

**IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

|                        |   |                      |
|------------------------|---|----------------------|
| BRIAN C. CLARK, et al. | : |                      |
|                        | : |                      |
| Plaintiffs,            | : | CASE NO.: 16CV007360 |
|                        | : |                      |
| vs.                    | : |                      |
|                        | : | JUDGE CHRIS M. BROWN |
| OHIO STATE TEACHERS    | : |                      |
| RETIREMENT SYSTEM,     | : |                      |
|                        | : |                      |
| Defendant.             | : |                      |

**DECISION AND ENTRY**

This class action comes before the Court upon the cross Motions for Summary Judgment filed by Defendant Ohio State Teachers Retirement System (“Defendant” or “STRS”) and the named Plaintiffs.

**I. PROCEDURAL HISTORY**

Plaintiffs Brian C. Clark, Ph.D, Steven Conn, Ph.D., B. David Ridpath, Ed.D., Zhaohui, XU, Ph.D., and John Zipp, Ph.D. (collectively, “Plaintiffs”) are university professors at various public institutions of higher education in the State of Ohio. (Complaint, ¶¶ 9-13). As part of their employment, Plaintiffs have chosen to participate and contribute into Alternative Retirement Plans (“ARPs”) rather than participating in the State Teachers Retirement System (“STRS”). Ohio law provides for these faculty members to contribute 14% of their salary into their ARP with a corresponding contribution (14% of the employee’s salary) from their university employers. The employer contribution is reduced by a contribution the employer must make into STRS to offset losses from Plaintiffs’ decisions not to contribute to STRS. This employer contribution to STRS is known as a “mitigating rate.”

ARPs are only available to university employees. Other eligible members of STRS who are not university employees may also forgo participation in the STRS Defined Benefit Plan by contributing to a Defined Contribution Plan (“DC Plan”). The DC Plan operates very similar to an ARP with employee and employer contributions, as well as an employer mitigating rate.

As discussed in detail below, the Ohio General Assembly passed a law in 2001 preventing STRS from collecting an ARP mitigating rate higher than the DC Plan mitigating rate. Prior to 2001, the ARP mitigating rate was either 6.0% or 5.76%. Thereafter, from 2001 until 2013, the mitigating rate for both the ARP and DC Plans was set at 3.5%. In July 2013, STRS increased the mitigating rate for both plans to 4.5%. The increase in the ARP mitigating rate is the subject of the dispute in this case.

Plaintiffs filed a Class Action Complaint (“Original Complaint”) against STRS on August 8, 2016, alleging Defendant unlawfully increased the ARP mitigating rate. The Original Complaint set forth causes of action for Equitable Restitution and Declaratory Judgment. On October 19, 2017, Plaintiffs filed an Amended Complaint, setting forth a sole cause of action for Equitable Restitution of the amounts STRS collected from the alleged unlawful increase in the ARP mitigating rate. (Amended Complaint, ¶¶ 48-51). STRS filed its Answer to the Amended Complaint on October 31, 2017. The parties have engaged in the discovery process since the Original Complaint was filed.

On November 2, 2017, STRS filed its Motion for Summary Judgment. In the Motion, STRS argues it lawfully collected the ARP mitigating rate under the statutory directives from the General Assembly. STRS also argues it has not been unjustly enriched by its collection of the ARP

mitigating rate. In support of its Motion, STRS submitted a voluminous amount of documentary evidence.<sup>1</sup>

On November 3, 2017, Plaintiffs filed their Motion for Partial Summary Judgment on the issue of liability for their Equitable Restitution claim set forth in the Amended Complaint. Plaintiffs argue STRS unjustly enriched itself by imposing an unauthorized one-percent increase to the ARP mitigating rate in July 2013. In support of their Motion, Plaintiffs rely upon several of the same documents as STRS, as well as numerous additional exhibits.<sup>2</sup>

Plaintiffs also filed their Motion for Class Certification and Appointment of Class Counsel on November 3, 2017.

