

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

**In the Matter of:** )  
 )  
**Urbana School Dist. #116** )  
 )  
**Petitioner.** )

**RECOMMENDED DECISION OF THE CLAIMS HEARING  
COMMITTEE IN THE ADMINISTRATIVE REVIEW  
OF URBANA SCHOOL DIST. #116**

**Introduction**

Pursuant to 80 Ill. Adm. Code 1650.640(e), Petitioner Urbana School Dist. #116 agreed with System staff that its request for administrative review would be presented to the TRS Board of Trustees' Claims Hearing Committee solely upon the record agreed to by the parties. The Claims Hearing Committee met on June 19, 2008 at TRS headquarters in Springfield to consider Urbana's appeal. Present were Committee Chairman Cynthia O'Neill and Committee members Jan Cleveland and James Bruner. Urbana is represented in this matter by Dennis Weedman and Belinda Becker of Robbins, Schwartz, Nicholas, Lifton and Taylor, Ltd. The System is represented by Thomas Gray, its General Counsel.

Petitioner Urbana filed the instant administrative review to challenge the assessment of \$56,537.17 in employer contributions under the provisions of 40 ILCS 5/16-158(f), due to the retirements of TRS members Janice Bradley and Joan Fortschneider. It is the position of Urbana that it is exempt from such employer contributions by reason of 40 ILCS 5/16-158(g) and 80 Ill. Adm. Code 1650.484. As will be more fully explained, after considering the pleadings of the parties and the agreed upon exhibits contained in the Claims Hearing Packet, it is the Committee's recommendation to uphold the staff determination that Urbana is not exempt from the employer contributions in question.

## **Statement of Facts**

1. Bradley and Fortschneider were employed as elementary school principals by Urbana.
2. Neither Bradley nor Fortschneider were employed under a multi-year performance based contract.
3. On May 17, 2005, the Urbana School Board approved salary and benefits for certain district administrators, including Bradley and Fortschneider, for the 2005-06 school year.
4. Bradley and Fortschneider were re-employed by Urbana for the 2006-07 school year.
5. On August 3, 2006, Bradley notified Urbana that she intended to retire at the end of the 2006-07 school year.
6. On January 17, 2007, Bradley signed a School District Early Retirement Incentive Agreement with Urbana.
7. On December 1, 2006, Fortschneider notified Urbana that she intended to retire at the end of the 2006-07 school year.
8. On January 17, 2007, Fortschneider signed a School District Early Retirement Incentive Agreement with Urbana.
9. Both Bradley and Fortschneider retired June 30, 2007.
10. Urbana was assessed \$56,537.17 in employer contributions pursuant to 40 ILCS 5/16-158(f) due to the retirements of Bradley and Fortschneider.

## **Applicable Law**

Public Act 94-0004 went in to effect June 1, 2005. The Act provides as follows:

*(f) If the amount of a teacher's salary for any school year used to determine final average salary exceeds the member's annual full-time salary rate with the same employer for the previous school year by more than 6%, the teacher's employer shall pay to the System, in addition to all other payments required under this Section and in accordance with guidelines established by the System, the present value of the increase in benefits resulting from the portion of the increase in salary that is in excess of 6%. This present value shall be computed by the System on the basis of the actuarial assumptions and tables used in the most recent actuarial valuation of the System that is available at the time of the computation. If a teacher's salary for the 2005-2006 school year is used to determine final average salary under this subsection (f), then the changes made to this subsection (f) by Public Act 94-1057 shall apply in calculating whether the increase in his or her salary is in excess of 6%. For the purposes of this Section, change in employment under Section 10-21.12 of the School Code on or after June 1, 2005 shall constitute a change in employer. The System may require the employer to provide any pertinent information or documentation. The changes made to this subsection (f) by this amendatory Act of the 94th General Assembly apply without regard to whether the teacher was in service on or after its effective date.*

*Whenever it determines that a payment is or may be required under this subsection, the System shall calculate the amount of the payment and bill the employer for that amount. The bill shall specify the calculations used to determine the amount due. If the employer disputes the amount of the bill, it may, within 30 days after receipt of the bill, apply to the System in writing for a recalculation. The application must specify in detail the grounds of the dispute and, if the employer asserts that the calculation is subject to subsection (g) or (h) of this Section, must include an affidavit setting forth and attesting to all facts within the employer's knowledge that are pertinent to the applicability of that subsection. Upon receiving a timely application for recalculation, the System shall review the application and, if appropriate, recalculate the amount due.*

*The employer contributions required under this subsection (f) may be paid in the form of a lump sum within 90 days after receipt of the bill. If the employer contributions are not paid within 90 days*

*after receipt of the bill, then interest will be charged at a rate equal to the System's annual actuarially assumed rate of return on investment compounded annually from the 91st day after receipt of the bill. Payments must be concluded within 3 years after the employer's receipt of the bill.*

The Act provides the following exemption from the above employer contributions.

