

CHAPTER 3

TEACHERS' PENSION AND ANNUITY FUND

Authority

N.J.S.A. 18A:66-56.

Source and Effective Date

R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 3, Teachers' Pension and Annuity Fund, expires on October 18, 2015. See: 47 N.J.R. 1242(a).

Chapter Historical Note

Chapter 3, Teachers' Pension and Annuity Fund, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.1983 d.175, effective May 16, 1983. See: 15 N.J.R. 526(b), 15 N.J.R. 930(c). Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, expired on May 16, 1988.

Chapter 3, Teachers' Pension and Annuity Fund, was adopted as new rules by R.1988 d.381, effective August 15, 1988. See: 20 N.J.R. 1181(b), 20 N.J.R. 2072(b). Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, expired on August 15, 1993.

Chapter 3, Teachers' Pension and Annuity Fund, was adopted as new rules by R.1993 d.658, effective December 20, 1993. See: 25 N.J.R. 4461(a), 25 N.J.R. 5942(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.1998 d.578, effective November 13, 1998. See: 30 N.J.R. 3376(a), 30 N.J.R. 4254(a).

Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.2002 d.352, effective October 10, 2002. See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c). Chapter 3, Teachers' Pension and Annuity Fund, expired on October 10, 2007.

Chapter 3, Teachers' Pension and Annuity Fund, was adopted as new rules by R.2008 d.94, effective April 21, 2008. As a part of R.2008 d.94, Subchapter 1A, Definitions, was adopted as new rules. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 3, Teachers' Pension and Annuity Fund, was scheduled to expire on April 21, 2015. See: 43 N.J.R. 1203(a).

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 1. ADMINISTRATION

17:3-1.1 Board meetings

(a) The Board shall meet on the first Thursday of each month or at such time as may be deemed necessary by the Board.

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

(c) The current rules within Roberts' Rules of Order, Second Edition, as well as future amendments thereto, are adopted and incorporated herein by reference as the source to be used by the Board of the TPAF in the conduct of its monthly meetings.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
As amended, R.1982 d.344, effective October 18, 1982.
See: 14 N.J.R. 201(a), 14 N.J.R. 1164(c).

Change of meeting from second to first Thursday of the month.
Amended by R.1994 d.161, effective April 4, 1994.
See: 25 N.J.R. 5762(b), 26 N.J.R. 1537(d).
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (b), substituted "chairperson" for "chairman"; in (c), deleted "effective as of April 4, 1994,".

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

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

In (a), deleted "of Trustees" following "Board"; and in (c), substituted "of the TPAF" for "of Trustees of the Teachers' Pension and Annuity Fund".

17:3-1.2 Fiscal year

The transaction of business and control of funds shall be conducted on a July 1 to June 30 fiscal year.

Amended by R.2000 d.442, effective November 6, 2000.

See: 32 N.J.R. 2985(a), 32 N.J.R. 3996(b).

Rewrote the section.

17:3-1.3 Officers and committees

(a) The members of the Board shall elect a chairperson and vice chairperson from its membership for the forthcoming year at its regular meeting held in July. The members of the Board shall elect a representative to the State Investment Council pursuant to N.J.S.A. 52:18A-83. A representative to the Pension System Actuary Selection Committee, as provided for by N.J.S.A. 43:4b-1, shall be elected by the Board whenever the selection of a new actuary is needed.

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

(c) The chairperson and the Secretary of the Board shall have the power to act for the Board in all matters which may be referred to them by the Board.

(d) Pursuant to N.J.S.A. 18A:66-61, there shall be one standing committee which is the Finance Committee. The Committee shall be appointed at the July Board meeting by the chairperson elect for the forthcoming fiscal year. The committee shall consist of three members of who shall be elected members of the Board. The State Treasurer and the person designated to represent the Fund on the State Investment Council shall serve as members of the Finance Committee. The Finance Committee shall review all investment transactions and financial reports referred to it by the Secretary for presentation to the Board at its regular monthly meeting.

As amended, R.1973 d.49, effective February 14, 1973.

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

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

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

Substituted "chairperson" for "chairman" and "July" for "June" throughout.

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

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

Rewrote (a) and (b); rewrote (d), incorporating former (e) through (g); and deleted (h) and (i).

17:3-1.4 Election of member-trustee

(a) The Board shall prescribe the manner of election of three trustees from among the active or retired membership of

the Fund. The three member-trustees shall each serve a three-year term, which shall be staggered by designated county group. An election of one trustee will occur each year for the group with the expiring three-year term. Each term of appointment shall commence on January 1 and conclude on December 31.

(b) Any member or retiree who wishes to be a candidate for the position of member-trustee shall send a written letter of interest to the Secretary of the Board by February 1 for the trustee member's term that expires the same year on December 31.

(c) To be eligible as a candidate for member-trustee, a person must be a resident of the State of New Jersey and must be employed in or retired from one of the counties of the group designated for electing a trustee that year, in accordance with (d) below.

(d) The county groups for election of a member-trustee shall be as follows:

Group A	Group B	Group C
Bergen	Middlesex	Atlantic
Essex	Monmouth	Burlington
Hudson	Morris	Camden
Union	Passaic	Cape May
	Somerset	Cumberland
	Sussex	Gloucester
	Warren	Hunterdon
		Mercer
		Ocean
		Salem

(e) Delegates shall be selected annually by each county in the manner described in this subsection, regardless of the number of candidates for member-trustee.

1. Each county superintendent's office shall be responsible for establishing and implementing the procedure for the selection of the delegates/alternates. To qualify to be a delegate or alternate, the individual must be an active or retired member of the Fund. The county superintendent's office will submit the names of the selected delegates and alternates to the Secretary of the Fund annually, for the purpose of conducting a vote by ballot for the member-trustee position.

i. Each county shall be entitled to one delegate for each 550 members employed in or retired from the county.

ii. Each county shall be entitled to elect alternates, the number not to exceed one half of the number of delegates elected.

iii. Each county superintendent shall have until June 1 to electronically forward to the Secretary of the Board the membership numbers, retirement numbers, names, mailing addresses, e-mail addresses, and school districts

of the delegates and alternates. The names of delegates and alternates submitted by June 1 will remain active for a period of 12 months for the purpose of conducting a vote in accordance with (g), (i), or (j) below.

(f) In the event only one candidate has registered with the Board Secretary for the position of member-trustee, in accordance with (b) and (c) above, the candidate shall be deemed elected without voting by ballot. Notification of the election results will occur in accordance with (g)5 below.

(g) In the event that more than one candidate has registered with the Board Secretary in accordance with (b) and (c) above, the delegates and alternates selected from the membership of each county shall vote for the member-trustee in accordance with the following procedures:

1. The selected county delegates will vote for member-trustee by either electronic ballot, paper ballot, or a meeting of delegates. The design of the electronic or paper ballot shall be determined by the Board and prepared by the Board Secretary.

2. The Secretary of the Board shall provide each qualified delegate and alternate with the following documents, either by regular or electronic mail:

- i. The Division's web address to obtain the Board's annual report for the preceding fiscal year;
- ii. Names of the candidates for member-trustee who have registered with the Secretary of the Board; and
- iii. A ballot.

