

CHAPTER 4**POLICE AND FIREMEN'S RETIREMENT SYSTEM****Authority**

N.J.S.A. 43:16A-13(7) et seq.

Source and Effective Date

R.1996 d.166, effective April 1, 1996.
See: 27 N.J.R. 4270(a), 28 N.J.R. 1873(a).

Executive Order No. 66(1978) Expiration Date

Chapter 4, Police and Firemen's Retirement System, expires on April 1, 2001.

Chapter Historical Note

Chapter 4, Police and Firemen's Retirement System, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 4 was readopted as R.1990 d.329, effective June 8, 1990. See: 22 N.J.R. 908(a), 22 N.J.R. 2032(b). Chapter 4, Police and Firemen's Retirement System, expired on June 8, 1995 pursuant to Executive Order No. 66(1978).

A new Chapter 4, Police and Firemen's Retirement System, was adopted as R.1996 d.166, effective April 1, 1996. See: Source and Effective Date.

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SUBCHAPTER 1. ADMINISTRATION**17:4-1.1 Board meetings**

The Board of Trustees shall meet on the third Monday of each month, unless a change is declared in order by the chairman at an appropriate time.

17:4-1.2 Fiscal year

(a) Fiscal year shall mean the 12-month period of fiscal transactions commencing July 1 and running until June 30 following.

(b) All reports and statements will consider such a fiscal year except special reports not having direct relationship to the financial transactions of the retirement system.

17:4-1.3 Officers and committees

(a) The chairman and vice chairman of the Board will be elected by a majority vote of the members in attendance at the first meeting of each fiscal year, not less than five members to be present at such a meeting.

(b) The chairman of the Board shall preside at all meetings that he or she attends and in his or her absence the vice chairman or, if absent, another member selected by the majority of the members in attendance will preside for that single meeting.

(c) The secretary of the Board will be the Chief of the Bureau of Police and Fire Funds, Division of Pensions.

(d) Upon recommendation of the Chief, the Board will also select from the staff of such Bureau, an assistant secretary who will serve in the absence of the secretary.

(e) The chairman will appoint such committees from the Board members as he deems necessary to facilitate the Board's operations. Such committee appointments will be for a one year period, commencing each July 1.

17:4-1.4 Election of active member-trustee

(a) The procedures for the election of a police or fire trustee representative to the Police and Firemen's Retirement System (PFRS) Board of Trustees are set forth in this section.

(b) Eligible candidates shall include any active member of the Police and Firemen's Retirement System. Only police members may seek police seats, and only fire members may seek firemen 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 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 also:

- 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 petition forms are available from the Board Secretary at the Division of Pensions and Benefits;
- iv. State the date of the election;
- v. Identify all present members of the Board; and

vi. Include any other information regarding that 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.

5. Election notices shall be distributed to each member who is eligible to vote, as shown on a master list of members that shall be compiled by the Board Secretary, stored and made available for review to any candidate at the office of the Board Secretary. Only active members of the PFRS may vote in an election of member-trustee of the Board of Trustees of the PFRS. Any challenge of questions concerning eligible voters shall be made in writing, prior to the close of the voting deadline. Failure to challenge the list or any part of it prior to the voting deadline shall disallow any challenges or questions raised after the close of voting.

(d) The following apply to nominating petitions:

1. Nominating petition forms shall be available at the office of the Board Secretary of the Police and Firemen's Retirement System.

2. Nominating petitions shall be forwarded to each active 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 police trustee, at least 500 active police members, who are eligible to vote for the position, are required to sign the petition for the candidate.

ii. For fire trustee, at least 300 active fire members, who are eligible to vote for the position, are required to sign the petition for the candidate.

4. The petition form shall require the candidate's name and employer, and the pension membership number or Social Security number of each petitioner.

5. The form shall explain that an active member shall sign only one petition, with police members petitioning for a police candidate and fire members petitioning for a fire candidate.

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

7. Candidates named on a petition shall sign the petition in a designated space indicating their willingness to be candidates.

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 apply 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);
- iii. Telefacsimile server (electronic vote); or
- iv. Color-coded 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 the vendor shall sever the envelope containing the voter's signature from the ballot, thus assuring a secret ballot. Unsigned ballots, 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 shall 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 appropriate by the Board Secretary. All candidates may attend such drawing by contacting the Board Secretary.

4. A receipt shall be signed by each certifying officer acknowledging the receipt and distribution of the election packets.

(f) The Board shall assess the percentage of returned votes after the conclusion of each 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 numbers 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.

3. The instructions shall also advise that the vendor shall sever the envelope containing the voter's signature from the ballot, thus assuring a secret ballot.

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

(g) The following apply to biographical information:

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

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

3. The biographical information shall be distributed to the certifying officer of each employing agency at the time of distribution of the election packets, or otherwise distributed as approved by the Board of Trustees. The employer should post this information at appropriate places throughout the workplace of each employing agency so that the members of the retirement system shall have a reasonable opportunity to read and consider the biographical information regarding the candidates.

(h) The following 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.

4. The eligible candidates for the election shall be informed as to the method and the date of counting the ballots and shall be invited to be present or to be represented at the counting of the ballots.

(i) The following 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.

3. Upon election and the taking of an oath of office, police and fire member-trustees shall serve for a term of four 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) If there are at least two candidates in an election for member-trustee and 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.2000 d.291, effective July 17, 2000.

See: 32 N.J.R. 1317(a), 32 N.J.R. 2598(a).

Rewrote the section.

17:4-1.5 Certifying agent (employer)

(a) The chief fiscal officer or other officer duly designated by a resolution of each county or municipality or public agency, and the personnel officer of the Division, Bureau or Institution of the State locations, shall serve as certifying agent for that unit.

(b) The certifying agent shall be responsible for the duties described by N.J.S.A. 43:16A-32.