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<sup>1</sup> The Court has reviewed the documents, which include the following:

- (1) Affidavit of Michael Nehf, Executive Director of STRS;
- (2) Affidavit of Brian Grinnell, Chief Actuary for STRS;
- (3) Affidavit of Kevin DeVries, Director of Employer Reporting for STRS;
- (4) Affidavit and Expert Report of Colin England, a private sector actuarial consultant;
- (5) Report on the Alternative Retirement Plan Mitigating Rate prepared by Jeffrey Bernard of the Ohio Retirement Study Council ("ORSC"), dated December 11, 2014;
- (6) Actuarial study prepared by Milliman & Robertson, dated March 6, 2000;
- (7) ORSC Final Report 2002 on the 2001 Mitigating Rate Legislation;
- (8) May 1, 2001 Report prepared by Milliman and Robertson on House Bill 94;
- (9) Office of Ohio Attorney General Opinion No. 2013-024, dated July 17, 2013; and
- (10) February 14, 2013 Meetings Minutes of STRS.

<sup>2</sup> Plaintiffs submitted the following additional documents, which the Court has reviewed:

- (1) "Understanding Your STRS Ohio Benefits" Plan Summary, 2017/2018;
- (2) Excerpts from Deposition of Jeffrey Bernard, Senior Research Associate of ORSC;
- (3) Affidavits from each named Plaintiff;
- (4) Excerpts from the Deposition of Bethany J. Rhodes, Director of ORSC;
- (5) STRS Responses to Plaintiffs' First Set of Interrogatories;
- (6) STRS Responses to Plaintiffs' Second and Third Interrogatories;
- (7) Excerpts of Deposition of Michael Nehf, Brian Grinnell, and Marla Bump;
- (8) Email and memorandum correspondence dated June 21, 2013, May 8, 2013, July 19, 2013, and July 22, 2013 by and between Michael Nehf and Marla Bump;
- (9) Email correspondence between Michael Nehf and James McGreavy dated April 5, 2014;
- (10) Ohio Legislative Services Commission Memorandum, dated June 14, 2013; and
- (11) STRS Comprehensive Financial Report, 2016.

Plaintiffs filed their Memorandum in Opposition to the STRS Motion for Summary Judgment on December 8, 2017, as well as a Motion to Strike the Expert Report of Colin England submitted by STRS.

STRS filed its Combined Opposition to Plaintiffs' Motion for Partial Summary Judgment and Plaintiffs' Motion for Class Certification on December 8, 2017. STRS filed an Opposition to Plaintiffs' Motion to Strike on December 22, 2017. Plaintiffs filed a Reply Brief in Support of their Motion to Strike on December 28, 2017.

On January 12, 2017, Plaintiffs and STRS each filed their Reply Memorandums in Support of their Motions for Summary Judgment.

All pending Motions are deemed submitted to the Court pursuant to Local Rule 21.01. The Court has reviewed and considered each of the briefs submitted by the parties, as well as the documents and other evidence submitted in support and opposition to the various Motions. For the reasons set forth in this Decision, Plaintiffs' Motion for Partial Summary Judgment is **DENIED**. The STRS Motion for Summary Judgment is **GRANTED**. The Motion to Strike is deemed **MOOT** as the Court did not grant any weight to the Expert Report of Colin England. The Motion for Class Certification is deemed **MOOT** because of this Court's ruling on the Motions for Summary Judgment.

## **II. SUMMARY JUDGMENT STANDARD**

When considering a motion for summary judgment, a court must determine if "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Civ.R. 56(C). "The moving party has the burden of showing that there is no genuine issue

as to any material fact as to critical issues.” *Stockdale v. Baba*, 153 Ohio App. 3d 712, 2003-Ohio-4366, 795 N.E.2d 727, ¶23 (10th Dist.). A fact is “material” when it would affect the outcome of the suit under the applicable substantive law. *Mosler v. St. Joseph Twp. Bd. of Trustees*, 6th Dist. No. WM-07-016, 2008-Ohio-1963, ¶8, citing, *Russell v. Interim Personnel, Inc.*, 135 Ohio App.3d 301, 304, 733 N.E.2d 1186 (6th Dist.).

When a party moves a court for summary judgment and supports its motion pursuant to Civ.R. 56, “an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response \*\*\* must set forth specific facts showing that there is a genuine issue for trial.” *Harless v. Willis Day Warehousing Co.* 54 Ohio St. 2d 64, 65, 375 N.E.2d 46 (1978) (quoting Civ.R. 56(E)). All doubts and evidence must be construed against the moving party. *Stockdale* at ¶31. Accordingly, “[s]ummary judgment may not be rendered unless it appears that reasonable minds can come to but one conclusion and that conclusion is adverse to the parties against whom this motion is made.” *Id.* at ¶32.

