BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDAHO RETIRED FIRE FIGHTERS ASSOCIATION, SHARON KOELLING, and JOHN ANDERSON, Plaintiffs, v. PUBLIC EMPLOYEE RETIREMENT BOARD, Defendant.	**IC 17-000044** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** **Filed 12/29/17**

INTRODUCTION

Pursuant to Idaho Code § 72-1423, the Idaho Industrial Commission has jurisdiction over this dispute between the Public Employment Retirement Board of Idaho (hereinafter the Board) and the Idaho Retired Firefighter's Association (IRFA), and their individual representatives, Sharon Koelling and John Anderson (hereinafter Association).

On October 8, 2015, the Association filed a complaint and petition for declaratory ruling with the Industrial Commission. On October 26, 2015, the Commission dismissed the petition and complaint because the Association did not comply with the service rules at J.R.P. 15(d) and because the Commission found it had no original jurisdiction over the dispute, only appellate jurisdiction after a claim was pursued before the Board.

The Association filed a complaint and petition for declaratory ruling before the Retirement Board on November 24, 2015. The Board ordered a contested case hearing on the petition and complaint pursuant to Idaho Code § 67-5232. A hearing was held on May 3, 2016. The hearing officer issued findings of fact, conclusions of law, and recommended order on

August 18, 2016 ruling for PERSI, and the Board adopted the recommendation in its entirety by order dated October 18, 2016.

Pursuant to Idaho Code § 72-1423, the Association filed a petition and complaint before the Industrial Commission appealing the Board's order on November 23, 2016. PERSI moved to dismiss the complaint for lack of jurisdiction. The Commission denied the motion to dismiss and the Association filed a renewed complaint and petition for declaratory ruling on July 10, 2017. The parties submitted briefs and exhibits and this matter came under advisement on September 18, 2017.

ISSUE

Is PERSI acting in violation of statute by including part-time firefighters employed by the City of Lewiston in the cost-of-living adjustments for the Fireman's Retirement Fund?

CONTENTIONS OF THE PARTIES

Claimants contend that Idaho statutes require the Fireman's Retirement Fund's cost-of-living adjustment be calculated on the salary of only full-time "paid firefighters." Further, that PERSI's Director and the agency generally are acting in violation of their statutory duty to correctly calculate the cost-of-living adjustment by including City of Lewiston part-time firefighters. Lastly, Claimants argue that PERSI, either through omission or commission, is acting in a legislative manner that impairs contracts, violating both the Idaho and US Constitution's Contract Clause.

Defendants respond that the statutory definitions of "paid firefighters" are unambiguous and make no distinction between part-time and full-time firefighters; the statutes only require that the firefighter be on the payroll for the city or fire district and devote the majority of his or her time to firefighting while on the city or fire district's payroll. They also contend that unless

the Association can show evidence to the contrary, the Director and PERSI staff are afforded a presumption of regularity as an administrative agency. Lastly, they contend that PERSI took no legislative action in this matter, nor did they change existing practices, and therefore PERSI did not violate the contract's clause of either the Idaho or U.S Constitutions.

Claimants reply that the paid firefighters' definitions are ambiguous and must be resolved with reference to rules of statutory interpretation. Second, they argue that the presumption of regularity does not apply in this instance. Finally, PERSI is acting in a legislative capacity by defining "employee" and then following their own regulatory definition of "employee" over a statutory mandate to include only full-time firefighters and is therefore impairing contracts.

EVIDENCE CONSIDERD

The record in this matter consists of the following:

1. The Commission's legal file.
2. Claimant's exhibits 1 through 3.
3. Defendant's exhibits A through E.

FINDINGS OF FACT

1. In 1945, the Idaho Legislature created the Fireman's Retirement Fund (hereinafter FRF). It codified the FRF in Chapter 14, of Title 72, and tasked the State Insurance Fund with running the fund. The purpose of the FRF was as follows:

> "The retirement, with continuance of pay for themselves, provision for dependents, and pay during temporary disability, and the encouragement of long service in fire fighting service, of paid firefighters becoming aged or disabled in the service of the state or any of its cities or fire districts, is hereby declared to be a public purpose of joint concern to the state and each of its cities and fire districts in the protection and conservation of property and lives and essential to the maintenance of competent and efficient personnel in fire service."