(c) The certifying agent shall be responsible for all other duties relating to matters concerning the system.

17:4-1.6 Records

(a) The 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 mailing addresses of all active and retired members are considered to be a part of the member's confidential files and shall not be released for any purpose.

(c) All medical testimony obtained in connection with an application for disability retirement shall be restricted for the confidential use of the Board of Trustees.

17:4-1.7 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 his or her legal representative:

"If you disagree with the determination of the Board of Trustees in this matter, you may appeal by sending a written statement to the Board within 45 days from the date of this letter informing the Board of your disagreements and all of the reasons therefor. If no such written statement is received within the 45-day period, this determination shall be considered final."

17:4-1.8 Suspension of pension checks

(a) Monthly retirement allowances will be suspended under the following circumstances and the suspension will continue during the period of default:

1. If a disability retirant fails to appear for a medical examination;
2. If a widow, widower, parent or guardian of a minor child(ren) fails to file a certificate of eligibility which is normally mailed to such beneficiaries on an annual basis;
3. If a retirant or beneficiary becomes mentally or physically incompetent. The disbursement of pension checks in this event shall be suspended until a proper legal representative has been appointed.

17:4-1.9 State employees; biweekly salaries

(a) Retirement and death benefits as well as service credit will be determined on the basis of biweekly pay periods for State employees paid by centralized payroll.

(b) In the event a member is reported on a combination of monthly and biweekly pay periods, his last year's salary or final compensation as well as his service credit will be computed on a proportional basis.

17:4-1.10 Survivor benefits; establishing dependency

(a) Proof of dependency shall be established by the filing of an affidavit of dependency, supported by the deceased and the claimant's income tax returns, for the period immediately preceding the death or accident.

(b) A widower or parent will be deemed to be dependent on the member if they were accepted as dependents of the member for Federal income tax purposes. If the member and spouse file separate or joint tax returns, the widower will be deemed dependent on the member, if the claimant's income was less than one-half of the total income of both spouses.

17:4-1.11 Travel

Travel to and from work when it is to and from the regular place of employment is not considered duty rendered in the course of employment for the purpose of determining eligibility for accidental disability or accidental death benefits.

17:4-1.12 Proof of age

(a) All members may be required to establish proof of their age with the System. A person enrolling in the System may be requested to submit proof of his or her age at the time of such enrollment and will be required to submit such proof of age before a period of six years has elapsed from the date of enrollment.

(b) In the event a member dies before satisfactory evidence of his or her date of birth has been filed with the System, appropriate evidence may be required before any death claim is processed for settlement.

(c) In the event proof of age has not been filed with the System before retirement, such proof must be filed before any retirement benefits may be disbursed.

6. "Employer" means the State of New Jersey or the county, municipality or political subdivision thereof which pays the particular policeman or fireman.

7. "Firefighting unit" means a municipal fire department, a fire district, or an agency of a county or the State which is responsible for control and extinguishment of fires.

8. "Fireman" shall have the meaning ascribed to that term by P.L. 1989, c.204 (N.J.S.A. 43:16A-1) as the same may be amended and supplemented from time to time.

9. "General supervision" means direct supervision of employees who perform direct supervision.

10. "Law enforcement unit" means any police force or organization in a municipality or county which has by statute or ordinance the responsibility of detecting crime and enforcing the criminal laws of this State.

11. "Policeman" shall have the meaning ascribed to that term by P.L. 1989, c.204 (N.J.S.A. 43:16A-1) as the same may be amended and supplemented from time to time.

12. "Police powers" means the statutory authority, under the appropriate circumstances in accordance with law, to arrest and detain and to control the actions of the public, or those individuals who come under the jurisdiction of the public employer's jurisdiction.

13. "Position" means a job title.

14. "Retirement system" or "system" means the Police and Firemen's Retirement System of New Jersey as defined in N.J.S.A. 43:16A-2.

(c) Determinations by the Director and the Board of whether an employee of a law enforcement unit or firefighting unit is an administrative employee within the meaning of the definitions of "policeman" or "fireman" under the law and these rules shall be on a case-by-case basis. An employee may perform some administrative functions without being an administrative employee. In determining whether an employee is an administrative employee, the Board shall consider the following factors:

1. Whether and to what extent the employee is responsible for preparing or recommending budgets contracting for goods or services, processing employment actions, managing information systems, and the provision of administrative support;

2. Whether the administrative tasks performed by the employee are central to, rather than incidental to, the primary responsibilities of the employee; and

3. Whether the career path to become an administrative employee begins with or includes positions as non-administrative policemen or firemen.

(d) Determinations by the Director and the Board of whether an employee of a law enforcement unit or firefight-

ing unit is a supervisory employee within the meaning of the definitions of "policeman" or "fireman" under the law and these rules shall be on a case-by-case basis. An employee may perform some supervisory functions without being a supervisor. In determining whether an employee is a supervisory employee, the Board shall consider the following factors:

1. Whether and to what extent the employee is responsible for conducting performance evaluations, disciplining, adjusting the grievances, rewarding, and assigning and directing the work of non-supervisory policemen or firemen or effectively recommending such actions;

2. Whether the individual policemen or firemen subject to some supervision by the employee have a primary supervisor other than the employee;

3. Whether the supervision performed by the employee is central to, rather than incidental to, the primary responsibilities of the employee; and

4. Whether the career path to become a supervisor begins with or includes positions as non-supervisory policemen or firemen.

(e) Employers shall not use the same job title for both individuals whose job functions meet the definition of "policeman" or "fireman" and individuals whose job functions do not meet those definitions. In the event that the Board determines that an employee's primary duties qualify that employee as a "policeman" or "fireman," but that employee holds a position held by other individuals whose primary duties do not qualify those employees as a policeman or fireman, then the employer shall promptly take the necessary actions to create a new job title to ensure that the same job title is not used both for individuals whose job functions meet the definition of "policeman" or "fireman" and individuals whose job functions do not meet those definitions.

