

CHAPTER 3

TEACHERS' PENSION AND ANNUITY FUND

Authority

N.J.S.A. 18A:66-56.

Source and Effective Date

R.1998 d.578, effective November 13, 1998.
See: 30 N.J.R. 3376(a), 30 N.J.R. 4254(a).

Executive Order No. 66(1978) Expiration Date

Chapter 3, Teachers' Pension and Annuity Fund, expires on November 13, 2003.

Chapter Historical Note

Chapter 3, Teachers' Pension and Annuity Fund, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.1983 d.175, effective May 16, 1983. See: 15 N.J.R. 526(b), 15 N.J.R. 930(c). Pursuant to Executive Order No. 66(1978), Chapter 3 expired on May 16, 1988.

Chapter 3, Teachers' Pension and Annuity Fund, was adopted as new rules by R.1988 d.381, effective August 15, 1988. See: 20 N.J.R. 1181(b), 20 N.J.R. 2072(b). Pursuant to Executive Order No. 66(1978), Chapter 3 expired on August 15, 1993.

Chapter 3, Teachers' Pension and Annuity Fund, was adopted as new rules by R.1993 d.658, effective December 20, 1993. See: 25 N.J.R. 4461(a), 25 N.J.R. 5942(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.1998 d.578, effective November 13, 1998. See: Source and Effective Date.

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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17:3-4.7 Excess contributions

Excess contributions left on deposit in the Annuity Savings Fund under the provisions of N.J.S.A. 18A:66-20 must remain in the fund until the member's death or retirement.

17:3-4.8 Military leave

(a) Military leave contributions remitted by an employer on behalf of an employee, who does not return to the payroll for the minimum 90-day period required by N.J.S.A. 18A:66-34, shall be retained by the fund. Such contributions shall be transferred from the Annuity Savings Fund to the Contingent Reserve Fund. Military leave contributions remitted by an employer shall be based on the employee's salary at the time he entered military service.

(b) Payroll, as referred to in (a) above, shall be interpreted to mean any public school payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when he entered military service.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

Case Notes

Approval of W.W.II veteran status in retirement system was proper. *Usarzewicz v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 69.

17:3-4.9 Eligibility for loan

Only active contributing members of the fund may exercise the privilege of obtaining a loan, and the maximum loan shall be 50 percent of the accumulated deductions posted to the member's account.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

17:3-4.10 Waiver required

Any member, who makes application for withdrawal from the fund who may otherwise be eligible to make application for retirement benefits, shall be required to execute and file a statement with the fund setting forth the benefits he is waiving in favor of withdrawal, before his application for withdrawal may be processed.

17:3-4.11 Termination; withdrawal

(a) Under the terms of the statute a member may withdraw from the fund only if he terminates all employment.

(b) No application shall be approved, if:

1. The member is on official leave of absence and his membership is subject to continuance under N.J.S.A. 18A:66.8;

2. The member certifies that his employment contract has not expired, or that he has executed another contract to work in a position subject to TPAF coverage;

3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if he has formally resigned from his position or there is no legal action contemplated or pending and the dismissal has been adjudged final;

4. A multiple member has not terminated employment in all covered positions;

5. The member has a claim pending for Workers' Compensation benefits.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
As amended, R.1975 d.140, effective May 27, 1975.
See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).
As amended, R.197 d.205, effective May 22, 1979.
See: 11 N.J.R. 208(a), 11 N.J.R. 359(a).

Case Notes

Previous acceptance of pension withdrawal funds deactivates member status and precludes reinstatement of membership account. *Mihalik v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 82.

Teacher's request for reinstatement of former pension membership account denied when teacher's equitable estoppel argument not supported by showing intentional misconduct or misrepresentation. *Kane v. Board of Trustees, Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 25.

17:3-4.12 Deductions

(a) A full deduction shall be taken for the TPAF in any payroll period in which the member is paid a sufficient amount to make a full normal deduction, plus any other arrears or loan deductions then in effect.

