if they are required to have a teaching certificate as a condition of employment. Ms. W did not fit into this category in the spring of 1990 because she was occupying a position that did require teaching on a regular basis. Her service as a substitute teacher was explicitly excluded from coverage. She is not entitled to service credit for her time as a long-term substitute. The clause in paragraph 40 addressing “a certificated person in a position requiring a teaching certificate as a condition of employment in a public school of the state” does not apply to classroom teachers because all classroom teachers have already been addressed in the earlier clause of paragraph 40. The two clauses, therefore, are not in conflict.

Even if the two provisions could not be harmonized, the same result would be reached. When two statutes conflict, the specific prevails over the general.<sup>31</sup> Here, AS 14.25.220(40) provides a general rule for a broad set of employees—those for whom a teaching certificate is required. In contrast, the paragraphs that govern substitute teachers, AS 14.25.220(18) and (27), specifically exclude one category of employees from coverage in TRS – substitutes. Because the specific would control over the general, if the two provisions were in conflict, the exclusion of substitute teachers from TRS coverage would prevail over the inclusion of employees who must have a certificate.

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<sup>28</sup> AS 14.25.220(18) and (27) (1989).

<sup>29</sup> This analysis does not imply that “teacher” and “member” are not synonymous. “Teacher” appears to be a catch-all term. The statutes, however, distinguish among teachers who are “occupying a position requiring teaching on a regular basis” and other teachers.

<sup>30</sup> Administrator’s Prehearing Brief at 4.

<sup>31</sup> *See, e.g., Matter of Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1978) (“where one section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but if there is a conflict, the specific section will control over the general.”).

Finally, Ms. W appears to be making an argument based on the specific language of 4 AAC 18.021, the Department of Education regulation that requires that long-term substitutes be certificated. In 1990, this regulation provided:

- (a) A person employed to replace a teacher who district authorities know will be absent for more than 20 days in which the school is in session must possess a valid teacher's certificate.
- (b) A person employed to replace a teacher who district authorities know will be absent for the remainder of the school term must be employed under the requirements imposed by this chapter if more than 20 in-session days remain in the term.<sup>[32]</sup>

Ms. W argued that because she was employed for more than 20 days, and was replacing a teacher who was going to be absent for the remainder of the term, the plain language of this regulation required that she be given TRS service credit for her service. In her view, this language meant that she became a full-time or part-time teacher. The chapter in which this regulation is located, however, was chapter 18 of Title 4 of the Alaska Administrative Code. This chapter governs employment of teachers, mandates provisions that must be in a teacher contract and the application of tenure rights. It does not govern membership in TRS or provide service credit for substitute teaching. Ms. W does not point to any language in Chapter 18 that provides that a long-term substitute is a full-time or part-time teacher.

Indeed, the main effect of 4 AAC 18.021(b) appears to be that it makes the regulation regarding the content of a contract for a teaching position, 4 AAC 18.010, applicable to long-term substitutes. The term of this regulation that applies to retirement, however, 4 AAC 18.010(a)(6), specifically recognizes that an employee whose contract is subject to 4 AAC 18.010 could be eligible for *either* TRS *or* Social Security. This provision provides support for the Administrator's interpretation that long-term substitutes are *not* in TRS because long-term substitutes are the only category of teachers subject to 4 AAC 18.010 who would be in Social Security. If long-term substitutes were in TRS, the "Social Security" language of 4 AAC 18.010(a)(6) would be superfluous.

The Department of Education regulation (4 AAC 18.021) that prescribes certain qualifications for a person to serve as a long-term substitute does not alter the TRS statutes that prescribe which school employees are eligible for TRS membership. Ms. W has not shown that she became eligible for TRS membership when she gave up the PERS-covered childcare-

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<sup>32</sup> 4 AAC 18.021 (1990)

position for the half-year temporary substitute position before becoming a regular TRS-eligible teacher.

*B. The G settlement does not affect the law that applied to Ms. W in 1990.*

Ms. W cites the Administrator's settlement with a teacher, B G, who had similar substitute service, and who was eventually awarded service credit for her substitute service. Ms. W argues that the settlement with Ms. G compels the Administrator to award her service credit for her time spent as a substitute teacher. In support of this argument, Ms. W cites the settlement with Ms. G, which was presented as an exhibit.<sup>33</sup>

The G settlement, however, does not apply here.<sup>34</sup> It was specific to Ms. G. Ms. W was not a party. The facts of Ms. G's situation were different from those of Ms. W. A settlement reached through compromise does not have the precedential effect of an adjudicated decision in which the facts become established and the legal questions are resolved by the neutral adjudicator rather than the self-interested parties. Indeed, in a settlement the parties do not necessarily follow the law in reaching a compromise result. The division's decision to compromise one claim does not bind it to resolve similar claims in subsequent cases at all, let alone in the same manner as the prior case.<sup>35</sup>

#### **IV. Conclusion**

Ms. W was not eligible for TRS membership when serving as a long-term substitute in 1990. The TRS Administrator properly denied Ms. W's request to add a half-year of service credit for her substitute coverage of Ms. D's position. The G settlement has no bearing on the law that governs Ms. W's eligibility for TRS service credit. Ms. W's appeal is denied.

DATED this 6<sup>th</sup> day of February, 2014.

By: Signed \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

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<sup>33</sup> W Exhibit 5.

<sup>34</sup> The G settlement documents were admitted because they were potentially informative regarding whether the division had a longstanding interpretation regarding whether service as a long-term substitute was creditable. Because this case is decided without reaching the issue of whether the division had a longstanding interpretation, the details of the G settlement will not be discussed in this decision.

<sup>35</sup> Cf., e.g., Alaska R. Evidence 408 (evidence of compromise of claim not admissible to show that claim was viable).

### **Adoption**

This Decision is issued under the authority of AS 14.25.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27<sup>th</sup> day of February, 2014.

By: *Signed* \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]