

**Matter of Blais v New York State Teachers'  
Retirement Sys.**

2008 NY Slip Op 32192(U)

July 23, 2008

Supreme Court, Albany County

Docket Number: 0625207/2008

Judge: George B. Ceresia

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

---

In The Matter of the Application of  
RICHARD R. BLAIS,

Petitioner,

For A Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

-against-

NEW YORK STATE TEACHERS'  
RETIREMENT SYSTEM,

Respondent.

---

Supreme Court Albany County Article 78 Term  
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding  
RJI # 01-07-ST7972 Index No. 6252-07

Appearances: Sheehan Greene Carraway Golderman & Jacques LLP  
Attorneys For Petitioner  
99 Pine Street, Suite 402  
Albany, New York 12207  
(Thomas D. Latin, Esq., of Counsel)

Andrew M. Cuomo  
Attorney General  
State of New York  
Attorney For Respondent  
The Capitol  
Albany, New York 12224  
(Roger W. Kinsey,  
Assistant Attorney General  
of Counsel)

**DECISION/ORDER/JUDGMENT**

George B. Ceresia, Jr., Justice

In this CPLR article 78 proceeding, petitioner Richard R. Blais, a retiree, seeks review of a final determination by respondent New York State Teachers' Retirement System (TRS) which found petitioner's service for the time period commencing on July 1, 1997 and ending on October 1, 2002 (hereinafter the relevant time period) was not creditable service in TRS. As a result of this determination, TRS reduced petitioner's monthly retirement benefit from \$4,264.03 to \$1,557.38 and suspended his benefits until TRS was reimbursed for purported overpayments made to petitioner. TRS opposes the petition, seeking its dismissal.

At his retirement in 2002, petitioner had approximately 23 years of service with TRS. In choosing to retire at that time, petitioner was able to avail himself of a retirement incentive, which credited him with an addition two years of service and helped him avoid penalties that would have reduced his retirement benefits.

Prior to retirement, from 1986 through June 30, 1997, petitioner served as Director of Occupational Education at Shenendehowa Central School District (hereinafter SCSD). From July 1, 1997 through October 1, 2002, petitioner served as the Director of Project Lead the Way at Hudson Valley Community College (HVCC). Currently, petitioner is employed by Project Lead the Way, Inc. (hereinafter, when referring to the corporate entity, PLTW, Inc.) – a New York State not-for-profit corporation. Project Lead the Way (hereinafter, when referring to the program based curriculum, PLTW) is a pre-engineering and technology

curriculum for middle and high school students.<sup>1</sup> At issue in this proceeding is petitioner's service as Director of PLTW while at HVCC.

In connection with this position, HVCC entered into a series of "Contractual Agreements" (hereinafter the Agreements) with Charitable Venture Foundation (CVF), which provided a grant to fund petitioner's position at HVCC. Petitioner was not a party to the Agreements. In part, the Agreements provided that HVCC and CVF "desire[d] to work jointly and with others to support school districts through the program called *Project Lead the Way*" (Contractual Agreement [dated 6-14-97], Hewig Affirmation, Exhibit H [emphasis in original]). The agreements further provided: "[HVCC] will hire Mr. Richard R. Blais, as the Director of Project Lead the Way, as a 12 month professional employee with a title and description of duties appropriate to the nature of the position at [HVCC]" (*id.* at ¶ 1). CVF agreed to provide a grant to HVCC for the position and further agreed to pay "[a]ll other expenses associated with Project Lead the Way" (*id.* at ¶ 2). Further, it stated: "[HVCC] will not provide the position with office and clerical support. [Petitioner] will be required to work out of a home office for the project" (*id.* at ¶ 4). Moreover, the Agreements provided:

"[CVF] reserves the right to adjust the salary. . .

"Any and all termination and/or retirement benefits provided for in the [Non-Teaching Professional] Administrative [C]ode that are due [petitioner] at the time of his termination/retirement from HVCC shall be the full financial responsibility of [CVF].

---

<sup>1</sup> Apparently, PLTW arose from a perceived need to prepare more students for possible engineering careers (or careers in other related technical fields) as a shortage of such professionals is anticipated.

“The position will report to the Academic Vice President at [HVCC]. The program and the director will report to the Trustees of [CVF].

