

SUBCHAPTER 4. MEMBERSHIP

17:3-4.1 Creditable compensation

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

1. 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, work year for the position, or normal duty assignment;
- iii. Bonuses;
- iv. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;
- v. Any compensation which the employee or employer has the option of including in base salary;
- vi. Sell-backs, trade-ins, waivers, or voluntary returns of accumulated sick leave, holiday pay, vacation, 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 years of service where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
- ix. Increments or adjustments in recognition of the member's forthcoming retirement;
- x. 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;
- xi. 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;
- xii. 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;
- xiii. Compensation paid for coaching sports;
- xiv. Compensation paid for teaching summer school;

xv. Compensation paid for performing clerical or other duties;

xvi. Compensation in the absence of services;

xvii. Compensation paid for working during vacation periods;

xviii. Compensation paid for serving as a bedside instructor or for leading extracurricular activities; and

xix. Compensation paid for additional services performed during a normal duty assignment, which are not included in base salary.

(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 shall investigate increases in compensation reported for credit, which exceed the reasonably anticipated annual compensation increases for members of the Fund 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 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 may:

1. 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 TPAF;

2. 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. Refer any suspected submission of false information in violation of N.J.S.A. 18A:66-64, 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) A member shall receive service credit for that base salary received during the period of suspension in which the member is awaiting a determination by the Commissioner of Education as provided under N.J.S.A. 18A:6-14.

(i) To be creditable compensation for teaching a period during the regular contracted day, the compensation shall be offered to all eligible and certified employees in the same position or covered by the same collective bargaining agreement, reported in regular, periodic installments in accordance with the payroll cycle of the employer and not offered to employees in anticipation of retirement.

(j) A stipend may be considered credible compensation and subject to pension deductions for retirement credit if it:

1. Is included as part of the petitioner's regular payroll check; and
2. Represents duties not addressed in base compensation that are integral to the effective functioning of the school curriculum.

Amended by R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

Amended by R.1981 d.30, effective January 27, 1981.

See: 12 N.J.R. 675(d), 13 N.J.R. 162(a).

(f) added.

Repeal and New Rule, R.2001 d.412, effective November 19, 2001.

See: 33 N.J.R. 2609(b), 33 N.J.R. 3907(c).

Section was "Creditable salary".

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Rewrote (a); in (d), deleted "of Pensions and Benefits" following "Division" and inserted a comma following "credit"; in (e)1, substituted "TPAF" for "Teachers' Pension and Annuity Fund"; rewrote (i); and added (j).

Law Review and Journal Commentaries

Pensions—Teachers. Steven P. Bann, 133 N.J.L.J. No. 11, 54 (1993).

Case Notes

That home instructors are not part of the regular teaching staff for purposes of attaining tenure under N.J.S.A. 18A:28-5 can be inferred from former N.J.A.C. 17:3-4.1(a)2xix (now N.J.A.C. 17:3-4.1(a)1xviii), which excludes home instructor income from earnings which are eligible for pension credit. *Donvito v. Board of Educ. of Northern Valley Reg'l High Sch. Dist.*, 387 N.J. Super. 216, 903 A.2d 508, 2006 N.J. Super. LEXIS 232 (App.Div. 2006), cert. denied, 188 N.J. 577, 911 A.2d 69, 2006 N.J. LEXIS 1740 (2006).

High school teachers acting as department chairpersons were not temporary employees so compensation received was creditable. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J. Super. 147, 620 A.2d 440 (A.D.1993).

Additional half-day of work performed by high school psychologist was not temporary so the extra salary was creditable for pension purposes. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J. Super. 147, 620 A.2d 440 (A.D.1993).

