

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

In the Matter of:)
)
)
 Raymond J. Gornik,)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF
RAYMOND J. GORNIK**

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.640(e), Petitioner Raymond Gornik agreed with System staff that Mr. Gornik's 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 January 30, 2001, to consider Mr. Gornik's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman James Bruner and Committee members John Glennon and Sharon Leggett.

It is Mr. Gornik's contention that the pardon he received from Governor James Edgar on March 2, 1998, restored his TRS pension benefits which had previously been forfeited under the provisions of 40 ILCS 5/16-199 due to Mr. Gornik's felony conviction on forty eight (48) counts of official misconduct committed while serving as Regional Superintendent for Will County (Will County Case No. 90-CF-1071). In the alternative, Mr. Gornik argues that he should be restored to a TRS pension excluding his service credit and annual salaries earned as Will County Superintendent of Schools and based solely upon his pre-Will County teaching service.

After reviewing the briefs of the parties, and accompanying exhibits submitted in support thereof and the stipulations of the parties, the Claims Hearing Committee finds in favor of the staff and recommends that Mr. Gornik's claim be denied by the TRS Board of Trustees. The basis for the Committee's decision is as follows.

II. Findings of Fact

Prior to hearing, the parties stipulated to the following facts which the Claims Hearing Committee adopts as the factual findings of this case. They are as follows:

- 1) Raymond J. Gornik initially retired from teaching on June 2, 1984, and began receiving an age retirement annuity from the Illinois Teachers' Retirement System (TRS) in the amount of \$1,835.56 per month.
- 2) Mr. Gornik returned to TRS membership on November 16, 1987, under the provisions of Ill. Rev. Stat. 108 ½ §16-150 (now 40 ILCS 5/16-150).
- 3) Mr. Gornik was serving as Will County Regional Superintendent of Schools when he returned to TRS membership on November 16, 1987.
- 4) On January 31, 1991, Raymond Gornik was convicted in Will County Case No. 90 CF-1071 of 48 counts of official misconduct arising from and relating to his service as Regional Superintendent.
- 5) Under the Illinois Criminal Code, official misconduct is a Class 3 felony and was so at the time of Mr. Gornik's conviction.
- 6) By letter dated March 6, 1991, the Illinois Teachers' Retirement System notified Mr. Gornik that his membership in the System had been terminated under the provisions of Ill. Rev. Stat. 108 ½ §16-199, (now 40 ILCS 5/16-199).
- 7) In the System's letter of March 6, 1991, Mr. Gornik was notified of his right to appeal the System's determination to the TRS Board of Trustees.

- 8) Mr. Gornik did not challenge the System's March 6, 1991, termination of his TRS membership and the right to receive TRS benefits.
- 9) Mr. Gornik was an active TRS member when his membership was terminated under the provisions of Ill. Rev. Stat. 108 ½ §16-199, (now 40 ILCS 5/16-199).
- 10) On March 2, 1998, Mr. Gornik received a general pardon from Governor James Edgar in Case No. 90-CF-107 stating: "Raymond Gornik is hereby acquitted and discharged of and from all further imprisonment and restored to all the rights of citizenship which may have been forfeited by the conviction."
- 11) By letter received at the System on June 8, 1998, Mr. Gornik requested a restoration of his TRS pension benefits.
- 12) By letter dated July 23, 1998, the Teachers' Retirement System denied Mr. Gornik's request for restoration of his TRS pension benefits.
- 13) By letter dated February 11, 1999, Mr. Gornik requested an administrative review to challenge the System's July 23, 1998, decision.
- 14) If Mr. Gornik took a refund from the System under the provision of 40 ILCS 5/16-151, he would receive \$10,499.98.
- 15) Mr. Gornik has not filed a retirement application with the System since his benefits were terminated on March 6, 1991.
- 16) If it was determined that by reason of his pardon, Mr. Gornik was restored to TRS membership retroactively to the date TRS terminated his membership under the provisions of Ill. Rev. Stat. 108 ½ §16-199, he would be eligible to retire retroactively to April 12, 1991.
- 17) Mr. Gornik's retroactive benefits for the period April 12, 1991 to June 30, 1999, would be \$295,281.83.