“The Director will follow the rules and regulations of the NTP Administrative [C]ode” (id. at ¶¶ 7-10).

Annually, petitioner and HVCC entered into a “Term Agreement with Non-Teaching Professional Personnel” by which petitioner was appointed by HVCC to the position of Director of PLTW. That agreement provided:

“Subject to all the applicable College Policy and the Administrative Code for Non-Teaching Professional Personnel, as the same now exists or may hereafter be amended, you will be employed by Hudson Valley Community College for the period September 1, 2001 through June 30, 2002 under grant number 709-927-110 at an annual salary rate of \$109,000. This salary compensates in full for the performance of your employment responsibilities” (Term Agreement with Non-Teaching Professional Personnel, id., Exhibit L).

The position description for the Director of PLTW provided that it was a “full time (12 mo.) non-teaching professional position. It is funded by a private Foundation at 100% and its continuation is dependent upon this funding” (Position Description, id., Exhibit J).

Further, it provided, inter alia:

“The Director of PROJECT LEAD THE WAY (PLTW) reports to the Academic Vice President at the College and performs the following duties:

- Manages PLTW following the ORGANIZATION FOR LEADERSHIP AND SUPPORT model developed for PLTW;
- Supports PLTW activities by maintaining a PLTW office in the home and working with PLTW schools and colleges/universities by traveling to those sites;
- Organizes and directs the writing and publishing of K-12 Technology Education curriculum;
- Directs the implementation of K-12 Technology Education curriculum;
- Identifies and communicates learning resources necessary to teach the curriculum;

- Negotiates contracts for the Foundation with school districts and colleges/universities;
- Expands PLTW into other regions of NYS and other states as directed;
- Serves as the executive director of the PLTW NEW YORK STATE OVERSIGHT COMMITTEE;
- Organizes and supports conferences, institutes, seminars and other activities designed to assure high quality student programs and services;
- Coordinates appropriate publicity and marketing activities to promote and communicate PLTW; . . .
- Will be present on the HVCC campus no less than one day per month;
- All activities and duties conducted will be done in collaboration with appropriate faculty and staff at HVCC and other colleges and universities;
- On a regular basis meetings will be scheduled with the Vice President of Academic Affairs to keep him/her informed of activities;
- A quarterly report will be submitted to the Vice President of Academic Affairs;
- Performs other duties as directed” (Position Description, id.).

Approximately four years after petitioner retired, in Spring 2006, TRS commenced an investigation of petitioner’s membership in TRS with respect to his work with PLTW at HVCC.<sup>2</sup> On July 24, 2006, TRS notified petitioner of its preliminary determination regarding his retirement credit for the period of July 1, 1997 through October 1, 2002. That notification provided:

---

<sup>2</sup> TRS also investigated six other TRS members. CPLR article 78 proceedings seeking review of TRS’s determinations regarding those individuals were also before this Court and have been decided today. They are as follows: Matter of Handley v New York State Teachers’ Retirement Sys., index No. 6239-07; Matter of Ford v New York State Teachers’ Retirement Sys., index No. 6240-07; Matter of Phillips v New York State Teachers’ Retirement Sys., index No. 6241-07; Matter of Jensen-Dooling v New York State Teachers’ Retirement Sys., index No. 6249-7; Matter of Tebbano v New York State Teachers’ Retirement Sys., index No. 6250-07; and Matter of White v New York State Teachers’ Retirement Sys., index No. 6251-07.

“Specifically, [TRS] has preliminarily determined:

“(1) that you were not entitled to retirement credit for claimed teaching service at [HVCC] during [the relevant time period] because you did not render teaching service at HVCC during those years and that the salary reported to [TRS] by HVCC for such claimed service does not represent compensation earned as a teacher.

“(2) that you were not entitled to benefit from the 2002 retirement incentive pursuant to Part B of Chapter 69 of the Laws of 2002 because you were not in active teaching service on February 1, 2002 and until the date immediately prior to the commencement date of the applicable open period as required by section 5 (a) of Part B of Chapter 69.