3. If the Board determines that a meeting of delegates is required, the following procedures will also apply.

i. The meeting of delegates shall be held at a time and location designated by the Board and as recommended by the Secretary of the Board.

ii. The Secretary of the Board shall provide each delegate and alternate with a form of identification that will grant admission to the meeting of delegates. The identification may be sent either by regular or electronic mail.

iii. The chairperson of the Board will conduct the meeting.

iv. The Secretary of the Board will conduct a roll call of the delegates. Alternates will be seated in the place of their respective county delegate, if that delegate is absent at the time of roll call. Alternates shall be seated in the order in which they are listed by the county superintendent's office.

v. A quorum is required for the purposes of an election at a meeting and shall be a majority of the total delegates appointed by the county superintendents as provided under (e) above. To determine a quorum at a meeting, alternates shall be seated and counted toward the quorum for any absent delegate. Delegates and

alternates must confirm their anticipated attendance with the Board Secretary at least 10 days prior to the meeting. If the Board Secretary determines that there are insufficient confirmed delegates to hold a meeting, the Secretary shall cancel the meeting and the vote shall be conducted by mail or electronic mail.

vi. Visitors and alternates not seated at the meeting of delegates will only be recognized for purposes of making any statements or comments during the meeting of delegates at the discretion of the chairman.

vii. Only delegates with proper identification will be permitted to participate in the voting process to elect a member-trustee.

viii. Delegates and alternates will be reimbursed for actual travel expenses incurred in connection with the meeting of delegates in accordance with State of New Jersey, Department of the Treasury reimbursement schedules. Mileage reimbursement shall not exceed 150 miles each way.

4. The candidate that receives the highest number of votes cast by the selected county delegates, or the delegate's qualified alternate, shall be appointed as a member-trustee.

5. The Board Secretary will notify each county superintendent's office of the election results. In addition, the election results will be posted on the Division's website.

(h) In the event that no member is deemed to receive a majority of votes in any election, the incumbent trustee shall serve until a successor is elected in accordance with (f) or (g) above. If necessary, the Secretary may conduct a run-off election using any method specified in (g)1 above.

(i) In the event an active or retired trustee elected by the membership is unable to complete his or her term, the vacancy shall be filled in accordance with (k) below. The term of this position shall be the remainder of the unexpired term.

(j) In the event a newly-elected candidate becomes unable or unwilling to serve as member-trustee prior to the beginning of the candidate's term as trustee, the Board shall conduct a new election to fill the Board vacancy, in accordance with (k) below. For purposes of this subsection, a member-trustee's term will terminate in accordance with the regular election cycle for that county's grouping.

(k) If a member-trustee cannot complete a term in accordance with (i) or (j) above, the following will apply:

1. The Board Secretary will open nominations for new member-trustee candidates. Interested parties will submit a letter of interest within 45 days of the date of notification of the vacancy.

2. If only one candidate registers for the vacant member-trustee position, that candidate will be deemed elected

without ballot, and announcement of the newly elected trustee will occur in accordance with (g)5 above.

3. If more than one candidate registers for the vacant member-trustee position, election by delegate vote will be conducted, according to (g) above.

As amended, R.1973 d.196, effective July 24, 1973.

See: 5 N.J.R. 203(c), 5 N.J.R. 294(d).

As amended, R.1974 d.24, effective January 31, 1974.

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

As amended, R.1975 d.140, effective May 27, 1975.

See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).

As amended, R.1978 d.444, effective December 29, 1978.

See: 10 N.J.R. 517(a), 11 N.J.R. 105(c).

As amended, R.1980 d.405, effective September 19, 1980.

See: 12 N.J.R. 435(b), 12 N.J.R. 678(a).

(w): Rate increased from \$0.16 to \$0.18.

As amended, R.1983 d.483, effective November 7, 1983.

See: 15 N.J.R. 1360(a), 15 N.J.R. 1870(d).

Certain dates and groupings changed concerning the election of delegates.

Amended by R.2000 d.318, effective August 7, 2000.

See: 32 N.J.R. 1911(a), 32 N.J.R. 2926(a).

Rewrote (b), (f), (g), (p), (u) and (w); in (e), inserted "or former members receiving a retirement allowance from"; in (i), neutralized a gender reference; in (j), inserted "or retire from"; in (k), deleted "with him before the first day of November" at the end; and in (s), deleted a former 1, and recodified former 2 as 1.

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

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

In (c), substituted "chairperson" for "chairman".

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

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

In (a)1 and (c), deleted "of Trustees" following "Board"; and rewrote (p).

Amended by R.2011 d.160, effective June 6, 2011.

See: 43 N.J.R. 274(a), 43 N.J.R. 1370(b).

In (a)1, inserted "and" at the end; deleted former (a)2; recodified (a)3 as (a)2; in (a)2, deleted "on any questions concerning the report or matters pertaining to the Fund" from the end; in (b), substituted "The" for "Such" and inserted "and at the recommendation of the Secretary of the Board"; in (e), substituted "and alternates attending" for "to" and "or retired members of" for "members of or former members receiving a retirement allowance from"; in the introductory paragraph of (f), inserted "and alternates attending" and substituted "County Superintendent" for "Board"; in (f)2, inserted "electronically" and "street and email" and substituted "information" for "a certificate"; in (g), deleted "or major fraction thereof" from the end; rewrote (i) and (k); added the current introductory paragraph of (o) and (o)1; recodified the former introductory paragraph of (o) as (o)2; in (o)2, substituted "In the event that more than one candidate has registered with the Board Secretary in accordance with (j) above, the" for "A" and inserted "to be elected"; in (p), deleted ", as set forth in N.J.S.A. 18:66-56" following the third occurrence of "trustee"; in (q), deleted "the main floor of" following "admitted to"; in (r), substituted "Delegates, alternates" for "Alternates"; in (s), substituted a period for a colon at the end; and deleted (s)1.

Repeal and New Rule, R.2013 d.112, effective September 16, 2013.

See: 45 N.J.R. 1090(a), 45 N.J.R. 2144(a).

Section was "Election of member-trustee".

17:3-1.5 Certifying officer (employer)

(a) The secretary of each local board of education shall be the certifying officer for the respective school district.

(b) The secretary, as the certifying officer, shall be responsible for the duties described by N.J.S.A. 18A:66-32 and all other duties relating to matters concerning the Fund.

(c) In locations other than boards of education, the chief fiscal officer or the personnel officer shall serve as the certifying officer for such units.

(d) Upon 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 Fund.

As amended, R.1973 d.49, effective February 14, 1973.

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

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

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

Substituted "officer" for "agent" throughout; in (b), substituted "described for "prescribed"; added (d).

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

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

In (d), substituted "Fund" for "retirement system".

Case Notes

School employee held not disqualified from purchase of retirement credit for unpaid maternity leave where failure to purchase credit within one year of return to active service was due to her being informed by school district employee, to whom duties of certifying agent had been delegated, that she could not purchase credit, and prompt action was taken by her to secure rights when error was learned. *Zigmont v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 182 N.J.Super. 50, 440 A.2d 37 (App.Div.1981), reversed 91 N.J. 580, 453 A.2d 1333 (1983).

17:3-1.6 Records

(a) In the addition to the provisions of N.J.A.C. 17:1-1.2, 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 members' 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. The Division will 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. A copy of the Board appointed physician's medical report cannot be released until after the Board's initial determination. In no event will the report be released to any individual not authorized in writing to receive the report.

(e) The annual report of the Fund's actuary shall not be released until it has been approved by the Board.

(f) Original documents, if available, shall only be reviewed by appointment at the Division.

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

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

Added new (c); recodified former (c) as new (d) with substantial amendments.

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

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

In (a), substituted "In the addition to the provisions of N.J.A.C. 17:1-1.2, the" for "The" and "Office" for "office"; in (d), deleted "of Trustees" following "Board" and inserted the third sentence; and added (e) and (f).

17:3-1.7 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 shall 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 solely a question of law, the Board may retain the matter and issue a final 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.

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

As amended, R.1971 d.63, effective April 28, 1971.
See: 3 N.J.R. 48(a), 3 N.J.R. 117(a).
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Rewrote the section.

17:3-1.8 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 disability retiree fails to timely file a report with the Fund of annual earned income;
3. 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 an annual basis;
4. If a retiree or beneficiary becomes mentally or physically incompetent. The disbursement of pension checks in this event shall be suspended until a proper legal representative has been appointed; or
5. If a retiree does not complete a policy assignment of group life insurance as requested by the Board.

