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IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

PHOENIX LAW ENFORCEMENT ASSOCIATION, an Arizona non-profit corporation; BARRY JACOBS, EARLE AKRE, and ROBERT RAMSEY, individually and on behalf of themselves and as representatives for similarly situated class members, Plaintiffs, vs. CITY OF PHOENIX, a body politic, Defendants, and MICHAEL DUPUY; and JIM JOCHIM, Defendant-Intervenors.	Case No. CV2014-009114 CV2014-008711 (Consolidated) **INTERVENORS' CONSOLIDATED RESPONSE TO PHOENIX LAW ENFORCEMENT ASSOCIATIONS', ET AL. CROSS MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF INTERVENORS' MOTION FOR SUMMARY JUDGMENT** *Honorable Robert Oberbillig*

Pursuant to Rule 56, Ariz. R. Civ. P., Intervenors, Michael Dupuy and Jim Jochim, who are Phoenix taxpayers ("Taxpayers"), submit this consolidated Response to Plaintiff Phoenix Law Enforcement Associations' ("PLEA"), et al., Cross Motion for Summary Judgment and Reply to PLEA's Response to Intervenors' Motion for Summary Judgment.

PRELIMINARY STATEMENT

The interpretation urged by Plaintiff PLEA in this case is at odds with the plain language of state law, the legislative intent of that law, and the case law. All foreclose PLEA's argument that the payments at issue are pensionable. Leave is leave, intended for employees to have time off for vacation or in the event of illness. Uniform allowances are meant to reimburse officers for the cost of clothing that is required for the performance of their duties. By law, neither leave nor uniform allowances are, nor were they ever intended to be, retirement enhancements. Plaintiffs' case must be dismissed.

LEGAL ANALYSIS

I. THE PLAIN LANGUAGE OF STATE LAW PROHIBITS THE PENSION PAYMENTS AT ISSUE IN THIS CASE.

"There is no magic in statutory construction and no legal legerdemain should be used to change the meaning of simple English words. . . ." *Kilpatrick v. Superior Court In & For Maricopa Cnty.*,105 Ariz. 413, 421, 466 P.2d 18, 26 (1970). The words and phrases at issue in this case – "base salary," "unused," "in lieu of" – are plain and simple. And A.R.S. § 38-842(12) is unambiguous in excluding payments in lieu of vacation, payments for unused sick leave, and payments for fringe benefits from the definition of pensionable compensation. *See U.S. Parking Sys. v. City of Phoenix,* 160 Ariz. 210, 211, 772 P.2d 33, 34 (App. 1989) ("An unambiguous statute should be interpreted to mean what it plainly states unless an absurdity results."). Yet, Plaintiff PLEA's attempt to redefine simple English words in an unambiguous statute is unavailing as anything other than perhaps an exercise in linguistic dexterity. Instead, the plain language of A.R.S. § 38-842(12) and the structure of that statute lead to the straightforward conclusion that state law prohibits the pension payments at issue in this litigation.

A. The payments at issue in this case are neither "base salary" nor "longevity pay."

The definition of "base salary" within A.R.S. § 38-842(12), as conventionally understood, and as defined *by the parties* in their memorandum of understanding, establishes that base salary does not include the payments at issue in this case.

Plaintiff PLEA contends that "[t]he payments at issue in this case clearly constitute pensionable compensation in the form of base salary" (Pls.' Resp. Summ. J. and Cross Mot. Summ. J. at 4) ("PLEA MSJ"). The definition of "base salary" within A.R.S. § 38-842(12), however, forecloses that argument. A.R.S. § 38-842(12) provides: "'[B]ase salary' means the amount of compensation each employee is *regularly paid* for personal services rendered to an employer *before the addition of any extra monies*, including overtime pay, shift differential pay, holiday pay, longevity pay, fringe benefit pay and similar *extra payments*" (emphasis added).

The payments at issue in this case are "extra payments" specifically excluded from the definition of base salary in A.R.S. 38-842(12). Extra means "more than is due, usual, or necessary: ADDITIONAL" MERIAM-WEBSTER, Dictionary (Online ed., 2014) (emphasis in original); *see State ex rel. Pennartz v. Olcavage*, 200 Ariz. 582, 588, 30 P.3d 649, 655 (App. 2001) ("In determining the plain and ordinary meaning of a word, we may refer to an established and widely used dictionary."). However characterized, it is indisputable that the payments at issue in this case are *in addition to* an officer's regular compensation because they are added to that compensation. In fact, PLEA itself refers to the payments at issue as "*additional* salary payments" no less than 13 times in its Response and Cross Motion for Summary Judgment. (PLEA MSJ at 2, 4-7, 10-11) (emphasis added). Thus, these extra, or additional payments, are clearly not base salary.