“(3) that, inasmuch as your retirement benefit was calculated taking into account the foregoing services, salaries and retirement incentive, the retirement benefit you are currently receiving was not calculated according to law and any retirement benefit to which you may lawfully be entitled after such service, salaries and retirement incentive have been excluded from the calculation of your retirement benefit will prove to be substantially less than the retirement benefit you have heretofore been receiving” (Schneider Letter [dated 7-24-06], id., Exhibit Q).

TRS also informed petitioner that, in order to “protect” it from loss until it rendered a final determination, it was suspending petitioner’s retirement benefits commencing September 2006 “until such time as [TRS] has fully recouped any and all retirement benefit overpayments” (id.).

TRS further explained:

“[W]e have obtained documents and information which appears to indicate that you had been improperly reported by HVCC as providing teaching service to HVCC during the school years 1997-98 through 2002-03. The documents and information appear to indicate that, during the relevant time period, you were, in fact, working for a not-for-profit corporation named Project Lead the Way, Inc. . . .” (id.).

That letter further provided:

“We understand that, since your retirement on October 1, 2003, you have continued to work for PLTW[, Inc.]. So far as we can determine, the only difference in your situation immediately subsequent to retirement from your situation immediately prior to retirement is that HVCC no longer holds you out as a purported employee of HVCC and no longer pays you any salary or provides any HVCC benefits” (id.).

Alternatively, TRS noted that “even assuming your service for PLTW[, Inc.] were also considered service for HVCC, that service does not appear to constitute teaching service creditable in the System” (id.). Moreover, TRS concluded that

“from all the documentation and information provided to [TRS] to date, it appears the primary focus of the ‘collaboration’ among HVCC, CVF and PLTW[, Inc.] with respect to you individually was to establish a mechanism under which your salary and benefits would be provided by HVCC, subject to reimbursement by CVF, while you worked for PLTW[, Inc.]” (id.).

In response, petitioner, through counsel, explained to TRS, inter alia, the history of PLTW. For example, counsel noted:

“During the period of 1986 through 1997, [petitioner] worked at [SCSD] as the Director of Occupational Education. This position was a supervisory position similar to the Director of Curriculum position that focused on the teacher tenure areas of technology education, business and marketing education, and home economics education. [Petitioner] was responsible for these program area and supervision of the teachers teaching courses in these areas. Most of [petitioner’s] duties centered on program development and evaluation, curriculum development and implementation, teacher support and evaluation, and program budget. He reported to the Assistant Superintendent for Instruction at [SCSD]. [Petitioner’s] specialization was bringing school and community together to create strategic plans for school program improvement. Eventually, representatives from [HVCC], Rensselaer Polytechnic Institute and leaders from area industry came together to address the pending shortage of engineers and technicians. As a result, the pre-engineering program at Shenendehowa High School District was created. The purpose of the pre-engineering program was to produce a larger and better prepared high school

student population to enter two and four year engineering and technology programs at Hudson Valley Community College and Rensselaer Polytechnic Institute.

“The goal of this program at Shenendehowa was important to [HVCC] because their Associate in Applied Science Degree Program in Engineering Technology was undersubscribed and the programs were threatening to close. The Shenendehowa program was successful in increasing [HVCC] enrollments in their Associate in Applied Science Degree Engineering Technology Programs. Because of the success in increasing the enrollment in the [HVCC] Associate in Applied Science Programs in Engineering Technology, [HVCC] attempted to acquire funds from the United States Department of Education, the National Science Foundation, the New York State Education Department, and elsewhere to create an outreach program at [HVCC] that would enable other high schools to replicate the Shenendehowa program. During the period of 1986 to 1996, [HVCC] was not able to acquire such funding . . . and the Shenendehowa High School Program was the only program offered in the area. In 1997, [CVF] discovered the Shenendehowa High School pre-engineering Program. [CVF] collaborated with [HVCC] to craft the elements of an outreach program intended to replicate the Shenendehowa Pre-Engineering program in other high schools. This outreach program grew into [PLTW]” (Latin Letter [dated 8-30-06], Hewig Affirmation, Exhibit R).

Counsel went on to explain that, while at HVCC, petitioner’s main objective was to create a curriculum standard and framework to enable the Shenendehowa program to be replicated elsewhere. Counsel noted:

“All of this curriculum development work occurred at [HVCC] and was delivered by [petitioner] and other [HVCC] faculty. [Petitioner] developed all the professional development components offering individualizing learning outcomes to individual high school teachers and collaborated with the [HVCC] Engineering Technology Department Chair to identify [HVCC] training [faculty] and crafting training plans” (*id.*).

