

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

In the Matter of:)
)
Schaumburg CCSD #54)
)
Petitioner.)

**RECOMMENDED DECISION OF THE
CLAIMS HEARING COMMITTEE
IN THE ADMINISTRATIVE REVIEW OF SCHAUMBURG CCSD #54**

Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner Schaumburg Community Unit School District (CCSD) #54 (“Schaumburg” or the “District”) agreed with the Teachers’ Retirement System of the State of Illinois (“TRS” or the “System”) 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 23, 2011 at TRS headquarters in Springfield to consider this matter. Present were Committee Chairman Cynthia O’Neill and Committee members Jan Cleveland and Janice Reedus. Schaumburg was represented by Andrew Malahowski of Franczek Radelet. The System was represented by Thomas Gray, its General Counsel.

Petitioner Schaumburg filed this administrative review to challenge the assessment of \$586,387.91 for the statutory 6% excess salary employer contribution plus interest of \$1,245.81¹ in relation to the retirements of seven administrators, namely, Robert Dewey, Craig Gaska, Mary Marello, Judith McDonald, Robert Kaplan, Joyce Drenth and Patrick Hayes (the “administrators”).

¹ These amounts have been paid to TRS. Schaumburg is seeking a refund.

It is the position of Schaumburg that it is exempt from the 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 Schaumburg is not exempt from the employer contributions.

Stipulated Facts and Exhibits

The following facts and exhibits were stipulated to by the parties.

1. This matter concerns Schaumburg's request for an exemption from excess salary increase contributions related to Robert Dewing ("Dewing"), Craig Gaska ("Gaska"), Mary Marelo ("Marelo"), Judith McDonald ("McDonald"), Robert Kaplan ("Kaplan"), Joyce Drenth ("Drenth"), and Patrick Hayes ("Hayes").
2. Dewing, Gaska, Marelo, McDonald, Kaplan, Drenth, and Hayes are current TRS annuitants who were previously employed by the District as administrators.
3. Dewing, Gaska, Marelo, McDonald, Kaplan, Drenth, and Hayes received retirement incentives pursuant to the District's Voluntary Retirement Program. *See Exhibit A, Voluntary Retirement Program, Claims Hearing Packet at p. 20.* Each of these individuals retired under Option C of the Voluntary Retirement Program. Attachment A represents a true and correct copy of the Voluntary Retirement Program that was disseminated to the District administrators.
4. The Voluntary Retirement Program was approved by the District's Board of Education on March 18, 2004.
5. The District and the teachers' union agreed on February 26, 2003 that the Voluntary Retirement Program would continue for the duration of the teachers' collective bargaining agreement and would be available for retirements effective through June 30, 2011. The District's collective bargaining agreement with the teachers' union had a term of July 1, 2003 to June 20, 2009.

6. The Voluntary Retirement Program, Option C, provides for various retirement incentives including salary increases in excess of 6%.
7. Dewing, Gaska, Marelo, McDonald, Kaplan, Drenth, and Hayes did not have written contracts with the District, and were not union members covered by the collective bargaining agreement, but were considered to be entitled to benefits and retirement incentives under the Voluntary Retirement Program by the District.
8. Dewing, Gaska, Marelo, McDonald, Kaplan, Drenth, and Hayes fulfilled the notice requirement of the Voluntary Retirement Program, submitting their notices of intent to retire prior to its expiration on January 2, 2009. The above persons gave their notice of intent to retire on the following dates:

Dewing	December 12, 2006
Gaska	December 5, 2006
Marelo	December 10, 2006
McDonald	September 21, 2007
Kaplan	June 12, 2007
Drenth	October 15, 2007
Hayes	November 15, 2007

True and correct copies of these notices of intent to retire are attached as Exhibit B starting at page 24 of the Claims Hearing Packet.

9. Dewing, Gaska, Marelo, McDonald, Kaplan, Drenth, and Hayes each received salary increases in excess of 6% under the Voluntary Retirement Program.
10. The above persons retired with TRS on the following dates:

Dewing	July 1, 2009
Gaska	July 1, 2009
Marelo	July 1, 2009

McDonald	July 1, 2010
Kaplan	July 1, 2010
Drenth	July 1, 2010
Hayes	July 1, 2010

11. TRS assessed the District the following employer contributions under the provisions of 40 ILCS 5/16-158(f) in relation to the retirements of:

Robert Dewing	\$99,065.60
Craig Gaska	\$93,561.12
Mary Marello	\$83,564.35
Judith McDonald	\$86,730.33
Robert Kaplan	\$111,446.70
Joyce Drenth	\$80,157.45
Patrick Hayes	\$31,862.26

Total amount assessed to the District: \$586,387.81 plus interest of \$1,245.81. These amounts have been paid to TRS.

12. TRS administrative staff denied the District's claim for an exemption from employer contributions for Gaska, Dewing, and Marello by letter dated November 17, 2009. *See* Exhibit C.
13. The District timely filed a petition for administrative review with respect to Gaska, Dewing, and Marrello on January 18, 2010.
14. On August 27, 2010, TRS provided a letter to the District which further opined that the District did not qualify for an extended exemption for McDonald, Kaplan, Drenth, and Hayes. *See* Exhibit D.
15. The District timely filed an additional petition for administrative review with respect to McDonald, Kaplan, Drenth, and Hayes on September 16, 2010.