As amended, R.1979 d.205, effective May 22, 1979.
See: 11 N.J.R. 208(a), 11 N.J.R. 359(a).
As amended, R.1980 d.103, effective March 5, 1980.
See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Deleted gender reference in (a)2.
Amended by R.2006 d.330, effective September 18, 2006.
See: 38 N.J.R. 1555(a), 38 N.J.R. 3915(a).
In (a)4, substituted "; or" for a period at the end; and inserted (a)5.

17:3-1.9 Verified discrepancy in member's age

The member's account (active or retired) shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member's correct date of birth.

17:3-1.10 (Reserved)

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
Repealed by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).
Section was "Travel".

17:3-1.11 Proof of age

(a) All members shall establish proof of their age with the Fund. 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 Fund, appropriate evidence shall be required before any death claim is processed for settlement.

(c) In the event proof of age has not been filed with the Fund before retirement, such proof must be filed before any retirement benefits may be disbursed.

As amended, R.1980 d.103, effective March 5, 1980.
See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).
As amended, R.1983 d.78, effective March 21, 1983.
See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).
Language added regarding proof of age.
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Rewrote (a); deleted gender reference in (b).

17:3-1.12 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.

R.1974 d.24, effective January 31, 1974.
See: 5 N.J.R. 426(c), 6 N.J.R. 124(a).
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Rewrote (a); deleted gender references in (b).

17:3-1.13 Nearest attained age; enrollment; retirement

(a) Members who are six months or more past their most recent birthdate at the time of enrollment or retirement will

have their pension contribution rate and retirement factor based upon their age on their next birthday.

(b) A flat five percent pension rate of contribution was enacted by P.L. 1994, c. 62 for all employees enrolled on or after July 1, 1994. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was six percent or more, the five percent contribution rate became effective on July 1, 1995. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was less than six percent, their rate of contributions became four percent on July 1, 1995 and then five percent on July 1, 1996. Effective January 1, 1998 the rate of contribution became four and one half percent. Pursuant to the provisions of P.L. 2001, c. 133 the contribution rate as of January 1, 2002 is three percent. Effective January 1, 2004 the rate of contribution was returned to five percent. This rate is subject to change based on the Treasurer's determination in accordance with N.J.S.A. 18A:66-18b.

New Rule, R.1991 d.226, effective May 6, 1991.

See: 23 N.J.R. 188(a), 23 N.J.R. 1421(b).

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

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

Rewrote the section.

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

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

In (b), substituted "c. 62" for "c.62" and "c. 133" for "c.133", and inserted the fourth sentence.

SUBCHAPTER 1A. DEFINITIONS

17:3-1A.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Base salary" means the annual compensation of a member, in accordance with contracts, ordinances, resolutions, or other 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 reported in regular, periodic installments in accordance with the payroll cycle of the employer.

"Board" means the Board of Trustees of the Teachers' Pension and Annuity Fund, vested with the general responsibility for the proper operation of the Fund pursuant to N.J.S.A. 18A:66-56.

"Division" means the Division of Pensions and Benefits, Department of Treasury, in the State of New Jersey.

"Extra compensation" means individual salary adjustments, which are granted primarily in anticipation of a member's retirement; additional remuneration for performing temporary duties beyond the regular work day or work year or additional remuneration for performing duties that are not integral to the effective functioning of the regular school curriculum.

"Fund" or "TPAF" means the Teachers' Pension and Annuity Fund, created pursuant to N.J.S.A. 18A:66-56.

"PERS" means the Public Employees' Retirement System, created pursuant to N.J.S.A. 43:15A-17.

"Work year" means either a 10-month contracted employee who works from September through June of each year and is compensated for each month or a 12-month contracted employee who works from July through June and is compensated for each month or any other approved 10- or 12-month approved contract period.

SUBCHAPTER 2. ENROLLMENT

17:3-2.1 Enrollment eligibility

(a) Any person appointed by the State, local board of education or charter school to a position listed in the definition of "teacher" found at N.J.S.A. 18A:66-2(p) or as a regular, full-time or part-time employee in a position that meets the following conditions shall be required to become a member of the Fund effective as of the date of their employment:

1. The position requires a valid certificate issued by the State Board of Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9, and the person employed holds this valid certificate;
2. The position is covered by Social Security; and
3. Prior to November 2, 2008, the salary for the position is \$500.00 or more within a year.

(b) An employee in an unclassified administrative position within the State Department of Education who possesses a valid certificate issued by the State Board of Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9, is eligible for participation in the Fund.

(c) An employee meeting the conditions stipulated in (a) above who is paid on an hourly or per diem basis is eligible for membership in the Fund.

(d) Any person meeting the requirements of (a) above, who is appointed to a regular full-time or part-time position in an accredited evening high school or vocational school after September 1, 1989 shall be eligible for enrollment in the Fund with the following limitation. Individuals teaching at a vocational school may substitute the directly applicable "occupational license" as required by the Department of Education for the certification stipulated in (a)1 above.

1. Prior to September 1, 1989, only individuals appointed to regular full-time positions in accredited evening high schools, as determined by the State Board of Education, were eligible for enrollment in the Fund. A minimum of five periods per evening was required to qualify as a

full-time employee. The accredited evening high schools were Camden, East Orange, Newark, Bayonne, Jersey City, Trenton, Woodbridge, Asbury Park, Morristown, and the Belleville Cerebral Palsy Center.

(e) N.J.S.A. 18A:66-2(p) specifically excludes substitute teachers from enrollment in the Fund. The statute also permits the Board to determine whether any person is a teacher as defined in this article. The following positions have been determined by the Board to be ineligible for enrollment in the Fund:

1. Substitute and replacement teacher positions;
2. Permanent or long term substitute positions; and
3. Independent contractors and consultants.

(f) As of January 20, 2004, new part-time instructors employed at postsecondary vocational-technical schools are ineligible for enrollment in the Fund. Part time instructors at postsecondary vocational-technical schools who were members of the Fund, as of January 19, 2004, are "grandfathered" in their positions with postsecondary vocational-technical schools, as long as they remain with their current employers.

(g) Pursuant to the provisions of N.J.S.A. 18A:66-4, for individuals who became members of TPAF on or after November 2, 2008, the \$7,500 minimum annual base salary for participation in the retirement system shall be adjusted annually by the Director of the Division in accordance with changes in the Consumer Price Index, but by no more than four percent. For the calendar year beginning January 1, 2010, the minimum base annual salary required for enrollment will be adjusted annually to reflect increases in the Consumer Price Index. For purposes of this calculation, "Consumer Price Index" means the average of the annual increase in the consumer price index for all urban consumers, not seasonally adjusted for all items, in the New York City and Philadelphia metropolitan statistical areas during the preceding calendar year as reported by the United States Department of Labor, Bureau of Labor Statistics.

1. The adjustment factor for a calendar year shall be calculated as a fraction, pursuant to the following:

i. The numerator shall be the annual Consumer Price Index for all urban consumers in the New York City metropolitan statistical area for the calendar year ending December 31 of the first year preceding the July 1 calculation date, plus the annual Consumer Price Index for all urban consumers in the Philadelphia metropolitan statistical area for the same time period; and

ii. The denominator shall be the annual Consumer Price Index for all urban consumers in the New York City metropolitan statistical area for the calendar year ending December 31 of the second year preceding the July 1 calculation date, plus the annual Consumer Price Index for all urban consumers in the Philadelphia metropolitan statistical area for the same time period.

2. If the value of the calculation in (g)1 above is less than zero for a calendar year, then the adjustment factor for the calendar year shall be equal to zero. If the value of that fraction is greater than 1.04 for a calendar year then the adjustment factor for the calendar year shall be equal to 1.04.