### **III. THE OHIO STATE TEACHERS RETIREMENT SYSTEM**

#### ***a. History***

The Ohio State Teachers Retirement System was created in 1920, more than a decade before the formation of the federal Social Security Administration.<sup>3</sup> Chapter 3307 of the Ohio Revised Code sets forth the organization and procedures for STRS. Under these statutes, STRS “is tasked with managing and administering several funds created for the payment of retirement allowances and other benefits for the teachers, licensed employees, and faculty of more than 1,100 of the school districts, charter schools, and universities in Ohio.” (Nehf Affidavit, ¶ 3). STRS serves more than 484,500 active, inactive, or retired public educators. (*Id.*).

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<sup>3</sup> The participants in STRS do not contribute to Social Security or receive Social Security benefits. (Nehf Affidavit, ¶ 4).

The standard retirement program administered by STRS is the Defined Benefit program. This program operates through contributions from employees and employers engaged in primary, secondary, and higher education in the State of Ohio. Each employee contributes 14% of their compensation into STRS and each employer contributes an additional 14% of that employee's compensation into STRS. Upon retirement, the employee is able to receive periodic payments from STRS based upon a calculation that takes into account age, years of service, and "final average salary."<sup>4</sup> In addition, the Defined Benefit plan "provides disability, death, and other benefits, and health care coverage to members and their beneficiaries." (Nehf Affidavit, ¶ 4).

In order to meet the obligations to its retirees, STRS relies upon the contributions from the participating employees and employers. Those contributions, along with investment returns, fund the program. Without those contributions, STRS argues it could not remain solvent.

***b. Alternative Retirement Plans***

Higher Education Plans. In 1997, the Ohio General Assembly established an alternative retirement program "for the purpose of providing eligible employees the opportunity of participating in an alternative retirement plan as an alternative to participating in a state retirement system."<sup>5</sup> The ARPs are offered under section 401(a) of the Internal Revenue Code to provide retirement and death benefits through investment options. These plans were originally offered only to employees of public institutions of higher education as defined by R.C. § 3305.01(A).

Under an ARP, each employee is required to contribute 14% of their compensation to the provider of the investment option the employee has chosen.<sup>6</sup> The employer must contribute 14% to the provider of the investment option the employee chooses, "less the percentage contributed

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<sup>4</sup> "Understanding your STRS Ohio Benefits" Plan Summary, Plaintiffs' Ex. 1, pg. 4.

<sup>5</sup> R.C. 3305.02.

<sup>6</sup> R.C. 3305.06(A).

by the public institution of higher education under division (D) of this section.”<sup>7</sup> An employer is required to contribute to the state retirement system a percentage of the electing employee’s compensation to mitigate the negative financial impact on STRS.<sup>8</sup> The employer contribution to STRS “shall be six percent, except that the percentage may be adjusted by the Ohio retirement study council” to reflect the results of actuarial studies performed by the Ohio Retirement Study Council (“ORSC”).<sup>9</sup> The ORSC “is a statutorily created body” that assists the “General Assembly, the governor, and other elected officials on any matters pertaining to the... state pensions systems.” (Deposition of Bethany Rhodes, pg. 13).

The contribution from the employer under division (D) is known as the “mitigating rate.” The actuarial study to adjust the mitigating rate is conducted by the ORSC to consider the negative financial impact on STRS resulting from members choosing to participate in the alternative retirement program. R.C. § 171.07 provides:

“The Ohio retirement study council shall cause an independent actuarial study to be completed and submitted to the Ohio board of regents by July 1, 2002, and by the first day of July every third year thereafter. The study shall determine any necessary adjustments in contributions under section 3305.06 of the Revised Code to reflect any changes in the level of the negative financial impact on the public employees retirement system, state teachers retirement system, and school employees retirement system resulting from the establishment of the alternative retirement program.” (emphasis added)

The ORSC conducted exactly one actuarial study in March 2000, which set the ARP mitigating rate contribution to STRS at 5.76%.<sup>10</sup> There have been no further actuarial studies commissioned by the ORSC. The Court notes R.C. § 171.07 requires (“shall cause”) the ORSC to conduct an actuarial study every three years.

