

(b) Where a beneficiary of a member requests that a retirement take effect and that a selection of an optional settlement be made as authorized under P.L. 1984, c.96, section 2, as amended by P.L. 1995, c.221, section 1 (N.J.S.A. 43:15A-50), an additional amount of insurance, not to exceed the amount of insurance that could be converted under the group policies for noncontributory and contributory death benefits, shall be paid as claims under the group policies only if the member files an application for conversion of the insurance upon retirement as provided under N.J.S.A. 43:15A-93 and pays the initial premium for the converted insurance. The premiums paid for the converted insurance shall be retained by the carrier and be applied to the premiums payable by the State and the retirement system for benefits provided under the group policies.

New Rule, R.1998 d.501, effective November 2, 1998.
See: 30 N.J.R. 1917(a), 30 N.J.R. 3970(a).
Amended by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (b), substituted a reference to N.J.S.A. 43:15A-50 for a reference to N.J.S.A. 18A:66-47.

17:2-3.14 Acceptable designations of beneficiaries

(a) The beneficiary designation on a duly executed retirement application that is filed with and accepted by the Division supersedes any older designation of beneficiary on file. The designation is effective upon acceptance by the Division, even if the retirement date on the application is in the future or the member cancels the retirement.

1. The beneficiary or beneficiaries designated on the retirement application for the retirement allowance shall be the beneficiary or beneficiaries for the return of the member's accumulated contributions.

2. If no beneficiary designation is in effect at the time of the member's death, or if no one is named as beneficiary for the retirement allowance, the Division shall pay the benefit to the member's estate.

(b) The beneficiary or beneficiaries of the group life insurance designated on the retirement application shall be the beneficiary or beneficiaries of the active group life insurance.

1. If no beneficiary designation is in effect at the time of the member's death, or if no one is named as beneficiary for life insurance, the Division shall pay the benefit to the member's estate.

New Rule, R.2000 d.74, effective March 6, 2000.
See: 31 N.J.R. 3928(a), 32 N.J.R. 823(a).
Amended by R.2001 d.9, effective January 2, 2001.
See: 32 N.J.R. 3213(a), 33 N.J.R. 62(a).

Added "or the member cancels the retirement" to the end of (a).

SUBCHAPTER 4. MEMBERSHIP

17:2-4.1 Creditable compensation

(a) The compensation of a member subject to pension and group life insurance contributions and creditable for retirement and death benefits in the system shall be limited to base salary, and shall not include extra compensation. For purposes of this section:

1. "Base salary" means the annual compensation of a member, plus the value of maintenance, if applicable, in accordance with contracts, ordinances, resolutions or other established salary policies of the member's employer for all employees in the same position, or all employees covered by the same collective bargaining agreement, which is paid in regular, periodic installments in accordance with the payroll cycle of the employer; and

2. "Extra compensation" means individual salary adjustments which are granted primarily in anticipation of a member's retirement or as additional remuneration for performing temporary duties beyond the regular workday or work year. Forms of compensation that have been identified as extra compensation include, but are not limited to:

i. Overtime;

ii. Pay for extra work, duty or service beyond the normal workday, work year (for 10 month employees) or normal duty assignment;

iii. Bonuses;

iv. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;

v. Any compensation which the employee or employer has the option of including in base salary;

vi. Sell-backs, trade-ins, waivers, or voluntary returns of accumulated sick leave, holiday pay, vacation, over-time, compensatory time, or any other payment or benefit in return for an increase in base salary;

vii. Individual retroactive salary adjustments where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;

viii. Individual adjustments to place a member at the maximum of his or her salary range in the final year of service where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;

ix. Increments or adjustments granted for retirement credit;

x. Increments or adjustments in recognition of the member's forthcoming retirement;

xi. Any form of compensation which is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement who are members of the retirement system and who receive the compensation;

xii. Retroactive increments or adjustments made at or near the end of a member's service, unless the adjustment was the result of an across-the-board adjustment for all similarly situated personnel; and

xiii. Any form of compensation which is not included in a member's base salary during some of the member's service and is included in the member's base salary upon attainment of a specified number of years of service.

(b) The Board may question the compensation of any member or retiree to determine its creditability where there is evidence that compensation reported as base salary may include extra compensation.

(c) Extra compensation shall not be considered creditable for benefits and all contributions made thereon shall be returned without interest.

(d) With respect to all claims for benefits, the Division of Pensions and Benefits shall investigate increases in compensation reported for credit which exceed the reasonably anticipated annual compensation increases for members of the retirement system based upon either the increase in the Consumer Price Index for the time period of the increases and the table of assumed salary increases recommended by the actuary and adopted by the Board or based on the

averages of the regular increases in the employees' compensation preceding the periods in which the extra compensation was received. Those cases where a violation of law is suspected shall be referred to the Board.

(e) In connection with an investigation of an increase in compensation, the Board:

1. May require that a notarized statement under oath be obtained from the member's employer that the reported compensation was not granted primarily in anticipation of retirement, and conforms with the statutes and rules governing the retirement system.

