

Substituted references to chairpersons for references to chairmen throughout; in (a), inserted a reference to a representative to the State Investment Council and the Pension System Actuary Committee; and in (e), substituted "five members, three of whom shall be elected members of the Board" for "three members" at the end.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Rewrote the section.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

Rewrote (a); in (c), deleted "of Trustees" from the end; and in (d), inserted a comma following the first occurrences of "committee" and "members", substituted "Secretary shall provide" for "finance committee shall review", deleted "referred to it by the Secretary" following "reports", and inserted a period following "meetings".

17:2-1.4 Election of member-trustee

(a) The procedures as required by N.J.S.A. 43:15A-17 for the election of a State, municipal or county trustee representative to the PERS Board of Trustees are set forth in this section.

(b) Eligible candidates shall include any active or retired member of the PERS. Only State members may seek State seats, only municipal members may seek municipal seats, and only county members may seek county seats on the Board of Trustees. All candidates shall comply with any and all requirements as provided by law and these rules. Any candidate who fails to comply with the law and these rules is automatically disqualified as a candidate.

(c) The following shall apply to election notices:

1. At least nine months prior to the expiration of the term of each elected trustee or immediately upon a vacancy on the Board, a notice shall be prepared and distributed by the Secretary of the Board or a contracted vendor through the certifying officers to each member who is eligible to vote;

2. The election notice shall:

- i. Advise the member of the election;
- ii. State the position and term to be filled;
- iii. State that nominating petitions are required and that the petition forms are available from the Board Secretary at the Division;
- iv. State the date of the election;
- v. Identify all present members of the Board; and
- vi. Include any other information regarding a particular election, as specified by the Board of Trustees;

3. Election notices shall be forwarded in bulk and in appropriate number to the certifying officer or other appropriate fiscal officer of each employing agency, together with instructions as to who is to receive the notices;

4. A confirmation form shall also be forwarded to each certifying officer or appropriate fiscal officer. Such form

shall be returned to the Board Secretary or contracted vendor and shall include documentation of:

i. Receipt of the notice by the certifying officer or other appropriate fiscal officer; and

ii. The extent to which the certifying officer or other appropriate fiscal officer has distributed the notice to eligible members; and

5. Election notices shall be distributed to each eligible member through the certifying officer of each employing location. Only active members of the PERS may vote in the election of member-trustees of the Board of Trustees of the PERS.

(d) The following shall apply to nominating petitions:

1. Nominating petition forms shall be available from the Office of the Board Secretary of the PERS;

2. Nominating petitions shall be forwarded to each active or retired member who requests them after the Division verifies the member's eligibility to run for such election;

3. The petition forms shall explain that:

i. For State trustee, at least 500 active State members, who are eligible to vote for the position, are required to sign the petition for the candidate;

ii. For municipal trustee, at least 500 active municipal members, who are eligible to vote for the position, are required to sign the petition for the candidate; or

iii. For county trustee, at least 500 active county members, who are eligible to vote for the position, are required to sign the petition for the candidate;

4. Each petition form shall require the candidate's name, membership number and employer, as well as the petitioner's name, signature, employer, pension membership or Social Security number;

5. The form shall explain that an active member shall sign only one petition, with State members petitioning for a State candidate, municipal members petitioning for a municipal candidate and county members petitioning for a county candidate;

6. The dates for filing and returning the petitions shall be identified, as well as the approximate date that election packets shall be sent to employers for distribution to voters;

7. Candidates named on the petitions shall sign each petition in a designated space indicating their willingness to be a candidate; and

8. If only one candidate is nominated for a position, the candidate shall be deemed elected to the position without balloting. A notice to the certifying officers shall be distributed for posting at the employing locations, indicating

no contest, since only one candidate was nominated by petition.

