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

In the Matter of:	)
Earlville CUSD 9	)
Petitioner	)

RECOMMENDED DECISION OF THE CLAIMS HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW OF EARLVILLE CUSD 9

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e) an administrative review hearing was conducted by the TRS Claims Hearing Committee on October 29, 2018, to consider the appeal of Petitioner Earlville CUSD 9 (Earlville or District) challenging the assessment of a 6% excess employer cost to the District in relation to the retirement of Earlville former employee Wade Winekauf in the amount of $50,474.27.

The TRS Board of Trustees (Board), the trier of fact in this matter as provided by TRS Rule 1650.520 (80 Ill. Admin. Code 1650.620), was represented at hearing by its Claims Hearing Committee comprised of the following Board members: Chairperson Mark Bailey, Laura Pearl and Daniel Winter. Thomas Gray of Whitt Law LLC served as Presiding Hearing Officer. By agreement of the parties, the matter was presented to the Board solely upon the agreed hearing record. The District was represented by Todd Hayden and Susan Glover of Robbins, Schwartz, Nicholas, Lifton & Taylor, LTD. The System was represented by Scott Spooner of Kopec, White & Spooner.

After reviewing the briefs and exhibits submitted by the parties, it is the determination of the Claims Hearing Committee that the TRS staff correctly computed the 6% excess employer cost assessed Earlville under the provisions of 40 ILCS 5/16-158(f) and TRS Rule 1650.481 (80 Ill. Admin. Code 1650.481). The Committee further finds that Earlville cannot step into the shoes of TRS member Winekauf to assert a claim for additional service credit [(the reduction of which

Winekauf did not challenge within the 6 month time period provided in TRS Rule 1650.620 (80 Ill. Admin. Code 1650.620)] which caused Earlville's excess employer cost to increase from $25,648.94 to $50,474.27.

II. Relevant Statute and Rule

In this case, the Claims Hearing Committee and the Board must apply the following Statute and TRS Rule.

40 ILCS 5/16-158(f): *If the amount of a teacher's salary for any school year used to determine final average salary exceeds the member's annual full-time salary rate with the same employer for the previous school year by more than 6%, the teacher's employer shall pay to the System, in addition to all other payments required under this Section and in accordance with guidelines established by the System, the present value of the increase in benefits resulting from the portion of the increase in salary that is in excess of 6%. This present value shall be computed by the System on the basis of the actuarial assumptions and tables used in the most recent actuarial valuation of the System that is available at the time of the computation. If a teacher's salary for the 2005-2006 school year is used to determine final average salary under this subsection (f), then the changes made to this subsection (f) by Public Act 94-1057 shall apply in calculating whether the increase in his or her salary is in excess of 6%.*

80 Ill. Admin. Code 1650.481:
The employer contribution required under 40 ILCS 5/16-158(f) will be determined as follows:

a) Calculate the member's monthly benefit using salaries as reported, excluding that part of the member's salary that exceeds the member's annual full-time salary rate with the same employer for the preceding year by more than 20%.

b) Calculate the member's monthly benefit using salaries as reported, excluding that part of the member's salary that exceeds the member's salary with the same employer for the preceding year by more than 6%.

c) Subtract (b) from (a).

d) Multiply (c) by a Monthly Benefit Factor for the member's exact age at the retirement date. The Monthly Benefit Factors are based on the actuarial assumptions of the System for life expectancy and investment return as determined by the System's actuaries at five year intervals pursuant to 40 ILCS 5/16-176.

III. Issues to Be Decided

In this administrative review, the Claims Hearing Committee must decide the following:

1) Did TRS staff correctly calculate the excess employer cost assessed in relation to the retirement of Wade Winekauf as required under the provisions of 40 ILCS 5/16-158(f) and TRS rule 1650.481?

2) Is Earlville bound by Winekauf's failure to challenge TRS' reduction of his retirement benefit by disallowing service credit for the time he was "working from home" after the Earlville School Board barred him from school property when he was charged with domestic battery?

3) Is TRS service credit available to a principal / school superintendent who is barred from school property and is "working from home" based upon an oral agreement while his employing school district investigates the criminal charges lodged against him?

IV. Facts

Earlville CUSD 9 is a school district located in LaSalle County, Illinois. In November of 2015, Wade Winekauf served in a dual capacity as Earlville's Principal / Superintendent of Schools. On November 27, 2015, Winekauf was arrested by Ogle County law enforcement officials on a charge of domestic battery. Thereafter, on December 3, 2015, Earlville's School Board announced it was investigating Winekauf's situation and that he would not be allowed on school property pending completion of the Board's investigation.

After its announcement, Earlville did not terminate Winekauf nor was he suspended or placed on a leave of absence. Instead, the district arranged for Winekauf to "work from home" while it conducted its investigation. Winekauf received his regular pay until March 11, 2016, when he reached an agreement with Earlville to resign his principal / superintendent position and retire with TRS.

TRS performed an initial review of Winekauf's reported earnings and assessed an excess employer cost of $25,648.94. Thereafter, TRS audited Mr. Winekauf's retirement file and determined his "work from home" did not constitute creditable service. Disallowance of this period resulted in an additional excess

employer cost of $24,825.33. Mr. Winekauf did not challenge the reduction of his creditable service and its impact on his TRS pension.

V. Excess Cost Calculation

The calculation of an excess employer cost is a mathematical exercise as prescribed by statute and rule. When Mr. Winekauf retired, Earlville provided TRS the following salary information.