Idaho Code § 72-1401.

The Legislature also provided definitions for the terms used within the Chapter. The legislation defined "paid fireman" as follows:

> "The words "paid fireman" mean any individual who is on the payroll of any city or town or fire district in the State of Idaho and who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted Fire Department of such city or fire district in the State of Idaho."

1945 Sess. Laws, Ch. 76 § 2, p. 113.

2. In 1976, the Legislature passed Idaho Code § 72-1432B (since redesignated Idaho Code § 72-1471). The statute provides a cost-of-living adjustment (hereinafter COLA) for FRF beneficiaries. The COLA is to be "calculated on the percentage increase or decrease in the average paid firefighter's salary or wage."[1] Idaho Code § 72-1471.

3. In 1979, the Legislature transferred the FRF to the public employee retirement system (hereinafter PERSI). PERSI took over management of the FRF from the State Insurance Fund and has managed it up to the present date. Any firefighter hired after the date of the transfer (October 1, 1980) participates in PERSI instead of the FRF. Idaho Code §§ 59-1392, 72-1401. Any firefighter hired before October 1, 1980 is still able to participate in the FRF and their rights and benefits cannot be less than they would have received under the FRF due to the transfer. Idaho Code § 59-1392.

4. The Legislature amended Title 72, Chapter 14 of the Idaho Code substantially as part of the transfer. One such amendment changed the definition of paid firefighter at Idaho Code § 72-1403(A) to the following:

> "The words "paid fireman" are synonymous with "paid firefighter," and mean any individual, male or female, excluding office secretaries employed after July 1,

[1] 72-1471 reads in its entirety: "Cost of living adjustment. In addition to the monthly sums provided for under this chapter, any retired firefighter or his or her surviving spouse, child, or children drawing benefits shall be entitled to receive adjustments to such benefits, calculated on the percentage of increase or decrease in the average paid firefighter's salary or wage, in this state, as computed under the terms of section 72-1431, Idaho Code."

> 1967, who is on the payroll of any city or fire district in the state of Idaho prior to October 1, 1980, and who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho."

Idaho Code § 72-1403(A).

This definition has not changed since 1980. *Id*; 1980 Sess. Laws, Ch. 50, § 3, p. 82. The legislature also adopted Idaho Code §§ 59-1351-1359[2] to govern the transfer of the FRF to PERSI. Idaho Code § 59-1351 defined the terms used in §§ 1351-1359. Firefighter member was defined as "a beneficiary receiving benefits or establishing the right to receive benefits from the fireman's retirement fund on October 1, 1980."[3] 1979 Sess. Laws, Ch. 147 § 1, p. 452-453. Paid fireman meant "an employee who engages in fire fighting, [sic] emergency or hazardous duties or other duties required of and by his employer." *Id.* In 1984, the legislature amended the definition of paid fireman to match some of the wording of the definition at § 72-1403(A), but omitted any kind of date restriction or the direction that fireman was synonymous with firefighter. 1984 Sess. Laws, Ch. 231 § 8, p. 319. In 1990, both titles and chapters 72-14 and 59-13 were redesignated and updated with the term "firefighter" versus "fireman." 1990 Sess. Laws, Ch. 231, § 61, § 70, p. 645, p. 649.

5. PERSI, under the management of the Retirement Board, has set the FRF COLA since 1980. Defendant's Exhibit E, p. 26-32. PERSI, pursuant to Idaho Code § 59-1325(1), directs all employers to report and pay contributions on any qualifying employee. *Id.* at 85-89. Idaho Code § 59-1302(14) defines "employee" and requires that they normally work twenty or more hours a week for at least five consecutive months. PERSI's Rule 113 clarifies that if an employee works more than twenty hours a week for more than half of the time considered (5

[2] Redesignated in 1990 to Idaho Code § 59-1391-1399.
[3] The current definition is: ""Firefighter member" means a person or beneficiary who, prior to October 1, 1980, was receiving benefits or establishing the right to receive benefits from the firefighters' retirement fund." Idaho Code § 59-1391(b).

