

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

In the Matter of:)
)
 COMMUNITY UNIT)
 SCHOOL DISTRICT)
 NO. 300, et al.,)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF COMMUNITY
UNIT SCHOOL DISTRICT NO. 300, ET AL.**

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.610 et seq., an administrative review hearing was held May 23, 1995, in Chicago, Illinois, to consider the appeal of Community Unit School District No. 300 (District No. 300)¹ and the Local Education Association of District No. 300 (LEA). Petitioners challenge the staff determination that the amounts paid by the District directly to the members of the LEA to cover their 4% employee Early Retirement Incentive (ERI) contribution is not reportable to TRS as creditable earnings.

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, James Bruner 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. District No. 300 was represented by attorney Charles Rose. The LEA was represented by attorney Betty Thielman, Illinois Education Association-NEA.

After hearing the presentations of the Parties and considering all the pleadings and hearing exhibits presented in support of their respective positions, it is the determination of the Claims Hearing Committee that, under the provisions of

¹ Community Unit School District No. 300 is located in Carpentersville, Illinois.

40 ILCS 5/16-121 and TRS Rule 1650.450(c)(6) [80 Ill. Admin. Code § 1650.450(c)(6)], that employer-paid employee ERI contributions, whether made to the System directly or to the employee to be forwarded to TRS, are not reportable as creditable earnings to TRS. Accordingly, the 4% employee contribution paid by District No. 300 to its ERI retirees cannot be included to increase their final year average salaries for benefit computation purposes.

II. Relevant Statutes and Rules

In the instant administrative review, the Claims Hearing Committee must apply 40 ILCS 5/16-121, Salary,² and TRS Rule 1650.450, Definition of Salary. Specifically, the Committee must determine the applicability of TRS Rule 1650.450(c)(6), which states:

- c) Examples of amounts not to be reported to the System include: . . .
 - 6) Any amount paid by an employer as the employer's one time contribution (or on behalf of the employee as the employee's one-time contribution) required by the System as part of the statutory early retirement option in Section 16-133.2 of the Act; . . .

III. Issue Statement

The Parties agreed at hearing upon the following issue statement:

Under the provisions of 40 ILCS 5/16-133.5(c) and TRS Rule 1650.450(c)(6), is the amount paid directly by an employer to an employee, which is equal to the 4% employee Early Retirement Incentive (ERI) contribution, reportable to the System as creditable earnings?

The Committee finds this issue statement to be accurate with one proviso. The issue statement should be amended to read as follows:

² "Salary": 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.

Under the provisions of 40 ILCS 5/16-121, Salary, and TRS Rule 1650.450(c)(6), is the amount paid directly by an employer to an employee, which is equal to the 4% employee Early Retirement Incentive (ERI) contribution reportable to the System as creditable earnings?

The Board finds this change to more accurately state what the Committee must decide: are the payments in question recognizable as salary under the rules of the Board?

IV. Statement of Facts

The Parties did not agree upon a statement of facts. Accordingly, based upon a thorough review of all the hearing exhibits, the Claims Hearing Committee determines the following to be the facts of the case:

- 1) On January 25, 1994, Community Unit School District No. 300 (District) and the Local Education Association of District No. 300 (LEA) entered into a Letter of Agreement, which provided that employees participating in the Early Retirement Incentive (ERI) Program:

“... will receive an amount of money from the Board sufficient to pay the member’s share of the TRS Penalty for ERI...” (TRS Hearing Exhibit A).
- 2) Twenty District No. 300 employees were covered by the January 25, 1994, ERI incentive agreement.
- 3) On January 13, 1993, prior to District No. 300’s Letter Agreement with LEA, TRS issued Information Bulletin No. 0050-93, which stated:
If a member’s employer elects to pay all or part of the member’s Early Retirement Incentive cost prior to retirement, this payment is NOT included in the member’s creditable earnings and therefore has no effect on the calculation of average salary. (TRS Hearing Exhibit I).
- 4) The Claims Hearing Committee specifically finds that the payments received by District No. 300’s retiring LEA members were employer payments of their ERI employee contributions.

- 5) Neither District No. 300 nor LEA contacted TRS to inquire if the payments made to the retiring LEA members to cover their ERI employee contributions was reportable as creditable earnings.