Counsel further noted that, later, this training function was transferred to Monroe 2-Orleans BOCES.

On April 13, 2007, despite the above-quoted letter and material submitted by counsel,

TRS finally “determined that [petitioner] was working on the business of Charitable Venture Foundations and/or Project Lead the Way in its unincorporated and/or incorporated form during the [relevant time period]” and, thus, is not entitled to credit in TRS for that time (Schneider Letter [dated 4-13-07], Hewig Affirmation, Exhibit U). In addition, TRS determined that, “because [petitioner] was not rendering teacher service from and after February 1, 2002 until the beginning of the applicable open period as required by section 5 (a) of Part B of Chapter 69 of the Laws of 2002, . . . [petitioner] is not entitled to the benefit of the retirement incentive pursuant to Part B of Chapter 69” (*id.*). The final determination provided that it would take effect on May 14, 2007, inviting petitioner to provide further information to TRS if desired. TRS attached an investigative report to its determination (see “Report on the Investigation of System Members and Retirees Found Working for Charitable Venture Foundation and/or Project Lead the Way While Reported As Providing Teaching Service for Participated Employers in the System,” Petition, Exhibit B).

In response to further correspondence from petitioner’s counsel, TRS rejected, *inter alia*, petitioner’s argument that payment by HVCC rendered it petitioner’s employer, noting that evidence showed that CVF provided the funding for the salary. Furthermore, TRS maintained its position that petitioner was an employee of CVF/PLTW, Inc. and, alternatively, that he did not provide creditable service as a teacher, adjourning the effective date of its determination to June 29, 2007.

Petitioner then commenced this proceeding for review of TRS’s determination to deny

him credit in TRS for his service during the relevant time period, which also affected his monthly pension benefit and his entitlement to an incentive pursuant to Part B of Chapter 69 of the Laws of 2002. In this proceeding, petitioner first argues that he was at all relevant times HVCC's employee, noting that his salary and benefits were paid by HVCC. Thus, petitioner maintains that TRS' determination concluding otherwise is arbitrary and capricious and lacks a rational basis. Second, petitioner contends that TRS arbitrarily, capriciously and irrationally determined petitioner's duties during the relevant time period did not constitute teaching service creditable in TRS. Finally, petitioner contends that the doctrine of estoppel is applicable here to protect his creditable retirement service.

First, the Court agrees with TRS that petitioner's reliance on the doctrine of equitable estoppel is unavailing. As the Court of Appeals has held on several occasions, that doctrine "is not available against a governmental agency in the exercise of its governmental function" (Matter of Daleview Nursing Home v Axelrod, 62 NY2d 30, 33 [1984]; see Collins v Manhattan & Bronx Surface Tr. Operating Auth., 62 NY2d 361, 372-373 [1984]). As that Court explained in Matter of Galanthay v New York State Teachers' Retirement System: "Under section 525 of the Education Law the retirement board is mandated to correct any errors in the computation of benefit entitlement on the part of the members of the system" (50 NY2d 984, 986 [1980]). Therefore, the Court of Appeals concluded that, given this statutory responsibility coupled with public policy, "[t]he doctrine of estoppel will not reach so far as to hold an individual eligible for vested retirement where by statute, he clearly does

not qualify for such eligibility” even where, as here, the benefit has already begun to be paid (id. at 986-987 [quoted case omitted]; see also Matter of Schwartz v McCall, 300 AD2d 887, 889 [3d Dept 2002]).

Although TRS has authority under the Education Law and associated case law to correct errors in computing benefits, it may neither exercise such authority in an arbitrary and capricious nor irrational manner (see generally Matter of Pell v Board of Education, 34 NY2d 222, 231 [1974]; Matter of Kirmayer v State of NY Civ. Serv. Commn., 42 AD3d 848, 850 [3d Dept 2007], lv dismissed 9 NY2d 955). Here, TRS has exercised its authority in both an arbitrary and capricious and irrational manner.

