EVELYN TELA,
Petitioner,

v.
BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES’
RETIREMENT SYSTEM,
Respondent.

Decided September 4, 1979

Initial Decision

SYNOPSIS

Board of Trustees of the Public Employees’ Retirement System would not be required to enroll petitioner, a county employee since 1957, in the Public Employees’ Retirement System, nor could she purchase her prior service credit based upon her salary and age as of June 1957. Although petitioner claimed she was misinformed about her ability to join the system when she began her employment, petitioner was an optional enrollee under N.J.S.A. 43:15A-75 and she did not fulfill the preconditions of the correction of errors section, N.J.S.A. 43:15A-54. That is, the employee had not stipulated in writing as to her misinformation and her employee did not agree to make the necessary contribution to the reserve fund.

Edward C. Stokes III, Esq., for Petitioner
Samuel Halpern, Deputy Attorney General for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney)

MILLER, ALJ:

Petitioner (Evelyn Tela) appeals from a decision of the Board of Trustees of the Public Employees’ Retirement System (Board of Trustees) denying her application to purchase service rendered to her employer, the County of Monmouth, since 1957 at a cost to her based on her 1957 age and salary.

Prior to the taking of testimony at an administrative hearing on August 24, 1979, the following stipulations were entered into between the parties:

1. Petitioner’s date of birth was February 3, 1924.
2. Petitioner became permanently employed as Election Clerk on June 1, 1957, in the office of the Superintendent of Elections of Monmouth County.
3. Petitioner has been continuously employed in Monmouth County in the aforementioned position since June 1, 1957.
4. On February 10, 1978, petitioner requested the right to enroll in the Public Employees’ Retirement System (hereinafter “PERS”) and
to purchase service back to 1957 at a rate based upon her age and salary from the date of her permanent appointment.

5. On March 7, 1979, the Board of Trustees denied petitioner’s request.

6. Petitioner’s appeal from the adverse determination of the Board of Trustees was timely.

The first person to testify at the hearing was petitioner herself. She stated that at the time her employment commenced, she was not informed that she had the option to join the Public Employees’ Retirement System. Rather, she was advised by one Mary Ellis, Deputy Assistant to the Superintendent of Elections, that she could not enroll. Subsequently, she was similarly advised by other deputy assistants, including one Mr. Foy. In the year 1978, approximately 20 other employees in her office became enrolled, as compulsory enrollees, in PERS. In these cases, according to petitioner, the County paid for one-half of the cost of their enrollment in the system. Prior to 1978 no one in her office had been enrolled in PERS. Finally, petitioner stated that she knows of no resolution or any other writing by her employer stating that she was not given the necessary information to effectuate her enrollment in the System.

The only other witness to testify at the hearing was Wallace B. Olsen, Jr., employed by the Division of Pensions of the State of New Jersey for the past 11 years and presently Supervisor of the Purchase Section of the Division of Pensions. Mr. Olsen stated that to his knowledge petitioner made no request to purchase prior service within one year after the passage of Laws of 1966, Chapter 71. According to Olsen, the cost of purchasing petitioner’s service since 1957 is based on her current age and salary and is consistent with the usual practice and procedure employed by the Division of Pensions for optional enrollees. In conclusion, Mr. Olsen stated that he is familiar with the “Correction of Errors” section (N.J.S.A. 43:15A-54) of the PERS statute and the procedures thereunder. He declared that he has never received from the employer an acknowledgement of any error having been committed or of a lack of any information with respect to her enrollment or in any way indicating that the employer would pay the necessary contributions.

The question presented for resolution in this matter is whether the Board of Trustees should be required to enroll petitioner as a member and at the same time allow her to purchase her prior service at a cost based on her age and salary as of June 1, 1957. For the reasons to be expressed hereafter, I am of the opinion that this question should be answered in the negative.

