

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

**In the Matter of:**                     )  
  )  
**JOSEPH WILLIAM ELLIS,**            )  
  )  
                          **Petitioner.**                 )

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS  
HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW  
OF JOSEPH WILLIAM ELLIS**

**I.     Introduction**

Pursuant to 80 Ill. Admin. Code § 1650.610 et seq., an administrative review hearing was held January 24, 1995, in Chicago, Illinois, to consider the appeal of Teachers' Retirement System (TRS) member Joseph William Ellis, challenging the staff determination that Mr. Ellis was not entitled to report the following as creditable earnings to increase his final average salary during the five year period preceding his retirement from teaching in June of 1993:

- 1) In the 1988-89 through 1992-93 School Years, health insurance premiums which had been paid for by Mr. Ellis' employer prior to 1988-89.
- 2) In the 1991-92 and 1992-93 School Years, dues, fees, and mileage reimbursements.

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 hearing by its Claims Hearing Committee comprised of the following Board members: Judy Tucker, Chairperson, Anne Davis, and Ray Althoff. The Committee was advised in its deliberations by Ralph Loewenstein, Independent Counsel to the Board of Trustees. TRS' staff position was presented by Thomas Gray, TRS Assistant

General Counsel. Mr. Ellis appeared on his own behalf to present his claim to the Claims Hearing Committee.

After hearing the evidence submitted by the Parties and considering all the pleadings and hearing exhibits presented in support of the Parties' respective positions, it is the determination of the Claims Hearing Committee that Mr. Ellis' employer, Bradford Unit #1 Schools, (Bradford Schools) improperly reported the above-stated fringe benefits and expense allowances as creditable earnings in violation of TRS Rule 1650.450(c), Definition of Salary (Examples of amounts not to be reported to the System ...) (80 Ill. Admin. Code 1650.450). Accordingly, the Claims Hearing Committee finds that Mr. Ellis is ineligible to increase his final average salary, and thus his TRS retirement annuity, by the dollar amounts reported by Bradford Schools for these items.

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

In the instant case, the Claims Hearing Committee applies TRS Rule 1650.450(c) which states in relevant part:

- c) Examples of amounts not to be reported to the System include: ...
- 3) Expense reimbursements, expense allowances, or fringe benefits unless included in a reportable flexible benefit plan; ...
- 5) 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. To overcome the presumption, the member must submit documentary evidence to the System which clearly and convincingly proves that none of the purposes of the change in compensation structure was to increase average salary (for example, collectively bargained agreements, change of employer, change in family status); ...

- 7) Options to take salary in lieu of employment-related expense allowances or reimbursements.

### **III. Issue Statement**

The Parties agreed the sole issue presented in the instant administrative review to be:

When Mr. Ellis' employer changed his compensation structure several times during the five-year period preceding Mr. Ellis' retirement to include the cost of fringe benefits, which were previously paid by the employer, and reported the changes to TRS as creditable earnings and, when requested by TRS, could furnish no documentary evidence that the changes in compensation structure were not to increase Mr. Ellis' final average salary, was there a "conversion" under the provisions of TRS Rule 1650.450(c) rendering the amounts in question non-reportable as salary under 40 ILCS 5/16-121?

The Claims Hearing Committee finds this to be accurate, and it is adopted by the Committee. However, the Committee further finds the following to be issues in the case as well:

Are dues, fees, and mileage reimbursements reportable as creditable earnings under the provisions of TRS Rule 1650.450(c)(7)?

Did Bradford Unit # 1 Schools offer its employees a reportable, flexible benefit plan?

Were the proper amounts disallowed for Mr. Ellis' mileage allowances in the 1991-92 and 1992-93 School Years by TRS' Audit Department?

#### **IV. Statement of Facts**

Based upon the testimony of the Parties and the exhibits admitted into evidence at hearing, the Claims Hearing Committee determines the following to be the facts of Mr. Ellis' administrative review.

- 1) Prior to the 1988-89 School Year, Mr. Ellis' employer, Bradford Unit #1 Schools (Bradford Schools), directly paid Mr. Ellis' personal and family health insurance premiums and did not report these insurance costs to TRS as creditable earnings.
- 2) In January of the 1988-89 School Year, Bradford Schools changed Mr. Ellis' compensation structure.
- 3) In January, 1989, Bradford Schools began paying Mr. Ellis the difference between his personal health insurance premium and his family health insurance premium and deducted the cost of the family health insurance premium from his gross pay.
- 4) The above differential was then reported to TRS as creditable earnings.
- 5) Bradford Schools continued to report Mr. Ellis' creditable earnings in this manner through the 1990-91 School Year.
- 6) In the 1991-92 School Year, Bradford Schools again changed Mr. Ellis' compensation structure.
- 7) In that year, Mr. Ellis' employment contract provided that his salary include "mileage to school activities, IPA dues and conference fees and health insurance premiums for the family."
- 8) For the 1991-92 School Year, Bradford Schools reported the difference between Mr. Ellis' personal health insurance premium

and his family health insurance premium as well as mileage, dues and conference fees as creditable earnings.

