

## CHAPTER 4

## POLICE AND FIREMEN'S RETIREMENT SYSTEM

## Authority

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

## Source and Effective Date

R.2001 d.66, effective January 25, 2001.

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

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 4, Police and Firemen's Retirement System, expires on July 24, 2006. See: 37 N.J.R. 4521(a).

## 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).

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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.

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 election packets 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); or
- iii. Paper ballot (postage-paid, self seal return mailer).

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

- i. The eligible member's name, pension membership number, pension location number, ballot number and personal identification number (PIN);
- ii. The closing date of the election;
- iii. The name of each candidate nominated including a biographical sketch listing the candidate's background and employer;
- iv. Instructions on how to properly cast a vote, including notification that shall advise the member that mutilated ballots, illegible ballots, ballots with write-in votes, ballots with multiple votes or ballots where it

cannot be determined for whom the member intended to vote shall be declared invalid and not considered in the final election count;

v. Instruction on how to properly cast an electronic vote;

vi. Instruction on proper use of the PIN number;

vii. Notification that the candidate receiving a plurality of the legal votes cast shall be declared elected to the position;

viii. Notification that the first vote cast shall be counted as the official vote and subsequent votes 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 notice shall be signed by each certifying officer acknowledging the receipt and distribution of the election packets. It is the responsibility of the certifying officer to ensure that such election packets are properly distributed to all eligible employees.

(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. Mutilated ballots, illegible ballots, ballots with a write-in vote, multiple votes or any other ballot where it cannot be determined for whom the voter intended to

vote shall be declared invalid and not considered in the final election count.

(g) The following 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.

4. Endorsements are not permitted in the biographical information.

(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 deemed to 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 invited to the presentation of the final results of the election.

(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.

Amended by R.2004 d.27, effective January 20, 2004.

See: 35 N.J.R. 4456(a), 36 N.J.R. 439(a).

In (b), substituted "firefighter" for "firemen" in the second sentence; in (e), substituted "Paper" for "Color-coded paper" preceding "ballot" in 1iv and rewrote 2iv; in (f), deleted former 3, recodified former 4 as 3 and substituted "Mutilated ballots" for "Unsigned ballots, mutilated ballots"; in (h), inserted "deemed to be" preceding "elected" in 2. Amended by R.2005 d.231, effective July 18, 2005.

See: 37 N.J.R. 570(a), 37 N.J.R. 2686(a).

In (a), substituted "The election procedures as required by N.J.S.A. 43:16A-13 for" for "The procedures for"; in (c), rewrote 5; in (d), substituted "election packets" for "ballots" in 6; rewrote (e); in (g), added 4; in (h), rewrote 4.

#### 17:4-1.5 Certifying officer (employer)

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

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

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

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

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

Changed "certifying agent" to "certifying officer" throughout; and added (d).

#### 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) The designations of beneficiaries of all active and retired members are considered to be a part of the member's confidential files and shall only be released after the member's death.

(d) All medical testimony obtained in connection with an application for disability retirement shall be restricted for the confidential use of the Board of Trustees. The Division shall release a copy of the examining physician's medical report to the member, the member's attorney or any person authorized by the member in writing to receive a copy of such report. In no event shall the report be released to any individual not authorized in writing to receive the report.

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

Added a new (c) and recodified former (c) as (d), and added the second sentence to the end of the paragraph.

#### 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 the claimant's legal representative:

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

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

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

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

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

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.

#### 17:4-1.8 Suspension of pension checks

(a) The disbursement of pension checks shall be suspended under the following circumstances and such suspensions shall continue during the period in default:

1. If a disability retiree 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 a periodic basis;
3. If a retiree or beneficiary becomes mentally or physically incompetent. The disbursement of pension checks in this instance shall be suspended until a proper legal representative has been appointed.

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

In (a), substituted "Monthly retirement allowances will" for "The disbursement of pension checks shall" and substituted "the suspension will" for "such suspensions shall"; in (a)2, substituted "an annual" for "a periodic"; in (a)3, substituted "event" for "instance".

#### 17:4-1.9 (Reserved)

Recodified as N.J.A.C. 17:4-1.12 by R.2001 d.66, effective February 20, 2001.

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

Section was "State employees; biweekly salaries".

#### 17:4-1.10 (Reserved)

Recodified as N.J.A.C. 17:4-3.7 by R.2001 d.66, effective February 20, 2001.

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

Section was "Survivor benefits; establishing dependency, recodified to N.J.A.C. 17:4-3.7.

#### 17:4-1.11 Proof of age

(a) All members shall establish proof of their age with the System. Acceptable proofs of age include birth or baptismal certificates, passports, naturalization papers, Biblical records, affidavits of older members of the immediate family or primary school records.

(b) In the event a member dies before satisfactory evidence of the member's 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.