(f) In the event an employee, not currently included as a member of the system, believes that he or she performs duties that meet the definition of "policeman" or "fireman," the employee may file an application for membership in the system with the Director, stating in detail the basis for the employee's belief that the employee is a policeman or a fireman. A copy of the application shall be served on counsel for the employee's employer.

(g) The Director shall review the application and determine whether the employee meets the definition of "policeman" or "fireman." The Director shall then make a recommendation to the Board as to whether the employee should be included in the system.

(h) If, after considering the recommendation of the Director, the Board determines that the employee meets the definition of "policeman" or "fireman" the Board shall, prior to making a final determination, publish in the New Jersey Register a notice that it proposes to include the

employee's position in the System. Interested parties shall be given at least 30 days to comment on the proposal.

(i) If, after considering the recommendation of the Director, the Board determines that the employee does not meet the definition of "policeman" or "fireman," the employee shall be offered an opportunity for a hearing in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(j) If the employee requests a hearing, the Board shall publish in the New Jersey Register a notice that a hearing will be conducted on the application of the employee that the employee's position be deemed to meet the definition of "policeman" or "fireman" as the case may be, and that interested parties may seek to intervene in accordance with N.J.A.C. 1:1-16.

Repeal and New Rule, R.1996 d.463, effective October 7, 1996.

See: 28 N.J.R. 2512 (a), 28 N.J.R. 4508(b).

Section was "Policeman and fireman defined".

Public Notice: Forest Fire Observer (State-Civil Service).

See: 31 N.J.R. 905(c).

Public Notice: Fire Official/Fire Protection Subcode Official UFD (Municipal-Civil Service), Chief Bureau of Law Enforcement Environmental Protection (State-Civil Service), Fire Fighter (Washington Township), Fire Fighter/Fire Inspector (Washington Township), Fire Fighter/Fire Fighter Apparatus Mechanic (Washington Township), Fire Fighter/Chief Maintenance Mechanic (Washington Township) and Fire Chief (Washington Township).

See: 31 N.J.R. 1388(a).

Public Notice: Supervising Parole Officer (State Civil Service), Assistant Director Parole Supervisor (State Civil Service) and District Parole Supervisor (State Civil Service).

See: 31 N.J.R. 1643(b).

Public Notice: Investigator Secured Facilities—Juvenile Justice Commission, Senior Investigator Secured Facilities—Juvenile Justice Commission, Principal Investigator Secured Facilities—Juvenile Justice Commission, Assistant Chief Investigator Secured Facilities—Juvenile Justice Commission and Chief Investigator Secured Facilities—Juvenile Justice Commission.

See: 31 N.J.R. 3538(b).

Public Notice: Police Officer Bilingual Spanish/English Municipal, Police Officer Bilingual Spanish/English County, Police Officer Bilingual Korean/English Municipal and Police Officer Bilingual Korean/English County.

See: 31 N.J.R. 3539(a).

Public Notice: Correction Officer Recruit/Bilingual Spanish/English, Parole Officer Recruit/Bilingual Spanish/English and Senior Parole Officer/Bilingual Spanish/English.

See: 31 N.J.R. 3539(b).

Public Notice: Parole Officer Recruit—Bilingual Spanish/English Juvenile Justice Commission and Senior Parole Officer Bilingual Spanish/English Juvenile Justice Commission.

See: 31 N.J.R. 3539(c).

Public Notice: Police Sergeant Bilingual Spanish/English—Municipal, Police Sergeant Bilingual Spanish/English—County, Police Lieutenant Bilingual Spanish/English—Municipal and Police Lieutenant Bilingual Spanish/English—County.

See: 31 N.J.R. 4132(a).

Public Notice: Fire Officer 1—County, Fire Officer 1—Municipal, Fire Officer 2—County, Fire Officer 2—Municipal, Fire Officer 3—County, Fire Officer 3—Municipal, Fire Officer 4—County, Fire Officer 4—Municipal.

See: 32 N.J.R. 2262(a).

17:4-2.2 Compulsory enrollment

(a) Membership in the Police and Firemen's Retirement System of New Jersey is mandatory, a condition of employment for every "policeman or fireman" appointed after July 1, 1944, in a county or municipality which had prior to July 1, 1944, adopted the provisions of N.J.S.A. 43:10, or in such county or municipality first providing coverage for such employees by referendum under N.J.S.A. 43:16A, or pursuant to the provisions of Chapter 92, P.L. 1973.

(b) It shall also be mandatory for eligible employees of the State or counties as provided by Chapter 156, P.L. 1973.

17:4-2.3 Medical requirements

(a) Applicants must furnish evidence of good health sufficient to satisfy the Board of Trustees:

1. In this connection, the Board may accept the medical determination of the Civil Service Commission or of the physician examining for the appointing county or municipality. If either of these medical sources indicate further examination is in order, the system will select and arrange appointment with an independent physician.

2. Each question of the physical eligibility is decided individually and on the basis of recommendations and findings of the examiner.

17:4-2.4 (Reserved)

17:4-2.5 Age requirements

(a) Applicants must be appointed to an eligible title on or prior to their 35th birthday.

(b) Municipalities having adopted the provisions of Civil Service are subject to the determination of that agency in determining eligibility for such appointments. The board will recognize anyone certified from a Civil Service list as having met the age requirements of the system.

(c) N.J.S.A. 38:23A-1 et seq. is recognized as a modification of the age maximum for certain "veterans." Persons having served in the active military service of the United States during "time of war" and conflict as defined in N.J.S.A. 43:16A-11.7 can for the purpose of meeting the maximum age requirement for entrance into this retirement system reduce their actual age by the stipulated period of such military service. Should this reduced age meet the age maximum in effect, the applicant will be considered as having met the age maximum for enrollment.