In this instance, TRS launched an investigation into petitioner’s service at HVCC after petitioner, in part, began receiving pension benefits for that service (as well as service in other positions). While the investigation was proper, the Court takes issue with how TRS viewed the results of that investigation and its ultimate determination in this matter. Essentially, TRS took a de novo approach in determining whether petitioner was HVCC’s employee without considering whether HVCC, in the first instance, had a good faith basis for concluding that petitioner was its employee when it reported his service to TRS. The Court holds today that, after conducting an investigation where either pension benefits have begun to be paid or service credit has already been granted, TRS should first consider whether an educational entity had a good faith basis for concluding that a teacher/professional is that entity’s employee. If such a basis existed – whether or not a

contrary conclusion could also be reached – TRS should accept that designation without substituting its judgment for that of the educational entity. If, however, such a basis does not exist, TRS is not bound by the educational entity’s conclusion.<sup>3</sup> This is especially significant given that “[f]ull-time teachers are required to participate” in the retirement system (Matter of Scanlan v Buffalo Public School Sys., 90 NY2d 662, 667 [1997], citing Education Law § 503), and an educational entity must, therefore, make a contemporaneous determination as to a professional educator’s employment status at the beginning of such service.

Here, arguably the record suggests that such a good-faith basis existed. As settled case law regarding what constitutes an employer-employee relationship holds: “Broadly speaking, an employee is someone who works for another subject to substantial control, not only over the results produced but also over the means used to produce the results” (Matter of O’Brien v Spitzer, 7 NY3d 239, 242 [2006]; see Matter of Salamanca Nursing Home, Inc. [Roberts], 68 NY2d 901, 902-903 [1986]; Matter of Mydland [North Shore Equestrian Ctr. – Sweeney], 221 AD2d 747, 748 [3d Dept 1995]; Matter of Clorfeine [New York Open Ctr. – Hudacs], 187 AD2d 840, 840 [3d Dept 1992] [noting that, where a professional relationship exists, the issue is whether there is sufficient control over the services of the professional]; see also Santiago v Spinuzza, 48 AD3d 1257, 1258 [4<sup>th</sup> Dept 2008]). “Factors relevant to the determination [of whether such a relationship exists] include the right to control the alleged’s employee’s work, the method of payment, the right of discharge and the

---

<sup>3</sup> As the parties acknowledge, in this given factual circumstances, no case law exists that is specifically on point to address the issues raised in this proceeding.

furnishing of equipment” (Matter of Wald v Avalon Partners, Inc., 23 AD3d 820, 820-821 [3d Dept 2005]). Further, “[n]o one factor is determinative, but control over means is the more important factor to be considered” (Matter of Charles A. Field Delivery Serv., Inc. [Roberts], 66 NY2d 516, 520 [1985]). Moreover, “[f]actors relevant to assessing control include whether the worker (1) worked at his own convenience, (2) was free to engage in other employment, (3) received fringe benefits, (4) was on the employer’s payroll and (5) was on a fixed schedule” (Bynog v Cipriani Group, Inc., 1 NY3d 193, 198-199 [2003]).

In applying these legal principles here, essential in considering whether HVCC had a good faith basis for considering its relationship with petitioner as one of employer and employee is understanding the collaborative relationship between HVCC and CVF/PLTW, Inc. TRS has taken the view that the arrangement between HVCC and CVF/PLTW, Inc. was nothing “more than a gambit to funnel [petitioner’s] salary from a private entity through a school district [sic] so that [petitioner] can receive retirement credit for his service to that private entity” (Hewig Affirmation at ¶ 58). This characterization, however, lacks a rational basis in the record.

The record before TRS and now this Court shows that HVCC and CVF entered into an agreement by which HVCC sought to support the development of PLTW. To help in that development, CVF – a charitable foundation promoting, in part, educational initiatives – undertook financing for petitioner’s position in the form of a grant. In exchange, HVCC agreed to hire petitioner to work on PLTW. As explained to TRS in a letter from petitioner’s

counsel, the genesis and development of PLTW benefitted HVCC as well as PLTW, Inc. in that it created a student base from which HVCC could draw students for its engineering programs. HVCC further explained in a sworn response to TRS's investigative questionnaire:

“The purpose of PLTW was to assist school districts to design and deliver advanced technology programs to their students through the Project Lead the Way Program, in hopes of stimulating interest and demand for post secondary technical and engineering education. HVCC runs one or more similar programs related to computers in a number of high schools” (Employment Questionnaire at ¶ 8, Hewig Affirmation, Exhibit L).

