

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

In the Matter of:)
)
)
 James Taylor)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF JAMES TAYLOR**

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner James Taylor agreed with System staff that his 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 by telephonic conference on August 22, 2002, to consider Mr. Taylor's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman Sharon Leggett and Committee members James Bruner, and John Glennon.

Teachers' Retirement System (TRS) member James B. Taylor has filed the instant administrative review to challenge the staff determination that Mr. Taylor's employer, Colchester C.U.S.D. No. 180 (Colchester) improperly reported the cost of moving expenses (in the 1992-93 school year) and health insurance as creditable earnings in the 1992-93 through 1994-95 school years in derogation of TRS Rule 1650.450(c)(3). Thereafter, in the 1995-96 through 1998-99 school years, Mr. Taylor's compensation structure was changed to convert the previously improperly reported cost of health insurance to salary in Mr. Taylor's final four years of teaching service in derogation of TRS Rule 1650.450(c)(5).

It is Mr. Taylor's position that no matter what the employment contracts between he and Colchester stated, the intent of the parties was that the health

insurance payments as well as his moving expense payment be considered “salary” under TRS Rule 1650.450. Accordingly, there could be no conversion under TRS Rule 1650.450(c)(5), because there was no intent to pay any amount in lieu of previously non-reportable benefits in Mr. Taylor’s last years of service. Mr. Taylor further asks the Claims Hearing Committee to find that his employment contracts were the product of a mutual mistake of fact and to accept his claim as to what the contracts intended.

After considering the Position Statements of the parties, their stipulations of fact and the agreed upon exhibits contained in the Claims Hearing Packet, the Committee’s recommendation is to uphold the staff’s determination. As will be more fully explained, the Committee finds that Mr. Taylor did not prove a mistake of fact by clear and convincing evidence; and that while Taylor and the District may have been operating under a mistake of law when they contracted with each other, a mistake as to governing law cannot be claimed against the System which was not a party to Mr. Taylor’s employment contracts.

II. Findings of Fact

Based on the case record, the Committee makes the following factual determinations:

- 1) Mr. Taylor’s employment contracts with Colchester provided as follows:

1992-93 School Year

C. Insurance Benefits. THE BOARD shall monthly pay to the SUPERINTENDENT, in addition to salary, a further sum equivalent to monthly cost of the family plan health insurance coverage available through THE BOARD’S group insurance carrier.

G. Relocation expenses. In addition to other salary, the BOARD shall pay to, SUPERINTENDENT the sum of THREE THOUSAND DOLLARS (\$3,000.00) as relocation expenses. Such sum shall be payable in equal monthly installments during the 1992-93 school year. Such sum shall not be paid to SUPERINTENDENT during any renewal of this agreement.

1993-94 and 1994-95 School Years

3. Salary. *In consideration of the performance of the duties of the SUPERINTENDENT for the term of this Contract, the BOARD shall pay to the SUPERINTENDENT as base annual salary for the year 1993-1994 the sum of Sixty-Two Thousand Four Hundred Fifty-Four and No/100 (\$62,459.00) plus the additional salary of Four Thousand Seven Hundred Fifty-Four and 20/100 (\$4,754.20) which is intended to cover the costs of Superintendent's medical insurance. For the years 1994-1995 and 1995-1996 the BOARD shall pay to SUPERINTENDENT as base annual salary the sum of Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$57,500.00) plus such additional salary as will be equal to the then-existing annual premium for family or dependent medical insurance premium in respect to SUPERINTENDENT, as the same may be from time to time under any medical plan or coverage in effect with DISTRICT from time to time. All such sums shall be payable to SUPERINTENDENT, as salary, and shall not be paid as an employer's contribution for medical insurance. Payment of medical insurance premiums shall be the responsibility of SUPERINTENDENT. Salary shall be payable to SUPERINTENDENT in substantially equal monthly installments, due on or before the fifteenth (15th) day of each month, or as is otherwise payable to certificated employees. In addition, the BOARD agrees to pay the sum of .086957 times the above-stated 1993-1996 salary of SUPERINTENDENT, to the Teachers' Retirement System on behalf of SUPERINTENDENT. For the year 1993-1994 said payment shall equal Five Thousand Eight Hundred Forty-Four and 66/100 Dollars (\$5,844.66). For the years 1994-1995 and 1995-1996 the BOARD agrees to pay the sum of .086957 times the above-stated salaries combined with the additional salary for insurance premium cost as then are in effect. (Emphasis added)*

1995-96, 1996-97 and 1997-98 School Years

3. Salary. *In consideration of the performance of the duties of the SUPERINTENDENT, the BOARD shall pay to SUPERINTENDENT a salary for services during each year of this agreement. As has been the case since SUPERINTENDENT began service to the District, SUPERINTENDENT shall be paid a compensation salary from which he may elect to have District Group Insurance premiums paid.*

1998-99 School Year.