months), then they are PERSI eligible. IDAPA 59.01.02.113. PERSI categorizes employees based on their contribution rate. *Id.*; IDAPA 59.01.03.026-028. "Public safety" employees are Class II, have a higher contribution rate, and include firefighters, police officers, and similar employments. *Id*. Employers decide which employees to report in what class based on guidance from PERSI. *Id*. To calculate the FRF COLA, PERSI employees compile all the monthly reports from employers who currently have or previously had an FRF-qualifying employee, 22 different fire departments. *Id*. The reports are organized by location and then by retirement fund; if a firefighter is participating in FRF, they are sorted into Option I or Option II[4], and if a firefighter is participating in PERSI they are included in Class D or E. *See* Claimant's Exhibit 1; Defendant's Exhibit E, p. 92. The total salary for all 22 departments is divided by the total service months for all firefighters to arrive at an average salary. *Id.* The average salary for that year is then compared to the prior year to arrive at the COLA. *Id.*

6. The Idaho Retired Firefighter Association is a non-profit that was formed to keep track of the pension and retirement benefits for retired firefighters in Idaho. Defendant's Exhibit E, p. 20. The Association meets with PERSI regularly, tracks the yearly COLA, and advocates on behalf of its members. *See* Defendant's Exhibit E.

7. In February of 2009, the City of Lewiston and the International Association of Firefighters Local 1773 agreed that reserve firefighters would get a pay raise, a life insurance policy, and that the City would start to pay PERSI contributions. Claimant's Exhibit 1. In the fall of 2009, at PERSI and the Association's annual meeting, the Association brought up some concerns about Lewiston's reported paid firefighters. Defendant's Exhibit E, p. 111. Based on these concerns, Don Drum, the Director of PERSI, ordered an audit of Lewiston. The results of

[4] This refers to Idaho Code § 72-1431 which allowed FRF retirees to choose a contribution rate based on their salary (Option II) or the state average for paid firefighters (Option I).

the audit showed that PERSI contributions were improperly paid and collected. *Id.* p. 112. PERSI issued refunds and collected contributions as needed to correct the deficiencies the audit uncovered. *Id*.

8. In 2013, the Association again brought up concerns about Lewiston to Director Drum after receiving its annual COLA report. *Id.* at p. 50. The Association had noticed a jump in the number of months that Lewiston was reporting in its annual report when compared to the sum of its monthly reports. Director Drum investigated and followed up by meeting with the Association. *Id*. At the meeting, Debbie Buck, a PERSI employee, explained that Lewiston added in 49 more months of service in their year-end report that they had mistakenly excluded in their monthly reports. *Id*. at p. 51.

9. After a few more meetings, the Association requested that PERSI recalculate the COLA with part-time firefighters excluded to see how it would affect their benefits. *Id*. at p. 59-60. Ms. Buck performed the calculations again and excluded 15 part-time Lewiston firefighters with a total of 157 hours of service. *Id*. at 61. The calculation showed that when the Lewiston part-timers were excluded, the COLA increased from 2.482% to 3.434%. *Id.* The Association lobbied through legal counsel for PERSI to change the practice of including Lewiston's part-time firefighters in the COLA calculations. *See* Claimant's Exhibit 1. After the Association was unsuccessful, this legal action followed.

DISCUSSION AND FURTHER FINDINGS

Is the definition of paid firefighter ambiguous?