3. The adjustment shall be calculated on or about July 1 each calendar year to become effective on January 1 of the subsequent calendar year.

4. Increases in the minimum annual base salary shall be made in multiples of \$100.00, except that any increase, which is not a multiple of \$100.00 will be rounded to the next lowest multiple of \$100.00. Each annual adjustment shall not be more than four percent when compared to the preceding year's minimum annual base salary.

(h) The calculation and any needed adjustment pursuant to (g) above shall be published via a notice of administrative change in the New Jersey Register revising the minimum annual base salary.

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1979 d.205, effective May 22, 1979.

See: 11 N.J.R. 208(a), 11 N.J.R. 359(a).

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

As amended, R.1983 d.484, effective November 7, 1983.

See: 15 N.J.R. 1360(b), 15 N.J.R. 1871(a).

Assistant principal added to list of position.

Amended by R.1985 d.658, effective January 6, 1986.

See: 17 N.J.R. 2238(b), 18 N.J.R. 93(c).

(b)1 deleted text "serving under a contract not conditioned by the continuance of Federal funding;"

Repeal and New Rule, R.2002 d.352, effective November 4, 2002.

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

Section was "Eligible positions".

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

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

In (a)1, substituted "Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9" for "Education"; in (b), substituted "Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9" for "Education"; in (c), deleted "of Trustees" following "permits the Board"; and added (f).

Amended by R.2009 d.253, effective August 17, 2009.

See: 41 N.J.R. 1713(a), 41 N.J.R. 3111(a).

In the introductory paragraph of (a), deleted a comma following "education"; in (a)3, substituted "Prior to November 2, 2008, the" for "The"; and added (g) and (h).

Public Notice: August 28, 2009 Increase in the Minimum Annual Base Salary for Participation in the Teachers' Pension and Annuity Fund.

See: 41 N.J.R. 3863(b).

Public Notice: Notice of the Minimum Annual Base Salary for Participation in the Teachers' Pension and Annuity Fund.

See: 42 N.J.R. 3002(a).

Public Notice: Notice of the Minimum Annual Base Salary for Participation in the Teachers' Pension and Annuity Fund.

See: 43 N.J.R. 3052(b).

Case Notes

Substitute teacher was temporary employee within meaning of statutory amendment including temporary public employees in retirement system. *Schulaner v. Board of Trustees*, 92 N.J.A.R.2d (TYP) 55.

Director of Community Adult Education and Principal of Adult High School held not eligible for pension fund membership as positions were not included in statutory definition of teacher (Board's Final Decision). *Carrea v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 5

N.J.A.R. 419 (1979), reversed per curiam Docket No. A-506-79 (App.Div.1980).

17:3-2.2 Documentation required

If a person is appointed to a position, which does not meet the eligibility requirements for membership in the Fund as specified in N.J.A.C. 17:3-2.1, the position shall be referred to the Board for their determination as to the person's eligibility for participation in the Fund. In order to determine such person's eligibility for enrollment, the employer shall be required to support the enrollment application with a statement setting forth the duties, qualifications, tenure rights and State Board of Examiners' Certification requirements of the position.

Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Inserted a comma following the first occurrence of "position", deleted "of Trustees" following "referred to the Board" and inserted "of Examiners".

Case Notes

Director of Community Adult Education and Principal of Adult High School held not eligible for pension fund membership as positions were not included in statutory definition of teacher (Board's Final Decision). *Carrea v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 5 N.J.A.R. 419 (1979), reversed per curiam Docket No. A-506-79 (App.Div.1980).

17:3-2.3 Multiple enrollees

A "teacher" employed in two or more positions that meet the eligibility requirements for enrollment in the Fund as stated in N.J.A.C. 17:3-2.1 must enroll in the Fund through each of the positions.

Repeal and New Rule, R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Section was "Full-Time".

Case Notes

Part-time (three days per week) school social worker performing all duties of position while at work, with another part-time employee performing duties at other times, held not eligible for pension fund membership, in furtherance of the Fund's establishment to benefit "career" rather than part-time teachers. *Caplan v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 3 N.J.A.R. 129 (1981).

17:3-2.4 Emergency or provisional certificate

(a) Any teacher employed under an emergency or provisional certificate, who is appointed to a regular full-time or part-time position under contract, shall be eligible for enrollment as of the date of employment.

(b) In the event a teacher does not qualify for a regular teaching certificate before the emergency or provisional certificate expires and such teacher is continued in employment as a substitute or temporary employee, such member:

1. Will not be permitted to make contributions to the Fund while employed in a substitute or temporary status;
2. Will be permitted to retain inactive membership for a period not in excess of two years;
3. Will be permitted to purchase credit for the period of substitute service as may be provided by statute.
4. Will not be covered for either the non-contributory or contributory insurance during the period of substitute service, in which event such member may exercise group life insurance conversion rights.

As amended, R.1973 d.49, effective February 14, 1973.

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

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

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

In (a), added "or part-time" following "full-time"; in (b), deleted gender references throughout.

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

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

In (b)1, substituted "Fund" for "fund".

17:3-2.5 Janitors

Any janitorial employee who was enrolled prior to August 1, 1966 shall be eligible to continue membership until such membership terminates.

17:3-2.6 (Reserved)

Repealed by R.2003 d.438, effective November 3, 2003.

See: 35 N.J.R. 2585(a), 35 N.J.R. 5148(a).

Section was "Ineligible positions; interim appointment to Boards of Education for those not covered by the provisions of P.L. 2001, c.355 (N.J.S.A. 18A:66-53.2b)".

17:3-2.7 Enrollment following deferred retirement

(a) For a member who has enrolled in the retirement system prior to November 2, 2008, the membership account under which a member elected deferred retirement who resumes regular service prior to age 60 shall be continued provided the member returns to service within the two-year period stipulated by N.J.S.A. 18A:66-7(a) or the longer period provided by N.J.S.A. 18A:66-8(a).

(b) Should a member who has enrolled in the retirement system prior to November 2, 2008, who elected a deferred retirement, resume regular service prior to age 60 after the period for continued membership stipulated by N.J.S.A. 18A:66-7(a) or 8(a) has expired, then such member shall be enrolled in the retirement system under a new membership account and shall be subject to such benefits and requirements as shall apply to new members of the retirement system as of the date of such new enrollment.

(c) For a member who has enrolled in the retirement system on or after November 2, 2008, the membership account under which a member elected deferred retirement who resumes regular service prior to age 62 shall be continued provided the member returns to service within the two-year period stipulated by N.J.S.A. 18A:66-7(a), or the longer period provided by N.J.S.A. 18A:66-8(a).

(d) Should a member who has enrolled in the retirement system on or after November 2, 2008, and who elected a deferred retirement, resume regular service prior to age 62 after the period for continued membership stipulated by N.J.S.A. 18A:66-7(a) or 8(a) has expired, then such member shall be enrolled in the retirement system under a new membership account and shall be subject to such benefits and requirements as shall apply to new members of the retirement system as of the date of such new enrollment.

(e) In the event that either (b) or (d) above applies, the member may elect to transfer all service credit associated with the previously vested membership to the new membership account and such service credit will be subject to the benefits and requirements as shall apply to new members of the retirement system as of the date of such new enrollment. Should the member elect not to transfer the service credit associated with the vested membership to the new membership account, no benefits shall be payable from the previous application for deferred retirement until such time as the member has terminated all TPAF eligible employment.

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

New Rule, R.2002 d.352, effective November 4, 2002.

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

Rewrote the section.

Repeal and New Rule, R.2011 d.209, effective August 1, 2011.

See: 43 N.J.R. 953(a), 43 N.J.R. 1899(a).

Section was "Enrollment following deferred retirement".