As demonstrated by the above-discussed evidence before TRS and the Court, HVCC and PLTW, Inc. worked in collaboration, in part, for the benefit of HVCC. To suggest otherwise simply ignores the record in this matter.<sup>4</sup>

HVCC offered petitioner employment in the context of its collaborative relationship with CVF/PLTW, Inc. Accordingly, the issue in this proceeding is whether HVCC had a good-faith basis to consider petitioner its employee in the context of the collaboration

---

<sup>4</sup> Petitioner also submits the affidavit of Richard C. Liebich – the Chairman of the Board of Trustees of Charitable Ventures Foundation. This affidavit attempted to explain not only the historical background of PLTW but also to discuss the collaborative effort between PLTW and HVCC and the concomitant funding given HVCC. The Court, however, cannot rely on this affidavit since it was not before the agency. As settled law holds, the scope of a court's review is limited to what was before the agency (see Matter of Newark Val. Cent. School Dist. v Public Emp. Relations Bd., 83 NY2d 315, 321 n 4 [1994]; Matter of World Buddhist Ch'An Jing Ctr., Inc. v Schoeberl, 45 AD3d 947 [3d Dept 2007]).

between HVCC and CVF/PLTW, Inc. For instance, as the record shows, in the relationship between HVCC and petitioner, HVCC paid petitioner and provided him benefits (see Matter of Siepierski v New York State & Local Retirement Sys., 46 AD3d 1316, 1318 [3d Dept 2007]; see also Education Law § 501 [3]), with the funding coming in the form of grant from CVF to support HVCC's work on PLTW. Petitioner reported to the Academic Vice President at the College and had to abide by the same written policies as other employees at HVCC. Petitioner also had an employment agreement with HVCC (see e.g. Matter of Montalto [Early Intervention Ctr.], 263 AD2d 736, 737 [3d Dept 1999]). Thus, the record suggests that HVCC arguably had a good faith basis founded in the law to consider petitioner its employee even though a contrary conclusion could also be reached (cf Matter of Sign v Commissioner of Labor, 43 AD3d 498, 499 [3d Dept 2007]). Further, the record indicates that TRS did not consider this good faith basis when it essentially determined based on its de novo review of the circumstances that petitioner was not an employee of HVCC. Accordingly, by failing to so consider whether that good faith basis existed, TRS exercised its authority in both an arbitrary and capricious and irrational manner.

Furthermore, public policy supports this Court's holding that the educational entity's conclusion grounded in good faith must be considered by TRS. Here, the investigation into petitioner's service credit and concomitant pension benefits was launched after such benefits were already being paid and well-after the school entity had previously determined petitioner to be its employee. In other words, the educational entity made a contemporaneous

determination that petitioner was in its employment and TRS has conducted an after the fact investigation and, without taking into consideration the previous conclusion by the educational entity, essentially made a de novo finding. To tolerate this procedure places the educational professional in an untenable position of losing such benefits for which the educational entity had a good faith basis to offer that professional. Moreover, educational professionals would be less likely to work within collaborative relationships such as PLTW where such educational professions would be in risk of losing either valuable pension benefits or creditable service. This potentially affects an educational entity's ability to staff such positions with the most qualified educational professional. Accordingly, for this reason and the others discussed above, the Court determines that, since, in reaching its determination, TRS failed to consider whether HVCC had a good faith basis for concluding that petitioner was its employee, that determination must be annulled and the matter remitted to TRS for such consideration.

In addition, TRS's alternative holding that petitioner failed to render creditable service as a teacher during the relevant period does not require a different result. Education Law § 501 (4) defines "teacher" as

"any regular teacher, special teacher, including any school librarian or physical training teacher, principal, vice-principal, supervisor, supervisory principal, director, superintendent, city superintendent, assistant city superintendent, district superintendent and other member of the teaching or professional staff of any class, public school, vocational school, truant reformatory school or parental school, and of any or all classes of schools within the state of New York . . . provided that no person shall be deemed a teacher within the meaning of this article who is not so employed for full time outside vacation

periods. . . . In cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this article” (Education Law § 501 [4]).

