

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

In the Matter of:)
)
)
Ronald Van Horn)
)
Petitioner.)

**PROPOSED DECISION RECOMMENDED
BY THE
CLAIMS HEARING COMMITTEE
IN THE
ADMINISTRATIVE REVIEW OF RONALD VAN HORN**

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner Ronald Van Horn 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 at TRS Headquarters in Springfield on May 18, 2007 to consider Mr. Van Horn's appeal. Present were, Committee Chairman Sharon Leggett and Committee members Jan Cleveland and James Bruner

Petitioner Van Horn filed the instant administrative review to challenge the System's disallowance of otherwise reportable earnings based upon the application of the "TRS conversion rule." Specifically, Mr. Van Horn elected to participate in a district administrator flexible benefit arrangement in his last three school years of employment prior to retirement (a change in compensation that resulted in converting his prior noncreditable district paid health insurance stipend into creditable earnings which increased his TRS retirement annuity).

Mr. Van Horn claims he had a change in family status (a divorce in 1999) that would overcome the application of the "TRS conversion rule" to his change in compensation structure to a creditable flexible benefit arrangement in the 2003 –

04 school year. However, after considering the pleadings of the parties 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 the staff correctly applied the "TRS conversion rule" to Mr. Van Horn's change in compensation structure in the 2003-04 school year.

II. Explanation of the "TRS Conversion Rule"

The "TRS conversion rule" is found at 80 Ill. Adm. 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. 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);

As explained in the TRS Employer Guide in Chapter 5, on pages 33 and 34, non-creditable earnings include:

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.

Example 46: Noncreditable earnings - converting fringe benefits to 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 \$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 “TRS conversion rule” looks at compensation, creditable and noncreditable, due or payable in a member’s school year of employment based upon 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 determination of whether conversion occurred and whether there is a valid reason to justify and overcome the conversion are both questions of fact.

III. Application of the “TRS conversion rule” to Mr. Van Horn

- 1) Mr. Van Horn was employed as an administrator by Sesser-Valier CUSD #196 prior to his retirement.
- 2) On October 14, 2003, Sesser-Valier adopted an Administrator Flexible Benefit Plan.
- 3) Mr. Van Horn elected participation in that plan on November 7, 2003.
- 4) Mr. Van Horn converted his health insurance (non-creditable compensation) to a flexible benefit plan (creditable compensation) in the 2003-04 School Year
- 5) Mr. Van Horn retired June 1, 2006.
- 6) Based upon Mr. Van Horn’s conversion of health insurance to a flexible benefit arrangement, the System reduced Mr. Van Horn’s creditable earnings as follows:

2005 – 06 School Year from \$109,170.00 to \$104,600.00

2004 – 05 School Year from \$103,230.00 to \$98,944.00

2003 – 04 School Year from \$100,434.77 to \$96,148.77

- 7) Mr. Van Horn’s TRS pension after removing the impermissible earnings based on the conversion rule was determined to be \$5,958.45.

- 8) Mr. Van Horn's unreduced TRS pension if the conversion rule were not applied would have been \$6,163.79.

Mr. Van Horn argues his flexible benefit arrangement is creditable earnings (\$325.00 cash or contribution to an eligible tax sheltered annuity in lieu of \$325.00 health insurance stipend) pursuant to 80 Ill. Adm. Code 1650.450(b)(6). This would be true but for the "conversion rule." The timing of the change in Mr. Van Horn's structure was in his last three years school years prior to retirement and increased his creditable earnings while decreasing his noncreditable earnings in those school years. Accordingly, the Committee finds that conversion took place.

IV. Mr. Van Horn's claim that he overcame "conversion"

Mr. Van Horn makes two arguments that he overcame the TRS conversion rule. First he claims his divorce in 1999 resulted in a change in family status that would justify his change in compensation. Second, he claims that offering a flexible benefit arrangement to the new superintendent who was employed by the district in Mr. Van Horn's last year of employment is somehow a justification for his change in compensation two years previously. The Committee finds neither of these arguments persuasive.

Divorce

Mr. Van Horn's divorce occurred four years prior to his change in compensation structure. His obligation to pay for his former spouse's health insurance ended on January 12, 2002, one and a half years prior to his change in compensation structure. Had Mr. Van Horn's employer paid for his ex-spouse's health insurance coverage, and if he had been released from that obligation, that would have been a valid reason for the compensation change and we would not be deciding this case. However, Mr. Van Horn only received a stipend toward his own health insurance coverage. His health coverage had no connection to his wife and is no justification for his change in compensation structure.

Mr. Van Horn also claims that after his divorce he took the opportunity to shop for cheaper health insurance. However, shopping for health insurance is not a justification that overcomes "conversion." The bottom line is that Mr. Van Horn received the same amount of compensation; however, the flexible benefit arrangement would have made it creditable, but for the "conversion rule."

New Superintendent

In applying the “conversion rule,” TRS looks at what happens in the school year of “conversion” (in this case, the 2003 – 04 school year). In that school year, the only three administrators employed by Sesser-Valier, all of whom retired within the next three years, converted salary. All three were subject to the “conversion rule.” Had the flexible benefit arrangement covered administrators who were not within seven years of retirement as well as those who were, the System would have considered this to be a valid, across-the-board change excusing “conversion;” but again, this was not the case.

V. Conclusion

The Claims Hearing Committee finds in favor of the staff in this matter. Mr. Van Horn clearly violated the TRS “conversion rule” and offered no valid argument to overcome the rule. It is clear to the Committee that Mr. Van Horn’s change in compensation structure was instituted to enhance his TRS pension in derogation of 80 Ill. Adm. Code 1650.450(c)(6).

VI. 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.