17:3-2.8 Enrollment date

(a) New employees in the classified service shall be considered as beginning their service on the date of their regular appointments.

1. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month 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 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) The compulsory enrollment of "teachers" was not in effect until January 1, 1956. Any employee, other than a veteran, who was employed prior to January 1, 1956 was given the option to enroll or not enroll and that employee continues to retain this option provided there has been no change in employer since January 1, 1956. If an employee is an optional enrollee, and wishes to enroll in the Fund, the employee shall be enrolled as of the first of the month following the receipt of the enrollment application for those whose employers report on a monthly basis or the first day of the next biweekly pay period for those whose employers report on a biweekly basis.

(c) An employee in the unclassified service shall be considered as beginning service on the date of the original appointment.

1. For local employers not covered by Civil Service, a regular appointment shall constitute the first day of work after the date the employee originally accepted employment in a regular budgeted position.

2. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month 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.

3. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period 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 cannot receive credit in the retirement system for the initial pay period or month of employment if that employment began after the seventh day of the pay period or after the 16th day of the month.

New Rule, R.2002 d.352, effective November 4, 2002.
 See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
 Amended by R.2008 d.94, effective April 21, 2008.
 See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).
 Added (d).

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:3-3.1 Compulsory and optional enrollment

(a) For the purpose of contributory insurance, all compulsory enrollees, including veterans, under age 60 at the time their enrollment application is filed, shall be required to participate in the contributory insurance program for one year (12 calendar months) from the date of enrollment, or the effective date of insurance premium deduction, whichever is later. Proof of insurability shall be required for all compulsory and optional enrollees, age 60 and older, at the time their enrollment application is filed with the Division, in order to qualify for noncontributory and contributory insurance coverage.

(b) Optional enrollees under age 60 at the time their enrollment application is filed with the Division, may qualify for noncontributory and contributory insurance coverage only if they were actively at work performing all of the duties that the position requires at the time they made application for enrollment, and such application was filed within one year from the date they first became eligible for enrollment in the Fund. If an application for an optional enrollee is not received within one year after the optional enrollee became eligible for enrollment, evidence of insurability will be required for the noncontributory and contributory coverage.

(c) When proof of insurability is required, the member's opportunity to prove such insurability shall expire one year (12 months) from the date the initial written notice is sent advising the member that the member must prove insurability by taking a medical examination and meeting the eligibility requirements of the Fund underwriter.

As amended, R.1973 d.49, effective February 14, 1973.
 See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
 As amended, R.1979 d.205, effective May 22, 1979.
 See: 11 N.J.R. 208(a), 11 N.J.R. 359(a).
 As amended, R.1980 d.103, effective March 5, 1980.
 See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).
 Amended by R.2002 d.352, effective November 4, 2002.
 See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.
 See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (a), substituted "and older, at the time their enrollment application is filed with the Division," for "or older,"; and in (b), inserted "at the time their enrollment application is filed with the Division,".

Case Notes

PERS Board of Trustees ordered to pay death benefits to a life insurance beneficiary; de facto "active service" insurance protection. *Williams v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 137.

Denial of petitioner's request for payment of deceased wife's insurance benefits was appropriate; failure to convert group life insurance. *Arico v. Teacher's Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 129.

17:3-3.2 Computation of insurance benefits

(a) A 10-month member will be credited with three months' participation if the member is enrolled in the contributory insurance program in September.

(b) A member's insurance death benefit shall be based upon the base salary that is attributable to the 12 months or 26 biweekly pay periods immediately preceding the member's death upon which contributions to the annuity savings fund were made.

(c) For the purpose of calculating the member's insurance death benefit, months or pay periods in which no salary was paid shall not be used in the calculation.

(d) Full salary credit will be given for the monthly 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 monthly or biweekly pension and insurance contribution deduction, provided such deduction was made by the employer.

(e) If a member dies during the first year following the member's date of enrollment, or if the member has contributed pension contributions for less than a year although the member's enrollment has been in effect for more than a year, the contributory insurance benefit shall be two times the member's annual base salary on which the member contributed or would have contributed immediately prior to death. The noncontributory insurance benefit shall be 1 1/2 times the actual base salary upon which contributions to the Annuity Savings Fund were due from the date of enrollment to the date of death.

(f) Where post-death audits establish the insurance benefits were underpaid, an additional check shall be sent to the beneficiary for the value of the underpayment.

(g) Refunds of a deceased member's pension contributions will be made to the member's designated beneficiary or the employer after written confirmation is received from the employer setting forth the reason for the refund of pension contributions to either the beneficiary or to the employer.

(h) Members who prove their insurability for the group life insurance benefits shall have their insurance benefit calculated on the basis of the salary upon which pension contributions were based during their last year (10 or 12 months) of service prior to death, regardless of their effective date of insurance coverage.

(i) 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 employee reported 12 months a year 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 biweekly payroll schedules.

(j) In computing (i) above in the case of employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which a member does not receive salary. The adjustment as specified in (i) above shall not be made.

(k) If a member was reported on a biweekly basis or any combination of 10 and 12-month contract years, the last year's salary prior to death shall be determined on a proportional basis.

R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
Amended by R.1985 d.431, effective September 3, 1985.
See: 17 N.J.R. 1252(a), 17 N.J.R. 2144(c).

(a) substantially amended.
Recodified from N.J.A.C. 17:3-3.3 and amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section. Former N.J.A.C. 17:3-3.2, Participation in the program, repealed.

17:3-3.3 Contributory insurance rate

Effective January 1, 1980, the contribution group life insurance rate of contribution for all participating members shall be 4/10 of one percent (.004) of the member's base or contractual salary.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
As amended, R.1974 d.24, effective January 31, 1974.
See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).
As amended, R.1978 d.104, effective March 21, 1978.
See: 10 N.J.R. 37(c), 10 N.J.R. 176(a).
Recodified from N.J.A.C. 17:3-3.4 and amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Former N.J.A.C. 17:3.3, Computation of insurance benefits, recodified to N.J.A.C. 17:3-3.2.

17:3-3.4 New enrollments and transfers; contributory insurance premiums

For new enrollees and transferees, contributory insurance premiums will be due from the date insurance is effective as shown on the certification, to the date payroll deductions are certified to begin. In no case will the retroactive premiums for more than 15 months be charged.

As amended, R.1980 d.175, effective April 21, 1980.
See: 12 N.J.R. 157(e), 12 N.J.R. 354(a).
Recodified from N.J.A.C. 17:3-3.5 by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Former N.J.A.C. 17:3-3.4, Contributory insurance rate, recodified to N.J.A.C. 17:3-3.3.

17:3-3.5 Leave for illness; life insurance coverage

(a) Life insurance coverage during a leave of absence without pay due to illness shall apply only to the personal illness of the member.

(b) A leave of absence on account of another person's illness will not entitle the member to continued life insurance coverage.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
Recodified from N.J.A.C. 17:3-3.6 and amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
In (a), substituted "Life insurance coverage" for "Coverage"; in (b), inserted "life" preceding "insurance". Former N.J.A.C. 17:3-3.5, New enrollment and orders; contributory insurance premiums, recodified to N.J.A.C. 17:3-3.4.

Case Notes

Claim for additional death benefits was dismissed where claimants failed to raise claim in prior Superior Court action. *Ostergren v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 249.

17:3-3.6 Survivor benefits

(a) Payment of benefits to eligible survivors shall become effective on the first of the month subsequent to the member's death and shall terminate on the first of the month subsequent to the date on which the survivor no longer qualifies for such benefits.

(b) In the instance of an active member who died in the performance of duty (accidental death), the initial pension payment will be for the month following the month in which the member died, and the last payment will cover the month the survivor dies or ceases to qualify for the continuance of benefits.