2. May require an employer to provide any record or information it deems necessary for the investigation, including, but not limited to, collective bargaining agreements, employment contracts, ordinances, resolutions, minutes of public meetings (closed or open), job descriptions, salary histories, promotional lists or notices or any other record or information related to the increase in compensation; and

3. May refer any suspected submission of false information in violation of N.J.S.A. 43:15A-55, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

(f) Failure to satisfactorily respond to a request by the Board for documents or information related to an increase in compensation may result in the denial of credit for the increase in compensation.

(g) A determination by the Board that a member's compensation for pension purposes includes extra compensation may result in:

1. A denial of credit for the extra compensation;

2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;

3. A return of contributions to the active members and retirees on the extra compensation without interest;

4. A recalculation of the retirement benefits of retirees to eliminate benefits based upon the extra compensation; and

5. Repayment to the system by the retiree of any benefits received based upon the extra compensation.

(h) Employer contributions shall not be revised or refunded because of a determination by the Board that a denial of credit for increases in compensation is warranted under this rule.

Amended by R.1971 d.71, effective May 18, 1971.

See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

Repeal and New Rule, R.1999 d.276, effective August 16, 1999.

See: 31 N.J.R. 1466(a), 31 N.J.R. 2366(b).

Section was "Creditable salary".

Case Notes

Income received by school employee for duties as clerk was pension creditable. *Chapel v. Board of Trustees of Public Employees' Retirement System*, Div. of Pensions, 258 N.J.Super. 389, 609 A.2d 1294 (A.D.1992).

Municipal court judge's salary paid for service as presiding judge was creditable compensation. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge serving as presiding judge was employee, not independent contractor. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge's duties as presiding judge were neither temporary nor extracurricular. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge's position as presiding judge even if temporary was not disqualification from pension creditability for presiding judge salary. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Action of utilities authority and borough in creating positions, respectively, of general counsel and municipal prosecutor, and in appointing person to those positions, held not to constitute salary adjustments within the meaning of public employees' pension law excluding salary adjustments from compensation to be used as the basis for computing retirement pay. *Hiering v. Bd. of Trustees, Public Employees' Retirement System*, 197 N.J.Super. 14, 484 A.2d 20 (App.Div.1984).

Salary creditable; pension and veteran retirement benefits. *Berger v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 187.

Termination of fixed term position does not constitute discontinuation from service through no fault of employee within meaning of statute providing for extension of membership in retirement system. *D'Alessio v. board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 100.

Salary paid township counsel during three years before retirement was paid primarily in anticipation of retirement, and thus ineligible compensation for pension purposes. *Mangini v. Trustees of Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 43.

Petitioner's claim for inclusion for pension calculation of salary received as town sewer attorney denied as services rendered were of the type usually rendered by an independent contractor rather than an employee: claim for inclusion for pension calculation of vouchered fees received as town sewer attorney denied as such fees are outside the statutory definition of compensation (Board's Final Decision). *Fasolo v. Bd. of Trustees, Public Employees' Retirement System*, 6 N.J.A.R. 4 (1980), affirmed in part and reversed in part and remanded 181 N.J.Super. 434, 438 A.2d 328 (App.Div.1981).

17:2-4.2 Leave with pay

(a) If a member is granted a leave of absence with sufficient salary to cover a full normal contribution, including any arrears or loan payments, the privilege of the member to obtain credit on the basis of such salary shall not extend beyond six months from the date of the leave.

(b) If the leave with pay extends beyond six months, the member will be required to make contributions only if the member is receiving 50 percent or more of regular base salary.

Amended by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (b), neutralized a gender reference.

Case Notes

Salary paid township counsel during three years before retirement was paid primarily in anticipation of retirement, and thus ineligible compensation for pension purposes. *Mangini v. Trustees of Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 43.

17:2-4.3 School year members; 10 and 12 months

(a) Ten month members who are employed and are compensated for employment for the full normal school year by the board of education are entitled to receive 12 months of service credit. Members will not receive service credit for months during the normal school year when they are not actively employed and did not receive salary.

(b) A 12 month member is presumed to work each month of the fiscal year.

(c) Not more than one year's service credit will be given during any period of 12 consecutive months.

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer or another employer that participates in the Public Employees' Retirement System and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Public Employees' Retirement System for the period between the end of the previous contract and the new 12 month position.

Amended by R.1989 d.423, effective August 7, 1989.
See: 21 N.J.R. 979(a), 21 N.J.R. 2300(a).

Reference to 10-month employment as a minimum deleted.
Amended by R.1993 d.296, effective June 21, 1993.
See: 25 N.J.R. 908(a), 25 N.J.R. 2701(a).
Amended by R.1994 d.162, effective April 4, 1994.
See: 26 N.J.R. 108(a), 26 N.J.R. 1537(c).
Amended by R.1995 d.61, effective February 21, 1995.
See: 26 N.J.R. 3823(a), 27 N.J.R. 754(b).

17:2-4.4 Loan tolerance

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, the member will be assessed.

New Rule, R.1987 d.511, effective December 7, 1987.
See: 19 N.J.R. 194(a), 19 N.J.R. 2303(d).
Old rule was loan revaluation.

17:2-4.5 (Reserved)

Repealed by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).
Section was "Approved leave".