4. *Superintendency salary.* In consideration of the performance of the duties of the SUPERINTENDENT, the BOARD shall pay to the SUPERINTENDENT a salary for services for the 1998-1999 fiscal year. [As has been the case since SUPERINTENDENT began service to the District, SUPERINTENDENT shall be paid a compensation salary total from which he may elect to have District Group Insurance paid through the District 's Group Insurance premiums paid through the District's Section 125 plan.]

2) Regarding these clauses, The Committee finds the following:

a) In the 1992-93 school year, Colchester C.U.S.D. had reported health insurance and a moving expense reimbursement as creditable earnings on behalf of Mr. Taylor in derogation of TRS Rule 1650.450 (c)(3) which states:

c) *Examples of amounts not reportable to the System includes:*

3) *Expense reimbursements, expense allowances, or fringe benefits unless included in a reportable flexible benefit plan;*

b) In the 1993-94 and 1994-95 school years, Mr. Taylor's contract presented the same problem as in the 1992-93 school year. Colchester was segregating the cost of health insurance from base salary, adding it back to Mr. Taylor's base salary for TRS reporting purposes, and then deducting it from Mr. Taylor's paycheck to remit to the school's health insurance carrier.

c) In the 1995-96 through 1998-99 school years, which coincidentally were Mr. Taylor's final four years of teaching and the four years used to calculate his retirement benefit, Taylor's fringe benefit reporting problem was resolved by a contract change which provide for a gross salary from which health insurance was deducted rather than added on as in his first three school years with Colchester. However, the change invoked TRS Rule 1650.450(c)(5) which states:

c) *Examples of amounts not reportable to the System include:*

5) *Any amount paid in lieu of previously non-reportable 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.*

- 3) The Committee finds that by changing his compensation structure in the 1995-96 school year to receive a gross salary from which health insurance was deducted from a compensation structure where health insurance was added to base salary and deducted back out, Mr. Taylor ran afoul of Rule 1650.450(c)(5).
- 4) TRS staff properly disallowed \$5,330.94 per school year between the 1995-96 and 1998-99 school years, which constituted the cost of health insurance which had been converted to TRS "salary" in derogation of TRS Rule 1650.450(c)(5).
- 5) Based on these adjustments, Mr. Taylor's initial TRS retirement annuity was properly reduced from \$5,131.25 per month to \$4,781.41 per month.
- 6) Mr. Taylor paid federal income taxes on all earnings disallowed by the System in the school years in which they were reported to TRS as creditable earnings. However, this is irrelevant to the determination of creditable earnings for TRS purposes.
- 7) Mr. Taylor never raised a claim of mutual mistake of fact with Colchester in regard to his employment contracts with Colchester.
- 8) It was not until he filed his administrative review with the System that Mr. Taylor claimed a mutual mistake of fact in relation to his contracts with Colchester and that claim was raised solely with TRS.

- 9) The Committee finds that staff correctly interpreted Mr. Taylor's contracts and properly applied §16-121 and Rule 1650.450 when it disallowed those items of compensation at issue in this case. The Committee further finds that the affidavits submitted on behalf of Mr. Taylor support the staff's documentary and factual conclusions.
- 10) In particular, the Committee finds that the affidavits of Mr. Taylor and Stephen Richbark, Colchester's School Board President in 1992, support the staff's and the Committee's conclusion that Mr. Taylor's 1992-93 contract had three component parts, a base compensation figure, a health insurance component and a moving expense component. The affidavits of all the Board members concur with Mr. Taylor and Mr. Richbark.
- 11) The affidavit of attorney T.J. Wilson is so devoid of recollection, the Committee finds it to be of no probative value.
- 12) Taylor's other affiants go on in their affidavits to state legal conclusions about the creditability of the compensation and their intent that such compensation be TRS creditable. However, the Committee finds that only the TRS Board of Trustees, has the power to determine creditability of earnings under the Pension Code.
- 13) The Committee finds that school districts and their employees have absolutely no statutory authority to determine creditable earnings nor to guarantee the creditability of earnings each to the other in employment contracts.
- 14) Lastly, the Committee finds that Mr. Taylor never participated in a reportable flexible benefit plan as defined in TRS Rule 1650.450(b)(6) while employed by Colchester.

