

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

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

Source and Effective Date

R.2006 d.130, effective March 10, 2006.
See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Chapter Expiration Date

Chapter 4, Police and Firemen's Retirement System, expires on March 10, 2011.

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, Police and Firemen's Retirement System, was readopted as R.1990 d.329, effective June 8, 1990. See: 22 N.J.R. 908(a), 22 N.J.R. 2032(b).

Pursuant to Executive Order No. 66(1978), Chapter 4, Police and Firemen's Retirement System, expired on June 8 1995.

Chapter 4, Police and Firemen's Retirement System, was adopted as new rules by R.1996 d.166, effective April 1, 1996. See: 27 N.J.R. 4270(a), 28 N.J.R. 1873(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Police and Firemen's Retirement System, was readopted as R.2001 d.66, effective January 25, 2001. See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Chapter 4, Police and Firemen's Retirement System, was readopted by R.2006 d.130, effective March 10, 2006. See: Source and Effective Date. See, also, section annotations.

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

(a) The Board of Trustees shall meet on the second Monday of each month or at such other time as may be deemed necessary by the Board.

(b) The chairperson may call for special meetings when necessary.

Amended by R.2001 d.66, effective February 20, 2001.
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Rewrote section.

Amended by R.2004 d.105, effective March 15, 2004.
See: 35 N.J.R. 5350(a), 36 N.J.R. 1359(a).

In (a), inserted "second Monday" for "third Monday".

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 chairperson, first vice chairperson, and second vice chairperson of the Board will be elected by a majority vote of the members in attendance at the first meeting of July, not less than six members to be present at such meeting.

(b) The chairperson of the Board shall preside at all of its meetings, or in the absence of the chairperson, the first vice chairperson shall assume the chairperson's responsibilities. If both are absent, the second vice chairperson shall assume the chairperson's responsibilities. In the absence of the chairperson and first and second vice chairperson, another member selected by the majority of the members in attendance will preside for that single meeting.

(c) The Director of the Division of Pensions and Benefits shall appoint a qualified employee of the Division to be Secretary of the Board.

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

Amended by R.2001 d.66, effective February 20, 2001.
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Rewrote the section.

Amended by R.2001 d.392, effective November 5, 2001.
See: 33 N.J.R. 2611(a), 33 N.J.R. 3756(a).

In (a), deleted "and" following "chairperson", inserted ", first" preceding "vice chairperson", and inserted ", and the second vice chairperson" following "vice chairperson"; rewrote (b).

17:4-1.4 Election of active member-trustee

(a) The election procedures as required by N.J.S.A. 43:16A-13 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 firefighter 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 eligible member through the certifying officer of each employing location. Only active members of the PFRS may vote in an election of member-trustee of the Board of Trustees of the PFRS.

(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.

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".

Case Notes

Police officers' base salary increase based on "senior status," occurring after 22 years of service and which was given in exchange for cessation of longevity pay and of vacation day accruals, was granted primarily in anticipation of officers' retirement and was disruptive to actuarial soundness of pension system, thus such salary increase was not creditable for retirement benefits. *Fraternal Order of Police v. Board of Trustees of the Police and Firemen's Retirement System*, 774 A.2d 680 (2001).

Police officers did not detrimentally rely on previous approval by Board of Trustees of the Police and Firemen's Retirement System of officers' increased "senior status" pay, and thus Board was not estopped from determining that "senior status" pay was not creditable for pension benefits, where most of the officers had not yet retired, sole officer who had retired was receiving pension credit under grandfathering provision, union had opportunity to bargain for other creditable salary increases, and "senior status" pay would not have been creditable under prior rule. *Fraternal Order of Police v. Board of Trustees of the Police and Firemen's Retirement System*, 774 A.2d 680 (2001).