Recodified from N.J.A.C. 17:4-1.12 and amended by R.2001 d.66, effective February 20, 2001.

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

Rewrote (a); in (b), neutralized gender references. Former N.J.A.C. 17:4-1.11, Travel, repealed.

#### 17:4-1.12 Employees; biweekly salaries

(a) Retirement and death benefits as well as service credit will be determined on the basis of biweekly pay periods for employees whose employers report salary and contributions on a biweekly basis. This biweekly schedule should conform to the biweekly reporting schedule issued by the State's Centralized Payroll Office.

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

Recodified from N.J.A.C. 17:4-1.9 and amended by R.2001 d.66, effective February 20, 2001.

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

Rewrote (a); in (b), neutralized gender reference. Former N.J.A.C. 17:4-1.12, Proof of age, recodified to N.J.A.C. 17:4-1.11.

#### 17:4-1.13 Election of retired member-trustee

(a) The election procedures as required by N.J.S.A. 43:16A-13 for the election of a retired member-trustee to the Board of Trustees of the Police and Firemen's Retirement System are set forth within this section.

(b) Eligible candidates shall include all retired members of the Police and Firemen's Retirement System. A retired member is one who meets the criteria set forth in N.J.A.C. 17:4-6.3(a). 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 six months prior to the expiration of a term of office of a retired member-trustee or immediately upon a vacancy on the Board, a notice shall be prepared and distributed by the Secretary of the Board to each retired member eligible to vote. This notice will be sent to the member's last known mailing address and shall inform the members that the nominating petition forms are available at the Office of the Board Secretary, Police and Firemen's Retirement System.

2. The election notice shall also:

- i. Advise the retired member of the election;
- ii. State the position and term to be filled;
- iii. State that nominating petitions are required;
- iv. State the dates of the election;
- v. Identify all present members of the Board; and
- vi. Contain other information specified by the Board of Trustees.

3. Election notices shall be forwarded to each retired member, together with instructions.

(d) The following shall 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 provided to each retired member requesting them after the Office of the Board Secretary verifies the retiree's eligibility to run for such election.

3. The nominating petition forms for retired member-trustees shall explain that a minimum of 100 retired members who are eligible to vote for the positions are required to sign the nominating petition for the candidate.

4. The nominating petition form shall require the candidate's name and the name of the employing agency from which the member retired and shall require the social security number or retirement number of each retired member. If the social security number or retirement number is not provided, the name shall be disqualified.

5. The form shall explain that a member shall sign only one nominating petition for a candidate seeking the retired-member trustee position.

6. The dates for filing and returning the nominating petitions shall be identified as well as the approximate date the election packets shall be sent to the retired members.

7. A candidate named on a nominating petition shall sign the petition in a designated space indicating that he or she is willing to be a candidate.

8. If only one candidate is nominated for the position, the candidate shall be deemed elected to the position without balloting. A notice to the retired membership shall be distributed indicating no contest since only one candidate was nominated by petition.

(e) The following shall apply to the distribution of the 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 eligible retired members shall have an opportunity to cast a ballot through one of the following:

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

2. For each eligible retired voter as defined within N.J.A.C. 17:4-6.3(a) there shall be forwarded to him or her a ballot which shall include the following information and instructions:

- i. The name of the eligible voter;
- ii. The closing date of the election;
- iii. The name of each candidate nominated and the name of his or her employer at retirement;
- iv. Instructions to the voter for the proper casting of the ballots shall be shown upon the ballot or on a separate sheet; and
- v. Instructions that the candidate receiving a plurality of the legal votes cast shall be declared elected to the position.

3. The ballot positions shall be determined by a drawing conducted at a time and place determined appropriate by the Secretary of the Board of Trustees. All candidates shall be invited to attend said drawing.

4. Voting for more candidates than instructed will be cause for rejection of the ballot.

5. Mutilated ballots, illegible ballots, ballots with a write-in vote or multiple votes or any other ballot where it cannot be determined for whom the voters intended to vote shall be declared invalid and cannot be considered.

6. The candidate receiving the highest number of legal votes shall be deemed to be elected to that position.

7. The Secretary of the Board shall oversee the election procedure to ensure that the vendor complies with all of the requirements and assures the validity of the final election count.

8. The candidates for election whose names are printed upon the ballots shall be invited to attend the presentation of the final results of the election.

(f) The following shall apply to biographical information:

1. An informational sheet of biographical information regarding each candidate shall be prepared by the candidate and submitted to the 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 eligible voters at the time of distribution of the election packets or otherwise distributed as approved by the Board of Trustees so that the retired members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

4. Endorsements are not permitted in the biographical information.

(g) 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 deemed to 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 invited to the presentation of the final results of the election.