16. TRS has never granted an exemption from employer contributions under 40 ILCS 5/16-128(d-10) or 16-158(g) to a school district employer based upon Section 1650.484(a) or (b) of the TRS administrative rules.
17. Urbana School District 116, Schaumburg Community Consolidated School District 54, and Glenbard Township High School District 87 are the only three TRS covered employers who have requested an exemption under 40 ILCS 5/16-128(d-10) or 16-158(g) based upon Section 1650.484(c) of the TRS administrative rules.

Finding of Fact

The Committee finds that the Voluntary Retirement Program was contained in a Community Consolidated School District Board of Education Policy and did not reference the District's collective bargaining agreement with its union employees.

Applicable Law

Article 16 of the Illinois Pension Code in reference to the assessment of the 6% excess salary employer contribution, provides as follows:

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.

[40 ILCS 5/16-158(f)]

The Pension Code provides the following exemption from the 6% excess salary employer contribution:

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 the 6% excess salary employer contribution imposed by the law, TRS promulgated 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.*

[80 Ill. Admin. Code 1650.484]

It is Schaumburg's contention that the administrators 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 teacher employees. The problem with Schaumburg's argument is that the administrators were employed under employment contracts, thus making Rule 1650.484 inapplicable as to them.

Analysis

The primary issue in this administrative review, namely: "Is Schaumburg exempt from employer contributions assessed pursuant to 40 ILCS 5/16-158(f) under the provisions of 40 ILCS 5/16-158(g) and 80 Ill. Adm. Code 1650.484?" has already been decided by the TRS Board of Trustees in the *Matter of Urbana*

School District 116 (see attached). As Urbana argued, Schaumburg argues that the administrators were employed under employment policies and, therefore, exempt under the provisions of 80 Ill. Adm. 1650.484. Like Urbana, Schaumburg chooses to ignore the School Code, which governs the employment of administrators; specifically, 105 ILCS 5/10-23.8a which states:

Principal and other administrator contracts. *After the effective date of this amendatory Act of 1997 and the expiration of contracts in effect on 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).

Under 105 ILCS 5/10-23.8a, administrators may be employed under a multi-year contract. Alternatively, they can be employed under a contract not to exceed one year, whereby they retain tenure rights during the term of the contract. These employees were not employed under a multi-year contract and therefore retained tenure.

There is no evidence in the record that these administrators had a written contract and as a result, they would have a one year contract by operation of law. This contract would have run from July 1, 2004 to June 30, 2005. See 105 ILCS 5/24-11 and, Arduni v Board of Education, 441 N.E. 2d 73 (1982). All of the administrators announced their irrevocable intent to retire after the exempt contract expired and were paid retirement incentives under non-exempt contracts. The Urbana case is clearly controlling here.

Support for the Committee's finding is also found in the Fourth Appellate Court's decision in *Homewood Flossmoor CHSD No. 233 v. TRS*, No. 4-09-0833 (August 23, 2010). As stated by the Court:

The District next argues that procedure 2413 constituted a separate contract entered into prior to June 1, 2005, between the District and Dr. Murray providing an independent set of employment rights. In support of its argument, the District cites Duldulao v St. Mary of Nazareth Hospital Center, 115 Ill. 2d 482, 490, 505 N.W. 2d 314, 318 (1987), in which the supreme court held that "an employee handbook or policy statement creates enforceable contractual rights if the

traditional requirement for contract formation are present.” Duldulao is inapposite to this case. The employee in Duldulao was an at-will employee, and the handbook detailed the hospital’s employment policies. Duldulao, 115 Ill. 2d at 485-86, 489, 505 N.E.2d at 315-317. Dr. Murray and the District had a fixed-term employment agreement. Detailing her rights and responsibilities as an employee. There is no evidence to support the proposition that the District and Dr. Murray intended to bind themselves to any agreement outside the written employment contract. The District has also failed to state what the consideration for an independent contract consisted of, as Dr. Murray had a preexisting legal obligation to perform the superintendent’s duties. See DiLorenzo v Valve & Primer Corp., 347 Ill. App. 3d 194, 201, 807 N.E.2d 673, 679 (2004) (discussing preexisting duty rule).

Assuming Dr. Murray received her raises pursuant to procedure 2413, it fell within the fringe benefits guaranteed in section 21 of her contract. Because the April 2006 contract required that Dr. Murray receive fringe benefits equal to or greater than those contained in the June 2001 contract, the 20% raises were likewise guaranteed in the April 2006 contract. However, as this court has already found, the April 2006 contract was nonexempt and required contribution for raises over 6% to the system. (p. 9 and 10)

Section 1650.484 simply does not apply to the administrators here because they all had contracts by operation of law. Section 1650.484 applies to a small group of TRS members, who are at will employees such as certain employees of the Illinois State Board of Education, TRS and in the Regional Offices of Education. However, assuming arguendo that 1650.484 does apply to these administrators, according to paragraph (c) of the rule, they would have been assumed to have a one year contract running from July 1, 2005 to June 30, 2006. Even under this scenario, the administrators did not exercise their retirement incentive rights under the exempt contract and the retirement incentives were not paid under the exempt contract, making Schaumburg ineligible for exemption.

Conclusion

The Claims Hearing Committee finds in favor of the TRS staff determination in this matter. Schaumburg was correctly assessed employer contributions as statutorily required under Pension Code 16-158(f) with regard to the above administrators.

Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen 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.