The structure of A.R.S. § 38-842(12) likewise eliminates the possibility that the payments at issue in this case are "base salary." Within that statute, "base salary" is considered "compensation" in

addition to "overtime pay, shift differential pay, military differential wage pay, compensatory time . . . holiday pay . . . and longevity pay…." These same components of compensation, in addition to "fringe benefit pay and similar extra payments," are then specifically *excluded* from the definition of "base salary" in the statute. Thus, if "base salary" by definition does not include items that are *included* in the broader definition of "compensation," it certainly does not include items that are specifically *excluded* from the definition of compensation, such as "payment in lieu of vacation" and "payment for unused sick leave." *Id.* "In construing a statute, 'we consider the statutory scheme as a whole and presume that the legislature does not include statutory provisions which are redundant, void, inert, trivial, superfluous, or contradictory.' " *Hourani v. Benson Hosp.*, 211 Ariz. 427, 431, 122 P.3d 6, 10 (App. 2005) (internal citations omitted). In finding that the legislature really intended to include payments it specifically excluded from the definition of pensionable compensation, PLEA's reading of A.R.S. § 38-842(12) would render that statute contradictory.

Moreover, "base salary" is a well-understood term that does not include payments for things like vacation leave, sick leave, or uniform allowances. "Base pay" means "a rate or amount of pay for a standard work period, job, or position *exclusive of additional payments* or allowances." MERIAM-WEBSTER, Dictionary (Online ed., 2014) (emphasis added). "Salary" means "*fixed* compensation paid *regularly* for services." *Id.* (emphasis added). Whether paid on an hourly or annual basis, "base salary" is just that, a *base* rate of pay to which other components of compensation may or may not be added. What it is not is those other forms of compensation, such as payment for vacation leave, sick leave, or uniform allowances.

In fact, the text of the Memorandum of Understanding between PLEA and the City specifically bears out that PLEA itself does not consider extra or additional salary payments of any kind as "base" pay. Specifically, the 2012-2014 MOU referenced "base hourly" pay six times as a figure on which to

base additional payments, such as time-and-half for overtime pay or "court standby" pay. (Intervenors' Supp. Sep. State. of Facts ("SSOF") ¶ 1). Those base hourly wages are then specifically set out in Attachment B to the 2012-2014 MOU. (SSOF ¶ 2). Thus, PLEA itself has defined and agreed that "base" pay means payment for regular wages that simply does not include additional payments for things like vacation leave, sick leave, or uniform allowances.

The same is true of "longevity pay." PLEA contends that "[t]he salary payments made pursuant to the eliminated provisions may also be characterized as longevity pay…." (PLEA MSJ at 4). To support this argument, PLEA contends that because some of the payments at issue are based on length of service, they automatically qualify as longevity pay. (*Id.* at 4-5.) As a threshold matter, the sick leave exchange provision does not have a length of service component at all. *See* SSOF ¶ 3; PSOF ¶ 18. Thus, with respect to payment for unused sick leave, this argument is inapplicable. Additionally, the 2012-2014 MOU between PLEA and the City specifically defines what constitutes "longevity pay" and the criteria necessary for an officer to qualify for longevity pay. (SSOF ¶ 4). These criteria include substantially more than simply "length of service" to qualify for longevity pay, including a performance rating of "meets standards or better," and "full-time active status." SSOF ¶ 5. If the payments at issue in this case are "longevity pay" they were certainly not conceived as such by the legislature, nor by any of the parties to this litigation, including PLEA. Obviously, pensionable payments for vacation leave, sick leave, and uniform allowances are not longevity pay.

B. The legislature meant what it said when it excluded the payments at issue in this case from the definition of pensionable "compensation."

In struggling to redefine the meaning of the terms "unused" and "in lieu of," Plaintiff PLEA engages in several logical fallacies that do not withstand closer scrutiny.