(d) The period of time to be deducted from an individual's age is limited to actual time served during the war or conflict. Earlier or later periods of military service cannot be used to reduce individuals' ages so as to enable them to meet any maximum age limits.

(e) Any active military service terminating in dishonorable discharge is not creditable.

Amended by R.2000 d.292, effective July 17, 2000.

See: 32 N.J.R. 1320(a), 32 N.J.R. 2599(a).

Rewrote (c) and (d); and recodified former (d)3 as (e).

17:4-2.6 Enrollment date

(a) An employee who is appointed to a permanent position from a Civil Service list shall be considered as having begun his or her eligibility for enrollment on the date of his or her regular appointment. The compulsory enrollment date shall be fixed as the first of the month for an appointee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose regular appointment date falls between the 17th and the end of the month.

(b) An employee in the unclassified service shall be considered as beginning service on the date his or her employment began. The compulsory enrollment date shall be fixed as the first of the month for an appointee whose beginning employment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.

(c) The regular appointment of an employee appointed by a local employer not covered by Civil Service shall constitute the date the employee originally accepted employment in a regular budgeted position. The date of compulsory enrollment shall be fixed as the first of the month for an appointee whose beginning date of employment falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.

(d) An employee who does not meet the requirements for enrollment cited in (a), (b) and (c) above may be considered a temporary employee by his employer for as long as a one year period following the employee's date of hire, but if his employment continues into his second year, he will be required to enroll immediately; his compulsory enrollment date will be the first of the month following the end of the one year (12-month) period.

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:4-3.1 Computation of insurance benefits

(a) Full salary credit will be given for the month or biweekly pay period in which a member dies, if he was paid salary to date of death and the salary paid was sufficient to permit a full normal month's or biweekly pension and

insurance contribution deduction, provided such deduction was made by the employer.

(b) Death benefits shall be based on the base salary upon which contributions to the Annuity Savings Fund were actually made during the 12 months or 26 biweekly pay periods immediately preceding the member's death. The salary, in the month in which no salary was paid, shall be counted as zero.

(c) If a member dies during the first year following his date of enrollment the insurance benefit shall be $3\frac{1}{2}$ times the member's base salary on which he contributed or would have contributed immediately prior to his death.

(d) For a member dying after the first year following the date of his enrollment, the noncontributory insurance benefits shall be determined on the base salary on which contributions to the Annuity Savings Fund were made or would have been made during the 12 months or 26 biweekly pay periods preceding death.

(e) If a member has contributed pension contributions for less than a year but his enrollment has been in effect for more than a year, only those wages upon which pension contributions were based can be used as salary to determine the value of the noncontributory insurance benefit.

(f) Where a post-audit of insurance claim payments indicate the pension contributions reported by an employer were incorrect and resulted in the overpayment of an insurance claim to a member's designated beneficiary or estate, the employer will be billed for the value of the overpayment of the insurance benefits. Where post-audits establish the insurance benefits were underpaid, an additional check would be sent to the beneficiary for the value of the underpayment.

(g) Refunds of a deceased member's pension contributions will be made to the member's designated beneficiary or the employer after written confirmation is received from the employer setting forth the reason for the refund of pension contributions to either the beneficiary or to the employer.

(h) Members who prove their insurability for the group life insurance benefits shall have their insurance benefit calculated on the basis of the salary they received or salary upon which pension contributions were based during their last year (12 months) of service prior to death, regardless of their effective date of insurance coverage.

(i) In computing the salary upon which pension contributions were based during a member's last year of service, in the case of a 12-month State employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by multiplying the total by the factors supplied by the actuary;

such adjustment will compensate for State biweekly payroll schedules.

(j) In computing (i) above in the case of State employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which the member does not receive salary. The adjustment as specified in (i) above shall not be made.

(k) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the last year's salary prior to death or retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

17:4-3.2 Leave for illness

Coverage during a leave of absence without pay due to illness shall apply only to the personal illness of the member. A leave of absence on account of another person's illness will not entitle the member to continued insurance coverage.

17:4-3.3 Proof of insurability

When proof of insurability is required, the member's opportunity to prove such insurability shall expire one year (12 months) from the date the initial written notice is sent advising him that he must prove insurability by taking a medical examination.

17:4-3.4 Survivor benefits

Eligible survivors shall become entitled to benefits on the first of the month following the member's death. The pension payment shall begin on the first of the month following the survivor's eligibility for benefits date. Survivor benefits shall terminate as of the last day of the month in which the survivor no longer qualifies for such benefits.

Amended by R.2001 d.41, effective February 5, 2001.
See: 32 N.J.R. 3554(b), 33 N.J.R. 568(b).

Rewrote the section.

17:4-3.5 Beneficiary designation; pension contributions

Only a primary and a contingent designation of beneficiary may be made by the member for the payment of his accumulated pension contributions.

17:4-3.6 Acceptable designations of beneficiaries

(a) A member's designation of beneficiary or beneficiaries of group life insurance on a duly executed retirement application:

1. Is effective upon filing with and acceptance by the Division, even if the retirement date on the application is in the future or the member withdraws the retirement application; and

2. Supersedes any previous beneficiary designation on file.

(b) If a deceased member has an eligible surviving spouse, child or parent, then the deceased member's aggregate contributions at the time of death shall be applied toward the payment of the benefit established at N.J.S.A. 43:16A-9(1).

(c) If a deceased member has no eligible surviving spouse, child or parent, then pursuant to N.J.S.A. 43:16A-9(2), the deceased member's designated beneficiary or beneficiaries of group life insurance also shall be the beneficiary or beneficiaries of the deceased member's aggregate contributions at the time of death.

(d) If a deceased member has no eligible surviving spouse, child or parent, and the deceased member has not made an effective designation of beneficiary or has designated no beneficiary for group life insurance, then the Division shall pay the group life insurance and the deceased member's aggregate contributions to the deceased member's estate.

New Rule, R.2000 d.388, effective October 2, 2000.
See: 32 N.J.R. 2216(a), 32 N.J.R. 3581(a).

SUBCHAPTER 4. MEMBERSHIP

17:4-4.1 Creditable compensation

(a) The compensation of a member subject to pension contributions and creditable for retirement and death benefits in the system shall be limited to base salary, and shall not include extra compensation.

1. "Base salary" means the annual compensation of a member, in accordance with 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.

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. 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 work day or normal duty assignments;
- 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, overtime, 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 or employment policy 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 credibility 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 employee 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 reasonably anticipated annual compensation increases for members of the retirement system based upon consideration of the Consumer Price Index for the time period of the increases, the table of assumed salary increases recommended by the actuary and adopted by the Board, and the annual percentage increases of salaries as indicated in data from the Public Employment Relations Commission, or through other reliable industry sources of information regarding average annual salary increases. Those cases where a violation of the statute or rules 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), 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. 43:16A-18, 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 section.

(i) This section shall not be applicable to longevity pay, holiday pay, or education pay which is included in the creditable compensation of a retiree or member on a mandatory basis in accordance with the provisions of a collective negotiations agreement or employment policy of an employer approved and executed on or before January 1, 2000, until the termination date of the collective negotiations agreement or employment policy, or December 31, 2001, whichever occurs first.

Repeal and New Rule, R.2000 d.141, effective April 3, 2000.
See: 31 N.J.R. 3930(a), 32 N.J.R. 1246(a).
Section was "Creditable salary".

17:4-4.2 Prior service

(a) Any period of prior service credit paid for by an employer at the adoption of the system will reflect identical credit when calculating membership credit.

(b) Prior service credits are limited to service rendered on a full-time basis.

17:4-4.3 Continuance of membership; transfer

Once an employee establishes membership in the retirement system, he is eligible to continue such membership should he be temporarily employed in a position covered by the system.

17:4-4.4 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.

17:4-4.5 Deductions

(a) A full deduction shall be taken for the Police and Firemen's Retirement System 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 deductions shall be taken in any pay period in which the employee's salary is not sufficient to cover the required deductions for the Police and Firemen's Retirement System.

17:4-4.6 Minimum adjustment

In order to facilitate the reconciliation of a member's account no rebates or additional contributions shall be made where an adjustment involves an amount of \$3.00 or less.

17:4-4.7 Suspension

(a) A member suspended without pay will have insurance coverage continued for a period of 93 days following the effective date of such suspension.

(b) No retirement deductions will be made during such a break in service, nor will any retirement credit accrue.

(c) If during the period of suspension or at the conclusion of the penalty period adjustment is made in favor of the member, the board may allow the payment of pension deductions to reflect the lesser penalty or the entire elimination of the suspension.

17:4-4.8 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. 43:16A-11 shall be retained by the system. Such contributions shall be transferred from the Annuity Savings Fund to the Pension Accumulation 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 payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when he entered military service.

17:4-4.9 Eligibility for loan

Only an active contributing member of the system 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.

17:4-4.10 Termination; withdrawal

(a) Under the terms of the statutes a member may withdraw from the system only if he terminates all employment. No application shall be approved if:

1. The member is on official leave of absence;
2. The member certifies that his employment has not ended or that he has taken another position subject to 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. The member has a claim pending for Workers' Compensation benefits.

17:4-4.11 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.

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE
17:4-5.1 Eligibility for purchase

(a) Only active members of the System shall be eligible to make application for the purchase of credit. Active members who are not currently contributing to the Retirement System must purchase their requested service in a lump sum.

(b) In order to be eligible to purchase service, a member must submit a written request to purchase such service and such purchase must be authorized by the member before the expiration date indicated on the quotation letter.

(c) The receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. Therefore, the Board of Trustees shall disallow the purchase of all or a portion of former service it deems to be dishonorable in accordance with N.J.S.A. 43:1-3.

Amended by R.2000 d.294, effective July 17, 2000.

See: 32 N.J.R. 1321(a), 32 N.J.R. 2600(a).

Rewrote (a) and (b); and added (c).

17:4-5.2 (Reserved)**17:4-5.3 Optional purchases of eligible service**

(a) A shared-cost purchase is one in which the member pays only the employee's share and not the employer's share of the purchase. A member may purchase all or a portion of such eligible service. A shared-cost purchase will be calculated on the basis of the actuarial purchase factor established for the member's age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The following types of purchases are shared-cost purchases:

1. Former membership credit with a State-administered retirement system;
2. Former service with any other employer that was not certified for membership but which would have qualified on an optional or compulsory basis at the time the service was rendered;
3. Continuous temporary service as a police officer or firefighter immediately preceding enrollment. "Special Police" service cannot be purchased;
4. Leaves of absence without pay:
 - i. The period of the leave for personal reasons which does not exceed 93 days. Childcare is considered leave for personal reasons.
 - ii. The period of the leave up to two years for personal illness. The Division may require proof that the illness existed for the length of the leave.
5. Eligible out-of-State public employment, up to a total purchase of 10 years. Out-of-State service cannot be used to qualify for an ordinary disability retirement.

(b) The types of purchases indicated in (b)1 through 5 below are considered to be full-cost purchases. A member may purchase all or a portion of such eligible service. The lump sum purchase cost shall be calculated on the basis of the actuarial purchase factor established for the member's nearest age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The computed lump sum purchase cost shall then be doubled to establish the full cost to the member. This cost is calculated in this manner as N.J.S.A. 43:16A-11.9, 11.11 and 11.12 provide that the employer shall not be liable for any costs of purchasing this service; therefore the member must pay both the employee and employer share.