(h) The following shall apply to recount procedures:

1. Any candidate or member who shall have reason to believe that an error has been made in counting or declaring the vote may, within 20 days of the certification of the results of the election, request in writing that the Board of Trustees shall, at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether or not 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. Each candidate on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support his or her beliefs.

2. If a candidate or other interested party requests a recount 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, a police and fire member-trustee 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.

(i) If there are at least two candidates in an election for retired member-trustee and the victorious candidate dies or is unable or unwilling to serve as such retired 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 retired member-trustee's term begins upon the taking of the oath of office.

New Rule, R.1997 d.28, effective January 21, 1997.

See: 28 N.J.R. 1605(b), 29 N.J.R. 376(a).

Amended by R.2004 d.27, effective January 20, 2004.

See: 35 N.J.R. 4456(a), 36 N.J.R. 439(a).

In (d), deleted "signature" following "100 retired members" in 3 and inserted "or retirement number" following "social security number" throughout 4; rewrote (e).

Amended by R.2005 d.231, effective July 18, 2005.

See: 37 N.J.R. 570(a), 37 N.J.R. 2686(a).

Rewrote the section.

## SUBCHAPTER 2. ENROLLMENT

### 17:4-2.1 Eligible positions

(a) All public employees actively employed in positions meeting the definition "police officer" or "firefighter" shall be members of the Police and Firemen's Retirement System of New Jersey.

(b) The following words and terms, as used in this section and in N.J.S.A. 43:16A-1 et seq., shall have the following meanings:

1. "An agency authorized to establish physical and mental fitness requirements applicable to the position of municipal police officer" means the Police Training Commission established by N.J.S.A. 52:17B-70.

2. "Authorized to carry a firearm while engaged in the performance of his official duties" means so authorized by a statute. It is not required that an employee actually carry a firearm while engaged in official duties, but the employee shall be legally authorized and qualified to do so.

3. "Board of Trustees" or "Board" means the Board of Trustees of the Police and Firemen's Retirement System established pursuant to N.J.S.A. 43:16A-13.

4. "Director" means the Director of the Division of Pensions and Benefits in the Department of the Treasury.

5. "Direct supervision" includes conducting performance evaluations, disciplining, adjusting grievances, rewarding, and assigning and directing the work of other employees.

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

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. "Firefighter" 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" as defined by (b)5 above.

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. "Police officer" 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 with the meaning of the definitions of "police officer" or "firefighter" 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 police officers or firefighters.

(d) Determinations by the Director and the Board of whether an employee of a law enforcement unit or firefighting unit is a supervisory employee within the meaning of the definitions of "police officer" or "firefighter" 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 super-

visory 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 police officers or firefighters or effectively recommending such actions;

2. Whether the individual police officers or firefighters 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 police officers or firefighters.

(e) Employers shall not use the same job title for both individuals whose job functions meet the definition of "police officer" or "firefighter" 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 "police officer" or "firefighter," but that employee holds a position held by other individuals whose primary duties do not qualify those employees as a police officer or firefighter, 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 "police officer" or "firefighter" 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 the employee performs duties that meet the definition of "police officer" or "firefighter," 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 police officer or firefighter. 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 "police officer" or firefighter." 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 "police officer" or "firefighter," 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 "police officer" or "firefighter," 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 "police officer" or "firefighter" as the case may be, and that interested parties may seek to intervene in accordance with N.J.A.C. 1:1-16.

(k) Guidelines for fire districts that have not adopted the provisions of Title 11A of the New Jersey Statutes (non-civil service) are as follows:

1. A Board of Fire Commissioners created under the provisions of N.J.S.A. 40A:14-81 shall have the powers, duties and functions within said district to the same extent as in the case of municipalities, relating to the prevention

and extinguishment of fires and the regulation of fire hazards.

2. When establishing an eligible position for the PFRS, the commissioners must comply with the employment guidelines stated in N.J.S.A. 40A:14-81.1, excerpted below:

- i. The position must be established by resolution;
- ii. The appointment of persons to the position, determination of the term and compensation and prescribed functions and duties of the position must also be established by resolution; and
- iii. The resolution must be published at least once in a substantial newspaper in the district.

(l) To determine the eligibility of a non-civil service position for the PFRS, the Board requires the following items:

1. A description of the physical and mental requirements for the position including evidence of the completion of a test determined by the Board to be comparable to the Fire Fighters' Physical Performance Test required by civil service employers;
2. A description of the training requirements including but not limited to, the Fire Fighter's I certification issued by the Division of Fire Safety, Department of Community Affairs.
3. A table of organization for the employing entity;
4. A list of employees currently in the position, with present pension status and job title; and
5. Proof of compliance with the provisions of N.J.S.A. 40A:14-81.1.

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 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).

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

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

Created neutral gender references throughout; added new (k) and (l).

Public Notice: Sheriff's Officer, Bilingual.