- 18) If it was determined that by reason of his pardon, Mr. Gornik was restored to TRS membership to the date of his pardon, he would be eligible to retire retroactively to March 2, 1998.
- 19) Mr. Gornik's retroactive benefits for the period March 2, 1998 to June 30, 1999, would be \$42,941.09.
- 20) If it was determined in this proceeding that Mr. Gornik's TRS membership was retroactively reinstated to April 12, 1991, his monthly annuity on July 1, 1999, would be \$3,377.08.
- 21) If it was determined in this proceeding that Mr. Gornik's TRS membership was retroactively reinstated to March 2, 1998, his monthly annuity on July 1, 1999, would be \$2,689.24.

III. Issues to be Decided

The Claims Hearing Committee is faced with the following issues in deciding this case.

- 1) Did the pardon granted by Governor Edgar to Mr. Gornik restore his TRS pension benefits retroactively to the date such benefits were previously forfeited under the provisions of 40 ILCS 5/16-199, or in the alternative, to his date of pardon?
- 2) Is membership in a public pension system a right of citizenship?
- 3) Is Mr. Gornik's TRS pension severable under the provision of 40 ILCS 5/16-199 and 16-150?
- 4) Do the felony forfeiture provisions of 40 ILCS 5/16-199 apply to Mr. Gornik?
- 5) Does the felony forfeiture provision set forth in 40 ILCS 5/16-199 constitute an injustice to Mr. Gornik?

IV. Discussion and Analysis

1) **Introductory Remarks**

Prior to denying Mr. Gornik's benefits reinstatement request, System staff referred Mr. Gornik's request to the Office of Attorney General James Ryan for an Attorney General Opinion. Attorney General Ryan issued his opinion on August 5, 1998. Therein, Attorney General Ryan concluded that Mr. Gornik's pardon in no way entitled him to a restoration of TRS benefits. The Committee finds Attorney General Ryan's analysis persuasive and adopts his opinion as part of the basis for its proposed decision in this matter. The opinion is hereby incorporated by the Committee as an exhibit to this decision.

Furthermore, before the Committee explains its decision, it would like to take this opportunity to specifically note that the felony forfeiture provision found at 40 ILCS 5/16-199 is not a criminal punishment provision. Rather, §16-199 is a contractual provision designed to deter official misconduct. As stated in Kerner v. State Employees Retirement System, 21 Ill.Dec. 879 (1978):

“The language of the [Illinois Pension] Code is clear and there is no need for this court to construe it so as to give it any meaning other than the one which is clearly stated. It is the duty of the court to enforce the law as enacted according to its plain and unmistakable provisions.” (*Peterson v. Board of Trustees* (1973), 54 Ill.2d 260, 264, 296, N.E.2d 721, 724.) This literal interpretation accords with the obvious purpose of the statute, to discourage official malfeasance by denying the public servant convicted of unfaithfulness to his trust the retirement benefits he otherwise would be entitled. This construction accords, too, with the related purpose of implementing the public's right to conscientious service from those in governmental positions. (Kerner at p. 882).

With the foregoing in mind, the Committee will address the individual issues raised in Mr. Gornik's appeal.

2) **Effect of Pardon**

Mr. Gornik argues that the pardon he received from Governor Edgar served to restore his right to TRS pension benefits based on the holdings in People ex rel. Stine v. City of Chicago, 22 Ill. App. 100 (1921), Bjerkan v. United States, 529 F.2d 125 (7th Cir. 1975) and Knote v. United States, 95 U.S. 149 (1877). The System cites the more recent cases of Talarico v. Dunlap, 226 Ill.Dec. 222 (1997) and People v. Glisson, 14 Ill.Dec. 473 (1978), as well as a host of earlier Illinois cases which conflict with the Stine case, in support of its position that Mr. Gornik's pardon does not wipe clean his felony convictions on 48 counts of official misconduct and that the pardon does not negate the effects of 40 ILCS 5/16-199. The Committee agrees with the System's analysis of the governing case law and its conclusion that the pardon did not act to restore Mr. Gornik's TRS pension based upon the following.

Stine is a 1921 Illinois Supreme Court case dealing with the effect of a gubernatorial pardon on a convicted police officer's eligibility to receive a City of Chicago police pension. In Stine, the Supreme Court determined that the pardon, which restored Stine to all his rights of citizenship which may have been forfeited by his conviction, restored all his civil rights, including his right to his police pension. However, the Stine decision contains absolutely no explanation why the Court concluded the right to a police pension is a civil right. The Committee does not find the Stine case to be well reasoned or persuasive. Furthermore, the Committee finds the Stine Court's conclusion that a pardon blots out a felony conviction to not be an accurate statement of the law in effect today in Illinois today.