Initial Decision (2008 N.J. AGEN LEXIS 871) adopted, which concluded that board's determination to exclude for pension purposes monies paid for disability insurance, health benefits, and annuity contributions, and for payments identified by the school district as "un-identified" and "over/under ROC" was correct, and these amounts were not properly included within the calculation of the final average salary of member retired from his last employment as assistant superintendent for curriculum and instruction with regional high school district. In re *Klemens*, OAL Dkt. No. TYP 08955-07, 2008 N.J. AGEN LEXIS 1124, Final Decision (October 31, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 871) adopted, which concluded that the inclusion as "extra compensation" of a form of payment which, at the sole option of the employee, may or may not be used to buy health benefits, makes eminent sense. If the money were used by the board to buy the health benefits package for the employee, it would surely be seen that the health package was a benefit and not part of either "contractual" or "base" salary" but, if instead, that same money were paid to the employee at his option, the money simply would replace the benefit. It would therefore be "extra compensation," added to the "base" at the choice of the employee, but not part of what he absolutely would receive under any circumstance as "contractual" salary under his agreement with the board. In re *Klemens*, OAL Dkt. No. TYP 08955-07, 2008 N.J. AGEN LEXIS 1124, Final Decision (October 31, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 818) adopted, finding that under this section, a bus drivers' association's members were not entitled to pension credit for the compensation earned for services performed during the summer months, as such services were part of a contracted salary and/or the established salary policies under a collective bargaining agreement. The drivers were ten-month employees whose summer routes ran from July through August and were clearly outside the contractually-stated work period of ten months. Furthermore, the summer routes were optional and voluntary on the part of the drivers who elected to take part in these particular responsibilities. While the drivers were entitled to compensation for services performed, any compensation they received fell outside the scope of the regular work year. In re *Rockaway Township Bus Drivers' Association*, OAL DKT. No. TYPPE 11083-2006N, 2008 N.J. AGEN LEXIS 276, Final Decision (January 17, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 25) adopted, which agreed that the Board of Trustees of the Teachers' Pension and Annuity Fundy properly disallowed under this section the additional earnings a public employee received as a lunch duty teacher. The extra pay for performing lunch duty was extra compensation and could be considered creditable for pension purposes. This work was optional, and the employee was compensated for an extra job that was neither contemplated nor calculated in the employee's collective bargaining agreement or in his base salary. In re *Corona*, OAL DKT No. TYP 11221-05, Final Decision (March 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 88) adopted, which determined that a public employee's service as a computer coordinator was not creditable for pension purposes under N.J.A.C. 17:3-4.1. Although the position of computer coordinator was similar to that of program specialist and curriculum coordinator, in legally significant ways it was sufficiently different so as to place it in a different category when it came to the pension creditability of service in that position. Because the computer coordinator role was more akin to a "beyond the school day" extracurricular duty, the employee was not entitled to pension credit. In re Chomicki, OAL Dkt. No. TYPTP 08069-2002S, 2006 N.J. AGEN LEXIS 686, Final Decision (April 7, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 23) adopted, which held that a school guidance counselor was entitled to additional pension credit for the years in which she held the title of Lead Counselor because the semi-annual stipend payments she received for the Lead Counselor position were the result of permanent duties that were discharged during the regular school day and regular school year; the fact that the additional payments made to her for her position as Lead Counselor were semi-annual did not mean they did not constitute "salary" pursuant to N.J.S.A. 18A:66-2(d). In re Icenhower, OAL Dkt. No. TYP 4239-03, 2006 N.J. AGEN LEXIS 124, Final Decision (February 3, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 541) adopted in part regarding the denial of pension credit to a teacher for the hours worked between 3:00 p.m. and 8:00 p.m. during the regular school year in the absence of a writing or integrated agreement stating otherwise. However, the teacher's compensation for the 21 days worked in July-August during the period of 1997-2003 was creditable compensation under N.J.A.C. 17:3-4.1 as extra compensation and therefore not considered pensionable. The teacher contracted to perform work beyond his normal work year, and, as such, was required to perform duties beyond his normal work year. This form of compensation was excluded as creditable for pension calculations. Merely agreeing, in advance, to provide services beyond the normal work day or work year did not turn extra compensation into creditable compensation for pension purposes. In re Kollman, OAL DKT TYPTP 10546-2004, 2005 N.J. AGEN LEXIS 1344, Final Decision (December 6, 2005).

Merit increase not a bonus for pension calculation purposes. *Farrah v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 69.

Petition for pension credit for payment received for services rendered as high school department chairman denied based upon finding that payment did not take the form of salary and was classified as extra compensation in petitioner's employment contract (also citing former N.J.A.C. 17:3-29). *Bishop v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 4 N.J.A.R. 179 (1980).

17:3-4.2 Leave with pay

(a) If a member is granted a leave of absence during the course of a school year 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 receive credit and will be required to make contributions only if the member is receiving 50 percent or more of the regular base or contractual salary.

Amended by R.1974 d.24, effective January 31, 1974.

See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Inserted paragraph identifiers; in (a), substituted "on the basis of such salary" for "for such leave" and added "from the date of the leave" following "six months"; in (b), neutralized gender references.

17:3-4.3 School year members; 10 and 12 months

(a) Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's salary credit shall be given during any consecutive 12 months.

(b) Members whose contracts require them to work 10 months of the year and who are employed and are compensated for employment for the full normal school year by the board of education are entitled to receive 12 months of service credit. Members will not receive service credit for months during the normal school year when they are not actively employed and did not receive salary.

(c) A 12-month member is presumed to work each month of the fiscal year. Members shall not receive service credit for a month that a member does not work and is not on an approved paid leave of absence.

(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 TPAF 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 TPAF for the period between the end of the previous contract and the employment date of the new 12-month position.

Amended by R.1989 d.359, effective July 17, 1989.