1. Active duty military service prior to enrollment. Military service before enrollment cannot be used to qualify for an ordinary disability retirement;
2. Employment with the Federal government. United States government service cannot be used to qualify for an ordinary disability retirement;
3. Service established under a local municipal or county retirement system within the State of New Jersey;
4. Up to three years of service established for certain periods of employment with public agencies or private non-profit agencies pursuant to N.J.S.A. 43:16A-11.9;
5. Up to three years of service credit for police officer members who were laid off in good standing and not by removal for cause or charges of misconduct or delinquency from employment as police officers and subsequently rehired in PFRS police service positions in accordance with P.L. 1999, c.338, N.J.S.A. 43:16A-11.13. The purchase cost is based on the actuarial purchase factor established for the member's nearest age at the time of

the purchase request and the member's salary during the 12 months preceding the layoff. The computed lump sum purchase cost will then be doubled to establish the full cost to the member.

(c) A member shall be eligible to purchase an aggregate of up to 10 years of out-of-State public employment, military service and Federal employment provided that the member is not receiving nor is entitled to receive a retirement allowance for such service from any other public retirement system and provides proof to the Division of Pensions and Benefits that the member has withdrawn from such other system. A qualified veteran shall be eligible to purchase an additional five years of military service rendered during periods of war for an aggregate of 15 years of such service.

Repeal and New Rule, R.2000 d.294, effective July 17, 2000.
See: 32 N.J.R. 1321(a), 32 N.J.R. 2600(a).
Section was "Optional purchases of eligible service".

17:4-5.4 Methods of repayment

(a) Methods of repayment include:

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.

17:4-5.5 Reinstatement of membership credit

(a) A member, whose account has been terminated by withdrawal of his or her contributions from the Annuity Savings Fund or whose account has been terminated because of a two-year lapse in contribution, may be reinstated to the system under the provisions of Chapter 199, P.L. 1967, Chapter 303, P.L. 1969, or Chapter 439, P.L. 1981, provided that he or she meets the requirements of the System other than the age maximum:

1. A member reinstated under Chapter 199, P.L. 1967, shall be enrolled at a rate appropriate to his or her age at original enrollment.
2. A member reinstated under Chapter 303, P.L. 1969, shall reinstate the previous credit he or she had established in the Police and Firemen's Retirement System at enrollment. The reinstatement will result in a rate assignment appropriate to his or her age at original enrollment. The cost of reinstating the previous credit will be determined by applying the factor certified by the actuary.
3. All members reinstated and reenrolled under these acts will be required to prove insurability to resume insurance coverages.

4. Should a member reinstating such credit retire or die before the completion of his or her payments, pension credits will be recognized in proportion to the amount paid to the total arrearage.

17:4-5.6 Elected officials; continuation of membership

Any member accepting an elective position may continue his or her membership and contribute at his or her current rate of contribution on the salary being received as an elected official as long as he or she holds elective office and remains a member of the retirement system.

17:4-5.7 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 law governing the Police and Firemen's Retirement System (N.J.S.A. 43:16A-1 et seq.) and the rules of the retirement system.

SUBCHAPTER 6. RETIREMENT

17:4-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the system. Such forms must be completed in all respects and filed with the system 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 system 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 and the salaries reported for contributions in the member's final years of employment.

(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.

Case Notes

Retired firefighter not entitled to benefits for period prior to Retirement System's receipt of retirement application. *Sheren v. PFRS*, 96 N.J.A.R.2d (TYP) 64.

17:4-6.2 Effective dates; 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 55th 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 system 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.

Case Notes

Retiree time-barred from requesting change in benefits three years after receiving benefits. *Esposito v. Police and Firemen's Retirement System*, 97 N.J.A.R.2d (TYP) 93.

Lack of good cause and diligence defeated request to reopen application for accidental disability benefits. *Stein v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 198.

17:4-6.3 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 the retirement, whichever is later.

(b) A member who files an application for retirement and whose insurance coverage has not lapsed prior to filing a retirement application is covered under the insurance program as an active member in the event of death prior to the date the retirement allowance becomes due and payable.

17:4-6.4 Outstanding loan

(a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with interest, as follows:

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:4-6.3;
2. By retention of retirement benefit payments, excluding authorized deductions, by the Retirement System until the loan balance, with interest, is repaid.
 - i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal and State income tax withholding; or
3. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with interest, is repaid as authorized by P.L. 1999, c.132. If the member does not request repayment in full, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(b) If a retirant dies before the loan balance, with interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments that are due to the beneficiary or estate. If multiple beneficiaries are to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

Amended by R.2000 d.293, effective July 17, 2000.

See: 31 N.J.R. 2710(a), 32 N.J.R. 2601(a).

Rewrote (a); deleted former (b) and (c); and recodified former (d) as (b).

17:4-6.5 Willful negligence

(a) Willful negligence is defined as follows:

1. Deliberate act or deliberate failure to act; or
2. Such conduct as evidences reckless indifference to safety; or
3. Intoxication, operating as the proximate cause of injury.

17:4-6.6 Retirement credit

(a) A member shall receive credit toward retirement for any month or biweekly pay period in which a full normal deduction is received by the system.

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension

contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

17:4-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by his employer or by one acting in behalf of the member, will be retired on an ordinary disability retirement allowance if the board finds that:

1. The member was under the normal retirement age at the time of filing application for a disability retirement allowance; and
2. The member is physically or mentally incapacitated for the performance of duty; and
3. The member is not eligible for accidental disability since the incapacity is not a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties; and
4. The member meets the service requirement for ordinary disability.

Case Notes

Patrolman suffering heart attack triggered by violent assault with arrestee qualifies for accidental disability retirement benefits. *Ciupinski v. Board of Trustees of the Police and Firemen's Retirement System*, 97 N.J.A.R.2d (TYP) 99.

