

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

**In the Matter of**                    )  
  )  
**Lawrence Baskin**                    )  
  )  
**Petitioner**                            )

**RECOMMENDED DECISION OF THE CLAIMS HEARING COMMITTEE  
IN THE ADMINISTRATIVE REVIEW OF LAWRENCE BASKIN**

**I.     Introduction**

Pursuant to the provisions of 80 Ill. Adm. Code 1650.650, an administrative review hearing was held on October 26, 2007 in Springfield, Illinois, to consider the Motion for Summary Judgment in the administrative review claim of Dr. Lawrence Baskin, a member of Teachers' Retirement System of the State of Illinois (TRS or the System). Present were Presiding Hearing Officer Ralph Loewenstein, Claims Hearing Committee Chairman Cynthia O'Neill, and Claims Hearing Committee members Jan Cleveland and Jim Bruner. Alternate Committee member Marcia Boone was also present but did not participate in the Committee deliberations. Attorneys Vanessa Klohessy and Debra Kaplan of the law firm of Hodges, Loizzi, Eisenhammer, Rodick & Kohn presented oral argument on behalf of Petitioner Baskin. Senior Assistant General Counsel Cynthia Fain presented oral argument on behalf of the System.

Petitioner Lawrence Baskin, former Superintendent of Glen Ellyn School District No. 89, filed the instant administrative review to challenge the System's disallowance of reported creditable earnings in the amount of \$5,538.46, based on TRS staff's application of the "TRS conversion rule." Dr. Baskin's compensation included a noncreditable automobile expense allowance that was removed from his compensation in the last three school years of employment prior to retirement. Under TRS administrative rule 1650.450(c)(6), this change in compensation constituted conversion of Baskin's noncreditable auto allowance into creditable earnings in the last years before retirement—a change in compensation that is

prohibited under the Pension Code's definition of salary creditable for retirement annuity calculation purposes.

Dr. Baskin claims he did not run afoul of the conversion rule because his noncreditable auto allowance was substituted for other noncreditable compensation, namely, a promise of payment of his post-retirement health insurance premium. He asserts that substituting one form of noncreditable compensation for another should overcome application of the conversion rule.

Baskin also asserts that there was no intent to increase his salary, and that therefore, the conversion rule should not apply. As will be more fully explained, the Committee finds that staff correctly applied TRS administrative rule 1650.450(c)(6) to Dr. Baskin's change in compensation structure in the 2003-04 and 2004-05 school years. Baskin has failed to demonstrate that **none of the purposes** of the change in compensation was to increase his creditable earnings and thereby increase his TRS retirement annuity.

Additionally, Baskin claims there are material issues of fact that preclude summary judgment. After considering the pleadings of the parties and the oral arguments presented at hearing, the Committee's recommendation to the Board of Trustees is to uphold the staff determination. The Committee finds that there are no material issues **with respect to the facts necessary to support application of the conversion rule** to Dr. Baskin's earnings.

## **II. The TRS Conversion Rule**

The "TRS conversion rule" looks at compensation, creditable and noncreditable, due or payable in a member's last seven school years of employment. The rule is based on the Pension Code, 40 ILCS 5/16-121, which defines "salary" for TRS purposes as:

*The actual compensation received by a teacher during any school year and recognized by the system in accordance with rules of the board. For purposes of this Section, "school year" includes the regular school term plus any additional period for which a teacher is compensated and such compensation is recognized by the rules of the board.*

The TRS conversion rule prohibits “conversion” of noncreditable earnings into salary in the last years before retirement. The conversion rule is found at 80 Ill. Admin. Code 1650.450(c)(6). As stated therein:

*Any amount paid in lieu of previously nonreportable benefits or reported in lieu of previously non-reported compensation where the conversion occurs in the last years of service and one of the purposes is to increase a member’s average salary. If the member’s non-creditable or non-reported compensation in any of the last seven creditable school years of employment exceeds that of any other subsequent year, the System will presume the difference, unless resulting from the terms of a collective bargaining agreement, to have been converted into salary and wages in the subsequent year for the purpose of increasing final average salary.*