As amended, R.1975 d.140, effective May 27, 1975.
See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).
Recodified from N.J.A.C. 17:3-3.7 and amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Rewrote (a). Former N.J.A.C. 17:3-3.6, Leave for illness; life insurance coverage, recodified to N.J.A.C. 17:3-3.5.

17:3-3.7 Withdrawal application; contributory insurance

A properly executed contributory insurance withdrawal application must be in the possession of the Fund before termination of the contributory coverage can be effected. Such withdrawal application cannot be retroactive and the contributory insurance will not be reinstated under the membership account number in which the cancellation was exercised.

Recodified from N.J.A.C. 17:3-3.8 and amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Substituted "the contributory coverage" for "contributory insurance". Former N.J.A.C. 17:3-3.7, Survivor benefits, recodified to N.J.A.C. 17:3-3.6.

Amended by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Inserted "and the contributory insurance will not be reinstated under the membership account number in which the cancellation was exercised".

17:3-3.8 Withdrawal and return, contributory insurance and conversion

(a) Withdrawal from contributory insurance coverage shall apply only to the membership account under which the cancellation was exercised. Any person, who has canceled contributory insurance coverage and withdraws from membership in the Fund, shall, upon subsequent re-enrollment in the Fund, be subject to the provisions of N.J.A.C. 17:3-3.1.

(b) If a member is covered by group life insurance during employment, the coverage ceases 31 days subsequent to the member's termination date from employment regardless of the cause of termination. A member can convert the life insurance at the members' expense as set forth in N.J.A.C. 17:3-3.13(b).

Recodified from N.J.A.C. 17:3-3.9 and amended by R.2002 d.352, effective November 4, 2002.

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

Deleted paragraph identifiers and neutralized gender references throughout. Former N.J.A.C. 17:3-3.8, Withdrawal application; contributory insurance, recodified to N.J.A.C. 17:3-3.7.

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

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

Section was "Withdrawal and return; contributory insurance". Inserted designation (a); and added (b).

17:3-3.9 Retired life insurance coverage

If a member's date of TPAF enrollment was on or after July 1, 1970, noncontributory life insurance shall be payable after the death of a retired member, only if the member established 10 or more years of pension membership credit at the time of retirement, or retired on a disability retirement. The noncontributory life insurance coverage for service, early, veteran and deferred retirements as well as disability retirements where the retiree is age 60 or older shall equal 3/16 of the retiree's last 10 months of salary if formerly employed on a 10-month basis, or 12 months of salary if formerly employed on a 12-month basis. Contributory group life insurance coverage shall equal 4/16 of the retiree's last 10 months of salary if formerly employed on a 10-month basis, or 12 months of salary if formerly employed on a 12-month basis. No premium payments are required to continue the coverage after retirement.

New Rule, R.2002 d.352, effective November 4, 2002.

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

Former N.J.A.C. 17:3-3.9, Withdrawal and return, contributory insurance, recodified to N.J.A.C. 17:3-3.8.

17:3-3.10 Contributory insurance premiums, leave of absence and workers' compensation

(a) Contributory insurance coverage will remain in effect for up to two years while a member is on an official leave of absence without pay for the personal illness of the member and without premiums paid by the member. The employer shall provide to the Division proof of the official leave of absence.

(b) Contributory insurance coverage will remain in effect while a member is on an official leave of absence without pay for the following reasons, provided that insurance premiums are paid by the member within 31 days of the official start date of the leave. It is the member's responsibility to make arrangements directly with the Division to continue these premium payments:

1. Up to one year to fulfill a residency requirement for an advanced degree; or as a full-time student at an institution of higher education; and

2. Up to 93 days on an official leave for any other reason.

(c) Contributory insurance coverage will remain in effect for members who are receiving periodic benefits directly from workers' compensation. No premiums are required pursuant to N.J.S.A. 18A:66-32.1.

As amended, R.1973 d.49, effective February 14, 1973.

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

Recodified from N.J.A.C. 17:3-3.11 and amended by R.2002 d.352, effective November 4, 2002.

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

Rewrote the section. Former N.J.A.C. 17:3-3.10, Ten-month members, recodified to N.J.A.C. 17:3-3.11.

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

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

Section was "Contributory insurance premiums: leave of absence". In (a), substituted "remain" for "be", inserted "without pay" and inserted the last sentence; in the introductory paragraph of (b), substituted "remain" for "be", deleted "in advance" following "paid" and inserted "within 31 days of the official start date of the leave"; and added (c).

17:3-3.11 Ten-month members

A member employed on other than a 12-month contract year will continue to be insured during the summer vacation period provided a bona fide employee-employer relationship exists during this period.

Recodified from N.J.A.C. 17:3-3.10 by R.2002 d.352, effective November 4, 2002.

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

Former N.J.A.C. 17:3-3.11, Contributory insurance premiums: leave of absence, recodified to N.J.A.C. 17:3-3.10.

17:3-3.12 Beneficiary designation; pension contributions

(a) Only a primary and a contingent designation of beneficiary may be made by the member for the payment of such member's accumulated pension contributions.

(b) When a member establishes multiple status by becoming employed by one or more additional employers in an eligible position or positions and files an enrollment application, the beneficiaries designated on the most recently submitted enrollment application supersede any older designations of beneficiaries on file with the Division.

(c) All beneficiaries must be specifically named.

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

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

As amended, R.1983 d.78, effective March 21, 1983.

See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).

Subsections (b) and (c) added.

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

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

Rewrote (b); in (c), substituted "intestate" for "interstate" preceding "succession".

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

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

In (b), deleted "of Pensions and Benefits" following "Division"; and in (c), deleted the last sentence.

17:3-3.13 Benefits payable under P.L. 1984, c. 96, as amended by P.L. 1995, c. 221

(a) For the purposes of P.L. 1984, c. 96, section 1, as amended by P.L. 1995, c. 221, section 2, (N.J.S.A. 18A:66-47), the person designated as the beneficiary of an optional settlement on the retirement application may request that a retirement become effective and that a selection of an optional settlement be made as authorized by the law. If there is no designated beneficiary for an optional settlement, the person designated as the beneficiary to receive the return of contributions or unpaid benefits due to a retiree at the date of death may make this request. If a beneficiary requests that an optional settlement be made, the death benefits payable on behalf of the member shall be the death benefits payable on behalf of a member who dies after retirement as otherwise provided in the TPAF Act, N.J.S.A. 18A:66-1 through 93, as amended and supplemented.

(b) Where a beneficiary of a member requests that a retirement take effect and that a selection of an optional settlement be made as authorized under P.L. 1984, c. 96, section 1, as amended by P.L. 1995, c. 221, section 2, (N.J.S.A. 18A:66-47), an additional amount of insurance, not to exceed the amount of insurance that could be converted under the group policies for noncontributory and contributory death benefits, shall be paid as claims under the group policies only if the member files an application for conversion of the insurance upon retirement as provided under N.J.S.A. 18A:66-79 and pays the initial premium for the converted insurance. The premiums paid for the converted insurance shall be retained by the carrier and be applied to the premiums payable by the State and the Fund for benefits provided under the group policies.

New Rule, R.2001 d.375, effective October 15, 2001.

See: 33 N.J.R. 2401(a), 33 N.J.R. 3670(a).

Recodified from N.J.A.C. 17:3-3.14 by R.2002 d.352, effective November 4, 2002.

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

Former N.J.A.C. 17:3-3.13, Acceptable designation of beneficiaries, recodified to N.J.A.C. 17:3-3.14.

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

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

Section was "Benefits payable under P.L. 1984, c.96, as amended by P.L. 1995, c.221". In (a), substituted "c. 96" for "c.96", "c. 221" for "c.221" and "TPAF" for "Teachers' Pension and Annuity Fund"; and in (b), substituted "c. 96" for "c.96", "c. 221" for "c.221" and "Fund" for "retirement system".

