

(d) With respect to all claims for benefits, the Division of Pensions and Benefits shall investigate increases in compensation reported for credit which exceed the reasonably anticipated annual compensation increases for members of the retirement system based upon either the increase in the Consumer Price Index for the time period of the increases and the table of assumed salary increases recommended by the actuary and adopted by the Board or based on the averages of the regular increases in the employees' compensation preceding the periods in which the extra compensation was received. Those cases where a violation of law is suspected shall be referred to the Board.

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

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

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

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

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

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

1. A denial of credit for the extra compensation;
2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;
3. A return of pension 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 re-funded because of a determination by the Board that a denial of credit for increases in compensation is warranted under this rule.

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

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

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

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

Section was "Creditable salary".

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

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

In (a), added the second sentence in 2vi; in (g), inserted "pension" preceding "contributions".

#### Case Notes

Board of Trustees of Public Employees' Retirement System, when reviewing administrative law judge's (ALJ) determination of physician's base salary for purposes of calculating his retirement pension for his employment as medical director for regional school district, could not reverse ALJ's factual findings which had been based upon ALJ's determination of credibility of lay witnesses, unless Board demonstrated that ALJ's findings were arbitrary, capricious, unreasonable, or not supported by sufficient, competent, and credible evidence in the record. *Cavalieri v. Board of Trustees of Public Employees Retirement System*, 847 A.2d 592.

An error in the determination of physician's base salary, for purposes of calculating his retirement pension for his employment as medical director for regional school district, could be corrected by Board of Trustees of the Public Employees' Retirement System, though physician was not yet receiving retirement benefits. *Cavalieri v. Board of Trustees of Public Employees Retirement System*, 847 A.2d 592.

Board of Trustees of the Public Employees' Retirement System would not be deemed to have adopted administrative law judge's (ALJ) determination of physician's base salary, for purposes of calculating his retirement pension for his employment as medical director for regional school district, though Board failed to file its final decision, rejecting ALJ's decision, within timeframe mandated by Administrative Procedure Act (APA), where Board had signaled its intent by voting, within the timeframe for filing the final decision, to reject ALJ's decision. *Cavalieri v. Board of Trustees of Public Employees Retirement System*, 847 A.2d 592.

Bond-financing activities by county utilities authority's director of finance and administration, were "temporary", not "extracurricular," and thus payment for those activities was not creditable compensation for pension purposes, as duties pertaining to bond issues were to arise only "in the event that the [utilities authority] undertakes any financing" and this were occasional. *Cortese v. Bd. Of Trustees*, 770 A.2d 1195 (2001).

The statutory bar to pension credit for temporary work does refer to the performance of temporary duties not to a temporary position. *Cortese v. Bd. Of Trustees*, 770 A.2d 1195 (2001).

Work for overtime, special assignments, and the like is "extracurricular" work of which pension credit is prohibited for public employees. *Cortese v. Bd. Of Trustees*, 770 A.2d 1195 (2001).

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

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

Municipal court judge serving as presiding judge was employee, not independent contractor. *Rokos v. State*, Dept. of Treasury, Div. of

Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

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

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

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

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

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

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

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

#### 17:2-4.2 Leave with pay

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

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

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

In (b), neutralized a gender reference.

#### Case Notes

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

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

(a) Ten month members who are employed for the full normal school year, September through June, are entitled to receive service credit for July and August. Members will not receive service credit for months during the normal school year, September through June, when they do not work and are not on a paid leave of absence.

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

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

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

Amended by R.1989 d.423, effective August 7, 1989.

See: 21 N.J.R. 979(a), 21 N.J.R. 2300(a).

Reference to 10-month employment as a minimum deleted.

Amended by R.1993 d.296, effective June 21, 1993.

See: 25 N.J.R. 908(a), 25 N.J.R. 2701(a).

Amended by R.1994 d.162, effective April 4, 1994.

See: 26 N.J.R. 108(a), 26 N.J.R. 1537(c).

Amended by R.1995 d.61, effective February 21, 1995.

See: 26 N.J.R. 3823(a), 27 N.J.R. 754(b).

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

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

Rewrote (a).

#### 17:2-4.4 Loan tolerance

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$50.00, it will be written off. If the balance is equal to or greater than \$50.00, the member will be assessed.

New Rule, R.1987 d.511, effective December 7, 1987.

See: 19 N.J.R. 194(a), 19 N.J.R. 2303(d).

Old rule was loan revaluation.

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

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

Substituted "\$50.00" for "\$10.00".

#### 17:2-4.5 Service and salary credit: awards of back pay

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