

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

**In the Matter of:** )  
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**Mannheim School District 83,** )  
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 )  
**Petitioner.** )

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS  
HEARING COMMITTEE IN THE ADMINISTRATIVE  
REVIEW OF MANNHEIM SCHOOL DISTRICT 83**

**I. Introduction.**

Pursuant to 80 Ill. Admin. Code § 1650.610 *et seq.*, an administrative review hearing was held on May 22, 2013, in Springfield, Illinois, to consider the appeal of Mannheim School District 83 ("Mannheim"), challenging the staff determination that members Bruce Lane ("Lane") and Thomas Lindsay's ("Lindsay") respective addendums removed their employment contracts from their previously exempt status under 40 ILCS 5/16-158(g). Because TRS staff determined that the addendums caused a loss of exemption in both cases, TRS assessed Mannheim a total contribution amount of \$144,672.43 (\$77,468.07 for Lane, and \$67,204.36 for Lindsay) pursuant to 40 ILCS 5/16-158(f). Mannheim has not paid either assessment, so interest continues to accrue 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 Board decided this matter on the briefs submitted by the parties, and no oral arguments were held. The Committee was advised in its deliberations by Ralph Loewenstein, Presiding Hearing Officer. The Parties were each represented by their respective legal counsel: Mr. Thomas M. Melody and Mr. Allen Wall represented Mannheim, while TRS was represented by Mr. Martin G. Durkin and Ms. Trisha M. Rich.

In this matter, Mannheim seeks administrative review of the staff determination that Lane's 2004 Contract ("2004 Lane Contract") lost its exempt status when Mannheim and Lane executed the 2008 Addendum ("2008 Lane Addendum"). Mannheim separately sought administrative review of the staff determination that Lindsay's 2004 Contract ("2004 Lindsay Contract") lost its

exempt status when Mannheim and Lindsay executed Lindsay's 2008 addendums ("2008 Lindsay Addendum" and "2008 Lindsay Second Addendum"). For purposes of this administrative review and the related proceedings, the parties have agreed to consolidate the Lane and Lindsay administrative reviews. TRS contends that the 2004 contracts lost their exempt status when Mannheim entered into the addendums with Lane and Lindsay. Mannheim argues that the 2008 addendums did not cause any loss of exemption, and that there was no "renegotiation" of benefits.

After reviewing the briefs and exhibits submitted by the Parties, it is the determination of the Claims Hearing Committee that, (a) the 2008 addendums did cause a loss of exemption under Section 1650.482(a) of the Illinois Administrative Code, rendering the contributions assessed to Mannheim proper; (b) Mannheim did not "waive" certain contract provisions; and (c) public policy does not favor Mannheim's interpretation of the legal effects of the addendums.

## **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.

40 ILCS 5/16-158(f):

(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% . . .

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).

### III. Issues to be Decided.

There are three issues to be decided: (1) whether or not the 2008 contract addendums and subsequent payment of the 20% retirement increases caused a loss of exemption under 80 Ill. Admin. Code 1650.482; (2) whether Mannheim had the ability to simply "waive" certain contract provisions contained in the 2004 contracts, and (3) whether public policy favors a decision in Mannheim's favor.

### IV. Facts.

The following facts are relevant to this administrative review:

#### **Bruce Lane**

Lane and Mannheim entered into the undated 2004 Lane Contract, a five-year, performance-based contract that commenced on November 8, 2004, and expired on June 30, 2009. The Parties agree that the 2004 Lane Contract was an exempt contract pursuant to 40 ILCS 5/16-158(g). The 2004 Lane Contract provided that, should Mannheim and Lane ever desire to extend the 2004 Lane Contract, they could do so only by discontinuing the 2004 Lane Contract, and entering into a new, multi-year contract. 2004 Lane Contract, § 2. The 2004 Lane Contract also included a retirement provision:

22. **RETIREMENT.** If between July 1, 2007, and June 30, 2008, [Lane] submits to the President and Secretary of [Mannheim] his resignation and retirement effective June 30, 2009, [Mannheim] shall provide the following retirement benefits:

- a. [Lane's] TRS creditable earnings for the 2008-2009 contract year shall be increased by twenty (20%) percent over his base salary, and any vacation exchanged under paragraph 6 above, for the 2007-2008 contract year . . .