V. Discussion and Analysis

When determining the creditability of compensation for TRS "salary" purposes under the provisions of 40 ILCS 5/16-121 and TRS Rule 1650.450, the Claims Hearing Committee must review all relevant documents and facts. After such review, the Committee then applies the law to determine creditability.

Mr. Taylor claims a mutual mistake of fact in the drafting of his 1992-93 through 1994-95 contracts. As stated in Village of Oak Park v. Schwerdtner, 288 Ill.App. 3d 716, 718 (1997):

We first address defendant's argument that the contract was based on a mutual mistake. To invalidate a contract because of mutual mistake, a party must show by clear and convincing evidence that a mistake has been made by both parties relating to a material feature of the contract. Keller v. State Farm Insurance Co., 180 Ill.App. 3d 539, 548, 536 N.E.2d 194, 129 Ill.Dec. 510 (1989). A mutual mistake is one where both parties understand that the real agreement is what one party alleges to be; then, unintentionally, a contract is drafted and signed that does not express the true agreement. See In re Marriage of Johnson, 237 Ill.App. 3d 381, 391, 604 N.E.2d 378, 178 Ill.Dec. 122 (1992); Black's Law Dictionary 1001 (6th ed. 1990) ("Mutual mistake is where the parties have a common intention, but it is induced by a common or mutual mistake.")

There was no mistake of fact as to the components and structure of Mr. Taylor's contracts. Mr. Taylor was paid all that he was due under all his contracts. Whether the earnings were creditable for TRS purposes is another matter. That is a question of law, and as stated in Estate of Hurst, 329 Ill.App. 3d 326, 335 and 336 (2002):

"Whatever is clearly shown that parties in their dealings with each other have acted under a common mistake of law and the party injured thereby can be relieved without doing injury to others, equity will afford him redress." Barkhausen, 3 Ill. 2d at 270, 120 N.E.2d at 657-58, quoting Peter, 343 Ill. At 499-500, 175 N.E. at 849. (Emphasis added)

A mistake of law claim is available to reform a contract under the very limited situation when such reformation causes absolutely no injury to any other affected party. Given that Taylor's contracts cannot be reformed without doing harm to TRS, the innocent third party in this situation, the law does not allow for reformation. Furthermore, the Committee cannot disregard the plain and unambiguous contracts in question merely based upon the self serving assertions made in petitioner's affidavits.

Having determined that reformation is not available to Taylor, the application of TRS' salary rule, 1650.450, is clear. Colchester misreported Taylor's moving expense reimbursements and health insurance costs in the 1992-93 through 1994-95 school years under that portion of 1650.450 which states:

c) *Examples of amounts not reportable to the System include:*

3) *Expense reimbursements, expense allowances, or fringe benefits unless included in a reportable flexible benefit plan;*

Accordingly, when Taylor changed his compensation structure in 1995-96 to gross up his salary, he ran afoul of the TRS conversion rule, 1650.450(c)(5), which provide the following to not be "salary" for TRS purposes:

Any amount paid in lieu of previously non-reportable 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, 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 finds that Mr. Taylor's situation is no different than that found in its decisions in the Joseph Ellis and William Hovey Administrative Reviews, prior conversion cases decided by the Board (attached).

With regard to Mr. Taylor's argument that he overcame the presumption of conversion because he paid income tax on his non-reportable moving expense allowance and health insurance, the Committee notes that the Fourth Appellate Court ruled in Barton v. Bd. of Trustees of TRS, No.4-96-0735 (March 26, 1997)

Likewise, it is not significant that the District deducts state and federal income taxes from the contribution payments. Salary, for purposes for the Code, is not taxable income. (Barton at p.9).

The Committee finds that the sole purpose of Taylor's change in compensation structure in the 1995-96 school year was to increase his final average salary.

VI. Conclusion

Based on the foregoing, the Claims Hearing Committee finds in favor of staff in this matter. Mr. Taylor's change in compensation structure violated the provisions of TRS 1650.450(c)(5). Furthermore, Mr. Taylor provided no evidence to overcome the presumption that the change was done solely to increase his final average salary for retirement annuity enhancement purposes.

VII. Notice of Right to File Exceptions

Exceptions to the Claims 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.