Initial Decision (2008 N.J. AGEN LEXIS 920) adopted, which concluded that Board of Trustees of the Police and Firemen's Retirement System (PFRS) correctly determined that provisions in the contract between Ocean County PBA Local 258 and Ocean County providing that a "clothing allowance" be rolled into base salary was in violation of N.J.A.C. 17:4-4.1(a)(2)(vi) and, therefore, not creditable compensation in the PFRS. In re Ocean County PBA Local No. 258, OAL Dkt. No. TYP PF 2950-06, 2008 N.J. AGEN LEXIS 1121, Final Decision (December 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 1269) adopted, which determined that the PFRS Board was not precluded from reducing public employees' pension benefits as a result of a prior determination by the PFRS Board that holiday leave pay was not creditable for pension purposes and, therefore, should not be included in the calculation of the employees' final compensation. In re Segear, OAL Dkt. No. TYP 01500-06, TYP 03718-06, TYP 03719-06, TYP 03877-06, 2008 N.J. AGEN LEXIS 1324, Final Decision (September 8, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 792) adopted, which determined that a patrol officer was not entitled to have a second-in-command stipend included as part of creditable PFRS compensation; the second-in-command stipend was for duties beyond the officer's regular duties, on a temporary basis, when covering for the chief when he was out. N.J.A.C. 17:4-4.1 defines compensation as base salary and specifically excludes individual adjustments granted in anticipation of retirement or for temporary duties beyond the regular work day. In re York, OAL Dkt. No. TYPF 05895-2006N, 2008 N.J. AGEN LEXIS 35, Final Decision (January 15, 2008).

In consolidated cases, training pay and vacancy pay for law enforcement officers constituted additional remuneration for performing temporary duties beyond the regular workday within the meaning of N.J.A.C. 17:4-4.1, and thus, the officers were not entitled to pension credit. "Workday" was read not only in the narrow sense of fixed hours of employment, but also in the broader sense of the duties that an employee ordinarily performed during his working hours. City of Hoboken PBA Local No. 2 v. Bd. of Tr. of Police and Firemen's Ret. Sys., OAL Dkt. No. TYP 03710-06 and TYP 03711-06 (Consolidated), 2007 N.J. AGEN LEXIS 700, Initial Decision (October 18, 2007), adopted (PFRS Bd. of Trustees November 19, 2007).

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, the member is eligible to continue such membership should the member be temporarily employed in a position covered by the Retirement System.

Amended by R.2001 d.66, effective February 20, 2001.
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Created gender neutral references.
Amended by R.2006 d.130, effective April 3, 2006.
See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Capitalized "retirement system"; and at the end of the sentence, substituted "Retirement System" for "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 \$50.00, it will be written off. If the balance is equal to or greater than \$50.00, the member will be assessed.

Amended by R.2006 d.130, effective April 3, 2006.
See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Increased balance amount from \$10.00 to \$50.00 throughout.

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. If wages are sufficient, deductions should also be made for any 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.

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Substituted ". If wages are sufficient, deductions should also be made for any" for ", plus any other" following "full normal deduction".

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 \$2.00 or less during a calendar quarter.

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Substituted "\$2.00" for "\$3.00" following "involves an amount of" and inserted "during a calendar quarter" following "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 deductions will be made during such a break in service, nor will any service 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 elimination of the entire suspension.

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

In (b), substituted "deductions" for "retirement deductions" and substituted "service credit" for "retirement credit".

17:4-4.8 (Reserved)

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Neutralized gender references throughout.

Repealed by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Section was "Military leave".

Recodified from N.J.A.C. 17:4-6.6 and amended by R.2004 d.410, effective November 1, 2004.

See: 36 N.J.R. 622(a), 36 N.J.R. 4953(a).

Rewrote the section.

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

In (a), substituted "Retirement System" for "system"; in (d), added "or settlement" throughout, following NJAC cite, deleted "the member shall have the contributions for the salaries based on the award refunded without interest, and", and added "and the member shall have the pension contributions for the salaries found not to be creditable refunded without interest".

Repealed by R.2010 d.189, effective September 7, 2010.

See: 42 N.J.R. 898(a), 42 N.J.R. 2140(b).

Section was "Service and salary credit: awards of back pay".