9) In the 1992-93 School Year, Mr. Ellis' last year of teaching service, Bradford Schools again changed how it reported Mr. Ellis' creditable earnings and included his personal health insurance premium, his family health insurance premium, and mileage, dues and conference fees in its computation of creditable earnings for Mr. Ellis.

10) Due to the above-described changes in reporting by Bradford Schools, Mr. Ellis' board approved salary was increased in the following amounts:

1988-89	\$1,577.40
1989-90	2,607.76
1990-91	3,151.72
1991-92	4,984.75
1992-93	7,672.75

11) Bradford Schools did not offer its employees a reportable flexible benefit plan.

12) Bradford Schools did not treat its employees the same with regard to the reporting of health insurance and expense allowance in School Years 1988-89 through 1992-93.

13) In the 1988-89 through 1992-93 School Years, rank and file teachers did not receive the option to have their family insurance premiums added to their salaries and to then have that amount reported to TRS to increase their creditable earnings.

14) During the 1990-91 through 1993-94 School Years, none of the three other administrators who were employed by Bradford Schools during this period had their health insurance or expense allowances reported to TRS as creditable earnings.

- 15) School Board records confirm that Mr. Ellis' dues, fees, and mileage allowance for the 1991-92 and 1992-93 School Years was \$1,195.00 per year.
- 16) In the 1988-89 through 1992-93 School Years, Bradford Schools added exactly the same amount to Mr. Ellis' salary, and reported to TRS as creditable earnings, as it deducted therefrom to pay Mr. Ellis' family health insurance premium.

#### V. Positions of the Parties

At hearing, Mr. Ellis conceded that TRS correctly disallowed the reporting of the following as creditable earnings:

- 1) Mr. Ellis' single family health insurance premium amount for the 1992-93 School Year (Hearing Transcript, p. 13);
- 2) Mr. Ellis' dues and fees for the Illinois Principal Association in both the 1991-92 and 1992-93 School Years (Hearing Transcript, p. 16); and
- 3) \$500.00 to \$600.00 of mileage allowance in both the 1991-92 and 1992-93 School Years (Hearing Transcript, p. 14).

However, Mr. Ellis continued to assert that his family health insurance premium for the 1988-89 through 1992-93 School Years was reportable to TRS because:

... the decision to insure my family was my option and it had no effect on the determination of my salary. I feel that I am being treated unfairly and being penalized because I made the decision to take the school insurance the same as the teachers and other employees. Therefore, I am asking that the amount that was deducted for health insurance be restored ... (Hearing Packet, page 62, Mr. Ellis' Position Statement).

With regard to his expense allowance, Mr. Ellis argues TRS deducted too much for his mileage allowance. He proposed a figure of \$581.00 instead of \$750.00 be used because that was his alleged highest actual mileage in his service at Bradford Schools. No documentary evidence was submitted by Mr. Ellis to support this figure at hearing.

It is the position of TRS that Mr. Ellis' family health insurance was properly disallowed under the provisions of TRS Rule 1650.450(c) because Mr. Ellis could produce no documentary evidence to substantiate any acceptable rationale under the rule for his change in compensation structure. Furthermore, the staff found there was no evidence to support Mr. Ellis' contention that teachers and administrators were treated in the same fashion as he was with regard to the reporting of family insurance.

Regarding any adjustment to Mr. Ellis' mileage allowance, the staff relied on the only documentation available that shows Mr. Ellis' mileage allowance to have been a flat \$750.00 per year in the 1991-92 School Year. Since Mr. Ellis' expense allowance for the 1992-93 School Year was exactly the same as in the 1991-92 School Year, the audit staff assumed no change in Mr. Ellis' mileage allowance had occurred.

## **VI. Discussion and Analysis**

Mr. Ellis does not challenge the Board's authority to promulgate rules for the governance of TRS, nor does Mr. Ellis claim that the Board exceeded its rulemaking authority in promulgating Rule 1650.450(c). However, the Committee feels it necessary to address these issues as a starting point to the analysis of its decision in this case.

Pursuant to 40 ILCS 5/16-168, the Illinois General Assembly has granted to the Board of Trustees the power to enact rules to insure orderly administration of TRS. As stated therein:

Board - meeting - rules - voting. The board shall meet regularly at least 4 times a year at such time as it may by by-laws provide, or at the call of the president or of a majority of the members. The board may adopt rules for the government

of its meetings and for the administration of the system. Each trustee is entitled to 1 vote. The votes of a majority of the members are necessary for a decision by the trustees at any meeting of the board. (Emphasis added).

Pursuant to 40 ILCS 5/16-121, the General Assembly further granted the Board the authority to establish rules for the reporting of salary. As stated in § 16-121, salary is:

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 if recognized by the rules of the board. (Emphasis added).