See: 34 N.J.R. 2473(b).

Public Notice: District Fire Captain (Washington Twp.), District Fire Captain/Training Officer (Washington Twp.), Assistant Fire Chief (Livingston).

See: 34 N.J.R. 3545(b).

Public Notice: Senior Emergency Services Specialist (Hopewell Twp.).

See: 35 N.J.R. 1596(d).

Public Notice: Correction Officers and Sheriff's Officers, Somerset County.

See: 35 N.J.R. 2533(c).

Public Notice: Notice of proposal to include the civil service positions in the Police and Firemen's Retirement System.

35 N.J.R. 2958(a), 2958(b).

Public Notice: Police Chief, Police Lieutenant, Police Sergeant, Police Officer, Palisades Interstate Park Commission.

See: 35 N.J.R. 4148(b).

Public Notice: Chief, Fire Apparatus (UFD).

See: 35 N.J.R. 5450(b).

Public Notice: Police Chief, Brookdale Community College.

See: 35 N.J.R. 5451(a).

Public Notice: Detective, Waterfront Commission of New York Harbor.

See: 36 N.J.R. 1245(a).

Public Notice: Notice of Proposal to Include the Non-Civil Service Positions of Assistant Chief, Firefighter/Emergency Medical Technician, and Firefighter/Emergency Medical Technician/Inspector in the Police and Firemen's Retirement System.

See: 37 N.J.R. 4478(b).

Public Notice: Notice of Proposal to Include the Civil Service Positions of Ranger, Ranger Sergeant, Ranger Lieutenant, and Chief of Parks and Law Enforcement in the Police and Firemen's Retirement System.

See: 37 N.J.R. 4479(a).

### 17:4-2.2 Compulsory enrollment

Membership in the Police and Firemen's Retirement System of New Jersey is mandatory, a condition of employment for every "police officer" or "firefighter" under the provisions of N.J.S.A. 43:16A-1 et seq.

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.

### 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 physician examining for the appointing authority. If this medical source indicates further examination is in order, the System will select and arrange an appointment with an independent physician.

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

3. The completed Report of Examining Physician shall be deemed unacceptable if there is more than one year's difference from the date of signature of the examining physician and the date of receipt time-stamped by the Division of Pensions and Benefits.

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

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

Added (a)3.

### 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) The age of candidates for positions covered by the Police and Firemen's Retirement System with employers who have adopted the provisions of Title 11A of the New Jersey Statutes (Civil Service) is determined at the announced closing date of the examination offered by the Department of Personnel for those positions. Candidates must not be one day past the date of their 35th birthday on the announced closing date of the examination. Those candidates meeting the age requirements at that time will be considered as having met the age maximum requirement for the duration of the list promulgated as a result of such examination. (N.J.S.A. 43:16A-3(1))

(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).  
Amended by R.2003 d.204, effective May 19, 2003.  
See: 35 N.J.R. 508(a), 35 N.J.R. 2186(a).  
Rewrote (b).

**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 eligibility for enrollment on the date of regular appointment.

1. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month of regular appointment for an employee 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 employee whose regular appointment date falls between the 17th and the end of the month.

2. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period of regular appointment for an employee whose appointment date falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose appointment date falls on any subsequent date within that pay period.

(b) An employee in the unclassified service shall be considered as beginning service on the date employment began. The compulsory enrollment date shall be fixed as the first of the month of hire 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) For local employers not covered by civil service, a regular appointment shall constitute the date the employee originally accepted employment in a regular budgeted position.

1. For local employers not covered by civil service who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month of hire for an employee whose beginning employment date falls between the first through 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose beginning employment date falls between the 17th and the end of the month.

2. For local employers not covered by civil service who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period of hire for an employee whose date of hire falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose date of hire falls on any subsequent date within that pay period.

(d) An employee of a civil service employer who is not permanent in a classified position or an employee of a non-civil service employer who is not in a regular budgeted position may be considered a temporary employee by the employer for the one-year period following the employee's date of hire, but if the employment continues into a second year, the employee will be required to enroll immediately in the Public Employees' Retirement System pursuant to the provisions of N.J.A.C. 17:2-2.8.

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.

### 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 the member was paid salary to date of death and the salary paid was sufficient to permit a full normal month's or biweekly pension deduction.

(b) Death benefits and noncontributory insurance 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. Months or pay periods in which no salary was paid shall not be used in the calculation.

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

(d) Where a post-audit of insurance claim payments indicates the pension contributions reported by an employer were incorrect and resulted in the underpayment of an insurance claim to a member's designated beneficiary or estate, an additional check would be sent to the beneficiary for the value of the underpayment.

(e) If a deceased member does not have an eligible surviving spouse, child or parent, then refunds of a deceased member's pension contributions will be made to the member's designated beneficiary.

(f) 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.

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.

#### 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 (Reserved)

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 "Proof of insurability".

#### 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 the member's accumulated pension contributions.

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 reference.

#### 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).

#### 17:4-3.7 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 parent will be deemed to be dependent on the member if they were accepted as dependents of the member for Federal income tax purposes.

Recodified from N.J.A.C. 17:4-1.10 and 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), "deleted widower or" preceding "parent" and the second sentence.

## 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.  
Sec: 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).

#### 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 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.

#### 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. 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 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.

(b) A member who appeals the suspension or termination of the member's employment and who, by award or settlement, becomes entitled to back pay for all or a portion of that employment for the period of such suspension or termination shall receive service credit for the period covered by the award or settlement 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 or settlement. If the member receives full back pay, including normal salary increases before mitigation, 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 award or 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, after mitigation, is insufficient to deduct the value of the normal pension contributions due, such contributions shall be paid by the member.

(c) In no case shall service or salary credit be given if the award of back pay, before mitigation, is less than the value of the normal pension contributions due. If a member waives an award of back pay, then the member cannot receive service or salary credit for the period of the award.

(d) If the award is structured in such a way as to provide the member with a substantial increase of creditable salary at or near the end of the member's service, or a substantial increase in retirement benefits, the award shall be reviewed by the Board of Trustees. If the Board determines that the pension benefit was part of the negotiations for the award, or if the award includes extra compensation as defined by N.J.A.C. 17:4-4.1, the member shall have the contributions for the salaries based on the award refunded without interest, and the Board shall determine the compensation to be used to calculate the retirement allowance.

(e) 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.

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.

#### 17:4-4.9 Eligibility for loan

Only active contributing members of the System may exercise the privilege of obtaining a loan. The member's total outstanding loan balance shall not exceed 50 percent of the accumulated deductions posted to the member's account.

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.

#### 17:4-4.10 Termination; withdrawal

(a) Under the terms of the statutes, a member may withdraw from the System only if the member terminates all employment.

(b) No application shall be approved if:

1. The member is on official leave of absence;
2. The member certifies that employment has not ended or that the member 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 the member has formally resigned from the position or there is no legal action contemplated or pending and the dismissal has been adjudged final; or
4. The member has a claim pending for Workers' Compensation benefits.

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 throughout.

#### 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 the day they return to service.

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

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

Added "the day" preceding "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 Service credited from multiple positions

Not more than one year of service shall be credited for all service in a calendar year.

New Rule, R.2005 d.118, effective April 18, 2005.

See: 37 N.J.R. 39(a), 37 N.J.R. 1217(a).

#### 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 New Jersey State-administered retirement system and any service which would have been eligible for purchase under that membership;
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 from the employer 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 actual 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. Active military service that is eligible for purchase means full-time duty in the active military service of the United States. Such term includes full-time training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include periods of service of less than 30 days. It does not include weekend drills or annual summer training of a national guard or reserve unit, nor does it include periods when the member was on-call. It also does not include time spent in the Reserved Officers Training Corps or as a cadet or midshipmen at one of the service academies. 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 members who were laid off in good standing and not by removal for cause or charges of misconduct or delinquency from employment in police service positions and subsequently rehired in PFRS police service positions in accordance with P.L. 1999, c.338, N.J.S.A. 43:16A-11.13 or up to three years of service credit for firefighter members who were laid off in good standing and not by removal for cause or charges of misconduct or delinquency from employment in firefighter positions and subsequently rehired in PFRS firefighter positions in accordance with P.L. 2001, c.228. 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".  
Amended by R.2001 d.394, effective November 5, 2001.  
See: 33 N.J.R. 2254(a), 33 N.J.R. 3756(b).

In (a)1, inserted "New Jersey" preceding "State-administered" and added "and any service which would have been eligible for purchase under that membership"; in (b)5, deleted "officer" preceding "members" and substituted "in police service positions" for "as police officers", and also added a credit reference for firefighters for three years who were laid off in good standing.

Amended by R.2005 d.118, effective April 18, 2005.

See: 37 N.J.R. 39(a), 37 N.J.R. 1217(a).

In (a), inserted "from the employer" following "The Division may require proof" in 4ii; in (b), rewrote 1.

#### 17:4-5.4 Methods of payment

(a) Methods of payment include:

1. Lump sum;
2. Partial lump sum; 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. Direct rollover/trustee-to-trustee transfer of funds: Lump sum payments and partial lump sum payments can include the direct rollover or transfer of tax-deferred contributions from financial plans that qualify under terms specified by the Internal Revenue Service. All payments remitted to the Division must be accompanied by properly completed forms as specified by the Division. Checks remitted to the Division without the required forms shall be returned to the member. A lump sum rollover payment for a purchase cannot exceed the lump sum cost of that purchase. Checks in an amount greater than the lump sum cost of the purchase shall be returned to the member.