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<sup>7</sup> R.C. 3305.06(B).

<sup>8</sup> R.C. 3305.06(D)

<sup>9</sup> Id.

<sup>10</sup> Actuarial study prepared by Milliman and Roberston, Inc., dated March 6, 2000. Bekeny Affidavit, Ex. 2.

Defined Contribution Plans. In 2000, the General Assembly authorized STRS to establish one or more defined contribution plans (“DC Plans”). DC Plans were made available to each member who was not previously eligible to participate in the ARPs.<sup>11</sup> Any employee eligible for STRS would be permitted to choose the Defined Benefit Plan, a DC Plan, or an STRS Combined Plan.<sup>12</sup> The State Teachers Retirement Board (STRB) establishes the plans and, as with the ARPs, there is an employee contribution and an employer contribution.<sup>13</sup> In addition, there is a mitigation rate to offset the financial impact of members choosing to participate in DC Plans. The STRS Board has the authority to determine what percentage the mitigating rate will be based upon an actuarial study prepared by the board to determine if transfers are necessary to address the negative financial impact.<sup>14</sup>

### *c. Mitigation Rates*

From its implementation in 1997 until the first (and only) actuarial study commissioned by the ORSC in March 2000, the mitigating rate for ARPs was set at 6.0%. Originally, the General Assembly set the mitigating rate “equal to six percent of the electing employee’s compensation.”<sup>15</sup> Under the former statutory scheme, the ORSC was required to conduct triennial independent actuarial studies that would automatically change the mitigating rate. Based upon a March 2000 actuarial study, ORSC reduced the mitigating rate to 5.76%. (See Bekeny Affidavit, Ex. 2).

In 2000, upon the creation of DC Plans, STRS commissioned an actuarial study which set that mitigating rate at 3.5%. (See Bekeny Affidavit, Ex. 1).

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<sup>11</sup> R.C. 3307.01, *et seq.*

<sup>12</sup> R.C. 3307.81.

<sup>13</sup> R.C. 3307.26(B) and 3307.28.

<sup>14</sup> R.C. 3307.84. and R.C. 3309.88.

<sup>15</sup> See Former R.C. 3305.06(E) (1997).

In 2001, the General Assembly amended R.C. § 3305.06 to eliminate any automatic adjustment to the ARP mitigating rate and instead gave ORSC the power to increase or decrease the rate based upon a triennial study. The amended statute stated, in relevant part: “The percentage shall be six percent, except that the percentage may be adjusted” by the ORSC.<sup>16</sup> The General Assembly also enacted R.C. § 3305.061 (referenced in detail below) the same year, which stated that the ARP mitigating rate could not exceed the mitigating rate for the DC Plans. At that time, the DC Plan mitigating rate was 3.5%. Therefore, the effective ARP mitigating rate could not be more than 3.5%. From this point forward, ORSC did not conduct any further actuarial studies for the ARP mitigating rate.

STRS, however, did conduct an actuarial study for the DC Plan mitigating rate in 2012. (Nehf Affidavit, ¶ 25). Based upon this actuarial study, STRS voted to increase the mitigating rate for the DC Plan to 4.5%, effective on July 1, 2013. (Id.). In addition, STRS determined that the ARP mitigating rate would also be increased “by operation of law pursuant to Revised Code 3305.061” to 4.5%. (Id. at ¶ 26).

In September 2015, the General Assembly enacted R.C. 3305.062, which set the mitigating rate for ARPs at 4.5%. This statute was subsequently repealed.<sup>17</sup>

This dispute is based upon the change in the ARP mitigating rate on July 1, 2013, which STRS collected at 4.5%, until the implementation of R.C. 3305.062 in September 2015. Plaintiffs argue only the ORSC had the authority to adjust the ARP mitigating rate during this time. By

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<sup>16</sup> R.C. 3305.06(D).

