

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

**In the Matter of:** )  
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 )  
**Schaumburg Community** )  
**Consolidated School District 54,** )  
 )  
**Petitioner.** )

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS  
HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW OF  
SCHAUMBURG COMMUNITY CONSOLIDATED SCHOOL DISTRICT 54**

**I. Introduction.**

Pursuant to 80 Ill. Admin. Code § 1650.610 *et seq.*, an administrative review hearing was held on October 24, 2012, in Springfield, Illinois, to consider the appeal of Schaumburg Community Consolidated School District 54 ("Schaumburg"), challenging the staff determination that member Mohsin Dada's 2006 First Addendum to Contract of Employment Between Board of Education & Assistant Superintendent, Business Services ("2006 Addendum"), removed Dada's 2004 Contract of Employment ("2004 Contract") from its previously exempt status under 40 ILCS 5/16-158(g). Because TRS staff determined that the 2006 Addendum caused a loss of exemption, TRS assessed Schaumburg a contribution amount of \$96,530.48, pursuant to 40 ILCS 5/16-158(f).

The TRS Board of Trustees ("Board"), the trier of fact in this matter as provided in TRS Rule 1650.620 (80 Ill. Admin. Code § 1650.620), was represented at the hearing by its Claims Hearing Committee comprised of the following Board members: Cynthia O'Neill, Chairperson, Jan Cleveland, and Sonia Walwyn. The Committee was advised in its deliberations by Ralph Loewenstein, Presiding Hearing Officer. The Parties were each represented by their respective legal counsel at the hearing; Mr. Andrew M. Malahowski represented Schaumburg, while TRS was represented by Mr. Martin G. Durkin and Ms. Trisha M. Rich.

In this matter, Schaumburg seeks administrative review of the staff determination that Mr. Dada's 2004 Contract lost its exempt status when Schaumburg and Dada agreed to extend its term through a two year addendum. Schaumburg contends that the 2004 Contract did not lose its exempt status, and in the alternative, that TRS is estopped from claiming any loss of exempt status due to comments Schaumburg claims were made by the General Counsel of TRS. TRS disputes the facts surrounding this alleged conversation. For purposes of the

hearing, the Parties agreed for the Committee to consider only the legal issue of whether Schaumburg could assert a claim for estoppel based on alleged statements of the General Counsel.

After reviewing the briefs and exhibits submitted by the Parties, and considering oral arguments from their respective legal counsel, it is the determination of the Claims Hearing Committee that, (a) the 2006 Addendum did cause a loss of exemption under Section 1650.482(a) of the Illinois Administrative Code, rendering the contribution assessed to Schaumburg proper; and (b) Schaumburg cannot claim that TRS is estopped from charging the assessment. TRS's General Counsel does not have express authority to bind TRS in a way that is contrary to Illinois law.

## **II. Relevant Rules and Statutes.**

In the instant case, the Claims Hearing Committee and the Board must apply the following rules and statutes:  
40 ILCS 5/16-158(g):

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, or amended, or renewed before June 1, 2005.

80 Ill. Admin. Code 1650.482:

A contract or collective bargaining agreement shall lose its exemption from employer contributions under 40 ILCS 5/16-128(d-10) and/or 16-158(f) upon the following:

- a) An increase in an existing salary or sick leave retirement incentive or the addition of a new salary or sick leave retirement incentive.
- b) A renegotiated increase in salary (excluding employer payment of the .40% of salary toward the cost of the early retirement without discount option under 40 ILCS 5/16-152(a)(4)) or sick leave unless specifically provided for in a salary reopener provision in the contract or collective bargaining agreement or as permitted in Section 1650.483(c).

Schaumburg maintains that it is not challenging the validity of 80 Ill. Admin. Code 1650.482, but rather its application to the facts in this matter.

### III. Issues to be Decided.

There are two issues to be decided. First, whether the payment to Dada of the "20% gross up of salary" in school years 2006-2007, 2007-2008, and 2008-2009, rather than in "each of the last three years" he worked for Schaumburg, was an increase in the salary retirement incentive or the addition of a new salary incentive under 1650.482(a), resulting in a loss of exemption. Second, if there was a loss of exemption, whether TRS is estopped from assessing to Schaumburg the applicable contribution because of statements allegedly made by TRS's General Counsel.

