

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDAHO RETIRED FIRE FIGHTERS
ASSOCIATION, JAMES NALLY, SHARON
KOELLING, and JOHN ANDERSON,

Plaintiffs,

v.

PUBLIC EMPLOYEE RETIREMENT
SYSTEM BOARD,

Defendant.

**ORDER DENYING PETITION
FOR DECLARATORY RULING
AND COMPLAINT**

Filed October 26, 2015

On or about October 8, 2015, the Idaho Retired Firefighters Association, James Nally, Sharon Koelling and John Anderson (Petitioners) filed their petition for Declaratory Ruling and Complaint with the Idaho Industrial Commission. Petitioners seek Commission review of what they describe as a decision by the Public Employee Retirement System (PERSI) Board. Petitioners, are individual retired firefighters/beneficiaries and their representative organization, who contend the PERSI Board has illegally diluted annual cost of living adjustments (COLA), to which retired firefighters or their beneficiaries are entitled, by including in the COLA calculation the salaries of part-time firefighters in addition to the salaries of full-time firefighters. In so doing, the PERSI Board has reduced cost of living adjustments guaranteed to Firemen's Retirement Fund recipients.

Per Petitioners, jurisdiction to review and correct the illegal actions of the PERSI Board is conferred on the Commission by the provisions of Idaho Code § 72-1423, which reads as follows:

All claims against the public employee retirement account shall be filed with the public employee retirement system board. Any appeal from a decision of the board shall be filed with the industrial commission in as nearly as practicable the same manner that claims under the Workers' Compensation Law of the state of Idaho are filed, and the said industrial commission is hereby given jurisdiction to entertain and pass upon said claims, allow or deny claims and make awards, and the provisions of

the Workers' Compensation Law of the State of Idaho relative to process, hearings and appeals are hereby made applicable to the provisions of this chapter, and said industrial commission is hereby given power and authority to make rules and regulations governing procedure in relation to said claims appealed from the public employee retirement system board.

Therefore, the statute provides that claims against the public employee retirement account shall first be made against the PERSI Board. From an adverse decision of the Board, an aggrieved claimant may make an appeal to the Industrial Commission. Such appeals shall be handled "as nearly as practicable" in the same manner that conventional workers' compensation matters are handled by the Commission. Since the Industrial Commission rules contain a process for declaratory rulings, Petitioners have filed such a petition with the Commission asking that the Commission declare PERSI's inclusion of part-time firefighters in the COLA calculation to be illegal.

The Commission declines to take action on the petition for the following reasons:

First, J.R.P. 15(d) requires petitioners to serve a copy of the petition on all other persons to the actual controversy contemporaneous with the filing of the petition with the Commission. The record does not reflect that the PERSI Board was so served.

More problematic is the manner in which this dispute comes to us. Idaho Code § 72-1423 anticipates that the Industrial Commission has no original jurisdiction over disputes arising out of PERSI's administration of the Firemen's Retirement Fund. The statute provides that all claims against the public employee retirement account shall be filed with the PERSI Board, and that an appeal from a decision of that Board may be made to the Idaho Industrial Commission. Clearly, the Commission only has appellate jurisdiction over claims that were originally made to and decided by the PERSI Board. Neither the attachments to the affidavit of Charlie Parks, nor any of the other documents filed by Petitioners in connection with this matter, suggest that individual petitioners

James Nally, Sharon Koelling and John Anderson seek Commission review of claims for benefits filed by them with the Board, and which were subsequently denied by decision of the Board. Therefore, the Commission has no jurisdiction to consider the claims of Nally, Koelling and Anderson, which appear to be brought as original claims before the Industrial Commission. With respect to the claim of the Idaho Retired Firefighters Association, the Commission recognizes that the Association, through its attorney, has alerted the PERSI Board to the Association's position that COLA benefits are being illegally diluted. However, we do not understand this action to constitute a "claim", nor do we believe that the PERSI Board's decision to take no action after being alerted to this issue constitutes a "decision" of the PERSI Board from which an appeal can be taken to the Industrial Commission pursuant to the provisions of the statute referenced above.

In support of their assertion that jurisdiction of this matter is properly before the Industrial Commission, Petitioners assert at page 8 of their brief: "Where a continuing course of conduct results in harm, Plaintiffs are not limited to pursuing their claim at a particular time, but may, as they did here, seek to address the matter with the other party prior to filing a claim." By this statement, Petitioners appear to argue that what they did before the PERSI Board was simply preliminary to the pursuit of their "claim" before the Industrial Commission. Cited in support of this proposition are *Farber v. State*, 102 Idaho 398, 630 P.2d 695 (1981) and *Woodland v. Lyon*, 78 Idaho 79, 298 P.2d 380 (1956). However, neither of these cases lend any support to the proposition that the Industrial Commission has jurisdiction over something other than a claim first pursued to decision by the PERSI Board.

For these reasons we decline to entertain the petition for declaratory relief filed with the

Commission pursuant to J.R.P. 15.

DATED this 26th day of October, 2015.

INDUSTRIAL COMMISSION

/s/
R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

/s/
Thomas P. Baskin, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2015, a true and correct copy of the foregoing ORDER DENYING PETITION FOR DECLARATORY RULING AND COMPLAINT was served by regular United States Mail upon each of the following:

JAMES PIOTROWSKI
PO BOX 2864
BOISE ID 83701

ka _____
/s/

Courtesy Copy:
PERSI
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