17:3-3.14 Acceptable designations of beneficiaries

(a) The beneficiary designation on a duly executed retirement application that is filed with and accepted by the Division supersedes any older designation of beneficiary on file. The designation is effective upon acceptance by the Division, even if the retirement date on the application is in the future or the member cancels the retirement application.

1. The beneficiary or beneficiaries designated on the retirement application for the retirement allowance shall be the beneficiary or beneficiaries for the return of the member's accumulated contributions.

2. If no beneficiary designation is in effect at the time of the member's death, or if no one is named as beneficiary for the retirement allowance, the Division shall pay the benefit to the member's estate.

(b) The beneficiary or beneficiaries of the group life insurance designated on the retirement application shall be the beneficiary or beneficiaries of the group life insurance.

1. If no beneficiary designation is in effect at the time of the member's death, or if no one is named as beneficiary for life insurance, the Division shall pay the benefit to the member's estate.

New Rule, R.2000 d.101, effective March 20, 2000.

See: 31 N.J.R. 3930(a), 32 N.J.R. 1046(a).

Amended by R.2000 d.441, effective November 6, 2000.

See: 32 N.J.R. 2986(a), 32 N.J.R. 3996(c).

In (a), added "or the member withdraws the retirement application" at the end of the introductory paragraph.

Recodified from N.J.A.C. 17:3-3.13 and amended by R.2002 d.352, effective November 4, 2002.

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

In (a), substituted "cancels" for "withdraws" in the second sentence. Former N.J.A.C. 17:3-3.14, Benefits payable under P.L. 1984, c.96, as amended by P.L. 1995, c.221, recodified to N.J.A.C. 17:3-3.13.

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

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

In the introductory paragraph of (b), deleted "active" preceding the second occurrence of "group".

17:3-3.15 Suspension

A member suspended without pay will have noncontributory life insurance coverage continued for a period of 93 days following the effective date of such suspension. A member will not be covered by contributory life insurance during a suspension without pay, but may convert the contributory insurance prior to 31 days after the effective date of the suspension.

New Rule, R.2008 d.94, effective April 21, 2008.

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

SUBCHAPTER 4. MEMBERSHIP

17:3-4.1 Creditable compensation

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

1. Forms of compensation that have been identified as extra compensation include, but are not limited to:

- i. Overtime;
- ii. Pay for extra work, duty or service beyond the normal work day, work year for the position, or normal duty assignment;
- iii. Bonuses;
- iv. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;
- v. Any compensation which the employee or employer has the option of including in base salary;
- vi. Sell-backs, trade-ins, waivers, or voluntary returns of accumulated sick leave, holiday pay, vacation, overtime, compensatory time, or any other payment or benefit in return for an increase in base salary;
- vii. Individual retroactive salary adjustments where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
- viii. Individual adjustments to place a member at the maximum of his or her salary range in the final years of service where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
- ix. Increments or adjustments in recognition of the member's forthcoming retirement;
- x. Any form of compensation which is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement or employment;
- xi. Retroactive increments or adjustments made at or near the end of a member's service, unless the adjustment was the result of an across-the-board adjustment for all similarly situated personnel;
- xii. Any form of compensation which is not included in a member's base salary during some of the member's service and is included in the member's base salary upon attainment of a specified number of years of service;
- xiii. Compensation paid for coaching sports;
- xiv. Compensation paid for teaching summer school;

xv. Compensation paid for performing clerical or other duties;

xvi. Compensation in the absence of services;

xvii. Compensation paid for working during vacation periods;

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

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

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

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

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

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

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

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

3. Refer any suspected submission of false information in violation of N.J.S.A. 18A:66-64, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

(f) Failure to satisfactorily respond to a request by the Board for documents or information related to an increase in

compensation may result in the denial of credit for the increase in compensation.

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

1. A denial of credit for the extra compensation;
2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;
3. A return of contributions to the active members and retirees on the extra compensation without interest;
4. A recalculation of the retirement benefits of retirees to eliminate benefits based upon the extra compensation; and
5. Repayment to the system by the retiree of any benefits received based upon the extra compensation.

(h) A member shall receive service credit for that base salary received during the period of suspension in which the member is awaiting a determination by the Commissioner of Education as provided under N.J.S.A. 18A:6-14.

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

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

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

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

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

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

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

(f) added.

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

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

Section was "Creditable salary".

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

When the retroactive salary adjustments of a former employee were intended to be part of his base salary for all purposes, the employee was entitled to credit for pension purposes. The adjustments were not extra compensation but were for additional job responsibilities compensated as the result of the settlement of then-ongoing litigation and represented duties that were integral to the effective functioning of the school curriculum. The settlement package was implemented irrespective of whether the employee ultimately went on to ordinary disability retirement. *Coyle v. Bd. of Trs. of Teachers' Pension and Annuity Fund*, OAL Dkt. No. TYP 11502-10, 2013 N.J. AGEN LEXIS 79, Initial Decision (April 9, 2013).

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

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

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

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

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

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

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

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

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

17:3-4.2 Leave with pay

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

(b) If the leave with pay extends beyond six months, the member will receive credit and will be required to make

contributions only if the member is receiving 50 percent or more of the regular base or contractual salary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

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

Case Notes

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

17:3-4.4 Loan tolerance

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

New Rule, R.1987 d.130, effective March 16, 1987.
See: 19 N.J.R. 52(b), 19 N.J.R. 457(a).

Old rule "loan evaluation" repealed.
Amended by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).
Substituted "\$50.00" for "\$10.00" twice.

17:3-4.5 Approved leave

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

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

17:3-4.6 Minimum adjustment

In order to facilitate the reconciliation of a member's account, no rebates or additional contributions shall be made where an adjustment involves an amount of \$2.00 or less during a calendar quarter.

Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Substituted "\$2.00 or less during a calendar quarter" for "\$3.00 or less".

17:3-4.7 (Reserved)

Amended by R.1974 d.24, effective January 31, 1974.
See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).
Amended by R.1981 d.140, effective June 4, 1981.
See: 13 N.J.R. 159(c), 13 N.J.R. 376(a).

(b) added.

Amended by R.1991 d.100, effective March 4, 1991.
See: 22 N.J.R. 3321(b), 23 N.J.R. 712(b).

In (b), amended method of computing back pay awards. Added (c).
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (b), neutralized gender references.
Recodified from N.J.A.C. 17:3-6.6 and amended by R.2004 d.244, effective July 6, 2004.
See: 36 N.J.R. 920(a), 36 N.J.R. 3267(c).

Rewrote the section. Express contributions, was reserved 17:3-4.7, reserved.

Amended by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (d), inserted "or settlement" four times, deleted "of Trustees" following "reviewed by the Board" and "the member shall have the contributions for the salaries based on the award refunded without interest, and" following "17:3-4.1" and inserted "and the member shall

have the contributions for the salaries based on the award refunded without interest".

Repealed by R.2010 d.188, effective September 7, 2010.
See: 42 N.J.R. 897(a), 42 N.J.R. 2140(a).

Section was "Service and salary credit: awards of back pay".
Administrative correction.
See: 43 N.J.R. 59(a).

Repealed by R.2011 d.065, effective February 22, 2011.
See: 42 N.J.R. 897(a), 43 N.J.R. 449(a).

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

Case Notes

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

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

(a) Military leave, prior to August 1, 1974, contributions remitted by an employer on behalf of an employee, who does not return to the payroll for the minimum 90-day period required by N.J.S.A. 18A:66-34, shall be retained by the Fund. Such contributions shall be transferred from the Annuity Savings Fund to the Contingent Reserve Fund. Military leave contributions remitted by an employer shall be based on the employee's salary at the time the member entered military service.

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

As amended, R.1973 d.49, effective February 14, 1973.