The TRS conversion rule is explained in the TRS Employer Guide, Chapter 5, page 33, as follows:

*Previously nonreportable earnings or benefits that are converted to reportable earnings in the last years of service for the purpose of increasing a member’s final average salary are not reportable as creditable earnings to TRS. TRS presumes any decrease in noncreditable compensation in the last seven creditable school years is for the purpose of increasing final average salary. To overcome the presumption, the member must submit documentary evidence to the System that clearly and convincingly proves that none of the purposes of the change in compensation structure was to increase average salary (for example, changes in collectively bargained agreements applicable to all similarly situated individuals covered by the agreement, change of employer, or change in family status.)*

The Committee recognizes strong policy reasons for the conversion rule. The System must make reasonable actuarial predictions of future liabilities. Prudent pension plan administration cannot permit retirement system members to withhold contributions on compensation until the last few years before retirement, and then artificially increase creditable earnings to receive an inflated TRS annuity. Sound actuarial projections of future liabilities are particularly important, given concerns about the effect of recent state funding reductions on the System’s unfunded liability.

Of particular note is one example of noncreditable earnings illustrated in the TRS Employer Guide. Example 46 specifically concerns a travel allowance such as that included in Dr. Baskin’s compensation structure:

**Example 46: Noncreditable earnings – converting fringe benefits into salary**

Administrator R was a 12-month administrator who retired at the end of the school year. His contract period was July 1 through June 30. His employer paid a travel allowance and health insurance premiums as noncreditable fringe benefits until his last year of service. In his last year, Administrator R’s salary increased to \$96,000 and travel allowance and health insurance premiums were no longer paid by his employer.

The decrease in noncreditable compensation occurred in Administrator R’s last seven creditable school years. TRS will assume the \$4,800 travel allowance and \$6,000 health insurance premiums were converted to salary for the purpose of increasing Administrator R’s final average salary. Therefore, the value of converted fringe benefits will be excluded from his last year’s salary reported to TRS.

**Annual salary rate and creditable earnings:**

Contract salary	\$96,000
Converted travel	(4,800)
Converted insurance	<u>(6,000)</u>
	<u>\$85,200</u>

**Employer’s Annual Report of Earnings**

Gender	1 Date of birth	2 Names of teachers (in alphabetical order)	3 Employment type (F,P,E,S,H)*	4 No. of days in employment agreement	5 Total no. of days paid **	6 Annual salary rate (not less than Column 7)	7 Creditable earnings (including retirement contributions)	8 Retirement contributions (9.4% of creditable earnings—tax excludable)	9 Sum of Column 7 paid from special trust or federal funds (dollars only)
M	99/99/9999	Administrator R	F	260	260	85,200.00	85,200.00	8,008.80	
	999-99-9999								

The Committee feels compelled to observe that there would have been no adjustment to earnings, and the instant administrative review would have been unnecessary, had Dr. Baskin’s employer simply followed the guidance provided in the TRS Employer Guide. Example 46 clearly illustrates that removal of a noncreditable travel allowance in the final years before retirement will result in exclusion of the value of the travel allowance from salary reportable to TRS for retirement credit, which is exactly what happened in Baskin’s case.

### **III. Application of the TRS conversion rule to Dr. Baskin**

1. During the 2000-01 through 2002-03 school years, Dr. Baskin received an auto expense allowance of \$420 per month which was correctly excluded from his salary reported to TRS. (Request for Administrative Review, p. 3, paras. 7 & 11).
2. In the 2003-04 and 2004-05 school years, Dr. Baskin's auto expense allowance was dropped from his compensation structure. (Request for Administrative Review, p. 3, para. 9).
3. Dr. Baskin retired on June 30, 2005, well within the seven-year conversion period provided in TRS Administrative Rule 1650.450(c)(6).
4. Based on the Pension Code and the TRS conversion rule that does not allow conversion of noncreditable earnings to salary in the final years before retirement, the System reduced Dr. Baskin's creditable earnings as follows:

2003 – 04 School Year from \$277,205.50 to \$271,667.04

2004 – 05 School Year from \$277,205.47 to \$271,667.01

5. Dr. Baskin's monthly TRS pension benefit after removing the impermissible earnings based on the conversion rule was determined to be \$15,447.07 per month, an annual benefit of \$185,364.89.
6. Dr. Baskin's unreduced monthly TRS pension benefit if the conversion rule were not applied would have been \$15,620.15 per month, an annual benefit of \$187,441.81.