2015-16 School Year	$148,111.18
2014-15 School Year	$139,728.18
2013-14 School Year	$131,907.71
2012-13 School Year	$119,622.54

Because Mr. Winekauf's salary increase from the 2012-13 School Year to the 2013-14 School Year exceeded the statutory 6% threshold by $5,107.82 (an increase of 10.269%), a $25,648.94 excess employer cost was assessed by the System. Earlville has paid this amount.

After auditing Mr. Winekauf's retirement record, TRS determined that Winekauf was not entitled to service credit for the time he "worked from home" while barred from school property. Since Winekauf had less than a year of service credit in the 2015-16 School Year, the System used the excess employer cost calculation in TRS Rule 1650.481.

Salary used in final average salary calculation	**/ Salary subject to 6% cap**	
2015-16 School Year	$90,208.51	$79,684.19
2014-15 School Year	$139,728.18	$139,728.18
2013-14 School Year	$131,907,71	$126,799.89
2012-13 School Year	$119,622.54	$115,669.93
2011-12 School Year	$50,414.63	$48,433.84
Average/ 4	$132,970.39	$127,579.01
Service credit factor	x .620085	x .620085
Annual benefit	$82,452.94	$79,109.83
Benefit difference		$3,343.11
Actuarial factor		x 15.098
Employer excess cost		$50,474.27

TRS has billed Earlville for the additional $24,825.33 due which it has not paid.

Earlville has not challenged TRS' mathematical calculation of the excess employer cost at issue in this matter. After reviewing the 40 ILCS 5/16-158(f) and TRS Rule 1650.481, the Committee finds that TRS correctly calculated the excess employer costs assessed Earlville.

VI. Winekauf's Failure to Challenge Retirement Annuity Calculation

It is Earlville's position that Winekauf should have received service credit for the time he "worked from home" and because TRS improperly reduced this amount of service credit, the district owes no excess employer cost. The Committee finds this assertion without merit for the following reasons.

A claim for service credit lies with the TRS member. As provided in 40 ILCS 5/16-127(a), TRS members receive service credit for teaching service; not TRS employers. Also, as stated in 40 ILCS 5/16-125, "[a] member claiming service credit shall file a detailed statement covering the period for which credit is claimed."

Mr. Winekauf is not a party to this proceeding and has not challenged TRS's reduction of his service credit nor filed a claim for service credit as required by sec. 16-125. Mr. Winekauf is not represented by the District's attorneys. It is Mr. Winekauf's responsibility to assert a claim for service credit. There is no statutory authority for a TRS employer to assert claims on behalf of a member without the member's participation in an appeal. As an administrative agency, TRS can act only pursuant to its statutory authority (City of Chicago v. Fair Employment Practices Comm'n (1976), 65 Ill.2d 108, 357 N.e.2d 1154 and Pickering v. Human Rights Comm'n (2nd District, 1986, 146 Ill. App. 3d 340, 496 N.E. 2d 746). There is no basis for TRS to determine Mr. Winekauf's service credit in his absence.

Furthermore, a dispute over service credit cannot negate an excess employer cost when a year to year salary increase used to calculate a member's final average salary for annuity calculation purposes exceeds 6%. As previously determined by the Committee, Mr. Winekauf's initial annuity calculation clearly showed excess increases and this calculation cannot be disputed.

VII. Service Credit for "Work from Home" while Barred from School Property

It is Earlville's position that it had the authority to bar Winekauf from school property and have him "work from home" and that TRS is bound by this agreement. TRS was not a party to this agreement and only became aware of the agreement when auditing Winekauf's retirement file. The Committee finds that while it does not have authority to opine on Earlville's agreement with Winekauf, it does have the authority to determine creditable earnings.

Pursuant to 40 ILCS 5/16-106 (a)(1), a teacher is defined as "[a]ny staff employed in the public common schools included with this system in a position requiring certification under the law governing certification of teachers." Pursuant to 80 Ill. Admin Code 1650.320, service credit is granted for days paid- Monday through Friday- but not for Saturdays or Sundays (except in the rare instance where the Saturday service is required as a lawful day of attendance).

The Committee finds that barring a principal / superintendent from school property and having him "work from home" is inconsistent with being employed in a public common school. Service credit is granted teachers who are employed on a daily basis in the public common schools. While some teaching work is performed away from school premises, the teachers performing such work are not barred from campus and are expected to report into the district and have contact with the district, its employees and its students. 105 ILCS 5/10-21.4 of the Illinois School Code sets forth a host of duties to be performed by a school superintendent on behalf of a school district. Likewise, 105 ILCS 5/10-21.4a of the Illinois School Code sets forth the duties required of a school principal. The positions of school superintendent and school principal are clearly not 'work from home" jobs to be performed by one barred from school property. The Committee finds that Mr. Winekauf was and is not entitled to service credit under the agreement he had with Earlville after his criminal charge.

VIII. Conclusion

The Claims Hearing Committee finds in favor of the staff in this matter. The Committee finds that TRS staff calculated the 6% excess employer cost owed in relation to Wade Winekauf's retirement in full compliance with TRS statute and rule; Earlville has no statutory authority to assert a claim for service credit on behalf of Winekauf; and that staff correctly disallowed service credit for the time Winekauf was barred from school property and "worked from home."

IX. 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 TRS Board of Trustees after it has considered the Claims Hearing Committee's Recommended Decision and any exceptions filed by the Petitioner.