PLEA first appears to believe that the prohibition on pension payments for "unused sick leave" under A.R.S. § 38-842(12) only means prohibiting payments for sick leave days that were saved and placed in a bank of hours, rather than converted for direct payment. (PLEA MSJ at 6.) Under this analysis, the timing of the payment is the essential factor. In other words, according to PLEA, if a sick leave day was previously accrued and saved, it cannot be exchanged for a pensionable payment. If the same sick leave day is earned but immediately converted to cash, then it can be exchanged for a pensionable payment. This is a distinction without a difference.

This novel interpretation, moreover, begs the question: What is sick leave and when is it used? Sick leave is "[a]n employment benefit allowing a worker time off for sickness, either with or without pay, but without loss of seniority or other benefits." BLACK'S LAW DICTIONARY (9th Ed. 2009). Sick leave is thus a benefit that allows an employee time off for illness, it is not a retirement enhancer. A sick leave day is obviously used when it is taken, like an apple is used when it is eaten. Sick leave days that are placed in a bank of hours are "unused" just like sick leave days that are recently accrued. In both cases, the apple has not been eaten. And in both cases, whether they are sold from a bank of hours or converted to cash upon receipt, if the officer received pensionable payment for these sick leave days, the officer would be receiving payment for "unused sick leave" in violation of A.R.S. § 38-842(12).[1]

PLEA makes the same argument with respect to vacation leave, but with even greater difficulty. PLEA asserts that the pension payments at issue in this case are not payments in lieu of vacation because "[t]he additional salary payment…is in lieu of accruing additional vacation credits. It is not a payment

[1] Tellingly, the legislature has not only prohibited use of sick leave payments when calculating the pensions for PSPRS members, but for other public employees as well. *See* A.R.S. § 38-711(7) (prohibiting sick leave and vacation leave payments for members of the Arizona State Retirement System); *see also* A.R.S. § 38-615(F) (applicable to public employees whose compensation requires forfeiture of sick leave upon retirement and stating that sick leave cannot be used when calculating "average salary" for retirement purposes).

made in lieu of vacation itself." (PLEA MSJ at 7.) A.R.S. § 38-842(12), of course, makes no such distinction. That law prohibits all "payment[s] in lieu of vacation." A.R.S. § 38-842(12). Trading vacation credit, whether previously accrued or recently accrued, for monetary payment, is quite simply the definition of payment in lieu of vacation.

Finally, PLEA concedes that a uniform allowance "is appropriately considered a fringe benefit" (PLEA MSJ at 7), but contends that because it is converted to biweekly payments under § 3-4(B) of the 2012-2014 MOU, it suddenly becomes pensionable pay.[2] If this analysis was correct, then *any* type of pay, including for vacation leave, sick leave, or any other fringe benefit, could be converted to bi-monthly payments and suddenly become pensionable despite express statutory prohibitions. This would render the entire statutory scheme for PSPRS, and any other pension plan, "void, inert, trivial, superfluous, or contradictory." *Hourani*, 211 Ariz. at 431, 122 P.3d at 10. Thus, such an extraordinary interpretation not only violates very plain principles of statutory construction, but would render the entire statutory scheme regarding the pensionability of payments irrelevant. As a result, this interpretation must be rejected.

Based on the foregoing, the Court need look no further than the plain language of A.R.S. § 38-842(12) to reject PLEA's innovative theories of statutory interpretation. The plain language of A.R.S. § 38-842(12) controls the outcome of this case. *Pima Cnty. v. School Dist. No. One of Pima Cnty.*, 78 Ariz. 250, 252, 278 P.2d 430, 432 (1954) ("It is well settled that where a statute expressly defines certain words and terms used in the statute the court is bound by the legislative definition in all cases

[2] PLEA asserts somewhat misleadingly that because the uniform conversion option under § 3-4(B) results in a reduced total annual payment by $309.00, the City is, "essentially, being reimbursed for the contributions it made to the PSPRS fund for the salary payments made pursuant to § 3-4B." (PLEA MSJ at 4, n. 1). As described in greater detail, *infra*, the City will over the lifetime of the retiree pay *substantially* more than any initial "reimbursement." *See* A.R.S. § 38-845.

where the rights of the parties litigant are based upon that statute."). PLEA's case must be dismissed in its entirety.

II. THE LEGISLATURE INTENDED TO EXCLUDE THE PAYMENTS AT ISSUE IN THIS CASE FROM THE DEFINITION OF PENSIONABLE COMPENSATION.