V. Position of the Parties

It is Petitioners' position that:

- 1) The sums in question were paid as an incentive and TRS accepts incentives as creditable earnings;
- 2) TRS Rule 1650.450(c)(6) is inapplicable for the following reasons: (a) the sums in question were paid to the member and not TRS; (b) the Agreement did not state the money from the payment had to be forwarded to TRS; and (c) the sums in question were taxed so the amounts paid were actually less than the employees' 4% ERI contributions;
- 3) TRS Rule 1650.450(c)(6) is ambiguous and did not provide sufficient notice to the Petitioners that their Agreement was problematic; and
- 4) TRS has accepted similar arrangements to the one at issue herein as creditable earnings in relation to the Early Retirement Option (ERO) Program.

It is the position of the System that:

- 1) Whether made to an employee or to the System, employer-paid employee ERI contributions are not reportable as creditable earnings;
- 2) The sums at issue in this case were paid to cover the retirees' 4% ERI employee contribution. That the employee could have used another pot of money to pay TRS does not change the nature of the payment;
- 3) TRS Rule 1650.450 and TRS Information Bulletin No. 0050-93 gave sufficient notice to the Petitioners that their arrangement would not result in the crediting of the payments at issue; and

- 4) It has been TRS' long-term, consistent position beginning with the Early Retirement Option (ERO) Program that employer-paid employee contributions are not reportable as creditable earnings.

VI. Discussion and Analysis

1) Petitioners first argue that their Agreement is a retirement incentive and should be reportable under paragraph (b)(4) of TRS Rule 1650.450. However, paragraph (c)(6) of Rule 1650.450 specifically disallows the reporting of employer-paid employee early retirement contributions as creditable earnings. While other types of retirement incentives may be reportable, the Board has seen fit to exclude employer-paid employee early retirement contributions because the payments are merely pass-throughs that wind up in the hands of the System. Such payments are not in fact additional income to the member. If TRS were to allow arrangements such as the one herein, TRS would in effect be using its own funds to boost a member's final average for benefit calculation purposes. This is not the intent of the Pension Code nor the ERI Program.

2) The Petitioners next argue that the payments herein do not fall under the purview of Rule 1650.450(c)(6) because: (a) they were made to the members; (2) the Agreement did not state they had to be forwarded to TRS; and (3) they were taxed. The Committee finds these arguments unconvincing. Rule 1650.450(c)(6) states as follows:

- c) Examples of amounts not to be reported to the System include: . . .
 - 6) Any amount paid by an employer as the employer's one time contribution (or on behalf of the employee as the employee's one-time contribution) required by the System as part of the statutory early retirement option in Section 16-133.2 of the Act; . . .

The Committee finds that it does not matter that the employee contributions were paid to the member instead of the System directly. Rule 1650.450(c)(6) prevents the reporting of any amount paid by the employer. There is no distinction in the rule allowing the member to avoid Rule 1650.450(c)(6)'s impact by passing the contribution through the member's hands first.

Furthermore, it does not matter that the Agreement did not require the LEA retirees to use the funds from the check containing the employer-paid employee contribution amounts to pay TRS. The retirees still had to pay TRS the 4% ERI contribution. That another pot of money might be used to pay the payment does not change the purpose of the payment, which is to cover the 4% ERI contribution.

Nor does it matter that the amounts in question were taxed when paid to the employee.³ Again, the purpose of the payment is controlling. As clearly stated in the Agreement:

2. EARLY RETIREMENT INCENTIVE. Members of the Bargaining Unit who elect to retire under ERI and who submit a letter of retirement to the Board by 12:00 noon, February 15, 1994 will receive an amount of money from the Board sufficient to pay the member's share of the TRS Penalty for ERI. The payment shall be made in two installments the first being made after July 1, 1994 and prior to July 15, 1994: the second thirty days prior to the date the payment is due to TRS. The first payment will be the amount equal to one half of what the member's penalty would be without any ERI money paid. The second payment will be the amount equal to the difference between the first payment and what is required to satisfy the TRS penalty owed by the member. (Emphasis added).

3) Petitioners go on to argue that TRS Rule 1650.450(c)(6) is ambiguous and did not alert them that the payments in question would not be reportable as creditable earnings. Again, the Committee is not persuaded by this assertion.

To provide guidance to the System's employers and membership in the reporting of earnings, the Board has duly promulgated TRS Rule 1650.450, Definition of Salary. TRS Rule 1650.450 sets forth examples of what is and what is not recognized by the System as reportable salary.⁴ As stated in paragraph (a):

. . . Subsection (b) of this Section lists the more common elements of compensation that are recognized by the System as "salary."

