

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MARGARET BENSON, REBA DAVIS,
DEBORAH ELLEARD, DEBORAH GREGORY,
IDA LANIER, PHYLLIS MALONE,
VICKI OUTZEN, AND JANET TAYLOR

Petitioners,

Case No.: 08-1202

FILED
2009 APR 27 A 11: 08
DIVISION OF
ADMINISTRATIVE
HEARINGS

vs.

ESCAMBIA COUNTY SCHOOL BOARD,
Respondent.

**FINAL ORDER DENYING PETITIONER'S CLAIMS
FOR ADDITIONAL COMPENSATION**

August 21, 2008, Administrative Law Judge Harry Hooper (ALJ) from the Division of Administrative Hearings (DOAH) submitted to the Escambia County School Board (School Board) and all parties his Recommended Order (RO), a copy of which is attached hereto, recommending that the Petitioners, all current and / or former teachers, receive compensation in the form of back pay and salary schedule placement subject, however, to the two year statute of limitations for wage claims. §95.11, Fla. Stat.(2008). The matter is now before the School Board for final agency action.

Procedural Background

The initial proceeding commenced with the petition by eight current and former classroom teachers of the School Board for back pay and corrected placement on the instructional salary schedule under the authority of §1012.33(3)(g) Fla. Stat. Petitioners claimed that they did not receive credit for prior teaching experience when hired by the School Board and placed on the salary schedule. §1012.33(3)(g) provides, in part, “[F]or purposes of pay, a School Board must recognize and accept each year of full-time public school teaching service earned in the State of Florida or outside the state.” Applying the statutory provision, Judge Hooper ruled the Petitioners were entitled

to have their pay recalculated as of April 2, 2005, giving them credit for each year of full time public school teaching service earned outside Florida. Judge Hooper ruled that the claims for back pay preceding April 2, 2005, were barred by the statute of limitations. The Petitioner filed exceptions to one (1) finding of fact and to paragraphs 47 and 49 of the Recommended Order conclusions of law. The Respondent filed exception to paragraph 7 of the findings of fact contending only that it was a conclusion of law and objected to the ALJ's conclusions of law in paragraphs 25, 27, 29, 32, 35, 37, 40, 41, 44, 51, and 52. All paragraphs subject to exceptions and objections other than 44, 51, and 52 deal with the proper application of §1012.33(3)(g), Fla. Stat.

Pursuant to §120.57(1)(l), Fla. Stat., the School Board hereby adopts Judge Hooper's findings of fact, with one exception: by stipulation of the parties the School Board accepts Petitioners' exception to paragraph 12 of the Recommended Order.¹

The School Board rejects Judge Hooper's conclusions of law with respect to the application of §1012.33(3)(g) to the extent the recommended conclusions of law conflict with the Recommended Order in *Charles Keene v Escambia County School Board*, DOAH Case No. 07-2125, adopted as a Final Order by the School Board on January 22, 2008. The School Board finds the conclusions of law by Judge Cohen in the *Keene* case more persuasive and well-reasoned than those in the instant case. The reasons for this finding include, but are not limited to the following:

- 1) The plain language of the statute (§1012.33(3)(g)) demonstrates the intent to require School Board to treat years of experience outside the school district the same as years of experience within the school district. (*Keene*, paragraph 38).
- 2) The statute is designed to ensure that teachers having prior service outside Florida are treated equally with teachers having prior service in Florida . . . (not) to confer a

¹The parties have stipulated that Petitioner Gregory, contrary to the R.O., did request the Board recognize each of her sixteen years of prior teaching service, however, and that this request was denied as to the period of August, 2002, through May 31, 2006.

benefit on teachers who retire outside of Florida while denying that same benefit to teachers who retire in Florida by using years of service earned in Florida. (*Keene*, paragraph 40).