10. The threshold issue is who is included in the class "paid firefighter," as legislatively defined in Idaho Code § 72-1403(A) and used in § 1471. The Court has stated "legislative definitions of terms included within a statute control and dictate the meaning of those

terms as used in the statute." *State v. Yzaguirre*, 144 Idaho 471, 477, 163 P.3d 1183, 1189 (2007).[5] In reading a statute, the Commission should consider the statute as a whole and "words should be given their plain, usual, and ordinary meanings," and the Commission "must give effect to all words of the statute so that it will not be void, superfluous, or redundant." *State v. Schulz*, 151 Idaho 863, 264 P.3d 970 (2011). The first step in interpreting a statute is to discern whether or not it is ambiguous. *Verska v. St. Alphonsus Regional Medical Center* 151 Idaho 889, 265 P.3d 502 (2011). When a statute is unambiguous, the clearly expressed intent of the legislature must be given effect, and the Commission "need not consider rules of statutory construction" in its reading. *Schulz* at 974, 867. A statute is ambiguous if it is capable of more than one reasonable interpretation. *Id*. at 896. A statute is not ambiguous "merely because an astute mind can devise more than one interpretation of it." *Farmers Nat. Bank v. Green River Diary, LLC* 155 Idaho 853, 318 P3d 622 (2014). Therefore, if the Commission finds that the statute is unambiguous, it must read the statute as written; if the statute is capable of more than one reasonable interpretation, the Commission should apply rules of statutory construction to discern the intent of the legislature.

11. The statute in question reads as follows:

> The words "paid fireman" are synonymous with "paid firefighter," and mean any individual, male or female, excluding office secretaries employed after July 1, 1967, who is on the payroll of any city or fire district in the state of Idaho prior to October 1, 1980, and who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho.

Idaho Code § 72-1403(A).

[5] This principle is also found in Idaho Code § 73-113(3) which states: "Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition."

We do not find this statute ambiguous. It is long and poorly worded due to multiple amendments, but it is capable of only one reasonable interpretation. We agree with the Hearing Officer[6] and Defendants that the statute refers to an individual's employment for the city or fire district, not their employment generally. The statute contemplates that if the principal work of an individual employed by a city or fire district relates to the operation of a fire department, then such individual falls within the class of "paid firefighters." Therefore, even if an individual worked only part-time for a city, he would still be a "paid firefighter" for purposes of the statute, so long as while in that employment he worked principally at the city fire department.

12. Two clauses require our conclusion: "principal time of employment… of such city or fire district." When the statute is read as a whole, it is clear that the later clause qualifies the former. To hold otherwise would render the last clause of the statute superfluous or require a piecemeal reading of the statute, neither of which we are permitted to do.

13. Our reading is further supported by the broad language used within the statute. The legislature included "any individual," of any gender that's on the payroll of "any city or fire district" in Idaho. The only clear exclusion from the class of paid firefighters is an office secretary. Based on the plain language, the legislature decided on a broad class, which is consistent with their statement of purpose to 'encourage long service.'

14. IRFA argues that the statute is ambiguous. Claimants do not point to any particular ambiguity, but argue that because PERSI's and Claimants' reading are different, the statute must be ambiguous. However, the Court stated in *Farmer's Nat. Bank*, *supra*, "the fact that two different interpretations of a statute are presented does not alone make a statute ambiguous. Rather, the statute's meaning must be so doubtful or obscure that reasonable minds

[6] "The Hearing Officer concludes that the statutory language "principle time of employment" refers to the time the firefighter devotes to their city or fire district employment, not whether they are employed outside the city or fire district at some second job or employment." (See Claimant's Exhibit 2).

would be uncertain or doubtful as to the statute's meaning." (Internal citations omitted). We do not find the statute's meaning so obscure or uncertain as to require statutory construction.

15. If we found the statute ambiguous, Claimants' interpretation would still fail. IRFA crafts arguments around the following rules of statutory construction to support the exclusion of the Lewiston's part-timers: liberal construction, contextual reading[7], and *in pari materia*. Both parties agree the most important rule of statutory construction is to give effect to the legislature's intention. We agree with both parties on this point, and find if the legislature's intention was to include only 'full-time firefighters' as Claimants insist, it is not apparent, even when using Claimants' preferred rules of statutory construction.

16. **Liberal Construction.** IRFA argues the legislature's intent to exclude part-timers is discernible by reading the statement of purpose at § 72-1401, quoted again below, and then to liberally construe that statute pursuant to § 72-1402[8] to exclude part-timers.