In addition to the plain and unambiguous language of A.R.S. § 38-842(12), the legislature's clear purpose in enacting the entire PSPRS statutory scheme and the legislative history make clear that the legislature intended to exclude the payments at issue in this case as pensionable compensation. *See Mail Boxes v. Indus. Comm'n of Arizona*, 181 Ariz. 119, 122, 888 P.2d 777, 780 (1995) (when interpreting a statute courts will "consider context, subject matter, historical background, effects, consequences, spirit, and purpose.").

The legislature's stated purpose in enacting the PSPRS system demonstrates that the legislature intended to exclude the payments at issue in this case from the definition of pensionable compensation. PLEA contends that the legislative history of A.R.S. § 38-842(12) supports a finding that the legislature intended PSPRS members to exchange vacation leave, sick leave, and uniform allowances for pensionable compensation. (PLEA MSJ at 8-11.) The legislative history of the PSPRS system – beginning with the purpose for which it was enacted – directly undermines that contention. *See Dietz v. General Elec. Co.*, 169 Ariz. 505, 510, 821 P.2d 166, 171 (1991) (a statute may be interpreted "in such a way as to achieve the general legislative goals that can be adduced from the body of legislation in question."). The legislature's stated purpose in enacting the whole PSPRS statutory system was "to provide a uniform, consistent and equitable statewide [retirement] program for public safety personnel." A.R.S. § 38-841(B). That purpose would be directly undermined if PLEA's interpretation of the statute is accepted.

PLEA's interpretation of A.R.S. § 38-842(12) would disturb uniformity and create inconsistencies and clear inequities in the PSPRS system. First, there are approximately 255 participating employers in PSPRS. SOF ¶ 2. When the City of Phoenix agreed to permit pension payments for vacation leave, sick leave, and uniform allowances under the 2012-2014 MOU, it created a benefit that was prohibited by A.R.S. § 38-842(12) and thus unavailable to employees of the hundreds of other participating employers in PSPRS. This contravenes the legislature's very purpose of creating a *uniform* statewide retirement system. Second, the payments at issue in this case created inconsistencies and inequities among Unit 4 members participating in PSPRS. For example, two Unit 4 members could have served the same number of years and retired in the same rank but receive vastly different pensions if one took advantage of the pension spiking provisions at issue in this case and the other did not. This rewards gamesmanship over merit, and promotes inconsistency and inequity over uniformity, flouting the legislature's purpose in creating a statewide PSPRS system.

PLEA next argues that the 1983 amendments to A.R.S. § 38-842 were intended to prevent "a situation in which members' pension calculations were drastically influenced by their very last paychecks, which, in turn, drastically increased the unfunded liability of the PSPRS fund." (PLEA MSJ at 9.) Exactly. The 2012-2014 MOU provisions at issue in this case are designed precisely to "drastically influence[] [PSPRS members'] very last paychecks" to artificially inflate their final average salary (which has the unfortunate consequence of increasing unfunded liabilities of the PSPRS fund). Specifically, the vacation leave conversion at § 5-5(J) and the uniform allowance conversion at § 3-4B are both only available once Unit 4 members attain a minimum of 17 years of service in PSPRS. (PSOF ¶¶ 17, 19). For an individual who retires at the minimum of 20 years, three years of payment represent 15 percent of the employee's working years. Similarly, the sick leave exchange provision is only available after Unit 4 members accrue a large bank of sick leave hours, built over the course of a long

career. (PSOF ¶ 18). These provisions ensure that the salaries, and thus pension amounts, of these PSPRS members will be "drastically influenced by their very last paychecks."

If a Unit 4 member took advantage of these provisions, the member would pay pension contributions for only a three year period, but would increase pension payments for the entirety of the member's retirement. Assume, for example, a PSPRS member increased his or her final average salary by $20,000 each year, beginning in year 17, for three years, and retired after 20 years of service. Assume also that this increased the member's final average salary from $100,000 to $120,000. Over the course of three years, the member would have contributed approximately $6,630 to PSPRS in member contributions on the additional payments, or 11.05 percent of the member's increased compensation. *See* A.R.S. 38-843(E)(5). If the member would have retired without spiking his or her pension, his annual pension would be $50,000. However, by cashing in the payments at issue in this case, the member increased his or her annual pension to $60,000. Thus, in the first year of retirement alone, the member is able to recoup *all* of his pension contributions to the system plus $3,370. Multiply the inflated retirement figure over the course of the member's entire retirement and the "unfunded liabilities" and inequities that existed under the provisions at issue in this case become stark. This circumstance is exactly why the legislature attempted to create a uniform, consistent, and equitable statewide retirement program that prevents members from, *inter alia*, receiving pension payments for the payments at issue in this case.