- 3) Although the ALJ in the instant case stated that the evidence and law herein called for a conclusion opposite that of *Keene*, he did not identify what factors in the evidence called for such a conclusion. In actuality, the material facts are so similar that legally, the cases call for the same result. Otherwise, the district is bound by opposing requirements on the same questions, and has no ability to answer this question when it arises in future cases.
- 4) Although the ALJ in the instant case concluded that the facts required to establish the elements of equitable estoppel were not present, this conclusion is not reasonable in light of the evidence contained in the transcript of the July 8, 2008, hearing.
- 5) Under identical facts, the *Keene* ALJ concluded that the petitioner was estopped from completing the contractual periods of employment and then claiming that he must be paid a higher rate of compensation for the period already served, than that to which he agreed when the offer of employment was extended. (*Keene* at paragraph 44).
- 6) In light of this conclusion of law, issues of the applicable statute of limitations and attorney fees are moot.

Rulings on Petitioners' Exceptions

Petitioners Exception to Paragraph 12 of the RO

The Petitioners exception to paragraph 12 of the RO is resolved through stipulation of the parties as addressed above.

Petitioners' Exception to Paragraph 47 of the RO

Paragraph 47 of the RO addresses the applicable statute of limitations, considering both

§95.11(4)(c) Fla. Stat., a two year period, and §95.11(3)(k) Fla. Stat., a four year period. This discussion, in part, is the predicate for the conclusion of law in paragraph 49 of the RO that the correct statute of limitations is a period of two years based on §95.11(4)(c). Petitioners' exception to paragraph 47 is rejected for those reasons more specifically set forth in response to Petitioners' exception to paragraph 49 below.

Petitioners' Exception to Paragraph 49 of the RO

Paragraph 49 of the RO concludes §95.11(4)(c) is the correct limitation to use in this case. Petitioners' exception is rejected because applicable case law and adopted RO findings of fact demonstrate Petitioners' compensation within the definition of wages as distinguished from a true salary. (See RO para. 8).

Respondent's Exceptions

Respondent's Exceptions to Paragraph 25 of the RO

To the extent paragraph 25 of the RO conflicts with the opinion of Judge Cohen in *Keene v Escambia County School Board*, Case #07-2125, adopted by the School Board as a Final Order on January 22, 2008, the conclusion of law is rejected. The plain language of §1012.33(3)(g), Fla. Stat., demonstrates the intent to require School Boards to treat years of experience outside the School District the same as years of experience within the School District. (*Keene*, para. 38). The statute is designed to insure teachers having prior service outside Florida are treated equally with teachers having prior service in Florida and is not designed or intended to confer a benefit on teachers who retire outside of Florida while denying the same benefit to teachers who retire in Florida, by using years of service earned in Florida. (*Keene*, para. 40).

Respondent's Exceptions to Paragraph 27 of the RO

See response to Respondent's exceptions to paragraph 25 above, incorporated herewith.

Respondent's Exceptions to Paragraph 29 of the RO

To the extent the conclusion of law regarding the application of §121.091(9)(b)3, Fla. Stat., conflicts with the opinion of Judge Cohen in *Keene v Escambia County School Board*, supra, the conclusion is rejected. Additionally, the conclusion is rejected to the extent it supports or construes §1012.33(3)(g), Fla. Stat., as conferring benefit on teachers who retire outside the state of Florida while denying the same benefit to teachers who retire in Florida by using years of service earned in Florida.

Respondent's Exceptions to Paragraph 32 of the RO

To the extent the conclusion of law at paragraph 32 acknowledges that credit be given to teachers coming in to the Escambia County School District from other districts in Florida and outside the state be given equal treatment the conclusion is accepted. To the extent it supports any conclusion §1012.33(3)(g), Fla. Stat., confers a benefit on teachers who retire outside of Florida while denying the same benefit to teachers who retire in Florida by using years of service in Florida, it is rejected.

