

STATE OF MICHIGAN  
COURT OF APPEALS

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GILLIAN EMLAW WILLIAMS,

Plaintiff-Appellant,

v

MICHIGAN PUBLIC SCHOOL EMPLOYEES  
RETIREMENT BOARD,

Defendant-Appellee.

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UNPUBLISHED  
September 29, 2009

No. 282543  
Ingham Circuit Court  
LC No. 07-000686-CZ

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

Plaintiff Gillian Emlaw Williams appeals as of right an order granting defendant Michigan Public School Employees Retirement Board's (the Retirement Board) motion for summary disposition under MCR 2.116(C)(10). Because we conclude that there were no errors warranting relief, we affirm.

This Court reviews *de novo* a trial court's determination on a motion for summary disposition. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion brought under MCR 2.116(C)(10), this Court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Williams was a seasonal employee of the Washtenaw Intermediate School District during the summers of 1989 through 1992. She also worked for the school district during the summers of 1994 and 1996. Each period of employment lasted approximately five weeks, except for 1996, which was for ten weeks. Williams said that she was never informed of retirement options, nor informed of her opportunity to choose a retirement plan. The school district offered two plans: the basic plan and the member investment plan. Williams was enrolled by default in the basic plan.

In 2004, Williams began full-time employment at Lincoln Consolidated Schools. At this time, she discovered that there were two retirement plans and that she was a member of the basic plan. She sought to switch plans, but her request was denied. She then requested and received an administrative hearing. After the hearing, the administrative law judge (ALJ) concluded that

Williams had been improperly enrolled in the basic plan and recommended that she be allowed to switch plans. The Michigan Public School Employees' Retirement System (the Retirement System) filed exceptions to the ALJ's conclusions and recommendations. Thereafter, the Retirement Board denied Williams' request to switch plans.

The Retirement Board had a steering committee that met prior to board meetings for the purpose of "moving the meetings along." The director of the Office of Retirement Services (ORS), four of the twelve board members, and an assistant attorney general working on behalf of the Retirement Board, generally attended the steering committee meetings. At these meetings, the steering committee discussed the contested cases, shared opinions, and determined which member would make a motion for decision before the full Retirement Board. The assistant attorney general also prepared and distributed a document to the entire Retirement Board, which summarized the contested cases and provided options with recommendations. The steering committee discussed Williams' case at such a meeting with the director and former directors of ORS present, as well as the Retirement Board's attorney.

Williams first argues that the trial court erred when it granted summary disposition in favor of the retirement board on her claim that the Retirement Board violated the Open Meetings Act, MCL 15.261 *et seq.*, when its steering committee met without public access to discuss Williams' case. Under MCL 15.263(1), a public body's meetings must "be open to the public" and all persons "shall be permitted to attend any meeting . . . ." Further, "[a]ll decisions of a public body shall be made at a meeting open to the public." MCL 15.263(2). The purpose of the Open Meetings Act is to encourage governmental accountability by facilitating public access and to provide an opportunity for the general public to better understand issues and decisions of public concern. *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 83-84; 669 NW2d 862 (2003). In light of this purpose, the Open Meetings Act's requirements are interpreted broadly and its exemptions are interpreted narrowly. *Id.* at 85.

The circuit court determined that the Retirement Board's steering committee was not a public body subject to the requirements of the Open Meetings Act. MCL 15.262(a) defines a public body to be "any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function . . . ." A central determination is whether the committee in question exercises governmental or proprietary authority. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 225; 507 NW2d 422 (1993). Committees that are less than a quorum and do not collectively deliberate toward resolution of public business are not subject to the Open Meetings Act; however, when such committees meet in an attempt to avoid the provisions of the act, it will apply. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 192 Mich App 574, 581; 481 NW2d 778 (1992), affirmed in relevant part 444 Mich 211.

Williams argues that the steering committee exercised governmental authority by discussing contested cases in order to reach a consensus to present to the full Retirement Board to be "rubber stamped." She urges that *Booth Newspapers, Inc*, 444 Mich 211, is analogous to the present case. In that case, the University of Michigan Board of Regents named itself as a committee to choose a university president. *Id.* at 215. The chairperson cut a list of 250 potential applicants to 70 after intercommunication with advisory committees and other regents.

The committee, after communication with individual regents, then cut this list to 30. These candidates were invited to apply and twelve did so. Small groups of regents then, in essence, interviewed the candidates and the regents informally discussed the candidates. They then met in closed sessions, after which the chairperson narrowed the field to five. A nominating committee was then formed, which narrowed the field to two candidates and then decided to recommend one candidate. This process was for the express purpose of avoiding the Open Meetings Act. *Id.* at 216-217. The Court found that the committee, or even the chairperson alone, was exercising governmental authority by selecting a president without the opportunity for public participation in violation of the Open Meetings Act. *Id.* at 226.

The steering committee's action in discussing contested cases in advance of the Retirement Board's meetings is not akin to the Board of Regents selection of a university president. In this case, there is no evidence that the discussion moved the committee or the Retirement Board to a predetermined resolution of the previewed cases. The steering committee was not able to bring the Retirement Board to a consensus or decide a contested case because it had not been given any authority to do so. The Retirement Board's chair appointed the steering committee and it was comprised of only four of twelve board members. The task of the steering committee was to keep the process of the board meeting flowing; it was not delegated any tasks by the Retirement Board except to evaluate the Retirement Board's performance. There was no showing that the steering committee made conclusions on cases, decided how members would vote, decided how to vote as a group, or controlled the votes of the other eight board members in deciding contested cases. Notably, in Williams' case two of the ten board members present at the meeting voted in her favor. In granting summary disposition to the Retirement Board, the trial court correctly noted that there was no evidence demonstrating that the steering committee exercised governmental or proprietary authority or otherwise performed a government or proprietary function. Therefore, the trial court properly granted summary disposition of this claim.

Next, Williams contends that the trial court erred when it granted summary disposition of her claim that the steering committee improperly met with, and received advice from, an assistant attorney general that was involved in Williams' case. This advice, Williams contends, violated the Administrative Procedures Act, MCL 24.201 *et seq.*

The decision makers in contested cases are prohibited from communicating about issues of fact or law with any party without notice and opportunity for all parties to participate:

Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. . . . [MCL 24.282.]

Here, Assistant Attorney General Larry F. Brya represented the Retirement System in the hearing before the ALJ. He then prepared the Retirement System's exceptions to the ALJ's proposal for decision. However, Assistance Attorney General Tom Schimpf, who was acting on behalf of the Retirement Board, was the attorney at the steering committee meeting in question.

Schimpf prepared a summary of the contested cases with options and recommendations that were then discussed by the Retirement Board.

Williams contends that the written materials submitted by Schimpf violated MCL 24.282 because the Attorney General's office represented the Retirement System before the ALJ and at the steering committee meeting. However, it was Byra who represented the Retirement System before the ALJ, not Schimpf. And MCL 24.282 permitted Schimpf's contact: "An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case." There was no evidence that Schimpf was engaged in investigating or prosecuting Williams' claim. He was not acting on behalf of any party and did not play any role as an advocate. Because there was no evidence that Schimpf was involved, the trial court properly concluded that this contact did not implicate MCL 24.282.

There were no errors warranting relief.

Affirmed.

/s/ Brian K. Zahra  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly