

Can NBCTs be required to pay employer's tax responsibility?

*By Richard Wilkinson
OEA General Counsel*

The Education Oklahoma Leadership Act was passed in 1997 by the Oklahoma Legislature and established a program for educators to become certified by the National Board for Professional Teaching Standards. The Act has been amended several times over the years, but the legislation provides teachers who achieve National Board Certification a \$5,000 annual bonus for a 10-year period as long as they maintain the national certification and are teaching in the classroom full-time in an Oklahoma public school.

The State Department of Education (SDE) directly paid the annual bonus to National Board Certified Teachers (NBCTs) every year until 2008. In 2007 the Internal Revenue Service (IRS) challenged that method of payment and determined that the bonus was a wage payable to an employee and therefore subject to applicable employer and employee withholding taxes.

As a result of the IRS determination, the state paid back taxes to the IRS for the prior years in which the bonus had been paid directly by the SDE to NBCTs and the state then changed the method of paying the bonus to eligible teachers.

In 2008 the SDE started the current practice of sending an allocation to local school districts that calculated the bonus amount for the NBCTs listed on a Statement of Eligibility that local school districts submit to the SDE. The initial allocation by the SDE in January 2008 contained only the amount of the bonus for each eligible teacher and did not include amounts to pay for any of the matching employer FICA contributions. Those employer costs were an unfunded mandate until the SDE sent an additional allocation in February 2008 that did cover the employer costs for the bonus amounts paid to teachers employed in a local school district. However, that additional allocation was sent to local school districts after the January 31 deadline for payment of the bonus.

The SDE sent allocations in 2009 that included the employer costs for the bonus amounts paid to teachers employed in a local school district. The 2010 allocation sent to local school districts by the SDE did not include amounts to cover the employer cost for the bonus and, so far, those costs are an unfunded mandate for 2010.

However, the 2010 SDE allocation notice indicated that the full amount of the bonus (\$5,000) was being allocated for each eligible bonus recipient and included instructions to each school district for the payment of the bonus.

Many school districts have opted to pay their national board certified teachers the bonus in the manner directed by the SDE and in the same way these payments have been made by local school districts since the IRS determination that the bonus amounts are wages and that employer matching FICA contributions should be paid on the bonus amount. However, there are also many districts this year that have opted to unilaterally reduce the amount of the bonus allocated to each school district by deducting the employer matching FICA contribution from the bonus amount.

Those school districts are arguing generally that the SDE is responsible for the payment of the national board bonus stipend and that they cannot be responsible for the employer costs associated with the bonus paid to eligible NBCTs. We have carefully reviewed these issues and do not believe that a local school district can unilaterally alter the amount of the bonus established by the SDE; unilaterally determine the amount of the bonus to provide to eligible teachers in its employ; or lawfully deduct required employer matching FICA contributions from employee wages.

If you are employed by a school district that has decided to deduct its matching employer FICA contribution from the bonus amount and you wish to pursue legal action against the school district, you should contact either Lynn Tiefenthaler in our office at 800/522-8091, ext. 344, or 405/523-4344, or you can e-mail Lynn at ltiefenthaler@okea.org to request legal assistance.

You do not have to participate in any legal proceeding against a school district; however, you must authorize our office to act on your behalf if you do wish to participate in any legal proceeding to resolve this dispute. You can also contact your OEA Regional Advocacy UniServ Specialist for additional information or help.