> The retirement, with continuance of pay for themselves, provision for dependents, and pay during temporary disability, and the encouragement of long service in fire fighting service, of paid firefighters becoming aged or disabled in the service of the state or any of its cities or fire districts, is hereby declared to be a public purpose of joint concern to the state and each of its cities and fire districts in the protection and conservation of property and lives and essential to the maintenance of competent and efficient personnel in fire service.

IRFA's argument is that when PERSI includes part-time firefighters, it lowers the yearly COLA, and therefore harms retirees. This stretches "liberal construction" a little too liberally. Liberal construction does not mean we can read in (or out) provisions that are not within the statute, namely the requirement that "paid firefighters" work full-time. Liberal construction also does not mean that tortured statutory interpretation is required to ensure the highest possible benefits. We

[7] We combine Claimant's contextual reading and last antecedent clause arguments because they are substantively the same.

[8] Idaho Code § 72-1402 reads in its entirety: "Construction. The provisions of this chapter shall be liberally construed, with the object of promotion of justice and the welfare of the persons subject to its provisions."

detect nothing in Idaho Code § 72-1401 which hints at an intent to exclude part-time firefighters from the FRF.

17. **Contextual reading.** IRFA next argues that the phrase "his or her" before "principal time of employment" means that the determination of what is "principal" must be made with reference to the employee. In other words, is firefighting "his or her" principal employment? Neither does this interpretation of the avail Claimants either. "Principal" does not mean "full-time" or "majority" of time. Merriam-Webster defines principal as "most important, consequential, or influential." Merriam-Webster, www.merriam-webster.com/dictionary/principal (last visited December 6, 2017); the Oxford Dictionary definition is similar: "first in order of importance; main." Oxford Dictionary, en.oxforddictionaries.com/definition/principal (last visited December 6, 2017). If we did construe the statutes as Claimants suggest, this does not inevitably lead to the conclusion that part-time firefighters would be excluded from the class of "paid firefighters." Defendants recognize and we agree that this construction of the statute would still include firefighters who are part-time, but only have one job: firefighting. Further, if a firefighter had two jobs, how would PERSI determine which was their "principal" job for inclusion or exclusion in the COLA calculation? A contextual reading does not support the exclusion of part-time firefighters.

18. ***In pari materia*.** Statutes are *in pari materia* if they relate to the same subject; statutes that are *in pari materia* must be construed together to effect legislative intent. *Gooding County v. Wybenga*, 137 Idaho 201, 46 P.3d 18 (2002). Claimants make two different arguments applying the concept of *in pari materia* to support their interpretation of the statute. Claimants argue that the definition of "paid firefighters" at 72-1403(A) must be read *in pari materia* with the definition of "employees" at § 59-1302(14). Claimants argue that because both statutes relate

to pensions, they must be understood together.[9] Further, that because of the legislature's special focus in defining "paid firefighters" and more general focus in defining "employee" the legislature must have intended that paid firefighters would not be subject to the employee definition. This argument is without merit. We agree that the legislature intended firefighter's pensions to be a matter of particular and unique focus both in 1945 and in 1980 when transferring the FRF into PERSI. However, we disagree that this means the legislature intended the definition of "employee" to exclude FRF firefighters. The definition of employee was first adopted in 1963, after the establishment of the FRF. 1963 Sess. Laws, Ch. 349 §2, p. 988. If the legislature intended to exclude paid firefighters from the definition of employee, they could have easily done so when they first adopted it in 1963; the definition when adopted already contained specifically enumerated exclusions. *Id.* Further, the 1963 legislature adopted a definition of "fireman" which began "fireman means an employee." *Id.* Subsequent legislative action further undermines Claimant's argument. In 1980, the legislature adopted § 59-1391-1399 specifically to bring FRF pensions into the PERSI system. There is greater *in pari materia* evidence that the legislature intended the FRF firefighters to be treated *more* like employees, not entirely excluded.

19. Claimants imply a second *in pari materia* argument in their opening brief to support their contention that the legislature intended to exclude part-time firefighters:

> ""Paid firefighter" is a specifically-defined term in Chapter 14, Title 72 and it is clear from the definition section of the FRF Act that by "paid firefighter," the Legislature meant career firefighters whose "principal time of employment" (I.C. § 72-1403(A)), "principal means of livelihood" (I.C. §§ 72-1403(D) & (H)), "principal gainful occupation" (I.C. § 1403(E)) was as a firefighter with an Idaho city or fire district."