2004 Lane Contract, § 22. Lane did not submit his resignation between July 1, 2007 and June 30, 2008, and Lane did not retire effective June 30, 2009. Instead, on January 10, 2008, Lane and Mannheim entered into the 2008 Lane Addendum. The 2008 Lane Addendum effectuated a number of changes to the 2004 Lane Contract, which included, among other things: (a) extending the expiration date from June 30, 2009 to June 30, 2011; (b) waiving Section 2's requirement that the 2004 Lane Contract could be extended only through discontinuing it and entering into a new multiyear contract; (c) waiving any requirement that would require Lane to retire before June 30, 2011; (d) specifically altering the date in Section 22 to require retirement on or before June 30, 2011, rather than June 30, 2009; and (e) allowing for reimbursement for the premium costs of Lane's personal liability insurance policy. 2008 Lane Addendum, §§ 1, 4, 6, 8. The 2008 Lane Addendum also provided that Lane would receive a 5% increase over his 2008-2009 base compensation for school year 2009-2010, and a 5% increase over his 2009-2010 base compensation for school year 2010-2011. 2008 Lane Addendum, § 7.

Lane received the 20% salary increase during the 2008-2009 school year, and received additional salary increases during the 2009-2010 and 2010-2011 school years. Lane retired on June 30, 2011. In the stipulated facts submitted, the Parties agreed that, had Lane retired on June 30, 2009, he would have received \$13,926.27 in total monthly retirement benefits under the 2004 Lane Contract. The Parties agree also that Lane now receives a total of \$16,736.15 in monthly retirement benefits, which represents an annual difference of \$33,718.56.

### **Thomas Lindsay**

On or about November 8, 2004, Mannheim and Lindsay entered into the undated 2004 Lindsay Contract, a five-year, performance-based contract that commenced on November 8, 2004, and expired on June 30, 2009. The Parties agree that the 2004 Lindsay Contract was an exempt contract pursuant to 40 ILCS 5/16-158(g). Like the 2004 Lane Contract, the 2004 Lindsay Contract provided that, should Mannheim and Lindsay ever desire to extend the 2004 Lindsay Contract, they could do so only by discontinuing the 2004 Lindsay Contract, and entering into a new, multi-year contract. 2004 Lindsay Contract, § 2. The 2004 Lindsay Contract also included a retirement provision substantially similar to that contained in the 2004 Lane Contract:

22. **RETIREMENT.** If between July 1, 2008, and September 30, 2008, [Lindsay] submits to the President and Secretary of [Mannheim] his resignation and retirement effective June 30, 2010 and has accepted employment with the School District for the 2009-2010 contract year, on substantially the same base salary and benefit terms as contained in this contract, [Mannheim] shall provide the following retirement benefits:

- a. [Lindsay's] TRS creditable earnings for the 2008-2009 contract year shall be increased by twenty (20%) percent over his base salary for the 2007-2008 contract year, and any vacation exchanged under paragraph 6 above for the 2008-2009 contract year.

2004 Lindsay Contract, § 22. Lindsay did not submit a resignation between July 1, 2008 and September 30, 2008, nor did Lindsay retire effective June 30, 2010. Instead, on January 10, 2008, Lindsay and Mannheim entered into the 2008 Lane Addendum. The 2008 Lindsay Addendum effectuated a number of changes to the 2004 Lindsay Contract, which included, among other things: (a) extending the expiration date from June 30, 2009 to June 30, 2012; (b) waiving Section 2's requirement that the 2004 Lindsay Contract could be extended only through discontinuing it and entering into a new multiyear contract; (c) waiving any requirement that would require Lane to retire before June 30, 2010; and (d) specifically altering the date in Section 22 to require retirement on or before June 30, 2012, rather than June 30, 2009<sup>1</sup>. 2008 Lindsay Addendum, §§ 1, 4-6. The 2008 Lindsay Addendum also provided that Lindsay would receive a 5% increase over his 2008-2009 base compensation for school year 2009-2010, a 5% increase over his 2009-2010 base compensation for school year 2010-2011, and a 5% increase over his 2010-2011 base compensation for school year 2011-2012 . 2008 Lindsay Addendum, § 7. Approximately six months later, Lindsay and Mannheim executed the 2008 Lindsay Second Addendum, which provided that Mannheim would also pay Lindsay's health insurance premiums from the date of Lindsay's retirement through the date he reached 65 years of age. 2008 Lindsay Second Addendum, § 2.