(b) Extra payroll deduction will include regular interest for the term of the installment.

Amended by R.2001 d.393, effective November 5, 2001.

See: 33 N.J.R. 2612(a), 33 N.J.R. 3757(a).

In (a)2, deleted "of \$250.00 or more".

Amended by R.2005 d.118, effective April 18, 2005.

See: 37 N.J.R. 39(a), 37 N.J.R. 1217(a).

In (a), substituted "payment" for "repayment" in the introductory paragraph, added a new 4, and recodified former 4 as (b).

**17:4-5.5 Reinstatement of membership credit**

(a) A member, whose account has been terminated by the withdrawal of 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 (N.J.S.A. 11A:4-9), Chapter 303, P.L. 1969 (N.J.S.A. 40:47-11.1 and 11.2), or Chapter 439, P.L. 1981 (N.J.S.A. 11A:4-9), provided that the member meets the requirements of the System other than the age maximum:

1. A member reinstated under Chapter 303, P.L. 1969 (N.J.S.A. 40:47-11.1 and 11.2), shall purchase the previous credit the member had established in the Police and Firemen's Retirement System at enrollment. The cost of purchasing the previous credit will be determined using the formula for calculating shared-cost purchases found at N.J.A.C. 17:4-5.3(a).

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.

**17:4-5.6 Elected officials; continuation of membership**

Any member accepting an elective position may continue membership and contribute on the salary being received as an elected official as long as the member holds elective office and remains a member of 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).

Deleted "at his or her current rate of contribution" preceding "on the salary" and neutralized gender references throughout.

**17:4-5.7 (Reserved)**

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 "Lump-sum purchases".

**SUBCHAPTER 6. RETIREMENT****17:4-6.1 Applications**

(a) Applications for retirement must be made on forms required by the System. Such forms must be completed in all respects and filed with the Division of Pensions and Benefits (Division) on or before the requested date of retirement. A member's retirement application becomes effective on the first of the month following receipt of the application unless a future date is requested.

(b) In the event a member files an incomplete application, the deficiencies shall be brought to the member's attention and the member shall be required to file a completed application with the Division to enable processing.

(c) Before an application for retirement may be processed, the Division must receive proof of the member's age,

if none is already in the member's record, and a completed Certification of Service and Final Salary form from the employer setting forth the employment termination date and the salaries reported for contributions in the member's final year of employment.

(d) In addition to the requirements in (a) through (c) above, an application for disability retirement must be supported by at least two medical reports, one by the member's personal or attending physician and the other in the form of either hospital records supporting the disability or a report from a second physician.

(e) If a member's previous retirement allowance has been cancelled due to the member's return to employment and reenrollment in the Retirement System pursuant to the provisions of N.J.S.A. 43:16A-15.3, a new retirement application must be filed with the Division in accordance with (a) through (d) above. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based on the member's subsequent covered employment, shall commence. The previous and subsequent retirement allowances shall then be combined and paid in one monthly benefit check.

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.

**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 date; death prior thereto**

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 one month after the date of the retirement, whichever is later.

Recodified from N.J.A.C. 17:4-6.3 and 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. Former N.J.A.C. 17:4-6.2, Effective dates; changes, recodified to N.J.A.C. 17:4-6.3.

**17:4-6.3 Effective dates; changes**

(a) Except as provided by N.J.A.C. 17:4-6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. 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 the retirement application before the 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 one month has elapsed following the effective

date or 30 days after the date the Board met and approved the change in the member's retirement application, whichever is later.

(c) A deferred retirement shall become effective on the first of the month following the member's 55th birthday. If the member's 55th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:16A-11.2 and requests that retirement date.

(d) In the case of deferred retirement, if an applicant desires to amend the retirement application, the amended application must be filed with the Division a minimum of one month prior to the effective date of retirement.

(e) Should the member continue to receive a salary beyond the effective date of retirement, 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 effective date of retirement.

Recodified from N.J.A.C. 17:4-6.2 and 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. Former N.J.A.C. 17:4-6.3, Effective date; death prior thereto, recodified to N.J.A.C. 17:4-6.2.

Amended by R.2005 d.232, effective July 18, 2005.

See: 37 N.J.R. 573(a), 37 N.J.R. 2687(a).

In (a), substituted "Except as provided by N.J.A.C. 17:4-6.7, a" for "A"; rewrote (e).

#### 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.

#### 17:4-6.4 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 (Reserved)

Recodified to N.J.A.C. 17:4-4.8 by R.2004 d.410, effective November 1, 2004.

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

Section was "Retirement credit".