The Knote and Bjerkan cases are not on point. They merely stand for the proposition that a pardon restores a person's civil rights. They do not address the issue of what constitutes a civil right.

The Committee finds the Talarico and Glisson cases to be the governing law regarding Mr. Gornik's situation. As stated by the Illinois Supreme Court in 1997 in Talarico:

Some courts have held that a pardon not only relieves punishment for the offender but also blots out the existence of the guilt of the offender. 67A C.J.S. Pardon and Parole §18 (1978). This court, however, has held that a pardon merely releases an inmate from custody

and supervision. People ex rel. Abner v. Kinney, 30 Ill. 2d 201, 205 (1964). Since the very essence of a pardon is forgiveness or remission of penalty, assessed on the basis of the conviction of the offender, a pardon implies guilt; it does not obliterate the fact of the commission of the crime and the conviction thereof. 67A C.J.S. Pardon and Parole §18 (1978). In other words, a pardon ‘involves forgiveness not forgetfulness.’ 29 Ill. L. & Prac. Pardons §1, at 109 (1957); see also People v. Chiappa, 53 Ill. App. 3d 639, 640 (1977). The law in Illinois, though slight, supports a conclusion that Talarico’s pardon did not negate the fact of his criminal conviction for purposes of collateral estoppel. (Talarico at p. 190, 177 Ill. 2d 185).

The court had earlier stated in Glisson:

“It is recognized that the effects of a pardon are not unlimited. (See People v. Rongetti, 395 Ill. 580, 584.) Illustrating this, the legislation has explicitly provided in certain areas for rights and benefits to the pardonee beyond those afforded by the granting of the pardon. For example, it has restored the right to hold public office to certain pardoned persons) Ill. Rev. State. 1975, ch 46, par. 29-15), and has made it possible for persons pardoned on the ground of innocence of the crime involved to have claims considered by the Court of Claims (Ill. Rev. Stat. 1975, ch. 37, par. 439.8(c)). Further illustrating the recognition of the limitations of a pardon on the rights of pardoned persons, the Executive Clemency Rules Book issued by the Illinois Parole and Pardon Board states: ‘The granting of a pardon does not expunge the record. It merely provides official forgiveness, which only in recent years is noted on fingerprint transcripts.’ State of Illinois Department of Corrections, Parole and Pardon Board, Executive Clemency 2 (1973). (Glisson at p. 506, 69 Ill. 2d 502).

Clearly, under current Illinois law, Mr. Gornik’s felony convictions still stands. Since his felony conviction was not blotted out by Governor Edgar’s grant of pardon, the provisions of §16-199 remain in effect with

regard to Mr. Gornik. This analysis is supported in other Illinois cases. As the Attorney General noted:

A general pardon does not restore to the recipient the right to practice law (People ex rel. Deneen v. Gilmore (1905), 214 Ill. 569; People ex rel. Johnson v. George (1900), 186 Ill. 122) or medicine (People v. Rongetti (1947), 395 Ill. 580). It does not render moot an appeal of the conviction which is the subject of the pardon because the pardon does not absolve the guilt of the accused. (People v. Chiappa (1977), Ill. App. 3d 639). Such a pardon does restore the right to run for public office (People ex rel. Symonds v. Gualano (1970), 124 Ill. App. 2d 208) but does not entitle the recipient to the expungement of criminal records. (People v. Glisson (1978), 69 Ill. 2d 502.)

The Committee notes that prior to and after the Stine case was decided, it was never followed by the Illinois Courts. This being the case, the Committee unequivocally rejects Gornik's "blot out the conviction" argument.

3) Pension Right of Citizenship

The Committee further finds the Stine Court erred when it held that the right to a public pension is a civil right. The right to TRS benefits flows from a person's membership in the Teachers' Retirement System and compliance with the provisions of Article 16 of the Illinois Pension Code. Being a citizen of Illinois is not the test to receive a TRS benefit. In fact, non-Illinois citizens participate in TRS. The Stine Court's statement that pension rights are civil rights without any supporting analysis is not viewed as an accurate statement of the law of Illinois today nor considered precedential by the Committee.