### IV. Facts.

On September 2, 2004, Schaumburg and Dada entered into the 2004 Contract, a five-year performance-based contract that commenced on July 1, 2004, and expired on June 30, 2009. The Parties agree that the 2004 Contract was an exempt contract pursuant to 40 ILCS 5/16-158(g). The 2004 Contract includes this reopener provision: "Compensation, including benefits, TRS payments made directly by the Board to TRS on behalf of [Dada], salary and any other compensation paid to [Dada], shall be subject to annual increases for the contract years 2005-2006, 2006-2007, 2007-2008, and 2008-2009 as agreed to by [Schaumburg's] Board and [Dada]." The 2004 Contract includes a specific provision related to retirement benefits, which entitled Dada to participation in a number of retirement benefits and programs. That provision states in part:

[Dada] shall be eligible to participate in retirement benefits, including those set forth in Board Policy GCPE, as may be amended by the [Schaumburg] Board from time-to-time, on the same basis and under the same terms and conditions as other twelve-month certified administrators, except the [Schaumburg] Board agrees to waive any length of service requirements for [Dada]. In addition, participation in such retirement benefits shall include a 20% gross up of salary to be afforded [Dada] ***in each of the last three years he works in the District.***

2004 Contract, § 6 (emphasis added).

On June 10, 2006, Dada notified Schaumburg that he was electing to receive the three 20% increases, the first of which was to be paid during the 2006-2007 academic year, and the last to be paid during the 2008-2009 academic year. In his memo requesting the gross up, Dada states: "I [would] like to elect the 20/20/20 gross up benefit approved by the board." Eleven days later, on June 21, 2006, Schaumburg and Dada executed the 2006 Addendum. The 2006 Addendum extended Dada's term of employment for two additional years. The 2006 Addendum also required that that the retirement benefits be paid before June 30, 2009, and provided that Dada's salary during the two additional years would be no less than

Dada's "grossed up" salary for the 2008-2009 year, and no more than 6% above that salary.

Accordingly, Dada received the three 20% increases during the 2006-2007, 2007-2008, and 2008-2009 years, and additional 6% increases during the 2009-2010 and 2010-2011 years. The effect of Dada receiving the three 20% increases in the middle of his contract, and then receiving two 6% increases on top of the already-applied 20% increases, was to substantially increase Dada's retirement compensation from what it would have been if the retirement incentives had been paid in the last three years of his employment. TRS calculates that, based on the early election and payment of the increases, Dada's benefits increased in excess of \$36,000.00 annually. Both Parties agree that the effect of the 2006 Addendum was to increase the value of Dada's retirement incentives.

In October 2010, Dada submitted his intent to retire, effective June 30, 2011.

## **V. Positions of the Parties.**

Schaumburg argues that the 2004 Contract allowed for three 20% increases in salary, and that, pursuant to TRS guidance, those increases were required to be paid during the term of the 2004 Contract. Schaumburg contends that the 2006 Addendum and the election of the 20% increases in June 2006 did not have the effect of taking the 2004 Contract out of its previously exempt status, because Schaumburg simply paid to Dada the benefits required under the 2004 Contract. Schaumburg further argues that even if the 2006 Addendum had the legal effect of removing the 2004 Contract from its exempt status, TRS is estopped from assessing any contributions against Schaumburg, because, Schaumburg claims, it relied on explicit guidance from a TRS staff member (specifically, TRS's General Counsel) that included a determination that the 2004 Contract would not lose its exemption under these facts. According to Schaumburg, even if that TRS staff member incorrectly interpreted the law or the facts of this situation, that opinion binds TRS, thereby preventing TRS from assessing contributions.

TRS disagrees with Schaumburg's position. TRS argues that the 2006 Addendum substantively changed the 2004 Contract, in that it extended the Dada's employment by two years, it required that the retirement benefits in the 2004 Contract be paid prior to the "last three years" Dada worked for Schaumburg, and required that Dada's 2009-2010 and 2010-2011 salaries be set at no less than his grossed up 2008-2009 salary amount. TRS argues that the 2006 Addendum, coupled with Dada's early election of the three 20% increases, was an "increase in an existing salary or sick leave retirement incentive or the addition of a new salary or sick leave retirement incentive," under Section 1650.482(a), causing the 2004 Contract to lose its exempt status. TRS claims that as a result, its assessment for contribution against Schaumburg is proper.