#### 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 the member's 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 applicant was considered a member in service at the time of filing the application for a disability retirement allowance. A "member in service" means that the member or the employer was making pension contributions to the retirement system at the time of filing the application for a disability retirement allowance. It may also mean that the member was on an approved leave of absence, paid or unpaid, or suspension, paid or unpaid, at the time of filing the application for a disability retirement allowance, and it has not been more than the time frames permitted by N.J.S.A. 43:16A-9(5)a for active membership since the member's last contribution to the retirement system. If the member had pending litigation for wrongful termination filed against the employer, the member has 30 days from the date the litigation is resolved to file for disability retirement in order to be considered a "member in service";
2. The member is physically or mentally incapacitated for the performance of duty;

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 the member's regular or assigned duties; and

4. The member meets the service requirement for ordinary disability.

(b) Once the Board approves a member for a disability retirement allowance, the member's retirement application shall not be withdrawn, canceled or amended.

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

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

In (a), rewrote 1; neutralized gender references throughout.

Amended by R.2005 d.232, effective July 18, 2005.

See: 37 N.J.R. 573(a), 37 N.J.R. 2687(a).

In (a), rewrote 1; added (b).

#### 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 Employment after retirement

(a) A member, who is pending retirement or whose retirement has become effective pursuant to N.J.A.C.

17:4-6.2, is required to re-enroll in the Police and Firemen's Retirement System pursuant to N.J.S.A. 43:16A-15.3, regardless of whether the member is over age 35, if:

1. The member returns to the employment in a PFRS covered position;

2. The member continues in the same, or substantially the same, position held prior to retirement with no lapse in service after the retirement date. In this case, the member would not be considered to have a bona fide retirement and would not be entitled to any retirement benefits. The member would be reinstated to the former PFRS membership; or

3. The member returns to employment in a position which is the same, or substantially similar, to the position held by the member prior to retirement, and:

i. The position became a PFRS position for that member prior to retirement due to the provisions of N.J.S.A. 43:16A-1(2)(a) or (b) or 43:16A-3.1, which permit a member of the PFRS to continue membership if serving in an appointive administrative or supervisory capacity over police or firefighters, and the member returned to employment with the same employer;

ii. The position became a PFRS position at the option of the member prior to retirement pursuant to N.J.S.A. 43:16A-3.5 or other statutory authority; or

iii. The position remained a PFRS position under the provisions of N.J.S.A. 43:16A-1.2 for those serving in the position at the time of the P.L. 1989, c.204 review.

(b) If a member is eligible to contribute to the PFRS from a position, then the position is a PFRS position.

(c) If the position is not for a title which is eligible for enrollment in the PFRS and the member is not eligible to contribute to the PFRS due to having reached the mandatory retirement age of 65 (N.J.S.A. 43:16A-5), the position is not covered under the provisions of the PFRS, and the member is not eligible to re-enroll or contribute to the PFRS from that position. The member may work in that position without affecting his or her retirement allowance.

New Rule, R.2005 d.119, effective April 18, 2005.

See: 37 N.J.R. 40(a), 37 N.J.R. 1217(b).

#### 17:4-6.9 Final compensation

(a) In order to determine the final compensation for benefits on a:

1. Member reported on a monthly basis, use the base salary upon which pension contributions were made to the Annuity Savings Fund for the member's last 12 months of service.

2. Member reported on a biweekly basis, use the base salary upon which pension contributions were made to the

Annuity Savings Fund for the member's last 26 pay periods of service multiplied by the factor supplied by the actuary to compensate for biweekly payroll schedules.

(b) The months or pay periods for which no contributions were made shall not be used in the calculation.

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.

**17:4-6.10 Employer initiated disability retirement application**

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

1. The member's employer has properly initiated a disability application signed by the Certifying Officer or other designated officer of the employer, on the member's behalf;

2. The member's employer has submitted a written statement as to the grounds for the employer's request for the member's involuntary disability retirement and all available medical documentation; and, if appropriate;

3. The member's 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 the member's regular or assigned duties;

4. The member has a period of 30 days to contest the involuntary retirement before the Board acts on the employer's application;

5. The member 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 the member is totally and permanently incapacitated for the performance of duty, the member shall be granted a retirement allowance; and

7. In the event the Board finds that the member 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.

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.

#### 17:4-6.11 Service or special retirement; eligibility

(a) A member becomes eligible for "service" retirement:

1. On the first of the month following the member's 55th birthday. If the member's 55th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:16A-5, and requests that date; or

2. When the member has a minimum of 20 years of service credit if the member was enrolled in the PFRS as of January 18, 2000.

(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 the member's age.

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.

#### 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 the retirant's retirement allowance until the retirant 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.

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), neutralized gender references throughout.

#### 17:4-6.13 Medical examinations; physicians

N.J.S.A. 43:16A-13(11) requires the Retirement System or the Board to designate physicians to perform medical examinations. A designated physician shall not be a member's personal physician, except in the case of a member whose personal physician has identified the member as

having a probable abbreviated life expectancy if sufficient corroborating medical evidence of the diagnosis can be obtained.