(e) The following applies to distribution of election packets:

1. The Board reserves the right to authorize a vendor to collect votes through one or more of the following election processes. All active eligible members shall have an opportunity to cast a ballot through one of the following:

- i. Telephone (voice retrieval system—electronic vote);
- ii. Internet access (electronic vote); or
- iii. Paper ballot (postage-paid, self-seal return mailer);

2. For each eligible voter, there shall be forwarded to the certifying officer, individual member packets with instructions for balloting, which shall include the following information:

- i. The eligible member's name, pension membership number, pension location number, ballot number and personal identification number (PIN);
- ii. The closing date of the election;
- iii. The name of each candidate nominated including a biographical sketch listing the candidate's background and employer;
- iv. Instructions on how to properly cast a vote, including notification that shall advise the member that mutilated ballots, illegible ballots, ballots with write-in votes, ballots with multiple votes or ballots where it cannot be determined for whom the member intended to vote shall be declared invalid and not considered in the final election count;
- v. Instruction on how to properly cast an electronic vote;
- vi. Instruction on proper use of the PIN number;
- vii. Notification that the candidate receiving a plurality of the legal votes cast shall be declared elected to the position;
- viii. Notification that the first vote cast shall be counted as the official vote and subsequent votes will be rejected; and
- ix. A statement regarding the confidentiality and security used by the vendor to protect the election process against fraudulent and/or multiple voting;

3. The ballot positions shall be determined by a drawing conducted at a time and place determined by the Board Secretary. All candidates may attend such drawing by contacting the Board Secretary; and

4. A notice shall be signed by each certifying officer acknowledging the receipt and distribution of the election packets. It is the responsibility of the certifying officer to

ensure that such election packets are properly distributed to all eligible employees pursuant to N.J.S.A. 43:15A-67 and 80.

(f) The Board may assess the percentage of returned votes after the conclusion of each respective election and determine based upon an analysis of the frequency of use of the paper ballots versus the cost of providing the paper ballots whether or not a paper ballot should continue to be incorporated in the election packet in future elections as denoted in (e) above. The Secretary shall notify the vendor handling the next election of the Board's decision regarding continued inclusion of the paper ballot in the initial election packet. If members cannot cast an electronic ballot, they shall have an opportunity to cast a paper ballot. If the Board determines that paper ballots shall no longer be included in the initial election packet, then the following apply to the distribution of paper ballots upon member request:

1. Active members may contact the vendor handling the election to request a paper ballot if the voter is unable to cast a ballot through any of the other electronic methods mentioned in (e) above. Members shall provide the vendor with their proper ballot and pension number and home address;

2. Upon proper request by an eligible voter, the vendor shall mail a paper ballot to the voter's home address, together with instructions for casting the ballot, biographical information about the candidates and a postage-paid return envelope; and

3. Mutilated ballots, illegible ballots, ballots with a write-in vote, multiple votes or any ballot where it cannot be determined for whom the voter intended to vote shall be declared invalid and not considered in the final election count.

(g) The following shall apply to biographical information:

1. An informational sheet of biographical information regarding each candidate shall be prepared by the candidate and submitted to the Secretary;

2. The Secretary shall inform each candidate that the biographical information will be included with the election packet;

3. The biographical information on each candidate shall be included on the ballot and provided to those eligible to vote as part of the election packet sent to employers for distribution; and

4. Endorsements are not permitted in the biographical information.

(h) The following shall apply to vote tabulation:

1. Only a member's first vote shall be counted as the official electronic or paper ballot. All duplicate or subsequent votes shall be considered invalid and not included in the final election count;

2. The candidate receiving the highest number of all legal votes contained in (e) and (f) above shall be elected to the position;

3. The Secretary of the Board shall oversee the election process to ensure that the vendor complies with all of the requirements and to assure the validity of the final election count; and

4. The eligible candidates for the election shall be invited to the presentation of the final results of the election.

(i) The following shall apply to recount procedures:

1. Any candidate or member who shall have reason to believe that an error has been made in counting or declaring the vote may request, in writing, within 20 days of the certification of the results of the election, that the Board of Trustees, at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such hearing, any member of the Board who is a candidate on the contested ballot shall not vote in the Board's decision on the request. Candidates on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support their beliefs;

2. If a candidate or other interested party requests a recount, in writing, within the prescribed time, this request shall be reviewed and granted by the Board of Trustees, if a recount could possibly affect the results of the election. All ballots received shall then be recounted and the recount shall be supervised by the Board Secretary. The Board Secretary shall certify the results of the recount to the Board of Trustees. If a recount is not requested within 20 days, the ballots may be destroyed; and

3. Upon election and the taking of an oath of office, the State, municipal or county member-trustees shall serve for a term of three years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board of Trustees.