TRS further argues that estoppel cannot be applied against it based on statements purportedly made by Mr. Gray, TRS's General Counsel.<sup>1</sup> TRS contends that any representations made by its staff members that are contrary to Illinois law cannot be binding upon TRS, as they would have the effect of changing or ignoring Illinois law. TRS also argues that its General Counsel does not have express authority to bind TRS. Accordingly, TRS claims, estoppel cannot be applied to TRS under these facts.

## **VI. Discussion and Analysis.**

For the reasons explained herein, the Committee agrees with TRS staff that the contributions were properly assessed, and finds that TRS is not estopped from assessing those contributions.

### **A. The 2006 Addendum Caused a Loss of Exemption.**

The Parties agree that the 2004 Contract was an exempt contract. The Parties also agree that if Dada had retired at the end of the 2008-2009 year, and had elected to receive the three 20% increases during his last three years of employment, those incentive payments would have been exempt from further contributions. Both Parties agree that the actual effect of the 2006 Addendum was to increase the value of Dada's annual retirement benefits. TRS does not dispute Schaumburg's right to extend Dada's contract for two additional years, but argues that because Schaumburg chose to enter into the 2006 Addendum, the 2004 Contract lost its exempt status.

The Parties agree that because Dada is an administrator with a multi-year, performance-based contract, any incentives for which he was eligible were required to be paid within the contract period. This is also consistent with the stipulated exhibits that the Parties submitted. Stip. Exh. 14, TRS Employer Bulletin, July 2006 ("Administrators with multi-year (performance-based) contracts are not eligible for the extended exemption because they have given up tenure in exchange for multi-year [contracts], requiring any incentives for which they are eligible to be paid within the contract period."). TRS argues that because Dada was not eligible for extended grandfathering, if Schaumburg entered into the 2006 Addendum and had paid the retirement incentives during the 2008-2009, 2009-2010, and 2010-2011 years, contributions would have been properly assessed for the incentive payments in the 2009-2010 and 2010-2011 years. TRS argues that because the 2006 Addendum changed the timing of the incentive payments from the last three years of employment, to the last three years of the 2004 Contract period, Schaumburg was

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<sup>1</sup> The Committee acknowledges that the parties are in dispute as to whether a conversation took place. For purposes of this decision, the Committee assumes *arguendo* Schaumburg's position that a conversation took place, but, as noted below, finds that the General Counsel lacked express authority to bind TRS.

left with the following options: (a) requiring Dada's retirement after the 2008-2009 year, paying the retirement incentives under the 2004 Contract, and not being assessed a contribution; (b) entering into the 2006 Addendum without offering the retirement incentives; or (c) paying a contribution under any other alternative.

Schaumburg argues that Dada's 2004 Contract contains a "broad" salary reopener provision, which would allow it to make alterations to the retirement incentives without causing a loss of exemption under 80 Ill. Admin. Code 1650.482. The salary reopener provision states:

Compensation, including benefits, TRS payments made directly by [Schaumburg] to TRS on behalf of [Dada], salary and any other compensation paid to [Dada], shall be subject to annual increases for the contract years 2005-2006, 2006-2007, 2007-2008, and 2008-2009 as agreed to between [Schaumburg] and [Dada].

2004 Contract, § 2.

Schaumburg argues that the reopener provision of Dada's 2004 Contract allowed Schaumburg to change Dada's compensation by accelerating the three 20% increases forward, paying the increases in the final three years of Dada's 2004 Contract, rather than in the final three years of Dada's employment at Schaumburg. This argument fails for two reasons. First, Dada expressly elected to receive the three 20% increases on June 10, 2006, pursuant to § 6 of the 2004 Contract. The 2006 Addendum was not executed until eleven days later, on June 21, 2006. Thus, Dada elected the payments under the 2004 Contract, pursuant to § 6 of the 2004 Contract; neither Dada nor Schaumburg was "reopening" the 2004 Contract under § 2 of the 2004 Contract.

Moreover, the general reopener provision is superseded by the specific provision that unmistakably speaks to the three 20% increases. There was no salary reopener that allowed for modifications to the timing of the payments for the three 20% increases. Even if an ambiguity exists between § 2 and § 6 of the 2004 Contract, the more specific provision relating to the retirement provisions prevails over the more general provision. *Brzowski v. Northern Trust Co.*, 248 Ill.App.3d 95, 99 (1st Dist. 1993) (citation omitted) ("However, wherever ambiguities exist in a contract between two provisions, the more specific provision relating to the same subject matter controls over the more general provision.").

