

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 adjust-

ment was the result of an across-the-board adjustment for all similarly situated personnel; and

xiii. Any form of compensation which is not included in a member's base salary during some of the member's service and is included in the member's base salary upon attainment of a specified number of years of service.

(b) The Board may question the compensation of any member or retiree to determine its credibility where there is evidence that compensation reported as base salary may include extra compensation.

(c) Extra compensation shall not be considered creditable for benefits and all employee contributions made thereon shall be returned without interest.

(d) With respect to all claims for benefits, the Division of Pensions and Benefits shall investigate increases in compensation reported for credit which exceed reasonably anticipated annual compensation increases for members of the retirement system based upon consideration of the Consumer Price Index for the time period of the increases, the table of assumed salary increases recommended by the actuary and adopted by the Board, and the annual percentage increases of salaries as indicated in data from the Public Employment Relations Commission, or through other reliable industry sources of information regarding average annual salary increases. Those cases where a violation of the statute or rules is suspected shall be referred to the Board.

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

1. May require that a notarized statement under oath be obtained from the member's employer that the reported compensation was not granted primarily in anticipation of retirement, and conforms with the statutes and rules governing the retirement system;
2. May require an employer to provide any record or information it deems necessary for the investigation, including, but not limited to, collective bargaining agreements, employment contracts, ordinances, resolutions, minutes of public meetings (closed or open), or any other record or information related to the increase in compensation; and
3. May refer any suspected submission of false information in violation of N.J.S.A. 43:16A-18, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

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

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

1. A denial of credit for the extra compensation;

2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;

3. A return of contributions to the active members and retirees on the extra compensation without interest;

4. A recalculation of the retirement benefits of retirees to eliminate benefits based upon the extra compensation; and

5. Repayment to the system by the retiree of any benefits received based upon the extra compensation.

(h) Employer contributions shall not be revised or refunded because of a determination by the Board that a denial of credit for increases in compensation is warranted under this section.

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

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

Section was "Creditable salary".

Case Notes

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

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

Initial Decision (2010 N.J. AGEN LEXIS 178) adopted, which found that a salary increase given to a chief of police in the last contract for employment was in anticipation of retirement and was, therefore, not creditable for pension purposes. In re Gerber, OAL Dkt. No. TYP 2148-2009S, 2010 N.J. AGEN LEXIS 766, Final Decision (May 18, 2010).

Initial Decision (2008 N.J. AGEN LEXIS 957) adopted, which found that Supermaximum and Computer Use Differential pay were extra compensation and were not, therefore, creditable for calculation of retirement benefits. The pay was limited to only those secretaries who had attained a specified number of years of service (20), and the additional pay they received was not included in their base salary during some of their service (those first 20 years of employment). In re Sacco, OAL Dkt. No. TYPPE 6440-05S, 2009 N.J. AGEN LEXIS 571, Final Decision (January 22, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 920) adopted, which concluded that Board of Trustees of the Police and Firemen's Retirement System (PFRS) correctly determined that provisions in the contract

between Ocean County PBA Local 258 and Ocean County providing that a "clothing allowance" be rolled into base salary was in violation of N.J.A.C. 17:4-4.1(a)(2)(vi) and, therefore, not creditable compensation in the PFRS. In re Ocean County PBA Local No. 258, OAL Dkt. No. TYPPE 2950-06, 2008 N.J. AGEN LEXIS 1121, Final Decision (December 9, 2008).

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

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

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

17:4-4.2 Prior service

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

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

17:4-4.3 Continuance of membership; transfer

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

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

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

Created gender neutral references.

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

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

Capitalized "retirement system"; and at the end of the sentence, substituted "Retirement System" for "system".

17:4-4.4 Loan tolerance

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