



EDUCATION

ALERT

EMERGENCY SERVICE FOR ANNUITANTS UNDER THE PENNSYLVANIA PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM (PSERS)

On April 30, 2010, the Commonwealth Court of Pennsylvania ruled against Dr. John Baillie, former Chester County Intermediate Unit Executive Director, in *Baillie v. Public School Employees' Retirement Board*, No. 1306 C.D. 2009, on the basis that his alleged emergency return to service did not fulfill the requirements of the PSERS.

The case involved the September 2006 notification of the CCIU Executive Director that he intended to retire in January 2007. However, Dr. Baillie agreed to work under an emergency contract until the end of the school year. In light of the alleged challenges facing the Intermediate Unit and the perceived shortage of qualified candidates to replace Dr. Baillie, the CCIU Board voted in November 2006 to employ Dr. Baillie under an emergency contract until June 30, 2007. Dr. Baillie retired on Friday, January 5, 2007. After spending the weekend in retirement, Baillie returned to his job as Executive Director on Monday, January 8, 2007. In April 2007, Dr. Baillie began collecting a retirement annuity from PSERS effective January 2007 and simultaneously, he collected his salary from the Intermediate Unit for his work as Executive Director.

In April 2007, by email, the CCIU announced Dr. Baillie's retirement on January 5, 2007, but explained that his last day at the CCIU would be June 30, 2007. A copy of the email was sent anonymously to the PSERS with the following handwritten notation: "Thought this was illegal? (Double dipping)."

The CCIU informed PSERS that exigent circumstances prompted its decision to employ Dr. Baillie on an emergency basis. PSERS concluded, however, that Baillie's employment from January 8, 2007, to June 30, 2007, was

not prompted by a genuine emergency but by astute planning by Dr. Baillie, with the agreement of the Intermediate Unit. Accordingly, PSERS recalculated Baillie's final average salary based upon a retirement date of June 30, 2007. This recalculation also excluded from his final average salary per diem compensation Dr. Baillie had received from the CCIU for unused vacation days. As the result of this recalculation, PSERS ordered Baillie to repay PSERS \$79,083.39.

Dr. Baillie attempted to argue that the CCIU had emergency conditions during the second half of the 2006-2007 school year. This was supported by the Board President of the Intermediate Unit, which indicated that "... recent legislation that required taxpayer approval of school district budget increases; contract negotiations to avert a threatened strike of support staff personnel; pending construction or renovation of four educational facilities; and the retirement of several persons in managerial positions at the Intermediate Unit ..."

PSERS based its argument on Section 8346(b) of the Retirement Code, which authorizes public schools to employ a retired public school employee, who is collecting a retirement annuity, for up to six months when there is an emergency. In that case, the retiree is able to collect both his/her annuity and his/her salary for the emergency services rendered. However, PSERS did not believe that there was an emergency in Baillie's case. PSERS sought to show that the "emergency" was one created by Baillie's retirement, and it could have been solved by hiring a temporary or permanent replacement, instead of retaining him as Executive Director after a sham retirement. PSERS presented testimony from

three of its employees that it did not constitute an emergency.

According to the case, PSERS examines two factors to determine whether an employer has abused its discretion when it hires a retiree on an emergency basis. First, PSERS determines whether the rehiring was planned before the retirement took place and, second, it determines whether the employer made a bona fide effort to fill the emergency vacancy with a non-retiree.

The Baillie decision stands as precedent of the emergency services provisions under PSERS. PSERS will vigorously investigate situations that they believe to be improper.

In such a situation, we suggest that any district write to Troy Peechatka at P. O. Box 125, Harrisburg, PA 17108

requesting an exception to Act 2004-63 due to an emergency situation. You will be required to provide substantiation of the situation of hiring a retired individual and what efforts the district made to fill the position with a non-retired individual.

Merely hiring someone as an independent contractor will not likely pass muster today due to the strict interpretation of independent contractor status that PSERS uses. It is suggested that you work with your legal counsel carefully to protect the interests of all involved in these processes.

If you have any questions about the information contained in this Alert, please contact Jeffrey T. Sultanik at 610.397.6515 or jsultanik@foxrothschild.com, or any member of Fox Rothschild's [Education Law Practice](#).



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