Based upon this grant of authority from the Legislature, the Board promulgated TRS Rule 1650.450(c) to establish parameters for the reporting of creditable earnings. As stated in the Matter of Estate of Hoheiser, 53 Ill. Dec. 612, 424 N.E.2d 25 (1981):

An administrative agency possesses no inherent or common law power (Sibley v. Health & Hospitals' Governing Comm. (1974), 22 Ill.App.3d 632, 317 N.E.2d 642), and thus the only power held by such body is conferred by express provision of law or is found, by fair implication or intendment, to be incident to and included in the authority expressly conferred for the purpose of carrying out and accomplishing the objectives for which the agency was created (Department of Public Aid v. Brazziel (1978), 61 Ill.App.3d 168, 18 Ill.Dec. 483, 377 N.E.2d 1119). (Hoheiser at p. 614.)

Monitoring of the reporting of creditable earnings is an express function of TRS, and the establishment of rules governing the reporting of creditable earnings is clearly incident to the administration of the System.



Under the provisions of TRS Rule 1650.450(c), fringe benefits previously paid by an employer and dues, fees, and mileage reimbursements are not reportable to the System as salary. As stated in paragraph 3 of Rule 1650.450(c):

Examples of amounts not to be reported to the System include: Expense reimbursements, expense allowances, or fringe benefits unless included in a reportable flexible benefit plan.

Bradford Schools does not offer its employees a reportable flexible benefit plan. Therefore, Mr. Ellis' health insurance and reimbursements are clearly barred from reporting under this paragraph.

Paragraph 7 of Rule 1650.450(c) goes on to prohibit the reporting of "options to take salary in lieu of employment-related expense allowances or reimbursements." This provision clearly bars the reporting of Mr. Ellis' dues, fees, and mileage reimbursements.

Paragraph 5 of Rule 1650.450(c) further addresses the propriety of changing a member's compensation structure in the last seven creditable years of employment prior to retirement. 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. To overcome the presumption, the member must submit documentary evidence to the System which clearly and convincingly proves that none of the purposes of the change in compensation structure

was to increase average salary (for example, collectively bargained agreements, change of employer, change in family status);

Under the provisions of Rule 1650.450(c)(5), the burden rests with Mr. Ellis to show that his change in compensation structure, was not made to increase final average. To meet this burden, Mr. Ellis is required to submit documentary evidence that convincingly establishes the reason for the changes in his compensation structure was not to increase his retirement annuity.

Three examples are given in paragraph 5 to demonstrate acceptable reasons for a change in compensation structure. Mr. Ellis' situation does not fall within any of these examples. As a principal, Mr. Ellis was not covered by a collective bargaining agreement. He did not change employers, nor was there a change in Mr. Ellis' family status that necessitated a change in his family health insurance coverage.

When asked to furnish documentary evidence for his change in compensation structure, Mr. Ellis submitted the affidavit of James Campion and Dale Endres (Hearing Packet Exhibit B), which states that the reason for Mr. Ellis' change in compensation structure was:

... to comply with Federal and State laws regarding equal treatment of all employees. Mr. Ellis then chose, but was not required to have the family premium deducted from his salary as did many other employees.

However, when asked to provide documentary evidence for these assertions, such as what laws he was referring to; who provided the advice to the School Board; and documentation that other employees were allowed to do as Mr. Ellis, Mr. Campion could only respond:

We have carefully searched our records for the information requested and have been unable to locate all the specific data needed by Mr. Ellis. Although it was, indeed, the intent of the Board of Education that the money in question, was

salary, we cannot prove that, at this time, with all the documentation which you require. (Hearing Packet Exhibit C).

That no documentary evidence is available to support Mr. Ellis' change in compensation structure is further confirmed by the testimony and audit report (Hearing Packet Exhibit A) of Vickie Geiger, TRS Senior Auditor. Without documentary support, the only conclusion which can be reached by the Hearing Committee is that an improper conversion of family health insurance benefits occurred.

With regard to Mr. Ellis' request for an adjustment to the amount disallowed for his mileage allowance in the 1991-92 and 1992-93 School Years, the Claims Hearing Committee finds that Hearing Packet Exhibit A, pages 50 and 51, clearly establish that Mr. Ellis received \$750.00 for his mileage allowance in the 1991-92 School Year. The Committee finds it was reasonable to use this figure to determine Mr. Ellis' mileage allowance rate in the 1992-93 School Year when the same expense allowance of \$1,195.00 was granted to Mr. Ellie by the Board. Mr. Ellis' argument that between \$500.00 and \$600.00 should have been the amount disallowed in each year is without documentary support as required by TRS Rule 1650.450(c)(5).

## **VII. Conclusion**

Based upon the foregoing, it is the Claims Hearing Committee's recommendation that the staff determination in the instant case, which is supported by the testimony and audit report of Senior Auditor Vickie Geiger and which was un rebutted by the submission of any documentary evidence by Mr. Ellis as required by TRS Rule 1650.450(c)(5) be upheld.

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

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt of the Proposed Decision by the Claimant. 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 Claimant.