Further, subdivision 19 defines service, as pertinent here, as “actual teaching or supervision by the teacher during regular school hours of the day.”

As a preliminary matter, TRS contends that its interpretation of provisions in article 11 of the Education Law as applied to petitioner in its determination should be given deference. The Court, however, disagrees. A Court need not give an agency’s interpretation of a statute deference where, as in this instant matter, the “central statutory question . . . does not implicate ‘knowledge and understanding of underlying operational practice or . . . evaluation of factual data,’ which would limit the scope of . . . review” (Matter of Guido v New York State Teachers’ Retirement Sys., 94 NY2d 64, 68 [1999], quoting Kurcsics v Merchant’s Mut. Inc. Co., 49 NY2d 451, 459 [1980]; see Weingarten v Board of Trustees of the New York City Teachers’ Retirement Sys., 98 NY2d 575, 580 [2002]). Further, “[w]here the terms of a statute are clear and unambiguous, ‘the court should construe it so as to give effect to the plain meaning of the words used’” (Matter of Auerbach v Board of Educ., 86 NY2d 198, 204 [1995], quoting Patrolmen’s Benevolent Assn. v City of New York, 41 NY2d 205, 208 [1976]).

Here, petitioner’s duties fall under the definition of a teacher as applicable to TRS. A teacher, as defined in Education Law § 501 (4), includes a director, which is applicable to the petitioner’s role at HVCC since he directed further development of PLTW while at HVCC (cf Matter of Auerbach, 86 NY2d at 204). Further, contrary to TRS’s determination

and under the plain language of the statute, petitioner has provided service as a teacher to HVCC as defined in Education Law § 501 (19) by directing further development of PLTW at HVCC. The record also indicates that petitioner provided continuing educational instruction to other PLTW teachers as part of his work at HVCC. Thus, to accept TRS's interpretation of service under Education Law § 501 as applied in this proceeding would require the Court to limit the definition of a teacher to one who strictly instructs students, which was clearly not the intent of the legislature since it defined teaching in a broader way (see Matter of Auerbach, 86 NY2d at 204).

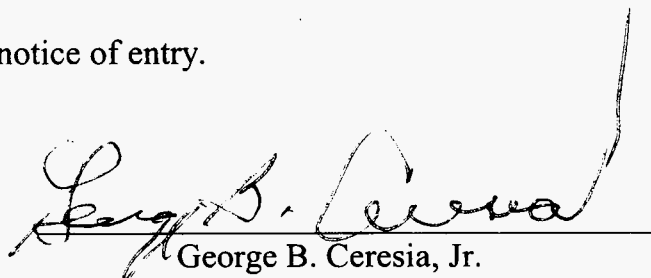
Otherwise, the Court has considered the parties' remaining contentions and finds them either lacking in merit or unnecessary to consider given this Court's decision. Accordingly, it is

**ORDERED and ADJUDGED** that the petition is granted to the extent that the determination is annulled and the matter is remitted to respondent New York State Teachers' Retirement System for further proceedings not inconsistent with this Court's decision.

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the petitioner who is directed to enter this Decision/Order/Judgment without notice and to serve all attorneys of record with a copy of this Decision/Order/Judgment with notice of entry.

**ENTER**

Dated: July 23, 2008  
Troy, New York



George B. Ceresia, Jr.  
Supreme Court Justice

## Papers Considered:

1. Notice of Petition dated August 10, 2007;
2. Petition verified August 7, 2007, with accompanying Exhibits A-W;
3. Affidavit of Richard C. Liebich sworn to August 7, 2007, with accompanying Exhibits A-J;
4. Answer verified January 16, 2008;
5. Affidavit of Walter Evans sworn to January 10, 2008;
6. Affirmation of Wayne Schneider, Esq., affirmed January 9, 2008, with accompanying Exhibits A-G;
7. Affirmation of Rosemarie C. Hewig, Esq., affirmed January 9, 2008, with accompanying Exhibits A-AA;
8. Reply Affidavit of Thomas D. Latin, Esq., sworn to February 15, 2008, with accompanying Exhibit A.