Accidental disability retirement allowance denied because no traumatic event occurred. *Joyce v. Police and Fireman's Retirement System*, 97 N.J.A.R.2d (TYP) 11.

Police officer who witnessed deaths of his father and brother while on duty suffered qualifying traumatic event entitling him to accidental disability retirement benefits. *Flint v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 278.

Corrections officer who sustained back injury in trip and fall incident did not suffer traumatic event for purposes of accidental disability retirement benefits eligibility. *Burzachiello v. Board of Trustees, Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 275.

Police officer granted disability retirement for psychiatric disorder offered sufficient proof that he no longer suffered from disorder to

support his reinstatement 15 years later. *Dascoli v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 231.

Bus driver injured when patients fell on her in three unrelated incidents several days apart suffered qualifying traumatic event entitling her to award of accidental disability retirement benefits. *Harring v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 202.

Bus collision constituted traumatic event entitling driver to accidental disability retirement benefits. *Fullwood v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 200.

Former firefighter's application for disability retirement benefits was properly dismissed where applicant was not member in service at time of filing. *Kirwin v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 183.

Corrections officer who was diagnosed as suffering from multiple sclerosis while receiving treatment for on-the-job tripping injury was not entitled to accidental disability retirement benefits. *McBride v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 162.

Incident in which corrections officer was surrounded and threatened by prison inmates, and which resulted in officer's total psychiatric disability, constituted traumatic event entitling him to accidental disability retirement benefits. *Flume v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 153.

17:4-6.8 (Reserved)

17:4-6.9 Average final compensation; 10 and 12-month members

(a) In order to determine the average final compensation (three-year average) for benefits on a:

1. Member reported on a monthly basis, use the creditable salaries upon which pension contributions were made to the retirement system for his last 36 months of service.

2. If a member was reported on any combination of 10 and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.

3. The months for which no contributions were made shall be counted as zero.

17:4-6.10 Employer disability application; employee notice

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of his or her employees, the member will be promptly notified by letter that:

1. His employer has initiated a disability application, on the member's behalf; and

2. His employer has certified that the member is permanently and totally disabled for the continued performance of duty; and, if appropriate;

3. His employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties;

4. He has a period of 30 days to contest his involuntary retirement before the board acts on his employer's application;

5. He will be required to appear for an examination before a physician designated to conduct such an examination for the retirement system; and

6. In the event the board finds that he is totally and permanently incapacitated for the performance of duty, he shall be granted the maximum retirement allowance payable under the statute, if he does not file a completed "Application for Disability Retirement Allowance" setting forth the type of allowance he desires, before his retirement goes into effect; and

7. In the event the board finds that he is not totally and permanently incapacitated for the performance of duty, the employer's application shall be disallowed and the employer shall be informed that the member should be returned to duty.

17:4-6.11 Service or special retirement; eligibility

(a) A member becomes eligible for "service" retirement on the first of the month following his 55th birthday.

(b) A member becomes eligible for "special" retirement on the first of the month following the establishment of 25 years of creditable service, regardless of his age.

17:4-6.12 Disability retirant; annual medical examinations

(a) All disability retirants may be required to undergo a medical examination each year for at least five years or for good cause thereafter by a physician designated by the System as of the anniversary date of their retirement, unless such examination requirement has been waived by the Board. Good cause means the receipt by the Board of creditable information that a member who is receiving a disability allowance is no longer disabled.

(b) Failure on the part of a retirant to submit to the required medical examination shall result in the automatic suspension of his retirement allowance until he submits to a medical examination.

Amended by R.1998 d.326, effective July 6, 1998.

See: 30 N.J.R. 1029(a), 30 N.J.R. 2516(a).

In (a), substituted "may" for "shall be required" and substituted "at least five years or for good cause thereafter" for "a maximum period of five years" in the first sentence, and added a second sentence.

17:4-6.13 Medical examinations; physicians

Where the statute prescribes that a physician be designated by the system to perform a medical examination, such physician shall be selected from the current membership directory of the Medical Society of New Jersey and the New Jersey Association of Osteopathic Physicians and Surgeons; however, in the cases of those members whose personal physician has identified them as having a probable abbreviated life expectancy, such "imminent death" cases may be processed without the necessity of an examination by a physician designated by the system if corroborating medical evidence of the diagnosis can be obtained.

17:4-6.14 Compulsory retirement

(a) Compulsory retirement at age 65 is applicable to all members.

(b) The retirement will be effective on the first day of the month following the 65th birthdate, if not voluntarily established before that date.

(c) A full deduction for the month of attaining the compulsory retirement age will be made if the member's partial salary covers the regular monthly deduction.

(d) Any deduction taken after the compulsory month of retirement will be refunded and no further pension credits recognized.

(e) The system shall send written notice to the member and his employer between 120 and 180 days in advance of the date on which the member shall be required to retire.

(f) A member shall be retired automatically by the Board as of his compulsory retirement date following his 65th birthday.

(g) Should a member fail to file an "Application for Retirement Allowance" before his or her compulsory retirement date, no retirement checks will be disbursed until he or she files the required application.

(h) When such a member files his application with the system, he shall be eligible to receive retirement benefits for the months that have elapsed since his compulsory retirement date, provided satisfactory evidence is received to show that he terminated employment as of his compulsory retirement date.

(i) No retirement benefits shall be paid for any period the member continued in service beyond his compulsory retirement date, nor shall he receive any credit for retirement purposes for salary received or for service rendered beyond his compulsory retirement date.

(j) If a member's death occurs after the 30-day waiting period has been satisfied, but before he has filed the required application for retirement, the member shall be considered to be retired for death benefit purposes. His estate shall be entitled to the retroactive retirement allowance due, in addition to any insurance and survivorship benefits payable.