On January 5, 2009, Lindsay submitted a letter to Mannheim notifying Mannheim of his intent to retire, effect June 30, 2012. On July 11, 2011, Lindsay submitted a second letter to Mannheim, notifying Mannheim of his intent to retire effective July 1, 2012.

Lindsay received the 20% salary increase during the 2008-2009 school year, and received additional salary increases during the 2009-2010, 2010-2011, and 2011-2012 school years. Lindsay retired effective July 1, 2012. In the stipulated facts submitted, the Parties agreed that Lindsay now receives a total of \$15,778.20 in monthly retirement benefits.

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<sup>1</sup> We note that while the 2008 Lindsay Addendum references "June 30, 2009," the 2004 Lindsay Contract included the "June 30, 2010" date. This error does not change our analysis, however.

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

Mannheim argues that the 2008 addendums were not a "renegotiation" of the originally exempt 2004 contracts, because there was no increase in salary. Mannheim contends that the parties to the relevant contracts waived certain contractual provisions in the addendums, and that the specific language of the addendums indicate that the parties did not intend to renegotiate Lane and Lindsay's salaries. Finally, Mannheim contends that TRS has "punished" Mannheim by applying an interpretation of the applicable laws that is against public policy, specifically because it is contrary to the School Code, and because it interferes with Mannheim's right to contract.

TRS disagrees with Mannheim's position. TRS believes it correctly determined that the 2008 addendums caused a loss of exemption, because the 2008 addendums provided Lane and Lindsay the opportunity to take advantage of the 20% salary increases without having to retire, thereby receiving later salary increases compounded upon the 20% increase each took in 2008-2009. TRS argues that the alleged "waivers" were illegitimate, and in any case, had the effect of dramatically increasing the retirement benefits of both men. While TRS does not dispute Mannheim's "right to contract," it argues that the Pension Code requires Mannheim to pay for the consequences of the addendums that it executed. Finally, TRS contends that public policy favors upholding TRS's determination that the 2008 addendums caused a loss of exemption.

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

For the reasons explained herein, the Committee agrees with TRS staff that the contributions were properly assessed, and finds that Mannheim did not "waive" the disputed contract provisions, and that no public policy considerations support Mannheim's arguments.

### **A. The 2008 Addendums Caused a Loss of Exemption.**

The Parties agree that the 2004 contracts were exempt. The Parties also agree that both Lane and Lindsay took the 20% salary increases in the 2008-2009 year, and then received additional salary increases in subsequent years that were compounded onto the 2008-2009 20% increases. The Parties agree that because Lane took the 20% increase in 2008-2009, while extending his retirement date to June 30, 2011, he now receives monthly retirement benefits in excess of what he would have received under the 2004 Lane Contract, in the amount of an additional \$2,809.88 per month. The Parties do not make a corresponding stipulation as to Lindsay, but they do agree that Lindsay worked three additional years after receiving the 20% salary increase, and that Lindsay received salary increases of 3.22%, 5.99%, and 5.80%, respectively, in those three additional years. In the 2008-

2009 school year, Lane and Lindsay's total increases in salary were 23.23% over the 2007-2008 school year.

We find that the 2008 addendums caused a loss of exemption in both cases. Each addendum made material changes to the 2004 contracts. Those renegotiated changes had the effect of both causing "an increase in an existing salary . . . retirement incentive" or "the addition of a new salary . . . retirement incentive" under 80 Ill. Admin. Code 1650.482(a) and "a renegotiated increase in salary" under 80 Ill Admin. Code 1650.482(b), as we recently discussed in *In the Matter of Schaumburg Community Consolidate School District 54*. While Mannheim argues that the code applies only to "sick leave retirement incentives," and that this was not a "salary incentive" under a strict reading of the statute, we disagree. Subsection (a) of the regulation clearly applies to various forms of retirement incentives, while subsection (b) applies to salary increases. If this were not the case the use of the word "salary" in subsection (a) would be redundant with subsection (b).

In years subsequent to 2008-2009, both Lane and Lindsay received salary increases that were compounded on top of the 20% retirement incentives that they received during 2008-2009 - retirement incentives that were intended to be provided during their final years of employment. As a result of the salary increases being calculated on top of the retirement incentive, the 2008 addendums certainly had the effect of increasing the *salaries* of both men during the subsequent school years. Moreover, the 2008 addendums also included increases in retirement incentives - specifically, both men received the benefit of Mannheim paying certain insurance premiums (Lane received the reimbursements directly, while it appears that in Lindsay's case, Mannheim may have directly paid the premiums). Although neither of the Parties focused on the insurance premiums in their respective briefs, we find that those benefits also represent "a renegotiated increase in salary" or "an increase in an existing salary or sick leave retirement incentive or the addition of a new salary or sick leave retirement incentive" under 80 Ill. Admin. Code 1650.482.

