No. 33502 – *William R. Smith v. State of West Virginia Consolidated Public Retirement Board*

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Albright, Justice, dissenting:

Through its overly narrow interpretation of West Virginia Code § 5-10-18(a) (2005) (Repl. Vol. 2006), the majority has ignored the express legislative directive to liberally construe the West Virginia Public Employees Retirement Act (the "Act"). *See* W.Va. Code §§ 5-10-1 to 5-10-55 (1961) (Repl. Vol. 2006). As a result, the majority has wrongly prevented Petitioner from reinstating his previously withdrawn service credit. This outcome is clearly at odds with the statutory scheme of providing public employees with a general retirement system that was established to benefit those individuals who choose public service employment over private employment. *See* W.Va. Code § 5-10-3a(a).

To reach its decision, the majority interprets the term "reemployment" in an overly narrow fashion. *See* W.Va. Code § 5-10-18(a) (providing for reinstatement into public retirement system and crediting of forfeited service following one year of reemployment by participating public employer). In deciding that an incumbent's reelection does not provide an additional "window" for buying back the years of withdrawn service credit, the majority has breached the remedial underpinnings of the Act. As we observed in *Flanigan v. West Virginia Public Employees' Retirement System*, 176 W.Va. 330, 342 S.E.2d 414 (1986): "[I]t is noted that under West Virginia Code § 5-10-3a (1979

Replacement Vol.) we are directed to give substantial weight to the remedial nature of the PERS Act by the legislative ordination to construe its provisions liberally in favor of its intended beneficiaries." 176 W.Va. at 335, 342 S.E.2d at 419. By interpreting the term "reemployment" in an overly technical fashion, the majority has failed to comply with the legislative mandate to resolve issues that require interpretation under the Act in a remedial fashion so as to benefit the public employee. *See* W.Va. Code § 5-10-3a(a).

In its rush to deny Petitioner's attempt to "buy back" into the public retirement system, the majority fails to consider the fact that the financial burden to the State is minimal because the manner prescribed by the Legislature for reinstating withdrawn credit requires both a repayment of the amount withdrawn plus accrued interest. *See* W.Va. Code § 5-10-18. Given that the Legislature expressly provided a mechanism for public employees who leave the system to not only rejoin the system but to "buy back" their years of already accrued service, it seems inequitable not to interpret the statutory term of "reemployment" in a fashion that comports with upholding the clear objective of permitting those individuals who return to public employment to experience the intended benefits of their employment.

Because I view the majority's decision as operating in contravention of a clear legislative mandate to apply the Act in a remedial fashion, I respectfully dissent.

I am authorized to state that Justice Starcher joins in this dissent.