

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

In the Matter of)
)
Glenbard Township High)
School District No. 87)
)
Petitioner)

**RECOMMENDED DECISION OF THE CLAIMS HEARING COMMITTEE
IN THE ADMINISTRATIVE REVIEW OF
GLENBARD TOWNSHIP HIGH SCHOOL DISTRICT NO. 87**

I. Introduction

Pursuant to the provisions of 80 Ill. Adm. Code 1650.650, an administrative review hearing was held on October 26, 2011 in Springfield, Illinois, to consider the administrative review of Glenbard Township High School District No. 87 (Glenbard). Present were Presiding Hearing Officer Ralph Loewenstein, Claims Hearing Committee Chairman Cynthia O'Neill, and Claims Hearing Committee member Sonia Walwyn. By agreement of the parties, the matter was presented to the Committee for hearing solely upon the record.

Glenbard has filed the instant administrative review to challenge the employer contributions assessed against Glenbard pursuant to the provisions of 40 ILCS 5/16-158 and 16-128(d-10) due to the retirements of Paula Zimmerman and David Wolfe, non-union administrators in the Glenbard School District. The employer contributions assessed were as follows:

Paula Zimmerman:

\$102,051.99 plus interest of \$10,190.23, as of January, 2011
under §16-158(f).

Total due as of January, 2011 is \$112,242.23

David Wolfe:

\$13,519.20 plus interest of \$1,249.19, as of January, 2011 under §16-158(f) and \$12,631.69 under §16-128(d-10).
Total due as of January, 2011 is \$27,400.08

Interest is still accruing on the 16-158(f) employer assessment for both Zimmerman and Wolfe.

At issue in this matter is whether Glenbard's Administrative Benefit Plan and Glenbard's Collective Bargaining Agreement were separate contracts with the two non-union administrators that were exempt under the provisions of §16-158(f) and 16-128(d-10). For the following reasons, the Claims Hearing Committee finds they were not.

II. Stipulations of the Parties

1. This matter concerns Petitioner's request for an exemption from excess salary and excess sick leave contributions related to Pamela Zimmerman ("Zimmerman") and David Wolfe ("Wolfe").
2. Zimmerman and Wolfe are current TRS annuitants who were previously employed by the District as administrators.
3. Zimmerman and Wolfe received retirement incentives pursuant to the District's Administrative Benefit Plan.
4. The Administrative Benefit Plan was approved by the District's Board of Education on May 16, 2005.
5. The District's collective bargaining agreement for certified staff was also entered into by the Board on May 16, 2005, and had a term of June 4, 2005 through August 9, 2007.
6. Zimmerman and Wolfe had written annual employment contacts with the District.
7. Both Zimmerman and Wolfe fulfilled the notice requirement of the Administrative Benefit Plan, submitting their notices of intent to retire on June 28, 2007 and May 3, 2007, respectively, prior to expiration of the collective bargaining agreement on August 9, 2007.

8. Zimmerman and Wolfe each received salary increases in excess of 6% under the Administrative Benefit Plan. The retirement incentives provided to administrators are listed in the collective bargaining agreement for certified staff.
9. Zimmerman retired with TRS on July 1, 2009. Wolfe retired with TRS on June 11, 2009.
10. TRS assessed the District the following employer contributions under the provisions of 40 ILCS 5/16-158(f) in relation to the retirements of:
 - Paula Zimmerman:
\$102,051.99 plus interest as of January, 2011 of
\$10,190.23
Totals due as of January, 2011 is \$112,242.23
 - David Wolfe
\$13,519.20 plus interest as of January, 2011 of
\$1,249.19
Total due as of January, 2011 is \$14,768.39
11. TRS administrative staff denied the District's claim of an exemption from TRS contributions for Zimmerman and Wolfe by letter dated September 3, 2009.
12. After the District provided further information to TRS Administrative staff, TRS General Counsel, Tom Gray, provided a letter dated November 6, 2009 which provided further rationale for the administrative staff disposition.
13. The District timely filed a petition for administrative review on January 18, 2010.
14. The District was also assessed \$12,631.69 for an award of excess sick leave pursuant to 40 ILCS 5/16-128(d-10) in relation to the retirement of David Wolfe. Interest is not accruing on this amount.
15. On May 4, 2010, TRS provided a letter to Petitioner which further opined that Petitioner "does not qualify for an extended exemption for Mr. Wolfe because his notice of intent to retire was submitted to

District 87 after the expiration of his exempt contract.” With its May 4, 2010 letter, TRS enclosed the same September 3, 2009 staff decision that forms the basis for Petitioner’s pending Request for Administrative Review.

16. The District timely filed an additional petition for administrative review with respect to the contribution assessed for Wolfe’s excess sick leave on June 9, 2010.
17. TRS has never granted an exemption from contributions under 40 ILCS 5/16-128(d-10) or 16-158(g) to a school district employer based upon Section 1650.484(a) or (b) of the TRS Rules.
18. Urbana School District 116, Schaumburg Community Consolidated School District 54 and Glenbard Township High School District 87 are the only three TRS covered employers who have requested an exemption under 40 ILCS 5/16-128(d-10) or 16-158(g) based upon Section 1650.484(c) of the TRS Rules.