As pointed out in the System's Position Statement, the rights of Illinois citizens are found in Article I of the Illinois Constitution. There is no mention therein to the right to a TRS pension. The Committee finds that TRS benefits are not a right of citizenship as clearly demonstrated in the Illinois Constitution. The pension rights of Illinois public workers

are found in §5 of Article 13 of the Illinois Constitution. As stated therein, “membership in any pension or retirement system of the State...shall be an enforceable contractual relationship.” TRS benefits and the right to those benefits are a contractual relationship between a member and the System governed by the provisions of 40 ILCS 5/16-101, et seq. Governor Edgar’s pardon did nothing to restore Mr. Gornik’s TRS pension rights.

Additional support for the Committee’s decision regarding this issue is found in the Unified Code of Corrections, 730 ILCS 5/5-5-5 which sets forth the rights forfeited by reason of a conviction and, therefore, restored by a pardon. As stated therein:

Loss and Restoration of Rights. (a) Conviction and disposition shall not entail the loss by the defendant of any civil rights, except under this Section and Sections 29-6 and 29-10 of The Election Code, as now or hereafter amended.

(b) A person convicted of a felony shall be ineligible to hold an office created by the Constitution of this State until the completion of his sentence.

(c) A person sentenced to imprisonment shall lose his right to vote until release from imprisonment.

(d) On completion of sentence of imprisonment or upon discharge from probation, conditional discharge or periodic imprisonment, or at any time thereafter, all license rights and privileges grant under the authority of this State which have been revoked or suspended because of conviction of an offense shall be restored unless the authority having jurisdiction of such license rights finds after investigation and hearing that restoration is not in the public interest. This paragraph (b) shall not apply to the suspension or revocation of a license to operate a motor vehicle under the Illinois Vehicle Code.

Clearly, the Illinois General Assembly never intended nor considered public pension membership to be a right of citizenship.

With regard to this issue, the Committee further notes that Governor Edgar made no effort in his statement of pardon to restore Mr. Gornik's pension rights.

As stated therein:

Now, Know Ye, that I, Jim Edgar, Governor of the State of Illinois, by virtue of the authority vested in me by the Constitution of this State, do by these presents:

**PARDON
RAYMOND GORNIK**

Of the said crime of which convicted, and Raymond Gornik is hereby acquitted and discharged of and from all further imprisonment and restored to all the rights of citizenship which may have been forfeited by the conviction.

The pardon is clear and unambiguous in its terms. Had the Governor intended to restore Mr. Gornik's pension benefits, he clearly knew how to do so. The absence of such a statement demonstrates to the Committee, the pardon was intended to restore to Mr. Gornik only the civil rights set forth in Article I of the Illinois Constitution and the Unified Code of Corrections.

4) Severable Pension Benefit

In the alternative, Mr. Gornik argues that at minimum he should receive a pension based on the time he was a teacher and only lose that portion of his pension based upon his service as a Regional Superintendent. However, under the provisions of Re-entry, 40 ILCS 5/16-150, which Mr. Gornik fails to mention:

If an annuitant under this System is again employed as a teacher for an aggregate period exceeding that permitted by Section 16-118, his or her retirement

annuity shall be terminated and the annuitant shall thereupon be regarded as an active member. The annuitant's remaining accumulated contributions shall be transferred to the Members' Contribution Reserve from the Employers' Contribution Reserve.

Such annuitant is not entitled to a re-computation of his or her retirement annuity unless at least one full year of creditable service is reached after the latest reentry into service and the annuitant must have rendered at least 3 years of creditable service after last re-entry into service to qualify for a re-computation of the retirement annuity based on amendments enacted while in receipt of a retirement annuity, except when retirement was due to disability.

Mr. Gornik re-entered service under the provisions of § 16-150 when he became Regional Superintendent. Accordingly, his first retirement was terminated and cannot be reinstated. Unfortunately, for Mr. Gornik, his felony conviction terminated his further pension rights accruing though his Regional Superintendent service.