(j) In the event, the victorious candidate dies or is unable or unwilling to serve as such member-trustee prior to the beginning of the candidate's term as trustee, the candidate who obtained the next highest number of votes in that election (that is, the first runner-up) shall be selected to fill the Board vacancy caused by the death or inability or unwillingness to serve of the successful candidate. If the Board selects the first runner-up in such election and that person is unable or unwilling to accept the position, then the Board shall select the candidate who obtained the next highest number of votes in that election. If there is no second runner-up, the Board shall conduct a new election to fill the Board vacancy. For purposes of this provision, a member-trustee's term begins upon the taking of the oath of office.

Amended by R.1973 d.118, effective April 30, 1973.
See: 5 N.J.R. 124(b), 5 N.J.R. 204(a).

Amended by R.1985 d.213, effective July 9, 1976.
See: 8 N.J.R. 260(a), 8 N.J.R. 407(c).
Amended by R.1985 d.590, effective November 18, 1985.
See: 17 N.J.R. 2238(a), 17 N.J.R. 2784(a).

(a)4 added text: "If only one ... only one nominee."; and added (b)9.
Amended by R.1987 d.157, effective April 6, 1987.

See: 19 N.J.R. 52(a), 19 N.J.R. 565(a).

Substantially amended.

Amended by R.1993, d.78, effective February 16, 1993.

See: 24 N.J.R. 3690(a), 25 N.J.R. 711(a).

Added new (i).

Amended by R.1994 d.259, effective June 6, 1994.

See: 25 N.J.R. 5113(a), 26 N.J.R. 2299(d).

Repeal and New Rule, R.2000 d.73, effective March 6, 2000.

See: 31 N.J.R. 3926(a), 32 N.J.R. 821(a).

Section was "Election of member-trustee".

Amended by R.2004 d.84, effective March 1, 2004.

See: 35 N.J.R. 4831(a), 36 N.J.R. 1198(a).

Rewrote (e)1iv and (e)2iv; in (f), deleted 3 and recodified 4 as 3.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

Rewrote (a), (c), (d), (e)1, (e)2, (e)3, (e)4, (f), (g), (h), (i) and (j).

Case Notes

Request for recount in election of trustees of Public Employees' Retirement System was properly denied where there was no evidence of miscalculations or serious errors in counting process. *McLaughlin v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 181.

Candidate was ineligible to run for reelection to PERS Board of Trustees; prior disciplinary suspension. *Buriani-DeSantis v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 63.

17:2-1.5 Certifying Officer (employer)

(a) The Chief Fiscal Officer or other officer duly designated via resolution of each county, municipality or public agency and the personnel officer of the Division, Bureau or Institution of the State locations shall serve as the Certifying Officer for that unit.

(b) The Certifying Officer shall be responsible for the duties described by N.J.S.A. 43:15A-67 and 80 and any other section, which refers to the Department head.

(c) The Certifying Officer shall also be responsible for all other duties relating to matters concerning the System including providing requested documentation in a timely manner.

(d) Upon the request of the Board, the Certifying Officer shall be required to sign a statement, verifying that any information reported is accurate to the best of the Officer's knowledge, and conforms with the statutes and rules governing the retirement system.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Substituted references to Certifying Officers for references to Certifying agents throughout; and added (d).

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (c), inserted "including providing requested documentation in a timely manner" following "System".

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (b), deleted "Section" preceding "80" and inserted a comma following "section".

