

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Paulette Keys,	:	
Relator,	:	
v.	:	No. 11AP-915
State Teachers Retirement System	:	(REGULAR CALENDAR)
Board of Ohio,	:	
Respondent.	:	
	:	

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D E C I S I O N

Rendered on February 7, 2013

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*J.G. Keys Jr. LLC, and James G. Keys, Jr., for relator.*

*Michael DeWine, Attorney General, Matthew J. Lampke,  
and Allan K. Showalter, for respondent.*

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IN MANDAMUS  
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶ 1} In this original action, relator, Paulette Keys, requests a writ of mandamus ordering respondent, State Teachers Retirement System Board of Ohio ("STRB"), to vacate its decision denying her request for an exception to the R.C. 3307.501 exclusion of increases in her compensation in the calculation of her final average salary ("FAS") and to enter a decision granting an exception to the statutory exclusion.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued a decision, including findings

of fact and conclusions of law, which is appended hereto. The magistrate concluded STRB did not abuse its discretion in determining that relator failed to demonstrate good cause for granting the administrative exception provided by Ohio Adm.Code 3307:1-4-01(B)(2). Therefore, the magistrate recommended that this court deny the requested writ of mandamus.

## **I. RELATOR'S OBJECTIONS**

{¶ 3} Relator has filed the following objections to the magistrate's decision:

[1.] What the Magistrate Submits as the Purpose of R.C. 33074.501 [sic] is Absent in Prior Authority

[2.] STRS' Abuse of Discretion Is Evident When the Facts Are Viewed in Light of Past Analysis

[3.] STRS' Abuse of Discretion Is Evident When Analyzing STRS' Argument to this Court

[4.] Magistrate's Decision is Offensive to Well Established Principles of Statutory Interpretation

## **II. DISCUSSION**

{¶ 4} In her first objection, relator challenges the magistrate's discussion of a State Teachers Retirement System ("STRS") brochure that discusses the purpose of R.C. 3307.501. Specifically, relator challenges the beginning of paragraph 46 wherein the magistrate states, "[g]iven that the purpose of R.C. 3307.501 is to ensure that the member's lifetime retirement benefit will be fully funded by the member's contributions." According to relator, the magistrate erred in relying on STRS's brochure to conclude R.C. 3307.501 has a single purpose.

{¶ 5} While the challenged sentence could have been written in a more limited manner, we conclude that, when read in context, this sentence does not require a rejection of the magistrate's decision. We conclude as such for two reasons. First, a review of the magistrate's decision reveals the discussion of the brochure and STRS's assertion that the purpose of R.C. 3307.501 is to ensure one's retirement benefit will be fully funded by one's contributions was an alternative reason for denying relator's requested writ of mandamus. Therefore, even a rejection of the first portion of paragraph 46 would not require us to grant relator's requested relief. Second, we disagree with relator's contention that the

magistrate determined, as a matter of law, that R.C. 3307.501 has a sole purpose as indicated in a brochure prepared by STRS. In our view, the magistrate was setting forth R.C. 3307.501's purpose, as viewed by STRS, and providing an explanation regarding why STRB did not abuse its discretion in affirming the calculations completed by STRS, which is the entity responsible for the initial calculation of relator's FAS and application of R.C. 3307.501(B)'s exclusion of compensation increases. For these reasons, we do not find the arguments raised in relator's first objection well taken.

{¶ 6} Accordingly, relator's first objection to the magistrate's decision is overruled.

{¶ 7} In her remaining objections, relator fails to raise any new issues and simply reargues the contentions that were presented to and addressed by the magistrate. For the reasons set forth in the magistrate's decision, we do not find relator's objections well taken.

{¶ 8} Accordingly, relator's second, third, and fourth objections to the magistrate's decision are overruled.

### **III. CONCLUSION**

{¶ 9} Upon review of the magistrate's decision, an independent review of the record, and due consideration of relator's objections, we find the magistrate has properly determined the pertinent facts and applied the appropriate law. We, therefore, overrule relator's objections to the magistrate's decision and adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. Accordingly, the requested writ of mandamus is hereby denied.

*Objections overruled;  
writ of mandamus denied.*

TYACK and DORRIAN, JJ., concur.