³ The Agreement mentions nothing about taxes. The Committee notes that an amount "sufficient to pay the member's share of the TRS penalty for ERI" could be interpreted to include an amount necessary to cover the taxes thereon as well. However, this is an issue for Petitioners to decide between themselves.

⁴ Pay arrangements in the Illinois public schools are so variable in nature there is absolutely no way they could all be encompassed in one reporting rule.

However, “salary” within the meaning of Section 16-121 of the Act is not limited to the items so enumerated.

This proviso clearly places employers and members on notice that because a pay arrangement is not specifically mentioned in Rule 1650.450, it does not mean that the pay arrangement is automatically reportable to TRS.

In the instant case, Rule 1650.450(c)(6) should have alerted District No. 300 and LEA that District No. 300’s payment of the 4% employee ERI contribution was not reportable as salary. Again, as stated therein:

(c) Examples of amounts not to be reported to the System include: . . .

- 6) Any amount paid by an employer as the employer’s one time contribution (or on behalf of the employee as the employee’s one-time contribution) required by the System as part of the statutory early retirement option in Section 16-133.2 of the Act . . . (Emphasis added).

The Board finds that paragraph (c)(6) was sufficiently illustrative to cover ERI employer-paid employee contributions within its prohibition. That § 16-133.5, the provision the LEA members retired under, is not specifically referenced therein does not negate (c)(6)’s applicability.

Rule 1650.450(c)(6) was adopted October 29, 1990. Since then, the Illinois General Assembly has enacted numerous amendments to Article 16 of the Illinois Pension Code. During this period, the General Assembly has not seen fit to enact legislation overturning TRS’ position regarding the reportability of employer-paid employee contributions. As stated in Freeman Coal v. Ruff, 228 N.E.2d 279 (1967):

Rules of statutory construction are tools or aids for ascertaining legislative intention and the application of a particular rule is not in and of itself determinative of legislative intention. It is, of course, axiomatic that long-standing contemporaneous construction by ones charged with the administration of a particular statute is entitled to great weight in construing the statute. This doctrine of contemporaneous construction becomes even more persuasive when it has been of long-standing and the legislature, presumably aware of the

administrative interpretation, has amended other sections of the act during the period involved but left untouched the sections subject to the seemingly approved administrative interpretation. Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 414 Ill. 275, 111 N.E.2d 329 (1953). Bell v. South Cook Co. Mosquito Abatement Dist., 3 Ill. 2d 353, 121 N.E.2d 473 (1954). Mississippi River Fuel Corp. v. Illinois Commerce Comm'n, 1 Ill.2d 509, 116 N.E.2d 394 (1953). (Emphasis added.) (Ruff at p. 282.)

When the General Assembly passed the ERI Program into law with an employee contribution provision similar to that of the Early Retirement Option Program, it was aware of the System's interpretation regarding the reportability of employer paid employee contributions, yet it included nothing in § 16-133.5 to change the System's long-settled interpretation. Clearly, the legislature has concurred in TRS' construction of § 16-133.5 by its past actions regarding § 16-133.2 and TRS Rule 1650.450(c)(6).

Furthermore, TRS informed its membership on January 13, 1993, that employer paid employee ERI contributions were not reportable as creditable earnings. As stated in TRS Information Bulletin 0050-93 (TRS Hearing Exhibit K):

If a member's employer elects to pay all or part of the member's Early Retirement Incentive cost prior to retirement, this payment is **not** included in the member's creditable earnings and therefore has no effect on the calculation of average salary.

By this bulletin, TRS clearly placed District No. 300 and LEA on notice that the payments at issue were not reportable to TRS when they entered into their agreement on January 25, 1994.

4) No proof was offered by Petitioners for their claim that TRS had accepted similar pay arrangements in the Early Retirement Option (ERO) Program. TRS has denied the assertion and points out that TRS Rule 1650.450(c)(6) bars the reporting of such pay arrangements. The Committee finds Petitioners' past practice claim to be unsubstantiated.

VII. Conclusion

Based upon the foregoing, it is the Claims Hearing Committee's recommendation that the staff determination in the instant case be upheld and that Petitioners' request to report the payments made to the LEA's retirees to cover the 4% ERI employee contribution be denied.

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 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.