<sup>17</sup> Effective April 6, 2017, the General Assembly overhauled the system of calculating and setting mitigating rates for ARPs and DC Plans by delegating the authority to STRS. Under this new law, STRS must conduct an independent actuarial study to determine the appropriate mitigating rate by analyzing the current unfunded and historical liabilities in the Defined Benefit Plan. *2016 HB 520*.

unilaterally increasing the ARP mitigating rate, Plaintiffs argue STRS acted without proper legal authority.

#### IV. STATUTORY ANALYSIS

This dispute depends upon a careful review of the plain language of R.C. 3305.061, read in conjunction with other relevant statutes. In 2001, the Ohio General Assembly passed R.C. 3305.061, which provides:

*Notwithstanding section 171.07 and division (D) section 3305.06 of the Revised Code, the percentage of an electing employee's compensation contributed by a public institution of higher education under division (D) of section 3305.06 of the Revised Code shall not exceed the percentage of compensation transferred under section 145.87, 3307.84, or 3309.88 of the Revised Code, as appropriate, by the state retirement system that otherwise applies to the electing employee's position. A change in the percentage of compensation contributed under division (D) of section 3305.06 of the revised Code, as required by this section, shall take effect on the same day a change in the percentage of compensation takes effect under section 145.87, 3307.84, or 3309.88 of the Revised Code, as appropriate. (emphasis added)*

Principles of statutory construction require this Court to give effect to every word and clause in the statute. *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St.3d 510, 2010-Ohio-2550, ¶ 21. This Court must “accord significance and effect to every word, phrase, sentence, and part of the statute” and “abstain from inserting words where words were not placed by the General Assembly.” *State ex re. Carna v. Teays Valley Local Sch. Dist. Bd. Of Educ.*, 131 Ohio St.3d 478, 2012-Ohio-14894, at ¶ 18. “Statutes must be construed, if possible, to operate sensibly and not to accomplish foolish results.” *State ex rel. Saltsman v. Burton*, 154 Ohio St. 262, 268 (1950). If a statute is clear and unambiguous, this Court will apply the statute as written, giving effect to its plain meaning. *Carna*, supra, at ¶ 20, citing *Cheap Escape Co., Inc. v. Haddox, LLC*, 120 Ohio St.3d 493, 2008-Ohio-6323.

Because R.C. 3305.061 contains multiple references to other statutes which relate to the same subject matter, these statutes must be read *in pari materia*. *Johnson's Markets, Inc. v. New*

*Carlisle Dep't of Health*, 58 Ohio St.3d 28 (1991), citing *Maxfield v. Brooks*, 110 Ohio St. 566 (1924). By construing these statutes together, the Court must give a reasonable harmonious construction to give proper force and effect to each of the statutes. *Id.* at 35.

The first duty for this Court, therefore, is to determine if R.C. § 3305.061 is clear and unambiguous. *Sherwin-Williams Co. v. Dayton Freight Lines, Inc.*, 112 Ohio St.3d 52, 2006-Ohio-6498. The Court finds R.C. 3305.061 is clear and unambiguous, but not without laborious review of each statute mentioned therein. Although the statute contains lengthy sentences with multiple references to outside statutes, the Court can breakdown the plain language read *in pari materia* with the referenced statutes to find harmony, even amongst “the unrelenting tide of the overpowering hordes of words and statutory numbers.” *State v. Willan*, 136 Ohio St.3d, 222, 2013-Ohio-2405 (Pfeifer, J., dissenting).

The phrase, “Notwithstanding section 171.07 and division (D) section 3305.06 of the Revised Code,” directs this Court to read R.C. 3305.061 to supersede those statutes where they conflict. These statutes conflict when “the percentage of an electing employee’s compensation contributed by a public institution of higher education under division (D) of section 3305.06 of the Revised Code” exceeds the percentage of compensation transferred under section 145.87, 3307.84, or 3309.88 of the Revised Code. In layman’s terms, the statutes will conflict when the ARP mitigating rate is set at a higher percentage than the DC Plan mitigating rate.<sup>18</sup> When the statutes conflict, the ARP mitigating rate changes and such change “shall take effect on the same day a

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<sup>18</sup> R.C. §§ 145.87, 3307.84, and 3309.88 refer to the mitigating rates for STRS DC Plans, as well as defined contributions plans for the Public Employees Retirement System (PERS) and the School Employees Retirement System (SERS).

change in the percentage of compensation takes effect under section 145.87, 3307.84, or 3309.88 of the Revised Code.”<sup>19</sup>

Plaintiffs argue the above statute requires *only* that the ARP mitigating rate cannot exceed the DC Plan mitigating rate. Under Plaintiffs’ interpretation of the statute, the DC Plan mitigating rate may exceed the ARP mitigating rate and only the ORSC may change the ARP mitigating rate. Therefore, Plaintiffs argue, STRS could raise the DC Plan mitigating rate to 4.5% but the ARP mitigating rate should have remained at 3.5%.