As a result of the 2008 addendums, Mannheim paid the retirement incentives not in the final years of employment for Lane and Lindsay, but rather in the middle of their respective employment terms. In the exempt 2004 contracts, the retirement incentives were to be paid "if" the men tendered their resignations and retirements, effective June 30, 2009 (for Lane) or June 30, 2010 (for Lindsay). Neither man did. Thus, neither man was entitled to the 20% retirement incentive *under the 2004 contracts*. The 2008 addendums allowed Lane and Lindsay to receive the 20% increases in the middle of their employment terms, which provided each of the men with significant increases in his compensation.

Accordingly, we agree that the TRS staff correctly interpreted 80 Ill. Admin. Code 1650.482, correctly determined that the 2008 addendums caused a loss of

exemption, and correctly assessed contributions to Mannheim pursuant to 40 ILCS 5/16-158(f).

### **B. Mannheim Did Not "Waive" Material Contract Provisions.**

In the alternative, Mannheim argues that it simply "waived" certain contract provisions. We find this argument to be completely without merit. Under Mannheim's theory, any party to a contract could "waive" material terms to the detriment of third parties - here, the pension fund and the taxpayers of Illinois.

As TRS points out, 105 ILCS 5/10-23.8 requires that performance-based contracts be limited to five years. While those contracts can be extended or rolled over, provided that certain conditions are met, that does not change what happened in this case. Mannheim entered into addendums that effectively renegotiated increases in the salaries for both men. Both 2004 contracts provided that the retirement incentives would be allowable *if* the men retired. Neither man retired, but both men received the incentive payments. Mannheim claims that it "waived" the conditions precedent - namely, requiring the retirement of the administrators. Even if Mannheim did properly waive that condition, the effect of that waiver was a renegotiation of the salaries of both men. We find Mannheim's waiver argument to be unpersuasive.

### **C. Public Policy Does Not Favor Mannheim's Actions.**

Finally, Mannheim argues that public policy concerns favor a finding in its favor, because TRS's "determination interfered with [Mannheim and the administrators] freedom to contract." Mannheim argues that TRS's determination prevented Mannheim from "extending the administrators' employment terms without penalty." Mannheim misses the mark.

Mannheim certainly could have extended Lane and Lindsay's employment terms without "penalty," if it had also not increased or added new salary retirement incentives or renegotiated increases in salary. While Mannheim maintains TRS "punished" it, and "interfered" with Mannheim's "freedom to contract," we agree with the district that Mannheim is free to contract as it pleases - so long as it bears the costs of those decisions that are imposed by the Pension Code. Mannheim and the employees were left with several alternatives. Mannheim could have extended the contracts on the condition that the administrators waive the retirement incentives otherwise payable under the exempt contract, thereby avoiding the contribution. Alternatively, Mannheim could have honored the original contracts, whereby the retirement incentives were paid and the administrators retired on the dates included in the exempt contract. Or, Mannheim could have extended the contracts in the manner it did and paid the required contribution.

Mannheim interprets significant intention behind TRS's actions; however, TRS's responsibility is simply to interpret the relevant code and statute provisions, which includes assessing contributions where due. The 2008 contract addendums had the effect of increasing existing salary and retirement incentives, and thus, exemption was lost. To the extent that we should examine public policy considerations, certainly public policy in this case would not favor assessing the costs of Mannheim's contracting decisions onto the entire pension fund and all Illinois taxpayers.

## **VII. Conclusion**

The Claims Hearing Committee finds in favor of the staff in this matter. The 2008 addendums that Mannheim entered into with Lane and Lindsay had the effect of dramatically increasing each of their respective compensations, and thus caused a loss of the previously exempt status that the 2004 contracts enjoyed. Further, Mannheim cannot "waive" the contract provisions that are at issue in this case, particularly where that waiver has the effect of extending a contract term beyond five years in violation of 105 ILCS 5/10-23.8 and renegotiating salary increases. Finally, to the extent that public policy applies, it favors a finding for TRS in this matter. Mannheim knowingly negotiated and entered into the addendums with Lane and Lindsay, and Mannheim must bear the burden of its actions. 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.