(b) No deduction shall be taken in any pay period in which the employee's salary is not sufficient to cover the required deductions for the TPAF.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

17:3-4.13 Active employment; membership requirement

All employees, otherwise eligible, who are not actively employed on the date of their enrollment, will not be covered by the group life insurance program until they return to service.

As amended, R.1974 d.24, effective January 31, 1974.
See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

17:3-5.1 Eligibility for purchase

(a) Only active contributing members of the system shall be eligible to make application for purchase of credit.

(b) In order to be eligible to purchase temporary service, a member must submit a written request to purchase such service within one year from the date his initial pension contributions are certified to begin and such purchase must be authorized by the member before the expiration date indicated on the letter which quotes the terms of the purchase.

Case Notes

Held that purchased service credit based upon out-of-state employment could be applied towards the 20 years service required for veteran's retirement. *Moss v. State Bd. of Trustees, Public Employees' Retirement System*, 178 N.J.Super. 460, 429 A.2d 420 (App.Div.1981).

Educational program specialist's application to purchase service credit was properly denied where application was made three years after deadline. *Willis v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 165.

Correction of error process not applicable to allow purchase of prior service credit where employer refused to stipulate that necessary enrollment information was not provided. *Telerico v. Freehold Regional High School*, 93 N.J.A.R.2d (TYP) 204.

Teacher would not be allowed to purchase pension credit for out-of-state substitute service. *Lillian Solomon v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 1.

Teacher, whose employment termination was found wrongful by the Commissioner but chose not to return to employment, held able to purchase pension credits, which she had sought to do before termination, as if her employment had continued through the date of the Commissioner's decision. *Stuermer v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 2 N.J.A.R. 248 (1980).

17:3-5.2 New enrollment purchases or rates adjustment

(a) Members who file an application for enrollment and indicate they want to purchase the period between their regular appointment and their compulsory date of enrollment will have such purchase calculated on the basis of their net pension rate of contribution and salary as of their date of their regular appointment. If more than one year has elapsed from the date of compulsory enrollment, the purchase of all service will be based on the member's current salary times the full pension rate of contribution.

(b) Upon enrollment or reenrollment, a veteran shall contribute at the percent rate applicable to the age resulting from the subtraction of his years of prior service (pre-1955) from the date he began his present employment or the date of enrollment, whichever is later, provided that member submits satisfactory evidence of prior public employment in New Jersey.

17:3-5.3 Reestablishing military leave credit

Any veteran, who terminated membership before January 1, 1955, and whose withdrawal of contributions included contributions paid by his employer during a period of military leave, shall receive veteran prior service credit for only the period during which he actually contributed. He can receive additional membership credit for the period of his military leave if he redeposits the amount of employer contributions, plus regular interest to the date of his authorization of such purchase.

17:3-5.4 Compulsory purchases

An employee, who was required to enroll and whose application was filed beyond his compulsory date of enrollment, will be required to purchase membership credit retroactive to the date of compulsory enrollment. Purchases will be calculated on the basis of the member's current salary at the full pension rate of contributions assigned as of his compulsory date of enrollment with regular interest.

17:3-5.5 Optional purchases of eligible service

(a) Members, who purchase temporary service, must purchase all such service immediately preceding enrollment. The purchase will be calculated on the basis of the member's current salary times the full percentage rate of contribution assigned at enrollment.

(b) The types of purchases indicated below will be calculated on the basis of the actuarial factor established for the member's age at the time of the purchase times his current salary:

1. All former membership credit in another State-administered retirement system.
2. All former service with any employer which was not certified for membership but which would have qualified on a compulsory basis at the time the service was rendered.
3. Leaves of absences:
 - i. All of the period of the leave for personal reasons for a period of less than three months.
 - ii. All of the period of the leave up to two years for personal illness or maternity.
4. Members who purchase all or a portion of their eligible out-of-State service.