Repeal and New Rule. R.2001 d.66, effective February 20, 2001.  
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).  
Section was "Medical examinations; physicians".

#### 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 birthday.

(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 Division shall send written notice to the member and the member's 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 the member's compulsory retirement date following the member's 65th birthday.

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

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

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

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), deleted "; if not voluntarily established before that date" following "65th birthday"; in (e) through (i), neutralized gender references; deleted (j).

#### 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 retire-

ment 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 the applicant's regular or assigned duties, and if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the Division will notify both the member and the member's employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the Division.

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

Substituted "Division" for "system" throughout; deleted "by both the employee and his employer." at the end of the first sentence; deleted the former second sentence; and neutralized gender references throughout.

#### **17:4-6.16 Final compensation; salary computation for employees reported on a biweekly basis**

(a) In computing final compensation upon which pension contributions were based in the case of a 12-month employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments attributable to the covered 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 biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop "final compensation."

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

In (a), deleted "average" preceding "final compensation" and "State" following "12-month", substituted "26" for "78" and "attributable to the covered" for "made within the prescribed"; deleted (c) and (d).

#### **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 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 the member's 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 the member completely leaves the property of the member's residence and begins to travel to the other location, or until the member 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 the member's 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 the member's 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.

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.

#### 17:4-6.18 Waiver

(a) If for any reason a retirement allowance or portion thereof has been waived by a retired member or beneficiary, the benefit waived shall remain in the retirement reserve fund.

(b) Retired members or beneficiaries may cancel the waiver effective as of the first day of any month subsequent to the receipt of the notice of cancellation; however, they may not make a claim for retroactive payment of any benefits waived prior thereto.

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

### SUBCHAPTER 7. TRANSFERS

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

(a) 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 of the present System shall disallow the transfer of all or a portion of prior service of any member of the System for misconduct occurring during the member's prior public service which renders that prior service, or part thereof, dishonorable.

(b) The system will transfer membership to any State-administered Retirement System as follows:

1. A member, desiring to transfer service credit and contributions from one State-administered retirement system to another, shall file an "Application of Interfund Transfer" and an "Enrollment Application" in place of the customary "Application for Withdrawal." This application will void all possible claims against the present system when approved and the new membership is commenced in the new system.

2. The member's accumulated contributions, less any outstanding loan, shall be transferred to the new system for the account of the respective member. Any outstanding loan, back deductions or arrears obligation will be scheduled for repayment.

3. A statement reflecting the member's status as of the date of transfer shall be prepared by the Withdrawal Section of the Division and a copy forwarded to the old account.

4. The member's service credits established in the present system shall be transferred to the new system.

5. The member is not eligible to transfer service credit if any of the following conditions apply:

i. The member has withdrawn the previous membership;

ii. The member has credit in the present system for service earned after the date of enrollment in the new system (concurrent service); or

iii. The account has expired; that is, it has been more than two years from the date of the last contribution and there was not sufficient service credit to be eligible for deferred retirement.

6. A data sheet shall be created for the member's new account that will indicate an interfund transfer from the member's previous retirement system and the service credit transferred into the new membership account.

(c) The reserves accrued in the present system will be valued and compared to the reserves required in the new 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.

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

(e) A member is subject to all age and medical requirements for enrollment into the Police and Firemen's Retirement System before an interfund transfer into the PFRS shall take effect.

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.

#### 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 Intrafund transfers; State-administered retirement systems

(a) Members who leave one public employer and take a position with another public employer covered by the same retirement system are immediately eligible to transfer their membership to their new employers, as long as the following conditions are met:

1. The member has not withdrawn from the System;

2. The account has not expired; that is, it has not been more than two years between the date of the last contribution received from the old employer and the starting date of contributions with the new employer or there was enough service credit to be eligible for a deferred retirement; and

3. The account has not been canceled due to Board of Trustees action. It is the responsibility of the employer to establish the employee's pension account status. For accounts that are withdrawn, expired or canceled, an enrollment application is needed, and the age and medical requirements for enrollment are again in effect;

(b) To transfer the member's account to the new employer, the new employer should file a Report of Transfer with the Division of Pensions and Benefits within 10 working days of the date employment begins. If more than one year elapses between the date that the member was required to contribute to the retirement system and the date contributions were first certified, the employer shall be assessed a late enrollment employer liability penalty plus delayed appropriation costs.

New Rule, R.2001 d.66, effective February 20, 2001.  
Sec: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

**17:4-7.3 (Reserved)**

Repealed by R.2001 d.66, effective February 20, 2001.  
Sec: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).  
Section was "Intrafund transfers".