III. NO DEFERENCE IS OWED TO PSPRS OR PHOENIX PENSION BOARD ACTIONS AT ODDS WITH THE PLAIN LANGUAGE OF STATE LAW.

An administrative agency's statutory interpretation is reviewed *de novo*. *West Maricopa Combine, Inc. v. Arizona Dep't of Water Res.*, 200 Ariz. 400, 404, 26 P.3d 1171, 1175 (App. 2001).

No deference is owed to interpretations or actions by either the Public Safety Personnel Retirement System ("PSPRS") or the Phoenix Police Pension Board ("Local Board") because their interpretations are contrary to the plain language of state law, these entities do not possess any special expertise in statutory interpretation that this Court does not possess, and the PSPRS administrator's interpretation of similar payments for vacation and sick leave on whose testimony PLEA relies has already been squarely rejected by the Arizona Court of Appeals.

A. Any agency interpretations finding that the payments at issue in this case are pensionable are owed no deference because such an interpretation is contrary to the plain language of state law.

PLEA contends that this Court should give deference to the Local Board's interpretation of the definition of compensation set out in A.R.S. § 38-842(12), and PSPRS's apparent acquiescence to that interpretation. (PLEA MSJ at 11.) Statutory interpretations that are contrary to the plain language of state law, however, are owed no deference. "[O]f course, no deference is due to agency interpretations at odds with the plain language of the statute itself. Even contemporaneous and longstanding agency interpretations must fall to the extent they conflict with statutory language." *Public Employees Ret. Sys. of Ohio v. Betts*, 492 U.S. 158, 171, (1989), *superseded by statute as stated in Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 94 (2008). Deference to an administrative agency's own statutory interpretation is only appropriate where a statute is ambiguous. As described *supra* and in Taxpayers' Motion for Summary Judgment, the prohibition on the pension payments at issue in this case as set out in A.R.S. § 38-842(12) is clear and the plain language controls. No deference is owed to an agency interpretation at odds with the plain language of state law.

B. Neither PSPRS nor the Local Board possess special expertise on a question of statutory interpretation that this Court does not possess.

Although PLEA correctly observes that PSPRS is responsible for administering the PSPRS pension fund and the Local Board is charged with authority pertaining to system administration (PLEA MSJ at 12), PLEA incorrectly assumes that either entity possesses expertise on a matter of pure statutory interpretation that is owed deference. Statutory interpretation is a fundamental judicial function. "When the issue involves an interpretation of law . . . 'the [superior] court . . . [is] free to draw [its] own legal conclusions and determine whether the agency erred in its interpretation of the law.' " *McMurren v. JMC Builders, Inc.*, 204 Ariz. 345, 348, 63 P.3d 1082, 1085 (App. 2003) (internal citations omitted). In this case, no issue of special administrative expertise is required. Nor is this a circumstance that involves detailed knowledge of pension fund administration generally or the claims of individual beneficiaries specifically. Rather, this a pure question of statutory interpretation to which this Court, not PSPRS or the Local Board, is most properly suited to resolve. *See U.S. Parking Sys. v. City of Phoenix*, 160 Ariz. 210, 211, 772 P.2d 33, 34 (App. 1989) ("courts must remain the final authority on critical questions of statutory construction."). And no deference should be afforded administrative entities that have improperly interpreted the law. *Id.* (Superior Court owed no deference to the ALJ's interpretation of the law).

Additionally, PLEA asserts that because the Local Board "reaffirmed the longstanding interpretation of the compensation definition to include the salary payments at issue in this case" in a hearing on March 26, 2014, the Court should afford deference to that assessment. (PLEA MSJ at 13-14.) Taxpayers note that the Local Board made those findings during the pendency of litigation in the *Wright v. Stanton* matter, CV2013-010915, where the Local Board was named as a defendant for approving pension payments that were specifically excluded by state law in a plan it was charged with

administering. Arizona courts have held that "an agency interpretation developed in litigation is not entitled to judicial deference." *McKesson Corp. v. Arizona Health Care Cost Containment Sys.*, 230 Ariz. 440, 443, 286 P.3d 784, 787 (App. 2012). Because those payments are no longer being included in officer salary as pensionable pay, the Local Board is no longer reviewing or approving final average salaries that include the payments at issue in this case. The Local Board's interpretation of the pensionability of payments for vacation leave, sick leave, and uniform allowances, on which PLEA now apparently relies, however, was "developed in litigation," and as such, is not entitled to judicial deference.