In support of their interpretation, Plaintiffs cite to an Ohio Legislative Service Commission (“OLSC”) memorandum, dated June 14, 2013, that found STRS is “not authorized to adjust the mitigating rate for ARPs.” [Plaintiff’s Ex. 15, pg. 2]. The OLSC memorandum further states, “[c]urrent law specifies that the mitigating rate for ARPs cannot exceed the mitigating rate for the STRS defined contribution plan.” This memorandum is less than two pages and is not prepared contemporaneously in time to the passage of R.C. 3305.061. Further, the memorandum does not address whether the ARP mitigating rate may increase or decrease by operation of law. Therefore, the Court grants this memorandum no weight.

In addition, Plaintiffs rely upon a July 17, 2013 Opinion from the Ohio Attorney General. This Opinion states that “a change to the mitigating rate for employees of public institutions of higher education who otherwise would be subject to STRS that will be higher than the mitigating rate for STRS defined contribution plans is prohibited.” [Plaintiff’s Ex. 17, pg. 9]. This Opinion is limited, however, and does not address whether an increase in the DC Plan mitigating rate will necessitate an increase in the ARP mitigating rate. Therefore, the Opinion contains very little guidance for this Court on the issue presented.

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<sup>19</sup> The ARP mitigating rate will be the same as the DC Plan mitigating rate on the day the DC Plan mitigating rate is set but only if the ARP mitigating rate is higher.

Plaintiffs' position injects language into the statutes that are not there. The Court must first determine if there is a conflict between of R.C. 3305.06 and R.C. 3305.061. If there is no conflict, R.C. 3305.06(D) sets the ARP mitigating rate at six percent (6%), as set forth below:

“Each public institution of higher education employing an electing employee shall contribute on behalf of that employee to the state retirement system that otherwise applies to the electing employees position a percentage of the electing employee’s compensation to mitigate any negative financial impact of the alternative retirement program on the state retirement system. The percentage shall be six percent, except that the percentage may be adjusted by the Ohio retirement study council to reflect the determinations made by actuarial studies conducted under section 171.07 of the Revised Code.” (emphasis added)

ORSC has discretion via use of the word “may” to adjust the percentage of the mitigating rate from its statutorily set amount of 6.0%. This adjustment may only occur to reflect an actuarial study conducted under R.C. 171.07. These actuarial studies are required to take place “by July 1, 2002, and by the first day of July every third year thereafter.”<sup>20</sup> ORSC only conducted one actuarial study in March 2000 and failed to conduct any additional studies every third year as required. Therefore, the Court finds the ORSC has not actually set the mitigating rate for ARPs.

STRS argues the ARP mitigating rate is 5.76%, which is the amount set by ORSC in 2000. However, this rate is based upon an actuarial study that was conducted over 13 years before STRS adjusted the DC Plan and ARP effective mitigating rates to 4.5%. The language of R.C. 3305.61 only permits the ORSC to adjust the rate to reflect determinations made by a triennial actuarial study. Absent such study, the ORSC has no authority to set the ARP mitigating at an amount different than that set by statute. Therefore, the Court finds the default mitigating rate for ARPs was 6.0%, pursuant to the plain language of R.C. 3305.06(D). Because R.C. 171.07 requires ORSC to conduct an actuarial study every three years, the March 2000 study became stale and ineffective in March 2003. Therefore, the mitigating rates for the ARP and DC Plans proceeded as follows:

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<sup>20</sup> R.C. 171.07 (emphasis added).