The exemption under 80 Ill. Admin. Code 1650.482 was also lost because the effect of 2006 Addendum was to increase Dada's retirement benefit. The Parties agree that the effect of the 2006 Addendum was to dramatically increase Dada's retirement benefit by an amount TRS estimates to exceed \$36,000.00 annually. The 2004 Contract required that the retirement incentives be paid "in each of the last

three years [Dada] works in the District." 2004 Contract, § 6. The 2006 Addendum materially changed that provision, requiring instead that the retirement incentives "must be provided to [Dada] before June 30, 2009, the expiration date of the Original Contract." 2006 Addendum, § A. We find that this modification removed the 2004 Contract from its previously exempt status. In this case, the incentive was materially changed, and as an effect, Dada's retirement incentives materially increased. This caused a loss of exemption under 80 Ill. Admin. Code 1650.482(a). However, we conclude that even in cases where the language of the incentive itself is not altered, or there is no addition to the incentive, where the *effect* of a change causes an increase in an existing salary or sick leave retirement incentive, exemption is lost under 80 Ill. Admin. Code 1650.482.

Accordingly, we agree that the TRS staff correctly interpreted 80 Ill. Admin. Code 1650.482, correctly determined that the 2006 Addendum caused a loss of exemption, and correctly assessed a contribution to Schaumburg pursuant to 40 ILCS 5/16-158(f).

#### **B. Estoppel Cannot Be Applied Under These Facts.**

As an initial matter, the Committee was asked to decide whether estoppel can be applied against TRS based on statements allegedly made by the General Counsel of TRS. The Committee understands that Schaumburg asserts that it had a conversation with TRS's General Counsel wherein TRS's General Counsel represented that the 2006 Addendum would not cause a loss of exemption. TRS, on the other hand, denies that this conversation ever happened. The issue before this Committee is whether, as a matter of law, any statements by the General Counsel of TRS that are contrary to Illinois law, can be binding on TRS. We find that claims for estoppel can not be brought in these circumstances because the General Counsel lacks express authority to bind TRS, and cannot bind TRS to actions that are contrary to Illinois law.

First, it is well settled that estoppel is particularly disfavored when public revenues are at stake. *Patrick Engineering*, 2012 IL 113148, ¶ 40. "Anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for it stays within the bounds of his authority, and this is so even though the agent himself may have been unaware of the limitations on his authority." *Patrick Engineering*, 2012 IL 113148, ¶ 36 (citation omitted).

Second, the Committee finds that, as a matter of law, TRS's General Counsel does not have express authority to bind TRS, particularly in situations where any advice or guidance given is contrary to Illinois law. The Illinois Supreme Court's recent decision in *Patrick Engineering, Inc., v. The City of Naperville* is on point. The *Patrick Engineering* Court held that

a plaintiff seeking to invoke equitable estoppel against a municipality must plead specific facts that show (1) an affirmative act by either the municipality itself or an official with express authority to bind the municipality; and (2) reasonable reliance upon that act by the plaintiff that induces the plaintiff to detrimentally change its position.

*Patrick Engineering*, 2012 IL 113148, ¶ 40.

To establish that TRS's General Counsel possessed express authority to bind TRS, and, in this situation, change the pension laws, Schaumburg points only to Section 1650.610 of the TRS Rules and Regulations, which provides: "The administrative staff of the System shall be responsible for the daily functioning of the System including interpretation of the Illinois Pension Code (The Act) and processing all claims for benefits or service credit." 80 Ill. Admin. Code 1650.610. Schaumburg pleads no additional facts and presents no additional arguments as to whether it believes the General Counsel has any source for express authority outside this provision in the code. To accept that Schaumburg's interpretation as correct would be to agree that any TRS staff member can bind TRS to positions that are contrary to Illinois law. We find that TRS's General Counsel does not have express authority to bind TRS, particularly in situations where any representations are in conflict with state law.