*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 further implement Public Act 94-0004, TRS promulgated TRS Rule 1650.484:

***Members Not Covered by Collective Bargaining Agreements or Employment Contracts***

- a) For members not covered by collective bargaining agreements or employment contracts, the System will accept employment policies as evidence of a contractual agreement under which salary increases paid and sick leave granted shall be exempt from employer contributions under 40 ILCS 5/16-128(d-10) and 16-158(f).*
- b) Such policies must have been in effect prior to June 1, 2005.*
- c) Employees operating under employment policies will be deemed to be employed under a one school year contract for exemption from employer contribution purposes under 40 ILCS 5/16-128(d-10) and 16-158(f) unless the salary increases and/or granting of sick leave under the policy are governed by provisions in the employer's collective bargaining agreement, in which case the employer exemption shall end at the same time the exemption ends for that collective bargaining agreement.*

It is Urbana's contention that Bradley and Fortschneider who were principals in the district were not covered by employment contracts and, therefore, the district was eligible to have its exemption period measured against the collective bargaining agreement covering the district's teachers. The problem with Urbana's argument is that Bradley and Fortschneider were employed under employment contracts making the rule inapplicable as to them.

### **Analysis**

The sole issue in this case is whether Bradley and Fortschneider were employed under employment contracts. The Committee finds that both Bradley and Fortschneider were not employed under a collective bargaining agreement but rather under employment contracts, for the following reasons.

The employment of principals in public schools outside the City of Chicago is governed by 105 ILCS 5/10-23.8a. As stated therein:

***Principal and other administrator contracts.** After the effective date of this amendatory Act... school districts may only employ principals and other school administrators under either a contract for a period not to exceed one year or a performance-based contract for a period not to exceed 5 years... (Emphasis added).*

As further stated in §10-23.8:

*By accepting the terms of a multi-year contact, the principal or administrator waives all rights granted him or her under Sections 24-11 through 24-16 of this Act [105 ILCS 5/24-11 through 105 ILCS 5/24-16] only for the term of the multi-year contact. Upon acceptance of a multi-year contract, the principal or administrator shall not lose any previously acquired tenure credit with the district.*

Urbana had only two statutory options to employ Bradley and Fortschneider; either under a one-year contract where the principal retains tenure rights or under a multi-year contract which is performance based.

The Committee disagrees with Urbana's contention that since Bradley and Fortschneider had no written employment contract, they had no employment contracts. Contracts do not need to be in writing to bind both parties. (See Bd. of

Ed., Granite City CUSD No. 9 v. Seved, 366 Ill.App.3d 330, 850 N.E.2d 821, 303 Ill.Dec.16 (2006).

Here, contracts existed by operation of law (i.e. tenure). The terms of the contracts included Bradley's and Fortschneider's promise to perform principal services for Urbana and Urbana's promise to pay a certain salary and benefits in each of the years they were employed by the district. As stated in Jacobson v. Bd. of Ed. of the City of Chicago, 321 Ill.App.3d 103, 746 N.E.2d 894, 254 Ill.Dec. 137 (2001), a case involving principals:

*...as the Illinois Supreme Court has held, the employer-employee relationship is inherently contractually based:*

*“Essential to the employer-employee relationship between Johnson and the claimant is the existence of an employment contract, express or implied. In order to establish such a contract there must be at least an implied acquiescence by the employee in the relationship.”* (Citation omitted.) *A.J. Johnson Paving Co. v. Industrial Comm'n*, 82 Ill.2d 341, 350, 45 Ill.Dec. 126, 412 N.E.2d 477 (1980).

*See also* *DeHeer-Liss v. Friedman*, 227 Ill.App.3d 422, 426, 169 Ill.Dec. 526, 592 N.E.2d 13 (1991), appeal denied, *146 Ill.2d 631, 176 Ill.Dec. 802, 602 N.E.2d 456* (1992) (“A contract of employment is formed when one party promises to render services in exchange for the other party's promise to pay wages”); *Perlin v. Board of Education of the City of Chicago*, 86 Ill.App.3d 108, 41 Ill.Dec. 294, 407 N.E.2d 792 (1980) (contract claim upheld based on established terms of employment and acceptance thereof by performance).

Furthermore, that school employees in contractual continued service do not need a written agreement to have an employment contract was well established by the Illinois Supreme Court decision in *Arduini v. Bd. of Ed. of Pontiac Township H.S. Dist. 90*, 92 Ill. 2d 197, 441 N.E. 2d 73, 65 Ill. Dec. 281 (1982).

Applying the foregoing to the instant case, the Committee finds that at its May 17, 2005 school board meeting, Urbana established the terms of Bradley and Fortscheider's 2005-06 employments contracts. These were the contracts that would have been exempt under §16-158(g).

Bradley and Fortschneider notified Urbana of their intent to retire on August 3, 2006 and December 1, 2007 respectively. The 2006-07 contracts under which they retired were not exempt. Therefore, the employer contributions required under §16-158(f) apply.

While Bradley and Fortschneider may have an enforceable right to the retirement incentives offered by Urbana, those payments were not made under a contract exempt from employer contributions under §16-158(g).

### **Conclusion**

The Claims Hearing Committee finds in favor of the staff in this matter. Urbana was correctly assessed §16-158(f) employer contributions in relation to the retirements of Bradley and Fortschneider.