Respondent's Exceptions to Paragraph 35 of the RO

To the extent the conclusion of law interprets §§121.091(9)(b)3, Fla. Stat. (2003) as conferring a benefit on teachers who retired outside the state of Florida that is not available to teachers who retire under the Florida Retirement Service with years earned in Florida, the interpretation is rejected as inconsistent with the plain language of §1012.33(3)(g), Fla. Stat.,

demonstrating the intent to require school boards to treat years of experience outside the District the same as years of experience within the District.

Respondent's Exceptions to Paragraph 37 of the RO

To the extent the RO concludes the amendment to §1012.33(3)(g), Fla. Stat., effective January 7, 2003, had no effect on the pay status of Petitioners who had not retired, the conclusion is rejected. Petitioners who were hired prior to the amendment were governed, for purposes of salary schedule placement and credit, by the version of §1012.33(3)(g), Fla. Stat., in place at the time of hire.

Respondent's Exceptions to Paragraph 40 of the RO

To the extent the conclusion of law in paragraph 40 confers a benefit on teachers who retire outside the state of Florida while denying the same benefit to teachers who retire in the state of Florida by using years of service earned in Florida, the conclusion is rejected.

Respondent's Exceptions to Paragraph 41 of the RO

To the extent conclusions of law that the evidence law presented in this case distinguishes the application of §1012.33(3)(g), Fla. Stat., in the *Keene* case, adopted by this Board as a Final Order, the conclusion is rejected as there is insufficient basis for distinguishing the facts and application of law in *Keene* from that which is appropriate here.

Respondent's Exceptions to Paragraph 44 of the RO

To the extent the conclusion of law rejects the assertion of equitable estoppel and to the extent inconsistent with the application of that doctrine in the *Keene* case, the conclusion is rejected as there are insufficient facts of record to distinguish the application of this doctrine from that which was accepted by the Board in the *Keene*.

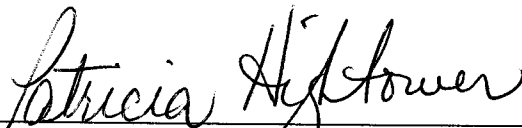
Respondent's Exceptions to Paragraph 51 of the RO

To the extent the conclusion of law is that Petitioners' causes of action accrued no earlier than April 2, 2005, two years prior to the filing of the lawsuit, the conclusion is rejected. The period for filing suit runs from the time Petitioners claim their contract rights were breached pursuant to the application of §1012.33(3)(g), Fla. Stat.. According to Petitioners' claims, this occurred when the Petitioners were hired and placed on the salary schedule without full credit for out of state years of experience previously used for retirement in another state. The cause of action accrues when the last element constituting the cause of action occurs. The running of the statute of limitation is not postponed by the fact that substantial damages do not occur until a later date. *Yoder v Kuvin*, 782 So.2d 697 (Fla. 3rd DCA 2001); *Sandford v Manatee County*, 769 So.2d 1084 (Fla. 2nd DCA 2000).

Respondent's Exception to paragraph 52 of the RO

Paragraph 52 of the RO awards an attorney's fee pursuant to §440.08, Fla. Stat. In consideration of the Final Order of the Board as set forth above, there is no statutory basis to award attorney's fees to Petitioners.

ADOPTED by the School Board of Escambia County, at Pensacola, Florida, in open meeting, this 17th day of March, 2009.



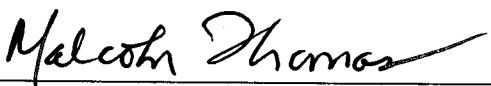
Patricia Hightower, Chair

APPROVED
ESCAMBIA COUNTY SCHOOL BOARD

MAR 17 2009

MALCOLM THOMAS, SUPERINTENDENT
VERIFIED BY RECORDING SECRETARY

Attest:



Malcolm Thomas, Superintendent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 23rd
day of ~~March~~, 2009, to:

April

— Clerk of the Division of Administrative Hearings, Division of Administrative Hearings, The DeSoto Building, 1230
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