### **IV. Summary judgment**

Dr. Baskin argues that material issues of fact exist as to whether his compensation structure changed between his 2000 and 2003 agreements, whether there was a reduction in Baskin's noncreditable earnings, and if a reduction did occur, whether the purpose of such a reduction was to increase his final average salary.

The Committee has considered Dr. Baskin's arguments and finds that all of the facts **necessary to establish conversion** are not in dispute.

**1. Baskin's compensation structure changed when the auto allowance was removed.**

Dr. Baskin argues that his compensation structure was essentially unchanged on the theory that one noncreditable form of compensation was removed and replaced with another form of noncreditable compensation. The Committee does not agree. Baskin does not dispute that the auto allowance was indeed removed from his compensation structure, as demonstrated by his Request for Administrative Review:

*Section 7.L of the 2000 Agreement contained an expense reimbursement in the amount of \$420 per month for auto expenses within DuPage County and a reimbursement for travel further than 100 miles outside of the District.*

(Request for Administrative Review, p. 3, para. 7.)

*Section 7.L from the 2000 Agreement covering certain auto expenses is not present in the same form in the 2003 Agreement. The 2003 Agreement was amended so that in lieu of paying Baskin an expense reimbursement for auto expenses incurred while conducting District business within DuPage County, the Board agreed to pay Baskin's retiree health insurance premium, as reflected in Section 7.M of the 2003 Agreement.*

(Request for Administrative Review, p. 3, para. 9.)

It is evident to the Committee that removal of the auto allowance resulted in a change in creditable compensation. The presumption of conversion has been clearly established by Baskin's own pleadings.

**2. Application of the TRS conversion rule does not depend on an increase in compensation.**

Dr. Baskin also argues that there was no change in compensation attributable to the elimination of the auto expense reimbursement, because he received the same bottom line compensation amount under both agreements. The Committee finds that the amount of total compensation is irrelevant. The conversion rule is not concerned with whether there was a salary increase, or even whether there was any change in total compensation. The very purpose of the presumption that

conversion occurred is to eliminate the need for a factual analysis of whether salary increased. The side of the equation that the rule examines focuses solely on whether noncreditable compensation was removed.

What is essential, and what is not in dispute, is that the auto allowance was present in the 2000 agreement and was not present in the 2003 agreement. It is not necessary to find an increase in compensation to apply the conversion rule. The proper focus is whether noncreditable compensation was removed in the final years before retirement.

## **V. Overcoming the presumption of conversion**

The conversion rule establishes a presumption that removal of previously noncreditable earnings was converted into salary. To overcome the presumption, the member must submit documentary evidence that clearly and convincingly proves that **none** of the purposes of the change in compensation structure was to increase average salary. 80 Ill. Admin. Code 1650.450(c)(6)(emphasis added). The conversion rule allows only a narrow opening to rebut the presumption that conversion occurred. The rule specifies only three examples that overcome the presumption: changes in collectively bargained agreements applicable to all similarly situated individuals, change of employer, or change in family status.

Dr. Baskin does not claim that any of the three identified examples occurred in his case. Rather, he claims that he overcame the presumption of conversion by showing that his noncreditable auto allowance was replaced by another noncreditable item, i.e. a promised payment of his post-retirement health insurance premium. He additionally claims that there was no intent to convert his noncreditable auto allowance into creditable earnings for retirement, and that this lack of intent should overcome the presumption of conversion.

The Committee must look at the purpose of the change in compensation, measured by the three examples set forth in the rule, not subjective intent. None of the examples set forth in the rule has occurred in Baskin's case.