C. Pension contributions to PSPRS are immaterial to the statute's prohibition on the pension payments at issue in this case.

PLEA next contends (PLEA MSJ at 11-12) that the legislative history of A.R.S. § 38-842(12) demonstrates that the payments at issue in this case should be considered pensionable compensation because Unit 4 members made pension contributions on those payments. The contention that a pension plan's collection of contributions from individual beneficiaries should inform the courts regarding a proper interpretation of state law, however, was recently squarely rejected by the Arizona Court of Appeals in a case that has some remarkable similarities to the present litigation. *Cross v. Elected Officials Ret. Plan*, 234 Ariz. 595, 598, 325 P.3d 1001, 1004 (App. 2014).

In *Cross*, Jack Cross, a former PSPRS administrator and beneficiary of the Elected Officials Retirement Plan ("EORP"), inflated his *own* pension by tens of thousands of dollars *a year* through cashing in vacation leave and sick leave at the end of his career at PSPRS. *Id.* Cross then sued EORP when that pension plan reviewed his "average annual salary" pension calculation and excluded "bonuses and payments for unused vacation and sick pay in calculating his pension." *Id.* Amazingly, PLEA now

relies on hearsay statements from the same Mr. Cross (PLEA MSJ at 12) to support its fanciful interpretation of A.R.S. § 38-842(12).

During litigation at trial and in the Court of Appeals, Mr. Cross argued that the definition of "annual average salary" under the EORP plan as set out in A.R.S. § 38-801(5) includes payments for unused vacation leave and sick time. *Cross*, 234 Ariz. at 604, 325 P.3d at 1010. In support of that argument, like PLEA here, Mr. Cross contended that paying contributions to the pension plan for unused vacation leave and sick leave payments was a significant factor in assessing whether the definition of "annual average salary" should include payments for vacation leave and sick leave. *Id.* at 604-605, 325 P.3d at 1010-1011.

The Court of Appeals squarely rejected Cross's argument. First, in interpreting the EORP statute, § 38-801(5), the court held that the definition of "average annual salary…does not include bonuses or payments made to a member in lieu of sick time or vacation." *Id.* at 605, 325 P.3d at 1011. Tellingly, the definition of "average annual salary" under A.R.S. § 38-801(5) is not nearly as clear as the definition of "compensation" under § 38-842(12); unlike § 38-842(12), § 38-801(5) does not include an express provision that excludes payment in lieu of vacation, payment for unused sick leave, and payment for fringe benefits from the definition of "compensation." Yet the court had no difficulty in concluding that the extra payments were not pensionable. Second, the court squarely rejected the argument that pension contributions on payments for unused vacation and sick leave was a relevant factor in determining whether such payments are pensionable pay. *Id.* ("we reject any contention that the Plan's collection of contributions from Cross's bonuses and sick leave and vacation payments represent a considered interpretation of the statute to which we should defer."). Thus, PLEA relies on an interpretation of a statute from an individual whose rationale for that interpretation was rejected outright by the Court of Appeals. This is true even though the definition of "average annual salary" under A.R.S.

§ 38-801(5) is not nearly as clear as the definition of "compensation" under A.R.S. § 38-842(12). As a result, PLEA's attempt to make the same argument here fails even more spectacularly than Mr. Cross's arguments for similar payments before the Court of Appeals. Neither weight nor deference should be afforded Mr. Cross's hearsay statements of interpretation.

CONCLUSION

Based on the foregoing, Taxpayers respectfully request that their Motion for Summary Judgment be GRANTED, that Plaintiff PLEA's Cross Motion for Summary Judgment be DENIED, and that PLEA's Amended Complaint and Plaintiff Theresa Clark's ("Clark"), et al., Verified Complaint be dismissed with prejudice.

RESPECTFULLY SUBMITTED this 30th day of January, 2015 by:

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The Honorable Robert Oberbillig
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