[9] Most, if not all of, Title 59, Chapter 13 and Title 72, Chapter 14 relate to pensions; there are two other definitions of firefighters (§ 59-1302(16) and § 59-1391(f)) that are entirely unmentioned in Claimants' *in pari materia* argument.

Claimants' Brief, p. 1.

Claimants acknowledge in a footnote that only § 72-1403(A) defines "paid firefighter," the statute at issue, but argue that the other definitions and their provisions provide "insight" into the legislature's intent to exclude part-time firefighters. We draw the opposite conclusion. The legislature chose the broader phrase "principal time of employment" to define "paid firefighters" and narrower phrases to define "twenty-five (25) years active service," (§72-1403(D)) "five (5) years of service," (§72-1403(E)) and "years active service" (§72-1403(H)). If the Legislature intended only "career firefighters" they could have said so plainly and unequivocally utilizing the phrases that Claimants cite.[10]

20. We do not address Claimants' argument that Director Drum and PERSI generally are operating against his/their statutory duty to determine who is a "paid firefighter," because that argument relied on Claimants' interpretation of "paid firefighter" and is moot.

21. We turn to Claimant's third argument that PERSI is violating the Contract Clause of the U.S. and Idaho Constitutions. In their opening brief, IRFA's asserts PERSI's inclusion of part-time firefighters in the COLA is an unconstitutional administrative activity, under the holding of *Deonier v. PERSI*, 114 Idaho 721, 760 P.2d 1137 (1988), because it impairs FRF retirees' benefits.

22. Claimants reliance on the plurality opinion of *Deonier* to support their argument that an administrative action can violate the Contract Clause is mistaken. The follow-up opinion, *Osick v. PERSI*, 122 Idaho 457, 835 P.2d 1268 (1992), begins: "we hold that the rationale of the opinion in Deonier [sic] is not controlling precedent, because only two members of the Court concurred, with one member concurring in the result only." Moreover, even if *Deonier* was a

[10] However, we note that if they had utilized "principal means of livelihood" or "principal gainful occupation" in the definition of "paid firefighters," it would still include part-time firefighters with only one occupation.

controlling opinion, it is distinguishable. In that case, PERSI chose to apply § 72-1414 which required disability retirement monies be offset by worker's compensation monies. The State Insurance Fund had never applied that provision when they administered the FRF ("Indeed, the State can point to no cases where the offset provisions of I.C. § 72–1414 or § 72–1429P (now repealed) were ever applied." *Deonier* at 725, 1141). The Court held that because the agency had "unilaterally alter[ed] its previously developed policy to lessen... benefits" it violated the Contract Clause. *Id*. at 726, 1142. Claimants have provided no evidence of a change in practice by PERSI in administering the FRF. Claimants' Exhibit 1, which contains 10 years of previous FRF COLA calculations, reveals no change in practice. Don Drum reported that they have not changed their practice in the 10 years since he'd been working for PERSI (Defendant's Exhibit E). Claimants' administrative action argument fails.

23. IRFA abandons *Deonier* in their reply brief and instead contend that PERSI is acting in a legislative manner outside the bounds of their statutory authority by passing Rule 100 (IDAPA 59.01.02.100), Rule 113 (IDAPA 59.01.02113), and Rule 300 (IDAPA 59.01.02.300). IRFA's argument asserts that Rule 113 defining "normally works twenty hours" (IDAPA 59.01.02.113) is unconstitutional legislative activity because application of that rule in determining the class of "paid firefighters" impairs FRF retirees' benefits. The Idaho Supreme Court has held that the Industrial Commission does not have jurisdiction to address constitutional challenges. The constitutionality of a provision of the workers' compensation law is properly addressed only by the courts. (See *Tupper v. State Farm Insurance*, 131 Idaho 724, 963 P.2d 1161 (1998); *State Insurance Fund v. Van Tine*, 132 Idaho 902, 980 P.2d 566 (1999)). If Rule 113 is a 'provision of worker's comp law,' we do not have jurisdiction to consider its constitutionality under *Tupper* and its progeny. If Rule 113 is not a provision of worker's