(c) Rules concerning the purchase and/or conversion of Class A credit include the following:

1. The cost of Class B service credit is based on actuarial factors and such factors provide a retirement benefit which is 1/6 greater than service credited as Class A. If Class A credit is purchased, the cost will be 6/7 of the amount computed for a Class B purchase. The computation is based on the member's present salary multiplied by the actuarial factor for the member's age at the time of purchase with regular interest.

2. If a Class A member converts to Class B, he will contribute an additional 1/6 of the total contributions that would have been payable based on his full Class A contribution rate with regular interest.

As amended, R.1983 d.78, effective March 21, 1983.

See: 14 N.J.R. 1002(b), 15 N.J.R. 449(b).

Language added at (b), 1. re: State-administered retirement systems.

Amended by R.1987 d.47, effective January 20, 1987.

See: 18 N.J.R. 2120(a), 19 N.J.R. 244(a).

benefit raised from 1/5 to 1/6 greater.

Case Notes

New Jersey makes no provision for purchase of additional credit for out-of-state employment periods during leaves of absence. *Schuman v. Teachers' Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 17.

Rule provision stating that per diem teaching service is not creditable for pension purposes held invalid as inconsistent with statutory provision allowing credit to be purchased for such services (citing former N.J.A.C. 17:3-5.4). *Antonchak v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 3 N.J.A.R. 83 (1980).

17:3-5.6 Methods of payment

(a) Methods of payment include the following:

1. Lump sum;
2. Partial lump sum of \$250.00 or more; balance by extra payroll deductions;
3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years;
4. Extra payroll deductions will include regular interest for the term of the installment.

Amended by R.1991 d.444, effective August 19, 1991.

See: 23 N.J.R. 1073(a), 23 N.J.R. 2522(a).

In (a)3, deleted class A to B conversions, compulsory and temporary service purchases.

17:3-5.7 Military leave

Any active member purchasing credit for out-of-State service may include in the maximum 10 years' credit to be purchased, his leave of absence for military service, provided he received credit for such leave in the State or local public retirement system in which he was participating at the time he was in military service.

17:3-5.8 Eligible credit

(a) An active contributing member may purchase credit for:

1. Up to 10 years of out-of-State full-time teaching service rendered in a public school conducted under the order and superintendence, and wholly or partly at the expense of a State, local or district board of education, provided the member is not receiving nor is entitled to receive a retirement allowance for such service from any other public retirement system and proof is received that he has withdrawn from such other system. Federal service and service rendered outside of the United States,

with the exception of service rendered to a local school board in territories or possessions of the United States, Washington, D.C. and the Canal Zone, is not creditable.

2. Any previous, eligible full-time public school teaching service rendered in New Jersey.

3. Full-time and continuous substitute or temporary public school teaching service rendered in New Jersey for a period of not less than one full school semester, provided such service was immediately followed by an appointment to a regular full-time teaching position. Per diem or intermittent temporary or substitute service is not creditable.

17:3-5.9 Lump-sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the Teachers' Pension and Annuity Fund Law (N.J.S.A. 18A:66-1 et seq.) and the rules of the retirement system.

New Rule, R.1989 d.360, effective July 17, 1989.

See: 21 N.J.R. 980(b), 21 N.J.R. 2055(b).

Provision of immediate credit for service purchased by a lump-sum payment.

SUBCHAPTER 6. RETIREMENT

17:3-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the Fund. Such forms must be completed in all respects and filed with the Fund before the requested date of retirement.

(b) In the event a member files an incomplete application, the deficiency shall be brought to his or her attention and he or she will be required to file a completed application with the Fund to enable acceptance for processing.

(c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the employer setting forth the employment termination date, the salaries reported for contributions in the member's final years of employment and proof of age, if none is already in the member's record.

(d) In addition to the foregoing requirements, an application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

Amended by R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

Amended by R.1987 d.10, effective January 5, 1987.
See: 18 N.J.R. 1519(b), 19 N.J.R. 140(b).
Substantially amended.