Under Article 16, Mr. Gornik cannot ignore his return to active service. Had the System tried to pay him two separate pensions, one based on his pre-Regional Superintendent service and a second on his Regional Superintendent service, Mr. Gornik would have certainly challenged the System. Mr. Gornik knew that his salary as Regional Superintendent would substantially increase his pension. He voluntarily re-entered service to take advantage of this fact. Having done so, the Committee finds Mr. Gornik must pay the consequences of his felony conviction by having his full membership terminated.

5) Application of §16-199 to Mr. Gornik

Mr. Gornik argues that §16-199 does not apply to him because of his prior July 9, 1955 service. However, §16-199 is clear and unambiguous in its language:

All teachers entering or re-entering service after July 9, 1955 shall be deemed to have consented to the provisions of this Section as a condition of membership.

Having reentered service on November 16, 1987, Mr. Gornik consented to the provisions of §16-199. Mr. Gornik cites Wright v. Board of Trustees of Teachers' Retirement System, 110 Ill.Dec. 1283 (1987) in support of his position that his pre-1955 service takes him out of the purview of §16-199. However, as pointed out previously, under 40 ILCS 5/16-150, Mr. Gornik's first retirement was terminated by his "re-entry" into active service. As stated in Wright:

The trial court correctly concluded that plaintiff reentered the system in 1962 pursuant to a new contract, which included the felony forfeiture provision and that, as a result of his conviction, plaintiff is not entitled to receive benefits from the system. (Wright at p. 257).

Further support for the Committee's decision regarding this issue is found in the case of Mirabella v. Retirement Bd, 145 Ill.Dec. 68 (1990). As stated therein:

Petitioner overlooks the highly significant fact that he applied for and received a refund of his Park District pension contributions. For that reason the analysis of the court in People ex rel. Wright v. The Board of Trustees of the Teachers' Retirement System (1987), 157 Ill. App. 3d 573, 110 Ill. Dec. 252, 510 N.E.2d 1283, which has not been cited by either party, is directly on point. In that case, plaintiff began teaching in the Illinois public school system in 1958, at which time he automatically became a member of the Teachers' Retirement System (TRS). After the 1955-56 school year, he left Illinois to teach in Indiana, and received a refund of his contributions to TRS. He returned to Illinois in 1962, reentered the TRS and remained a member until 1982, at which time he accepted employment with the federal government. He subsequently retired and began receiving pension

benefits from TRS in 1982, after paying an additional \$6,093.97 to reestablish his withdrawn service credit for the school years 1953-54 and 1955-56 and to receive credit of the years spent in Indiana school system. His pension benefits were later terminated pursuant to Ill. Rev. Stat. 1985, ch. 108 1/2, par. 16-199, a forfeiture provision comparable to the one applicable in this case.

The court agreed with TRS' argument that by applying for and accepting a refund of contributions in 1956, plaintiff terminated his membership in the Illinois plan and forfeited any pension benefits he may have acquired as of that time. Consequently, when he reentered TRS in 1962, his status was no different from that of any newly hired individual. The court also rejected plaintiff's argument that his refunding \$6,000 to TRS in order to reestablish his 1953-1956 credits served to reinstate all rights, which he had previously acquired.

In this case, petitioner ceased to be employed by the Park District on September 30, 1955, and did not resume government service again until August 20, 1958. Later, exactly as in Wright, petitioner received a refund from the Park Employees' Annuity and Benefits Fund. His 1958 employment therefore did not restore any right to benefits which may have accrued to him as a result of his earlier employment, a conclusion that is not affected by his later repayment of his contribution refund. (Mirabella at p. 70 and 71).

6) **Injustice to Mr. Gornik**

Lastly, Mr. Gornik claims the forfeiture of his TRS pension is an injustice. However, the Illinois Court in Kerner v. State Emp. Retirement System, 21 Ill.Dec. 897 (1978), has ruled that this is not so. As stated therein:

We have also reviewed plaintiff's claim relating to corruption of blood and forfeiture of estate (Ill. Const. 1970, art. I, sec. 11), cruel and unusual punishment (U.S. Const., amend. VIII), and due process (Ill. Const. 1970, art. I, sec. 2; U.S. Const. Amends. V, XIV). We hold that the termination of payments here violates none of these provisions. (Kerner at p. 833).

Again, the Committee finds that Mr. Gornik knew the consequences of a felony conviction. He chose his course of action and now must suffer the consequences of his bargain with the System to refrain from committing felonies involving teaching service.

V. 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.