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**APPENDIX****IN THE COURT OF APPEALS OF OHIO****TENTH APPELLATE DISTRICT**

State of Ohio ex rel. Paulette Keys,	:	
	:	
Relator,	:	
	:	
v.	:	No. 11AP-915
	:	
State Teachers Retirement System	:	(REGULAR CALENDAR)
Board of Ohio,	:	
	:	
Respondent.	:	
	:	

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**MAGISTRATE'S DECISION****Rendered on October 3, 2012**

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*J.G. Keys Jr. LLC, and James G. Keys, Jr., for relator.**Michael DeWine, Attorney General, Michael J. Lampke, and Allan K. Showalter, for respondent.*

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**IN MANDAMUS**

{¶ 10} In this original action, relator, Paulette Keys, requests a writ of mandamus ordering respondent State Teachers Retirement Board ("STRB") to vacate its decision denying her request for an exception to the R.C. 3307.501 exclusion of increases in her compensation in the calculation of her final average salary ("FAS") and to enter a decision granting an exception to the statutory exclusion.

**Findings of Fact:**

{¶ 11} 1. Effective October 1, 2010, at 60 years of age, relator retired after 37 years of service with the Cincinnati Public Schools ("CPS").

{¶ 12} 2. From 1973 through the 2007-2008 school year, relator was employed by CPS as a special education teacher.

{¶ 13} 3. Beginning the 2008-2009 school year, relator was promoted by CPS to central administration as manager of pre-school disabilities, a position she held until her retirement at the end of September 2010. Her annual salary increased substantially as a result of her promotion.

{¶ 14} 4. By letter from the State Teachers Retirement System ("STRS") dated January 25, 2011, relator was informed that STRS had "finalized" the calculation of FAS and that the R.C. 3307.501(B) exclusion of compensation increases had been applied in the calculation.

{¶ 15} 5. In the calculation of FAS, STRS determines the sum of the member's three highest years of compensation and divides by three. R.C. 3307.501(C).

{¶ 16} 6. STRS calculated relator's FAS to be \$82,959. In reaching this calculation, relator's 2008-2009 school year earnings of \$88,899 were adjusted to \$84,349, her 2009-2010 school year earnings of \$88,355 were adjusted to \$82,614, and her partial earnings for the 2010-2011 school year were also adjusted.

{¶ 17} 7. Granting an exception to the R.C. 3307.501(B) exclusion would increase FAS from \$82,959 to \$86,618.

{¶ 18} 8. By letter dated February 4, 2011, relator administratively appealed STRS's FAS determination pursuant to Ohio Adm.Code 3307:1-4-01(C).

{¶ 19} 9. In her February 4, 2011 letter, relator argued:

The legal rationale for statutory limitations on a member's FAS is to protect the fund from abuse and manipulation by employees seeking extraordinary increases in the final years as a result of supplemental contract income, or summer school, or other "extra duties" assumed with the sole purpose of inflating the member's FAS above the historical pattern of earnings, and in excess of all the other teachers of the same level.

However, the limitation was never intended to apply to an employee who receives a bona fide promotion by the employer from one level, e.g. teacher, to an entirely different level, e.g. administrator, in the later years of his or her career with the school district, and who is paid the exact same

salary as every other administrator of the same level. If that were the case, such a policy would inhibit the ability of the school district to fill their badly needed administrative positions with their most qualified personnel. That is clearly not the intent or purpose of the FAS limitations statute.

The record is clear that Ms. Keys did not apply for or seek a promotion in her later years of employment with CPS. She did not seek a supplemental contract, or extra duties that would have compensated her above the level of others at her same level. She did not try to manipulate the system in any way whatsoever.

The evidence will show that CPS approached Ms. Keys and requested that she accept the central administration position as Manager for Pre-school Disabilities because of her unique qualifications for the position. She was paid by CPS pursuant to its standard contractual schedule the same as every other administrator at the same level without regard to supplemental or extended pay contracts. She worked two full years as central administration manager of pre[-]school disabilities, and then extended her tenure through September, 2010 at the request of CPS, to assist the district with the beginning of the new school year 2010/2011. She should not now be penalized by STRS for having answered the call to serve her employer's needs in the administrative position of manager of pre-school disabilities.

{¶ 20} 10. On May 18, 2011, the FAS committee met to consider relator's administrative appeal. Following the meeting, the committee issued its report and recommendation to the STRB:

Ms. Keys presented a letter and information regarding her salary increase due to promotion to manger of pre-school disabilities.