Case Notes

Petition for acceptance of retirement application, filed more than 30 days after retirement date, denied; after notification by Board that disability retirement application was denied and advising petitioner to file for service retirement, which she did not do for three months, petitioner held not entitled to retroactively effectuate retirement application to her actual retirement date (citing former rule). *Sobel v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 139 N.J.Super. 55, 352 A.2d 585 (App.Div.1976).

Estoppel did not entitle teacher to retroactive retirement date. *Berk v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 348.

Board of Trustees not equitably estopped from correcting erroneous retirement allowance; detrimental reliance not established. *Sgombick v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 107.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.2 Effective date; changes

(a) A member shall have the right to withdraw, cancel or change an application for retirement at any time before his retirement allowance becomes due and payable; thereafter the retirement shall stand as approved by the Board.

(b) Except in the event of deferred retirement, if a member requests a change in his retirement application before his retirement allowance becomes due and payable, said change will require approval of the Board and the revised retirement allowance shall not become due and payable until 30 days have elapsed following the effective date or the date the Board met and approved the change in the member's retirement application, whichever is later.

(c) If the applicant should die within 30 days following the date the Board of Trustees approved the revised application, the member shall be considered to be retired on the basis of the originally approved application for retirement, provided that the initial 30-day requirement was satisfied.

(d) A deferred retirement shall become effective on the first of the month following the member's 60th birthday.

(e) In the case of deferred retirement, if an applicant desires to amend his retirement application, the amended application must be filed with the Fund a minimum of one month prior to his effective date of retirement.

(f) Should the member continue to receive a salary beyond the effective date of retirement after approval of the retirement by the Board of Trustees, no retirement benefits shall be paid for the period where the member received salary and no salary or service credit shall be provided for the service rendered after the approved, effective date of retirement.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
As amended, R.1974 d.24, effective January 31, 1974.
See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).
As amended, R.1975 d.140, effective May 27, 1975.
See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).
As amended, R.1983 d.78, effective March 21, 1983.
See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).
Subsection (f), added.

Case Notes

Denial of retiree's request to convert ordinary plan to early service retirement was not arbitrary or capricious. *Steinmann v. State, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund*, 235 N.J.Super. 356, 562 A.2d 799 (A.D.1988) reversed 116 N.J. 564, 562 A.2d 791.

Retiree may change benefits after retirement and receipt of benefits if retiree is incompetent at time of application completed. *Cicione v. Teacher's Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 84.

Tenured teacher could not obtain difference between her salary and disability pension benefits for period between when she applied for and was granted disability retirement. *Matter of Tenure Hearing of Scherr*, 95 N.J.A.R.2d (EDU) 97.

Monthly allowance selection; decedent was competent at the time he made selection. *Robertson v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 161.

No good cause or reasonable diligence existed to allow teacher to reopen early retirement designation made 12 years earlier. *Porter v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 9.

Untimely request to change effective date of retirement denied. *Jengeleski v. Board of Trustees of the Teachers' pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 5.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.3 Effective date; death prior thereto

(a) A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

(b) A member, who has applied for a retirement allowance, who dies before his retirement allowance becomes due and payable shall not be covered by insurance as a retired member.

(c) An in-service insurance benefit will be payable if the member's insurance coverage was in effect immediately prior to his retirement date.

Case Notes

31-day period for conversion of individual life policy began to run after receipt of approval rather than date of approval of retirement. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

For purpose of statute, notice of termination of employment and notice of existence of right to convert to individual life policy were not synonymous. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.4 Outstanding loan

(a) Members who have a loan outstanding at the time of their retirement, will be permitted to repay the outstanding value of their loan, with interest, before their retirement allowance becomes due and payable. The allowance be-

comes due and payable 30 days after the date the Board approves their application for retirement or 30 days after the date of retirement, whichever is later.

(b) In the event a retirant should die before the outstanding value of the loan, with interest, is recovered, the group life insurance proceeds will first be used to repay the loan. If the retirant has designated multiple beneficiaries to receive such benefits, each beneficiary will share equally in repaying the loan from benefits payable to them.