III. Additional Facts

Zimmerman was employed under a series of one year contracts, first as the Principal of Glenbard West High School and later as the Associate Superintendent. Her contract for the 2004-2005 school year would have expired on June 30, 2005. She entered into a new contract for the 2005-2006 school year on July 12, 2005 when it was approved by the Board of Education.

When she submitted her Irrevocable Notice of Retirement on June 28, 2007, she was employed under a 12 month administrative contract for the 2006-2007 school year dated February 21, 2006. That contract provided her “employment will at all times confirm (sic) to the policies of the Board as they presently exist or as they exist in the future.”

Wolfe was also employed under a series of one year contacts as Assistant Principal at Glenbard East High School. His contract for the 2004-2005 school year would have also expired on June 30, 2005. He entered into a new contract for the 2005-2006 school year on July 12, 2005 when it was approved by the Board of Education.

When he submitted his Irrevocable Notice of Retirement on May 3, 2007, he was employed under a 10 month Administrative Contract dated May 26, 2006. That contract provided that he was entitled to fringe benefits for Administrators as provided by Board of Education action.

As stipulated, both Administrators received retirement incentives pursuant to the Administrative Benefit Plan that was in effect as of the time they respectively submitted their notices of retirement.

The Collective Bargaining Agreement makes clear in the recognition clause that because of their administrative positions, neither Zimmerman nor Wolfe was covered by the CBA, nor could they be under the Illinois Educational Labor Relations Act, 115 ILCS 5/2.

IV. Analysis

Initially, Glenbard claimed it was exempt from the employer contributions at issue under the provisions of 80 Ill. Adm. Code 1650.484, Members Not Covered by Collective Bargaining Agreements or Employment Contracts. It was subsequently discovered that Zimmerman and Wolfe were employed under written one year employment contracts making TRS Rule 1650.484 inapplicable.

Thereafter, Glenbard argued that Zimmerman and Wolfe were not only employed under written annual contracts but also under the District Administrative Benefit Plan and the District's Collective Bargaining Agreement (CBA) which ran from June 4, 2005 through August 9, 2007.

For reasons included in the additional facts, the Committee finds that Zimmerman and Wolfe were not subject to the Collective Bargaining Agreement and did not retire under it.

This leaves Glenbard arguing that the Glenbard Administrative Benefit Plan was a separate and distinct contract with Zimmerman and Wolfe.

P.A. 04-0004 was enacted June 1, 2005. The Act provides in relevant part:

When assessing payment for any amount due under subsection (f), the System shall exclude salary increases paid to teachers under contracts or collective bargaining agreements entered in, amended or renewed before June 1, 2005. (40 ILCS 5/16-158(g)).

In like part, ILCS 5/16-128(d-10) states:

This subsection (d-10) does not apply to sick leave granted to teachers under contracts or collection bargaining agreements entered into, amended, or renewed before June 1, 2005 (the effective date of Public Act 94-4).

Zimmerman and Wolfe both submitted their Irrevocable Notice of Retirement under their one year contracts in effect for the 2006-2007 school year, which were not exempt under 40 ILCS 5/16-158(g) or 40 ILCS 5/16-128(d-10) having been entered into after June 1, 2005. These contracts incorporated the Administrative Benefit Plan as it existed at that time. There is no authority for these two administrators having a separate multi-year contract in the form of a benefit policy, see 105 ILCS 5/10-23.8(a) nor is there any indication in their respective contracts that a separate contract existed.

Accordingly, the Fourth Appellate Court's reasoning in Homewood-Flossmoor CHSD No. 233 v. TRS, No. 4-09-0833 (dec. August 23, 2010) is applicable. As stated by the Court:

The District next argues that procedure 2413 constituted a separate contract entered into prior to June 1, 2005, between the District and Dr. Murray providing an independent set of employment rights. In support of its argument, the District cites Duldulao v St. Mary of Nazareth Hospital Center, 115 Ill. 2d 482, 490, 505 N.W. 2d 314, 318 (1987), in which the supreme court held that "an employee handbook or policy statement creates enforceable contractual rights if the traditional requirement for contract formation are present." Duldulao is inapposite to this case. The employee in Duldulao was an at-will employee, and the handbook detailed the hospital's employment policies. Duldulao, 115 Ill. 2d at 485-86, 489, 505 N.E. 2d 315-317. Dr. Murray and the District had a fixed-term employment agreement. Detailing her rights and responsibilities as an employee. There is no evidence to support the proposition that the District and Dr. Murray intended to bind themselves to any agreement outside the written employment contract. The District has also failed to state what the consideration for an independent contract consisted of, as Dr. Murray had a preexisting legal obligation to perform the superintendent's duties. See DiLorenzo v Valve & Primer Corp., 347

Ill. App. 3d 194, 201, 807 N.E. 2d 673, 679 (2004) discussing preexisting duty rule).

Assuming Dr. Murray received her raises pursuant to procedure 2413, it fell within the fringe benefits guaranteed in section 21 of her contract. Because the April 2006 contract required that Dr. Murray receive fringe benefits equal to or greater than those contained in the June 2001 contract, the 20% raises were likewise guaranteed in the April 2006 contract. However, as this court has already found, the April 2006 contract was nonexempt and required contribution for raises over 6% to the system. (p.9 and 10).

Like Dr. Murray, Zimmerman and Wolfe's 2006-07, 2007-08, and 2008-09 written employment contracts were clearly not exempt under the law.

IV. Conclusion

The Committee finds in favor of the staff in this matter.

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