|                                      | <b>ARP Mitigating<br/>Rate<br/>(R.C. 3305.06)</b> | <b>Effective ARP<br/>Mitigating Rate<br/>(R.C. 3305.061<br/>effective 9-5-01)</b> | <b>DC Plan Mitigating<br/>Rate<br/>(R.C. 3307.84<br/>effective 7-13-00)</b> |
|--------------------------------------|---|---|---|
| <b>1997-March 2000</b>               | 6.0%  | -   | -   |
| <b>March 2000-2001</b>               | 5.76%   | -   | 3.5%  |
| <b>2001-March 2003</b>               | 5.76%   | 3.5%  | 3.5%  |
| <b>March 2003-July<br/>2013</b>      | 6.0%  | 3.5%  | 3.5%  |
| <b>July 2013-<br/>September 2015</b> | 6.0%  | 4.5%  | 4.5%  |

The Court finds that the ARP effective mitigating rate could not exceed the DC Plan mitigating rate after the implementation of R.C. 3305.061 in 2001. At that time, the ARP mitigating rate would be reduced, by operation of law, to mirror the DC Plan mitigating rate if the latter rate were less than 6.0%. Should the DC Plan mitigating rate equal or exceed 6.0%, the ARP mitigating rate would remain at 6.0% by operation of law pursuant to R.C. 3305.06(D). However, as long as the DC Plan mitigating rate is less than the default rate of 6.0%, the ARP rate must be the same as the DC Plan mitigating rate. Therefore, the Court finds the ARP mitigating rate increased, by operation of law, to 4.5% in July 2013 when STRS increased the DC Plan mitigating rate.

**V. CONCLUSION**

Although this Decision is now 15 pages long, the Court finds the issue presented quite simple. There are no genuine issues of material fact. This case may be decided as a matter of law. In July 2013, the ARP mitigating rate was 6.0% pursuant to statute. STRS could not collect that percentage, however, because it conflicted with R.C. 3305.061. When STRS raised the DC Plan mitigating rate to 4.5% in July 2013, STRS could then collect a 4.5% mitigating rate on ARPs, but no more, pursuant to R.C. 3305.061. Plaintiffs' Motion for Summary Judgment is **DENIED**. Defendant's Motion for Summary Judgment is **GRANTED**.

This is a final, appealable order.

IT IS SO ORDERED.

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JUDGE BROWN

Franklin County Court of Common Pleas

**Date:** 02-02-2018

**Case Title:** BRIAN C CLARK PHD ET AL -VS- OHIO STATE TEACHERS  
RETIREMENT SYSTEM

**Case Number:** 16CV007360

**Type:** DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to be "Ch Brown", written over a circular official seal. The seal contains the text "COMMON PLEAS COURT", "FRANKLIN COUNTY OHIO", and "ALL THINGS ARE POSSIBLE".

/s/s Judge Christopher M. Brown

Court Disposition

Case Number: 16CV007360

Case Style: BRIAN C CLARK PHD ET AL -VS- OHIO STATE  
TEACHERS RETIREMENT SYSTEM

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0073602017-12-0899800000  
Document Title: 12-08-2017-MOTION TO STRIKE - PLAINTIFF:  
BRIAN C. CLARK PHD  
Disposition: MOTION IS MOOT
2. Motion CMS Document Id: 16CV0073602017-11-0399880000  
Document Title: 11-03-2017-MOTION FOR PARTIAL SUMMARY  
JUDGMENT - PLAINTIFF: BRIAN C. CLARK PHD  
Disposition: MOTION DENIED
3. Motion CMS Document Id: 16CV0073602017-11-1399980000  
Document Title: 11-13-2017-MOTION FOR LEAVE TO FILE -  
PLAINTIFF: BRIAN C. CLARK PHD  
Disposition: MOTION RELEASED TO CLEAR DOCKET
4. Motion CMS Document Id: 16CV0073602017-11-0399980000  
Document Title: 11-03-2017-MOTION - PLAINTIFF: BRIAN C.  
CLARK PHD - CLASS CERTIFICATION AND APPOINTMENT OF C  
Disposition: MOTION IS MOOT
5. Motion CMS Document Id: 16CV0073602017-11-0299980000  
Document Title: 11-02-2017-MOTION FOR SUMMARY  
JUDGMENT - DEFENDANT: OHIO STATE TEACHERS  
RETIREMENT SYSTEM  
Disposition: MOTION GRANTED