Initially, it must be determined whether petitioner is an optional or a compulsory enrollee. I am of the opinion that petitioner is an optional enrollee. N.J.S.A. 43:15A-75, in pertinent part, provides as follows:
If this act is so adopted it shall become effective in the county or municipality adopting it on June 30 of the following year. Membership in the Public Employee’s Retirement System shall be optional with the employees of the county, board of education or municipality in the service on the day the act so becomes effective or on June 30, 1966, whichever is earlier in such county, board of education or municipality except in the case of public employee veterans who on such date are members. An employee who elects to become a member within 1 year after this act so takes effect shall be entitled to prior service covering service rendered to the county, board of education or municipality prior to July 1, 1966 or prior to the date this act so becomes effective, whichever is earlier. Membership shall be compulsory for all employees entering the service of the county, board of education or municipality on July 1, 1966 or after the date this act becomes effective, whichever is earlier. [emphasis added]

Petitioner argues that she should be considered a compulsory enrollee (rather than an optional one) pursuant to this section because she was misinformed by her employer – both when she first became employed and subsequent thereto – about her right to join the system. Thus she argues that she should fall within the provisions of N.J.S.A. 43:15A-7.1(b), which in the case of delinquent enrollment, requires the employer to pay one-half of the employee’s cost of contributions.

In my opinion, this argument is without merit. Assuming, arguendo, that petitioner is misinformed, as she asserts, such misrepresentation is neither attributable to nor binding on the Board of Trustees. See, In re Krah, 130 N.J. Super. 366, 368 (App. Div. 1974). Furthermore, the statute clearly gave petitioner the option to join; a misrepresentation by any person cannot alter or nullify the terms of the statute.

Petitioner also argues that N.J.S.A. 43:15a-54 should be applied. This section reads as follows:

If any change or error results in an employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive, then on discovery of the error, the retirement system shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

The application of any member for prior service credit or credit for all previous service shall be approved if the employer, for whom the service was rendered stipulates, in writing, to the retirement system that the information necessary for the award of such credit was not presented to the employee and agrees to make the necessary additional contribution to the contingent reserve fund and the employee makes the required contributions, if any.

In my opinion, however, N.J.S.A. 43:15A-54 does not apply because the necessary preconditions have not been met. Specifically: (1) the employer has not stipulated in writing that petitioner was misinformed or that the necessary information was not given to her; and (2) the employer did not agree to make the necessary additional contributions to the contingent reserve fund.

Finally, petitioner argues that her employer has, in effect, admitted being in error with respect to enrollment of compulsory employees has enrolled them, and has been required to pay one-half of the cost of the purchase of their prior service. Thus she argues, it would be unfair not to afford her the same or similar treatment. In my judgement, this argument is not valid for the following reasons:

1. In 1957 petitioner was a much younger woman and may not have desired at that time to join the system. Generally speaking, interest in retirement benefits increases proportionately to increase in age. It is significant that petitioner did not assert in her testimony that had she known in 1957 that she could join PERS, she definitely would have done so.

2. There is no acknowledgement from the employer that petitioner was misadvised or misinformed as to her rights under the pension statute. Such acknowledgement, as noted above, is a specific pre-condition to the granting of relief under section 54. Neither I, the Board of Trustees, nor the courts are at liberty to ignore or disregard the statutory mandate.

3. Petitioner's complaint is with her employer. If she can voluntarily obtain the necessary acknowledgement from her employer and agreement by the latter to pay for the cost of purchase, she will be entitled to relief under section 54. If not, she may have an action, at law or in equity, against her employer.

I make the following FINDINGS OF FACT:

1. Stipulations numbered 1 to 6 inclusive as though set forth herein at length.

2. Petitioner was neither aware nor informed until 1978 of her right, as an optional enrollee, to join PERS.

3. Petitioner's employer, the County of Monmouth, has not acknowledged in writing that petitioner was misinformed about her rights to join PERS or that she did not have the necessary information to make such decision, and said employer has not agreed to make the necessary additional contribution required to purchase her prior service.
I CONCLUDE that:

1. Petitioner is an optional enrollee under N.J.S.A. 43:15A-75.
2. Petitioner's employer is not required to pay one-half of the cost of purchase of her service since 1957 under N.J.S.A. 43:15A-7.1 (b).
3. Petitioner is not entitled to purchase prior service credit based on her age and salary in 1957 under N.J.S.A. 43:15A-54.

It is hereby ADJUDGED that petitioner's application to purchase service in PERS from June 1, 1957 to date at a cost based upon her age and salary on June 1, 1957, be denied.

After reviewing this Initial Decision, the Board of Trustees of the Public Employees' Retirement System on September 14, 1979 issued the following Final Decision

The Board of Trustees hereby adopts the Findings of Fact and Conclusions of Law of the administrative law judge.