

**BEFORE THE BOARD OF TRUSTEES
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS**

In the Matter of)
)
)
Homewood-Flossmoor)
CHSD No. 233)
)
Petitioner)

RECOMMENDED DECISION OF THE CLAIMS HEARING COMMITTEE
IN THE ADMINISTRATIVE REVIEW OF
HOMEWOOD-FLOSSMOOR CHSD NO. 233

I. Introduction

Pursuant to the provisions of 80 Ill. Adm. Code 1650.650, an administrative review hearing was held on October 29, 2008 in Springfield, Illinois, to consider the administrative review of Homewood-Flossmoor CHSD No. 233 (H-F 233). Present were Presiding Hearing Officer Ralph Loewenstein, Claims Hearing Committee Chairman Cynthia O'Neill, and Claims Hearing Committee members Jan Cleveland and Marcia Boone. By agreement of the parties, the matter was presented to the Committee for hearing solely upon the record.

H-F 233 has filed the instant administrative review to challenge the employer contribution of \$221,324.07 assessed by the Teachers' Retirement System of the State of Illinois (TRS) against H-F 233 pursuant to the provisions of 40 ILCS 5/16-158(f), due to the retirement of Dr. Laura Murray.

The sole issue in dispute is whether the three-year grace period, provided in TRS Rule 1650.483 for exemptions from employer contributions imposed under §16-158(f), protects Homewood-Flossmoor from the employer contribution imposed by TRS in regard to Dr. Murray's retirement. For the following reasons, the Committee finds the H-F 233 is liable for the \$221,324.07 employer contribution at issue in this case.

II. Analysis

P.A. 94-0004 was enacted June 1, 2005. The Act provides in relevant part:

When assessing payment for any amount due under subsection (f), the System shall exclude salary increases paid to teachers under contracts or collective bargaining agreements entered into, amended or renewed before June 1, 2005. (40 ILCS 5/16-158(g)).

To effectuate P.A. 94-0004, the TRS Board promulgated TRS Rule 1650.483(a), which states:

The exemptions from employer contributions provided under 40 ILCS 5/16-128(d-10) and 40 ILCS 5/16-158(f) for those members who notify their employer of the intent to retire under the terms of an exempt contract or collective bargaining agreement but do not receive such incentives until after the expiration of the contract or collective bargaining agreement shall cease no later than three school years after the expiration of the contract or collective bargaining agreement or June 30, 2011, whichever is earlier. (Emphasis added)

On June 1, 2005, Dr. Murray was employed by H-F 233 under a performance based contract the term of which was July 1, 2001 through June 30, 2006. By memorandum dated April 13, 2006, Dr. Murray notified H-F 233 she was retiring effective June 30, 2008. Due to her election to retire, H-F 233 gave Dr. Murray 20% salary increases in both the 2006-07 and 2007-08 School Years. Dr. Murray had no written contracts or contract amendments covering the 2006-07 and 2007-08 School Years.

The question before the Committee is did Dr. Murray receive her 20% salary “bumps” “under the terms of an exempt contract” (i.e. her July 1, 2001 through June 30, 2006 performance based contract) thus entitling H-F 233 to the three year grade period provided in Rule 1650.483. The Committee finds that Dr. Murray did not receive her retirement incentives under her 2001 contract but rather her new contract with H-F 233, which began July 1, 2006.

In her retirement memorandum of April 13, 2006, Dr. Murray stated:

I will retire under my current contract in accordance with provision 21 of my contract and Board Procedure 2413, Item 20, Sections A, B, and C.

Paragraph 21 of Dr. Murray's contract provides:

The Superintendent shall be allowed such other privileges, leaves and fringe benefits, not specifically enumerated as are extended to all other certified personnel, except as set forth herein.

However, the 20% salary "bumps" that caused H-F 233 to incur the employer contribution in question under §16-158(f) were paid pursuant to Board Procedure 2413, Administrative Staff Benefits, which was not incorporated into Dr. Murray's 2001 contract because the policy did not apply to all other certified personnel but only to administrators.

As stated in paragraph 18 of Dr. Murray's 2001 employment contract:

If the Board fails to act on the Contract's extension, revision or termination before April 1, 2006, a new one-year contract for July 1, 2006 through June 30, 2007 will automatically exist. The annual salary for this new one-year contract will be not less than that set forth in Section 3 above for the 2005-2006 contract year and the fringe benefits will be no less than those provided in the 2005-2006 contract year. (Emphasis added).

This paragraph makes clear that her contract for the 2006-07 school year was a new contract; not a renewal of her 2001-06 contract. Her contract for the 2007-08 school year was a new contract by operation of law pursuant to 105 ILCS 5/10-21.4.

When Dr. Murray received her two 20% salary "bumps", they were due to the Board Procedure but not under the contract that she was under on June 1, 2005; thus H-F 233 cannot avail itself of the three year grace period provided in Rule 1650.483(a).

H-F 233's argument that P.A. 1057 extended the exemption period provided in §16-158(g) under P.A. 94-0004 to July 1, 2011 is a total misreading and misunderstanding of P.A. 1057.

As stated in TRS Employer Bulletin 07-05, which was provided to H-F 233 and is available on the TRS website:

Public Act 94-0004 requires employers to pay contributions equal to the actuarial value of the pension benefit resulting from a salary increase over 6 percent that is used to calculate a retiring member's final average salary. These contributions are sometimes referred to as "employer contributions for excess salary increases." PA 94-0004 is revised by Senate Bill 49 which was signed into law July 31, 2006 as Public Act 94-1057.

PA 94-1057 provides additional exemptions from employer contributions for excess salary increases. Some of these exemptions are permanent while others are available for a limited time period. The exemptions provided in PA 94-1057 apply only in specified circumstances and only to members retiring on or after July 31, 2006. PA 94-1057 does not apply to any member whose effective date of retirement is prior to July 31, 2006.

P.A. 1057's permanent exemptions are for salary increases due to school consolidations and annexations. P.A. 1057's temporary salary exemptions, which expire June 30, 2011, are for overload work, summer school, salary increases due to a promotion for which a member is required to hold a different certificate or supervisory endorsement, and payments made to teachers by the State over which the employer has no control, all as more fully detailed in P.A. 1057, and none of which are applicable in Dr. Murray's situation.

III. Conclusion

The Committee finds in favor of the staff in this matter. Dr. Murray did not receive her 20% salary "bumps" under her 2001 employment contract. TRS Rule 1650.483 does not apply in her case. Accordingly, H-F 233 must pay the System the \$221,324.07 employer contribution in question.

IV. Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee's Recommended Decision must be filed within 15 days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Recommended Decision and any exceptions filed by the Petitioner.