The Committee carefully reviewed all of the information, documents and comments provided by Paulette Keys. Based upon that review, it is the conclusion of the Final Average Salary Committee that Paulette Keys has not established good cause for making an exception to the limitation upon compensation set forth in section 3307.501 of the Revised Code. Accordingly, it is the recommendation of the Committee that the State Teachers Retirement Board affirm the original determination of final average salary and benefit.

{¶ 21} 11. At a June 16, 2011 meeting, STRB voted unanimously to uphold the decision of the FAS committee.

{¶ 22} 12. By letter dated June 20, 2011 from the deputy executive director of member benefits, relator was informed:

At your request, the STRS Ohio Retirement Board reviewed the determination of the final average salary (FAS) used in the calculation of your benefit. As originally determined, your FAS excluded payment for an increase in earnings in the 2008/09, 2009/10 and 2010/11 school years. The Final Average Salary Committee carefully considered all of the information you submitted to support your position.

The earnings excluded in the calculation of your FAS were not the result of any recognized reasons for making exceptions to the statutory exclusions. Your FAS remains at \$82,959 and your gross monthly benefit is \$5,948.34.

Original monthly calculated benefit	\$5,936.65
Plus additional annuity from FAS limitation	11.69
Total original gross benefit	\$5,948.34

Since the laws and rules that create STRS Ohio provide no further appeal, the action of the Retirement Board is final.

{¶ 23} 13. On October 25, 2011, relator, Paulette Keys, filed this mandamus action.

**Conclusions of Law:**

{¶ 24} It is the magistrate's decision that this court deny relator's request for a writ of mandamus as more fully explained below.

{¶ 25} Chapter 3307 of the Revised Code sets forth the statutory framework for STRS.

{¶ 26} Pursuant to R.C. 3307.04, the general administration and management of STRS is vested in the STRB.

{¶ 27} R.C. 3307.501 tells STRS how to calculate FAS. It instructs:

(A) As used in this section, "percentage increase" means the percentage that an increase in compensation is of the compensation paid prior to the increase.

(B) Notwithstanding division (L) of section 3307.01 of the Revised Code, for the purpose of determining final average salary under this section, "compensation" has the same meaning as in that division, except that it does not include any amount resulting from a percentage increase paid to a member during the member's two highest years of compensation that exceeds the greater of the following:

(1) The highest percentage increase in compensation paid to the member during any of the three years immediately preceding the member's two highest years of compensation and any subsequent partial year of compensation used in calculating the member's final average salary;

\* \* \*

(C) The state teachers retirement board shall determine the final average salary of a member by dividing the sum of the member's annual compensation for the three highest years of compensation for which the member made contributions plus any amount determined under division (E) of this section by three, except that if the member has a partial year of contributing service in the year the member's employment terminates and the compensation for the partial year is at a rate higher than the rate of compensation for any one of the member's highest three years of compensation, the board shall substitute the compensation for the partial year for the compensation for the same portion of the lowest of the member's three highest years of compensation.

\* \* \*

(E) The state teachers retirement board shall adopt rules establishing criteria and procedures for administering this division.

The board shall notify each applicant for retirement of any amount excluded from the applicant's compensation in accordance with division (B) of this section and of the procedures established by the board for requesting a hearing on this exclusion.

Any applicant for retirement who has had any amount excluded from the applicant's compensation in accordance with division (B) of this section may request a hearing on this exclusion. Upon receiving such a request, the board shall



determine in accordance with its criteria and procedures whether, for good cause as determined by the board, all or any portion of any amount excluded from the applicant's compensation in accordance with division (B) of this section, up to a maximum of seventy-five hundred dollars, is to be included in the determination of final average salary under division (C) of this section. Any determination of the board under this division shall be final.

{¶ 28} Supplementing the statute, Ohio Adm.Code 3307:1-4-01 is captioned "Compensation includible in the determination of final average salary." The rule provides:

The following criteria and procedures are established by the state teachers retirement board pursuant to section 3307.501 of the Revised Code.

\* \* \*

(B) Where the two highest years of compensation certified for an applicant for service retirement include a percentage increase otherwise excluded by division (B) of section 3307.501 of the Revised Code, the executive director of the state teachers retirement system or his designee may include all or part of such percentage increase in the calculation of final average salary, up to a maximum of seventy-five hundred dollars, if:

\* \* \*

(2) The executive director of the state teachers retirement system or his designee determines that other good cause exists for inclusion.