compensation law, we still do not have jurisdiction to address its constitutionality; the Industrial Commission is a court of limited jurisdiction, with "nothing being presumed in favor of its jurisdiction." *Idaho Power Co. v. Idaho Public Utilities Commission* 102 Idaho 744, 749, 639 P.2d 442, 447 (1981). If Claimants believe they have a colorable Contract Clause claim, they should pursue it before a higher court.[11]

24. Finally, we come to an issue that has not been raised or briefed by the parties. While we do not make this issue the basis of our decision, the matter seems of sufficient consequence to warrant some discussion. As noted, Idaho Code § 72-1401 *et seq*. applies only to paid firefighters who were employed prior to October 1, 1980. Idaho Code § 72-1403, the definitional section, specifically defines "paid firefighter" as any individual who is on the payroll of any city or fire district in the state of Idaho "prior to October 1, 1980, and who devotes his or her principal time of employment to the operation of a fire department of such city or fire district." Idaho Code § 72-1471, which governs the cost of living adjustment at issue in this case, specifies that such cost of living adjustment shall be calculated on the percentage of increase or decrease in the average "paid firefighter's salary." Since, as established by Idaho Code § 72-1403(a), "paid firefighter" is a term of art, we must necessarily consider all parts of that definition, including that language which unambiguously specifies that in addition to whatever else a paid firefighter may be, such class is specifically limited to those individuals who are on the payroll of a city or fire district prior to October 1, 1980.

[11] However, we note Rule 113 reads: "If a person works twenty (20) hours or more per week for more than one-half (1/2) of the weeks during the period of employment being considered, then the person meets the requirements of Section 59-1302(14)(A)(a), Idaho Code ("normally works twenty (20) hours or more per week"), and shall be considered an employee if the person meets the other requirements of Section 59-1302(14), Idaho Code. Statutory References: Section 59-1302(14)(A)(a)." Idaho Code § 59-1302 reads in relevant part "Employee means any person who normally works twenty (20) hours or more per week… Employee does not include employment as… a person whose employment with any employer does not total five (5) consecutive months." When comparing the two, it is difficult to see how PERSI exceeded their statutory authority.

25. This would necessarily result in a much smaller class of "paid firefighters" than is currently used to calculate the COLA.[12] For example, in 2015, if PERSI calculated the COLA based on only those paid firefighters on the payroll prior to October 1, 1980, it would include only two firefighters. Further, taken to its logical end, if PERSI calculated the COLA in this manner, the COLA would drop to zero once all the "paid firefighters" retired and *Verska*, *supra*, instructs us that we would not be at liberty to disregard this conclusion because it would produce an absurd result (i.e. a very high COLA based on end-of-career firefighters and than no COLA once all had retired). However, we are comfortable stating this result is probably not what the legislature intended when it passed a COLA for firefighters or when the FRF was merged with PERSI. Notwithstanding our concerns in this regard, since this issue was neither briefed nor otherwise addressed by the parties, and we decline to make it the basis of our decision.

CONCLUSIONS OF LAW AND ORDER

1. The definition of "paid firefighters" includes firefighters who may work for a city or fire district on less than a full time basis.

DATED this __29th__ day of __December__, 2017.

INDUSTRIAL COMMISSION

___/s/_____
Thomas E. Limbaugh, Chairman

___/s/_____
Thomas P. Baskin, Commissioner

___/s/_____
R.D. Maynard, Commissioner

ATTEST:
_____/s/_____
Assistant Commission Secretary

[12] PERSI asserts the COLA includes "all" firefighters, but it does not. PERSI calculates the COLA by first separating out the 22 fire departments that have or had a pre-October 1, 1980 firefighter and then divides total salary by total hours to arrive at an average salary.

CERTIFICATE OF SERVICE

I hereby certify that on the __29th__ day of __December__, 2017, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

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_____/s/_____