See: 21 N.J.R. 980(a), 21 N.J.R. 2055(a).

Employees working less than a 12 month school year receive credit for a full year in Teacher's Pension and Annuity Fund.

Amended by R.1994 d.163, effective April 4, 1994.

See: 26 N.J.R. 108(b), 26 N.J.R. 1538(a).

Amended by R.1995 d.89, effective February 21, 1995.

See: 26 N.J.R. 3606(a), 27 N.J.R. 754(c).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (c), inserted the second sentence; and in (d), substituted "12-month" for "12 month" following "accepts a" and substituted "TPAF" for "Teachers' Pension and Annuity Fund" twice.

Case Notes

Professor employed on semester-by-semester basis did not qualify for extension of retirement system membership. *LaMastro v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 215.

17:3-4.4 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.130, effective March 16, 1987.
 See: 19 N.J.R. 52(b), 19 N.J.R. 457(a).
 Old rule "loan evaluation" repealed.
 Amended by R.2008 d.94, effective April 21, 2008.
 See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).
 Substituted "\$50.00" for "\$10.00" twice.

17:3-4.5 Approved leave

When benefits are payable involving approved leaves of absence or when a purchase of credit is to be processed involving a creditable leave, a certified copy of the employer's resolution granting such approved leave must be available in file or must be confirmed before processing can be completed.

Amended by R.1973 d.49, effective February 14, 1973.
 See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

17:3-4.6 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.2002 d.352, effective November 4, 2002.
 See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
 Substituted "\$2.00 or less during a calendar quarter" for "\$3.00 or less".

17:3-4.7 (Reserved)

Amended by R.1974 d.24, effective January 31, 1974.
 See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).
 Amended by R.1981 d.140, effective June 4, 1981.
 See: 13 N.J.R. 159(c), 13 N.J.R. 376(a).
 (b) added.
 Amended by R.1991 d.100, effective March 4, 1991.
 See: 22 N.J.R. 3321(b), 23 N.J.R. 712(b).
 In (b), amended method of computing back pay awards. Added (c).
 Amended by R.2002 d.352, effective November 4, 2002.
 See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
 In (b), neutralized gender references.
 Recodified from N.J.A.C. 17:3-6.6 and amended by R.2004 d.244, effective July 6, 2004.
 See: 36 N.J.R. 920(a), 36 N.J.R. 3267(c).
 Rewrote the section. Express contributions, was reserved 17:3-4.7, reserved.
 Amended by R.2008 d.94, effective April 21, 2008.
 See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).
 In (d), inserted "or settlement" four times, deleted "of Trustees" following "reviewed by the Board" and "the member shall have the contributions for the salaries based on the award refunded without interest, and" following "17:3-4.1" and inserted "and the member shall have the contributions for the salaries based on the award refunded without interest".
 Repealed by R.2010 d.188, effective September 7, 2010.
 See: 42 N.J.R. 897(a), 42 N.J.R. 2140(a).
 Section was "Service and salary credit: awards of back pay".
 Administrative correction.
 See: 43 N.J.R. 59(a).

Repealed by R.2011 d.065, effective February 22, 2011.
 See: 42 N.J.R. 897(a), 43 N.J.R. 449(a).
 Section was "Service and salary credit: awards of back pay".

Case Notes

Former teacher entitled to interest on monies improperly withheld from retirement account, but not reimbursement for overpayment of state income tax. *Nangle v. Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d(TYP) 14.

17:3-4.8 Military leave prior to August 1, 1974

(a) Military leave, prior to August 1, 1974, 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. 18A:66-34, shall be retained by the Fund. Such contributions shall be transferred from the Annuity Savings Fund to the Contingent Reserve Fund. Military leave contributions remitted by an employer shall be based on the employee's salary at the time the member entered military service.

(b) Payroll as referred to in (a) above, shall be interpreted to mean any public school payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when the member entered military service.

As amended, R.1973 d.49, effective February 14, 1973.
 See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
 Amended by R.2002 d.352, effective November 4, 2002.
 See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), inserted ", prior to August 1, 1974" following "Military leave" and neutralized gender references throughout.

Case Notes

Approval of W.W.II veteran status in retirement system was proper. *Usarzewicz v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 69.

17:3-4.9 Eligibility for loan

Only active contributing members of the Fund may exercise the privilege of obtaining a loan. The member's total outstanding loan balance shall not exceed the lesser of 50 percent of the accumulated deductions posted to the member's account or \$50,000. The loan is subject to I.R.C. §72(p) (2007) of the Internal Revenue Code.

As amended, R.1973 d.49, effective February 14, 1973.
 See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
 Amended by R.2002 d.352, effective November 4, 2002.
 See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.
 Amended by R.2008 d.94, effective April 21, 2008.
 See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).
 Inserted the last sentence.