(C) Where a percentage increase is excluded from compensation used to determine final average salary under the provisions of division (B) of section 3307.501 of the Revised Code and paragraph (A) of this rule, the applicant shall be given written notice of the right to an appeal pursuant to this paragraph, provided:

\* \* \*

(2) The applicant shall be afforded the opportunity to present written information explaining the arguments for

making an exception to the statutory limitation and to appear before a review committee designated by the state teachers retirement board.

\* \* \*

(4) After consideration of the information presented by the applicant, the committee shall submit its report and recommendation to the board. Such report shall include any conclusion the committee may have reached as to whether:

\* \* \*

(c) Other good cause justifies inclusion of amounts otherwise excluded up to seventy-five hundred dollars.

{¶ 29} In two cases cited and discussed by the parties, this court has determined the applicability of R.C. 3307.501(B)'s directive for the calculation of FAS.

{¶ 30} In *State ex rel. Hanzely v. State Teachers Retirement Sys. Bd. of Ohio*, 10th Dist. No. 03AP-1125, 2004-Ohio-5537, Stephen Hanzely retired in May 2002 from his faculty position at Youngstown State University ("YSU"), where he had taught since 1968.

{¶ 31} For most summers in the course of his employment, Hanzely taught a lecture and associated laboratory class during the summer. In 2000-2001, YSU switched from a quarter system to a semester system. As a result of the switch, the start of the academic year was different and, in accordance with YSU's collective bargaining agreement, two of Hanzely's summer salaries were reported in the same fiscal year. In calculating FAS, STRB excluded a portion of the amount Hanzely was paid in 2000-2001, and as a result, his FAS was calculated at \$96,293, rather than \$98,180.

{¶ 32} The issue in *Hanzely* was a provision of former Ohio Adm.Code 3307:1-4-01(A)(2) which provided that STRS may include a percentage increase in the calculation of FAS if:

The same percentage increase was paid to other individuals employed in a similar capacity by the same employer, if no more than one half of such similarly employed individuals have made application for service retirement[.]

*Id.* at ¶ 30.

{¶ 33} Finding that STRS had abused its discretion in failing to apply the exception to the statutory limitation on compensation provided by former Ohio Admin.Code 3307:1-4-01(A)(2), this court explained:

The magistrate concluded that nothing in the record rebutted relator's contention that his pay increase in 2000-2001 was solely the result of YSU's decision to switch from quarters to semesters, a decision over which relator had no control; that all YSU faculty who taught that summer would have been similarly paid; and no more than one-half of YSU's employees applied for retirement. Thus, the magistrate concluded the additional amount paid to relator in 2000-2001 should be included.

\* \* \*

This is not an instance where relator is attempting to manipulate or artificially create higher compensation so as to receive greater retirement benefits. The increase in compensation he received in 2000-2001 was the result of YSU's decision to change from a quarter academic year to a semester academic year, thereby affecting the time at which relator was paid. We conclude that STRB abused its discretion by not including the full amount paid relator in 2000-2001 in the calculation of his FAS, pursuant to Ohio Adm.Code 3307:1-4-01(A)(2).

*Id.* at ¶ 6, 8.

{¶ 34} Citing *Hanzely*, relator asserts that the primary focus of the statute and rule at issue here is "controlling the type of fiscal manipulations that could result in a retiree artificially increasing compensation and thus retirement benefits." (Relator's brief, at 6.)

{¶ 35} Because, arguably, she did not attempt to manipulate her FAS calculation or artificially create higher compensation at the end of her career, but simply accepted an unsolicited promotion, relator concludes that, under *Hanzely*, there was no rationale for denying her an exception to the statutory limitation on compensation in determining FAS.

{¶ 36} The magistrate disagrees that *Hanzely* stands for the proposition that the exception must be automatically applied whenever manipulation is lacking.

{¶ 37} Moreover, the issue before STRS in this case was whether, under Ohio Adm.Code 3307:1-4-01(B)(2), "good cause exists for inclusion." That was not the issue in *Hanzely*. Rather, as earlier noted, the issue in *Hanzely* was the applicability of former Ohio Adm.Code 3307:1-4-01(A)(2).

{¶ 38} In short, while evidence of manipulation would normally be grounds for denial of the exception, lack of manipulation does not mandate the exception.