Schaumburg has argued in its briefs and at oral arguments that Dada's contracts and the facts presented in this case are substantially similar to a situation involving another of the district's administrators, Edward Rafferty. In early 2006, Schaumburg was apparently considering amending Rafferty's performance-based contract, and approached TRS regarding the possible effects that the amendment might have on the prior contract's exempt status. TRS provided guidance that, under those particular written contracts and facts, Rafferty's contract would not lose its exempt status. This conversation was memorialized in writing by both of the parties involved. While not an estoppel argument *per se*, Schaumburg argues that TRS is bound by its prior interpretation of the relevant regulation as applied to the Rafferty contract in its application of the statute to the Dada contract. This argument ignores that fact that the Rafferty and Dada contracts are materially different. In any case, the prior interpretation offered by TRS's General Counsel is not binding on the Board. *McDonald v. Illinois Dep't of Human Svs.*, 406 Ill.App.3d 792, 804 (4th Dist. 2010) (refusing to allow an estoppel claim based on a prior erroneous interpretation of a statute by a ministerial officer).

Finally, although Illinois courts are clear that the party claiming estoppel has the burden of proving each element by "clear and unequivocal evidence," the courts have been less clear about what facts and supporting material constitute such evidence in the pension context. *See, e.g., Geddes v. Mill Creek Country Club*, 196 Ill.2d 302, 320 (2001). Two lines of cases, one involving ERISA, and the other



state tax revenue, provide guidance by analogy. It is well established that courts in Illinois will look to ERISA when deciding issues related to the Pension Code. *Board of Trustees of the Village of Barrington Police Pension Fund v. Dep't of Ins.*, 211 Ill.App.3d 698, 705 (1st Dist. 1991) (noting that "given the lack of Illinois caselaw construing relevant portions of the Pension Code, we look for guidance to analogous provisions of [ERISA]"). In the ERISA context, estoppel causes of action have four elements: (1) a knowing misrepresentation, (2) **made in writing**, (3) with reasonable reliance on that misrepresentation by the plaintiff, (4) to her detriment. *Coker v. TWA, Inc.*, 165 F.3d 579, 585 (7th Cir. 1999) (emphasis added).

Following the ERISA requirement of a "writing" to allow estoppel is an appropriate middle ground where state revenues are concerned. In *Brown's Furniture Inc. v. Wagner*, 171 Ill.2d 410 (1996), the Illinois Supreme Court refused to apply estoppel against the State based on statements allegedly made during a phone call. In *Brown's Furniture*, the court noted:

In the case at bar, the facts are insufficient to warrant application of estoppel against the State. According to Jim Brown's testimony, the Department employee to whom he spoke on the phone was unaware of the extent of the store's activities in Illinois. Under the general rule, estoppel cannot be asserted against a party not having knowledge of all relevant facts. The State is not estopped by the mistakes made or misinformation given by the Department's employees with respect to tax liabilities. Therefore, it would be inappropriate to impose the doctrine against the Department on the basis of the phone conversation.

*Brown's Furniture, Inc.*, 171 Ill.2d at 432 (citations omitted).

Schaumburg admitted in oral arguments that the only evidence it can provide establishing that the alleged conversation took place was the affidavit proffered by its attorney, and that it had no written records or confirmations of the alleged conversation. Conversely, TRS's General Counsel adamantly denies the conversation occurred. Although we find as a matter of law that TRS's General Counsel does not have express authority to bind TRS, we also note that Schaumburg's evidence of any alleged conversation would fall far short of its burden. We believe that, where state funds are involved, ERISA's requirement of a written communication may be the only way a petitioner can show by "clear and unequivocal evidence" that any given communication actually happened.

## VII. Conclusion

The Claims Hearing Committee finds in favor of the staff in this matter. The 2006 Addendum that Schaumburg entered into with Mr. Dada had the effect of

dramatically increasing Mr. Dada's compensation, and thus caused a loss of the previously exempt status that the 2004 Contract enjoyed. Further, an estoppel claim cannot stand in this situation. First, TRS staff members cannot bind TRS and effectively change Illinois law by offering advisory opinions that may be incorrect, misapplied, or otherwise wrong. Second, it is far from clear that such a misinterpretation happened in this case. It is however clear to the Committee that the staff rightly applied the applicable laws to reach the proper conclusion. The Committee recommends the Board adopt this proposed decision.

#### **VIII. Notice of Right to File Exceptions**

Exceptions to the Claim Hearing Committee's Proposed Decision must be filed within fifteen (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 Proposed Decision and any exceptions filed by the Petitioner.