17:4-6.15 Employer and employee notices

If an applicant for accidental disability retirement is found to be physically or mentally incapacitated for the performance of duty but is rejected for accidental disability retirement because the board finds that the disability was not a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties, and if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the system will notify both the member and his employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the system by both the employee and his employer. Both the employer and the employee will also be advised that a copy of such notice will be placed in the member's file and will be given full consideration in any future claim for disability retirement benefits.

17:4-6.16 Average final compensation; biweekly salary computation for State employees reported by centralized payroll

(a) In computing average final compensation upon which pension contributions were based in the case of a 12-month State employee reported on a biweekly basis, a total of 78 biweekly pays will be used, including any retroactive salary payments made within the prescribed period.

(b) In computing (a) above, the total salary will be adjusted by the factors supplied by the actuary to convert biweekly salaries to compensate for State biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop "final compensation".

(c) In computing (a) above in the case of State employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which the member does not receive a salary. The adjustment as specified in (b) above shall not be made.

(d) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the final average compensation prior to retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

17:4-6.17 Work-related travel; accidental disability retirement and accidental death benefit coverage

(a) A member whose duties include regular or occasional travel in the course of employment will be considered in the "performance of his regular or assigned duties" for the purposes of accidental disability retirement or "in the actual performance of duty" for the purposes of accidental death benefits during employment-related travel as provided in this section. For the purposes of this section, "in performance of duty" means and includes both "performance of regular or assigned duties" and "in the actual performance of duty."

(b) If a member's duties require or authorize the member to travel between a regularly assigned office or workplace and other locations, or among other locations, the member is in performance of duty during travel between a regularly assigned office or workplace and other locations, or among other locations.

(c) If a member's duties require or authorize the member to travel between his or her place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty when he or she completely leaves the property of his or her residence and begins to travel to the other location, or until he or she begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

1. The member's regular or assigned duties involve field work which requires or authorizes the member to travel to locations other than a regularly assigned office or workplace of the employer to perform his or her duties and do not require the member to report to a regularly assigned office or workplace before or after traveling to other locations. Travel by the member between a regularly assigned office or workplace of the employer and the place of residence of the member is not considered part of the member's duties.

2. The member's regular or assigned duties are usually performed at an office or workplace of the employer to which the member is regularly assigned but occasionally require or authorize travel to other locations.

3. The member is authorized or required by his or her employer to respond to an emergency situation outside of the member's regularly scheduled work hours, regardless of whether the member goes to a regularly assigned office or workplace or another location, or whether the expenses of the travel are paid for by the employer or the member.

4. The member is attending a meeting, seminar, convention or a similar type of work-related activity as authorized or required by the employer at a location other than a regularly assigned office or workplace, regardless of whether the expenses of the travel are paid for by the employer or the member. Where there are social or recreational activities associated with the work-related activity or attendance requires living accommodations, only travel to and from the general activity and participation in and travel to and from the work-related functions of the activity are considered part of the duties of the member. Activities related to social or recreational functions or living accommodations are not considered part of the duties of the member.

(d) In all cases, a certification from the employer is required and must include a copy of the member's job description, a statement of the member's work schedule on the day of the travel in question, and proof of or a statement by the employer that the travel was authorized or required by the employer and indicating who paid the travel expense.

SUBCHAPTER 7. TRANSFERS

17:4-7.1 Interfund transfers/State-administered retirement systems

(a) The system will transfer membership to any State-administered retirement system as follows:

1. A member, desiring to transfer his or her credits to any State-administered retirement system, must file an application for "Transfer of Membership Credit" in place of the customary application for withdrawal of accumulated contributions. This application will void all possible claims against the present system when approved and the new membership is commenced in the new system.

2. A check covering the member's accumulated contributions, full interest included, less any outstanding loan, shall be drawn payable to the new system for the account of the respective member. Any outstanding loan or arrears obligation will be scheduled for repayment.

3. A statement reflecting the member's status as of the date of transfer shall accompany the check.

4. The member shall enjoy the same rate of contribution and service credits established in the present system, subject to the provisions of the new system.

5. This procedure would not apply where a member has credit in the present system for service after the date of enrollment in the new system or where a person has ceased to be a member of the present system before establishing sufficient service credit to be eligible for deferred retirement.

6. A copy of the transfer application, together with a check covering the withdrawal value and a statement of the service credits being transferred, is to be forwarded to the new system.

(b) The new system will cause to be valued the reserves accrued for such employee as compared to the reserves required in the second system.

1. If the reserves accumulated or provided for in the present system are less than those required in the new system, the full reserve will be transferred.

2. If the reserves accumulated or provided for in the present system are more than those required in the new system, only the amount required to establish the credit will be transferred.

(c) Years of credit will be subject to the benefit formula of the new system after transfer.

(d) A member who makes a timely transfer in accordance with N.J.S.A. 43:2-1 et seq. will contribute to the new system at a rate based on his or her age at the time of enrollment in the present system and no refund of pension contributions will be made except for those contributions made by veterans covering service prior to January 1, 1955, where applicable. The contribution rate for a member granted a deferred retirement in the present system who makes a timely transfer at the time of enrollment in the new system will be determined in accordance with the rules concerning enrollment after deferred retirement in the new system. A member who does not make a timely transfer will contribute to the new system at a rate based on his or her age at the time of enrollment in the new system.

Case Notes

Board of Trustees of the Police and Firemen's Retirement System lacked jurisdiction over facial attack on statutory scheme governing pension transfers. *Armstrong, et al. v. State of New Jersey*, 96 N.J.A.R.2d (TYP) 195.

17:4-7.2 (Reserved)**17:4-7.3 Intrafund transfers**

(a) A member who terminates employment with an employer but transfers as a policeman or fireman with another participating employer may continue his membership without interruption.

(b) A member transferring from the police to the fire department of the same employer may likewise continue his or her membership. Such a member may withdraw at such an occasion, but his or her reenrollment will be subject to age and physical requirements.