{¶ 39} The other case cited and discussed by the parties is this court's decision in *State ex rel. Day v. State Teachers Retirement Sys. Bd. of Ohio*, 10th Dist. No. 06AP-388, 2007-Ohio-3214.

{¶ 40} In *Day*, STRB determined there was an absence of good cause to grant an exception to the R.C. 3307.501(B) statutory limitation on compensation in the calculation of FAS. In *Day*, this court upheld STRB's decision and denied the writ, explaining:

Pursuant to Ohio Adm.Code 3307:1-4-01(B)(2) and R.C. 3307.501(E), the STRB was permitted to include all or part of relator's 16.03 percent increase in income in 2004, up to a maximum of \$7,500, that was excluded by R.C. 3307.501(B) if it determined that good cause existed for its inclusion. The "good cause" urged by relator during the administrative proceedings was that the increase in earnings was solely due to changes made in the State Teachers Retirement System ("STRS") and not by any attempted manipulation by relator.

In the present case, the magistrate did not err in finding the STRB did not abuse its discretion in denying an exception to relator. Although relator presented several sources to indicate that the limitation in R.C. 3307.501(B) aims to prohibit artificial manipulation of income during the final few years of employment, there is no indication in the statute or administrative regulation that any other reason for a substantial increase in salary is good cause for an exception to the limitation. Here, although relator frames the circumstances as being "due solely to a change in new regulations enacted by the [STRS]," the circumstances actually arose solely due to relator's failure to follow the rules in the newly enacted Ohio Adm.Code 3307-6-01 and 3307-6-02, which contained procedures of which relator could have taken advantage prior to July 1, 2004, in order to prevent the present situation. A letter from relator's attorney to the STRS

indicates that relator was not prevented from utilizing those procedures but merely failed to "learn about the new regulations until after the July 1, 2004 deadline." Therefore, it was not STRS's actions that were responsible for relator's decreased FAS, but his own. Under these circumstances, we cannot find an abuse of discretion in the STRB's determination that relator failed to establish good cause to support an exception to the limitation in R.C. 3307.501(B).

*Id.* at ¶ 3-4.

{¶ 41} According to respondent, *Day* is controlling and mandates denial of the writ.

{¶ 42} Respondent argues here that relator's "decisions on accepting a new and higher paying position, the length of time she remained employed in her new position, and the timing of her STRS service retirement were the result of her own actions." (Respondent's brief, at 6-7.) According to respondent, it was within respondent's discretion to deny the exception on that basis.

{¶ 43} Unfortunately, the record before this court fails to disclose the actual basis for the FAS committee's recommendation to STRB or the decision of STRB. In *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, the Supreme Court of Ohio held that STRS has no clear legal duty cognizable in mandamus to specify what evidence it relied upon and explain the reasoning for its decision.

{¶ 44} Given that there is no claim by relator that she was, in any way, compelled to retire when she did or that she was unable to continue her higher paying position to eliminate the problem of a recent substantial salary increase, respondent's argument has merit, even if respondent is incorrect in asserting that *Day* is controlling.

{¶ 45} The record contains a copy of an STRS brochure captioned: "Frequently Asked Questions and Answers about Final Average Salary." The brochure explains the purpose of R.C. 3307.501:

**Why are there FAS limits?**

STRS Ohio expects the money you and your employer contribute, along with the investment earnings made on those contributions, to fund your retirement benefit.

Section 3307.501 of the Ohio Revised Code explains how FAS is calculated and how the limits on compensation are determined. To determine the amount of money required to pay your retirement benefit, we review the level of increases in earnings you have been receiving and assume a similar level of increases will continue to the date of retirement. If your level of increases during the two highest years of earnings (three years if you don't complete the last year) go above those assumptions, your lifetime benefit will not be fully funded by the contributions.

{¶ 46} Given that the purpose of R.C. 3307.501 is to ensure that the member's lifetime retirement benefit will be fully funded by the member's contributions, it cannot be held that respondent abused its discretion in determining that relator has failed to demonstrate good cause for granting the administrative exception provided by Ohio Adm.Code 3307:1-4-01(B)(2).

{¶ 47} Accordingly, for all the above reasons, it is the magistrate's decision that this court deny relator's request for a writ of mandamus.

/S/ MAGISTRATE  
KENNETH W. MACKE

### **NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).