### **1. Substituting one form of noncreditable compensation for another does not overcome the presumption.**

Substituting one form of noncreditable compensation for another has never been recognized by TRS staff or the Board to overcome the presumption that conversion to salary occurred. In another administrative review involving the TRS conversion rule, *Ronald Van Horn v. Teachers' Retirement System of the State of*

*Illinois*, the TRS member argued that a change in his compensation structure to a flexible benefit arrangement during the last three school years prior to retirement should not have been subject to the conversion rule.

Mr. Van Horn made two arguments that he overcame the TRS conversion rule. First, he claimed his divorce resulted in a change in family status that justified his change in compensation. Second, he claimed that because the district offered a flexible benefit arrangement to the new superintendent in Mr. Van Horn's last year of employment, this somehow justified his change in compensation that occurred two years prior. The TRS Board found neither of these arguments persuasive.

The Committee finds Dr. Baskin's arguments even less persuasive than the arguments presented in the *Van Horn* administrative review. Dr. Baskin does not assert, as did Mr. Van Horn, that any of the purposes stated in the conversion rule (change in collective bargaining agreement, change in employer, or change in family status) occurred to justify conversion of his noncreditable earnings in the last years. The Committee does not agree that substitution of one form of noncreditable compensation for another form in the final years before retirement, overcomes the presumption that conversion occurred.

## **2. Federal law precludes consideration of post-retirement benefits in determining earnings creditable for retirement benefits.**

Dr. Baskin asks the Committee to find that the value of his auto allowance should not be excluded from his creditable earnings used to calculate his retirement benefit, because the auto allowance was substituted for promised payment of his post-retirement insurance premium. However, federal law does not allow TRS to consider post-retirement benefits in determining whether the conversion rule was violated. Proposed Treasury Regulation § 1.415(c) – 2(e)(1)(ii) prohibits qualified plans such as TRS from considering post-retirement earnings in benefit calculations:

*Payment prior to severance from employment. In order to be taken into account for a limitation year, compensation within the meaning of section 415(c)(3) must be paid or treated as paid to the employee (in accordance with the rules of paragraph (e)(1)(i) of this section) prior to severance from employment (within the meaning of section 401(k)(2)(B)(i)(I) with the employer maintaining the plan.*



The Committee is not persuaded that the purported converting of present school-year noncreditable compensation for post-retirement benefits, which can never be creditable and are never monitored by TRS, should be recognized as a new purpose that overcomes the presumption that conversion occurred.

**3. Lack of intent to increase salary does not overcome the presumption.**

Dr. Baskin has not overcome the presumption of conversion by asserting there was no intent to increase his salary. The conversion rule uses the word “purpose” rather than “intent”. It is not reasonable to interpret the rule to require a look into the minds of the TRS member and individual school board members who approved the change in compensation structure. If intent were the standard, the presumption of conversion could always be overcome by simply asserting there was no intent to increase salary. Such a reading would render the conversion rule meaningless.

**VI. Conclusion**

The Committee finds that summary judgment is proper because all of the facts necessary to establish that the conversion rule was properly applied to Dr. Baskin’s earnings, are not in dispute. The TRS staff correctly applied the conversion rule because Dr. Baskin’s noncreditable auto allowance was removed from his compensation structure in the last years before retirement. It is clear to the Committee that Dr. Baskin’s change in compensation structure enhanced his TRS pension in derogation of 80 Ill. Admin. Code 1650.450(c)(6).

The Committee finds Baskin’s assertion that his compensation structure was unchanged to be belied by the facts stated in his administrative review request. Removal of the auto allowance from compensation in the final years is exactly the type of change in compensation that the conversion rule prohibits—one that artificially increases a member’s final average salary in the last years before retirement with a resulting boost in the retirement benefit.

The Committee further finds that Dr. Baskin has offered no valid purpose to overcome the presumption that conversion occurred. He has not demonstrated that any of the recognized examples to overcome the presumption occurred in his case. The Committee is not persuaded to recognize substitution of pre-retirement noncreditable compensation for promised payment of post-retirement insurance premiums, as a new purpose that would overcome the presumption of conversion.

## **VII. 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.