Case Notes

PERS member's employer, not the Division of Pensions and Benefits or the PERS Board, had duty to keep employees apprised of all duties and obligations under the PERS statute. *Kramer v. Board of Trustees of Public Employees' Retirement System*, 291 N.J.Super. 46, 676 A.2d 1117 (N.J.Super.A.D. 1996).

Petition to purchase pension credit for prior temporary service after expiration of statutory filing limitation denied: Public Employees' Retirement System held without statutory obligation to disseminate to certifying agents amendatory legislation concerning the retirement system at the time of enactment. *In re Krahn*, 130 N.J.Super. 366, 327 A.2d 248 (App.Div.1974).

17:2-1.6 Records

(a) In addition to the provisions of N.J.A.C. 17:1-1.2, the approved minutes of the Board are a matter of public record and may be inspected during regular business hours in the Office of the Board Secretary.

(b) The annual report of the system's actuary shall not be released until it has been accepted by the Board of Trustees.

(c) Original documents, if available, shall only be viewed by appointment at the Division.

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

Inserted a new (c); and recodified former (c) as (d), and added the second and third sentences.

Amended by R.2005 d.75, effective February 22, 2005.
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), substituted "In addition to the provisions of N.J.A.C. 17:1-1.2, the" for "The"; in (d), added the third sentence; added (e) and (f).

Amended by R.2010 d.149, effective July 19, 2010.
See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (a), inserted "approved"; deleted (b) through (d); recodified (e) and (f) as (b) and (c); in (b), substituted "accepted" for "approved"; and in (c), deleted "of Pensions and Benefits" from the end.

17:2-1.7 Appeal from Board decisions

The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative:

"(a) If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

(b) The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(c) Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.

(d) If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division.

(e) If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law."

As amended, R.1971 d.71, effective May 18, 1971.

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

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Case Notes

State agency's failure to give employee required notice of right to appeal adverse determination concerning substitution of survivor's benefits beneficiary necessitated court's transfer of issue back to agency for final determination. *Rienzi v. Rienzi*, 300 N.J.Super. 355, 693 A.2d 129 (A.D.1997).

Employee who sustained back injury which, at most, contributed to progression of arthritic condition by aggravation, held not to have disability which was a direct result of a traumatic event so as to entitle the employee to disability retirement benefits. *Gerba v. Bd. of Trustees, Public Employees' Retirement System*. 83 N.J. 174, 416 A.2d 314 (1980).

Legislative positions held by employee as Assistant to Speaker of General Assembly, Assistant Secretary of Senate and Secretary of Senate held not within explicit exclusions for temporary or seasonal employees or employees whose salary was less than \$500, but were regular State employment positions qualifying employee for PERS benefits, notwithstanding twice yearly rather than quarterly salary payments. *Gladden v. Bd. of Trustees, Public Employees' Retirement System*, 171 N.J.Super. 363, 409 A.2d 294 (App.Div.1979).

Public employee's request for a formal hearing to challenge the Board of Trustees of the PFRS' determination in a May 16, 2000 letter that the employee had not suffered a "traumatic event" and thus was not entitled to an accidental disability pension was denied as untimely under N.J.A.C. 17:2-1.7. Despite the Board's confusion regarding the employee's address, from the documents presented and the employee's testimony, it appeared most probable that the employee did receive the May 16, 2000 letter denying the benefits within days of its date, especially where a letter from the employee's attorney on May 22, 2000 made it clear that a retainer between the attorney and the employee had been discussed regarding the denial of the pension. *In re Williams*, OAL Dkt. No. TYP 03483-05S, 2006 N.J. AGEN LEXIS 1060, Initial Decision (December 28, 2006), adopted (PFRS Bd. of Trustees February 5, 2007).

17:2-1.8 (Reserved)

As amended, R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (a)2, deleted "under age 60" following "retirant".

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), inserted "if requested" following "annual earned income" in 2 and added 5.

Repealed by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

Section was "Suspension of pension checks".