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

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

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

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

Case Notes

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

17:3-4.9 Eligibility for loan

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

As amended, R.1973 d.49, effective February 14, 1973.

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

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

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

Rewrote the section.

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

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

Inserted the last sentence.

17:3-4.10 Waiver of retirement benefits upon withdrawal

Any member, who makes application for withdrawal from the Fund, who may otherwise be eligible to make application for retirement benefits, shall be required to execute and file a statement with the Fund setting forth the benefits the member is waiving in favor of withdrawal, before the application for withdrawal may be processed. If a member is eligible to begin receiving a monthly retirement allowance (age 60 or more, or 25 years or more of credited service), the Division shall inform the member of the estimated amount of the retirement allowance and shall require the member to sign a waiver of such benefits, should the member still wish to withdraw.

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

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

Rewrote the section.

17:3-4.11 Termination; withdrawal

(a) Pursuant to N.J.S.A. 18A:66-34, a member may withdraw from the Fund only if the member terminates all employment.

(b) No application shall be approved, if:

1. The member is on official leave of absence and the membership is subject to continuance under N.J.S.A. 18A:66-8;

2. The member, or employer, certifies that the member's employment contract has not expired, or that the member has executed another contract to work in a position subject to TPAF 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 and there is no legal action contemplated or pending and the dismissal has been adjudged final. If the member or employer does not advise the Division that an appeal is pending and the withdrawal application is processed, the member will be required to repay the Fund the full amount of contributions with interest, before the account may be reinstated;

4. A multiple member has not terminated employment in all covered positions;

5. The member has a claim pending for workers' compensation benefits unless the member signs a waiver indicating that the member still wishes to withdraw.

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1975 d.140, effective May 27, 1975.

See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).

As amended, R.197 d.205, effective May 22, 1979.

See: 11 N.J.R. 208(a), 11 N.J.R. 359(a).

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

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

Neutralized gender references throughout; in (a), substituted "Pursuant to N.J.S.A. 18A:66-34" for "Under the terms of the statutes".

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

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

In (b)2, inserted ", or employer,"; in (b)3, substituted "and" for "or" following "position", inserted a period following "final" and inserted the last sentence; and rewrote (b)5.

Case Notes

Previous acceptance of pension withdrawal funds deactivates member status and precludes reinstatement of membership account. *Mihalik v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 82.

Teacher's request for reinstatement of former pension membership account denied when teacher's equitable estoppel argument not supported by showing intentional misconduct or misrepresentation. *Kane v. Board of Trustees, Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 25.

17:3-4.12 Deductions

(a) A full pension and contributory insurance deduction shall be taken for the TPAF in any payroll period (monthly or biweekly) 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 other arrears or loan deductions then in effect.

(b) No deductions shall be taken, nor service credit given, in any pay period for employers who report on a biweekly basis or in any month, for employers who report on a monthly basis, in which the employee's salary is not sufficient to cover the required deductions for the TPAF.

As amended, R.1973 d.49, effective February 14, 1973.

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

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

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

Rewrote the section.

17:3-4.13 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.

As amended, R.1974 d.24, effective January 31, 1974.

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

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

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

Inserted "the day" preceding "they return to service".

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

17:3-5.1 Eligibility for purchase

(a) Only active members of the Fund who are currently contributing, or who have contributed within the last two years to the Fund, except as provided in N.J.S.A. 18A:66-8, shall be eligible to make application for purchase of credit. Active members who are not currently contributing to the Fund shall purchase their requested service in a lump sum.

(b) In order to be eligible to purchase service, a member must submit a request to purchase service and such purchase must be authorized by the member before the expiration date indicated on the letter, which quotes the terms of the purchase. If the Purchase Cost Quotation expires prior to authorization and subsequently the member requests the purchase of such service, the purchase cost will be subject to recalculation based upon all cost factors in effect at the time of the new request.

(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 shall disallow the purchase of all or a portion of service it deems to be dishonorable in accordance with N.J.S.A. 43:1-3.

Amended by R.1999 d.387, effective November 15, 1999.

See: 31 N.J.R. 2298(a), 31 N.J.R. 3741(a).

Rewrote the section.

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

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

In (a), rewrote the first sentence; in (c), deleted "former" preceding "service" in the second sentence.

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

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

In (b), deleted "written" preceding "request to purchase", inserted a comma following "letter" and inserted the last sentence; and in (c), deleted "of Trustees" following "Board".

Case Notes

Held that purchased service credit based upon out-of-state employment could be applied towards the 20 years service required for veteran's retirement. *Moss v. State Bd. of Trustees, Public Employees' Retirement System*, 178 N.J.Super. 460, 429 A.2d 420 (App.Div.1981).

Initial Decision (2010 N.J. AGEN LEXIS 43) adopted, which found that the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) properly denied petitioner's request to purchase service credit in the TPAF for the period of her employment with the Newark School District from October 13, 1970, to June 30, 1973 because petitioner failed to exercise her option to purchase additional service credit before the expiration of the purchase opportunity and attempted to make the purchase only after she was no longer an active member of TPAF. Petitioner was not entitled to purchase the service credit after the expiration date indicated absent a showing that she received erroneous information from a Division interviewer or that she did not receive a quote letter. In re Ferrand, OAL Dkt. No. TYTPP 01783-2009N, 2010 N.J. AGEN LEXIS 762, Final Decision (March 5, 2010).

Educational program specialist's application to purchase service credit was properly denied where application was made three years after deadline. *Willis v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 165.

Correction of error process not applicable to allow purchase of prior service credit where employer refused to stipulate that necessary enrollment information was not provided. *Telerico v. Freehold Regional High School*, 93 N.J.A.R.2d (TYP) 204.

Teacher would not be allowed to purchase pension credit for out-of-state substitute service. *Lillian Solomon v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 1.

Teacher, whose employment termination was found wrongful by the Commissioner but chose not to return to employment, held able to purchase pension credits, which she had sought to do before termination, as if her employment had continued through the date of the Commissioner's decision. *Stuermer v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 2 N.J.A.R. 248 (1980).

17:3-5.2 New enrollment contribution rate adjustment

Upon enrollment or reenrollment, a veteran shall contribute at the percent rate applicable to the age resulting from the subtraction of years of prior service (pre-1955) from the date the member began the member's present employment or the date of enrollment, whichever is later, provided that the member submits satisfactory evidence of prior public employment in New Jersey.

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

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

Deleted (a) and the paragraph identifier for (b); neutralized gender references throughout.

17:3-5.3 Reestablishing military leave credit

Veterans who terminated membership before January 1, 1955, and whose withdrawal of contributions included contributions paid by their employers during a period of military leave, shall receive veteran prior service credit for only the periods during which they actually contributed. They can receive additional membership credits for the periods of military leave if they redeposit the amounts of employer contributions, plus regular interest to the date of their authorizations of such purchases.

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

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

Neutralized gender references throughout.

17:3-5.4 Compulsory contributions (back deductions)

An employee who was required to enroll and whose application was filed beyond the compulsory date of enrollment, will be required to make retroactive contributions to the date of compulsory enrollment. Contributions will be calculated on the basis of the member's current salary at the current pension rate of contribution assigned as of the compulsory date of enrollment with regular interest.

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

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

Rewrote the section.

17:3-5.5 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 shall 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 in a New Jersey State-administered retirement system;

2. Former service with any employer which was not certified for membership but which would have qualified on an optional or a compulsory basis at the time the service was rendered;

3. Continuous temporary service without interruption or substitute service as a teacher immediately preceding enrollment is eligible for purchase provided the following conditions are met:

i. Continuous temporary service without interruption must be employment without a break in service. For an employer that reports on a monthly basis, a break in service is defined as no salary earned by an employee during a month. For an employer that reports on a bi-weekly basis, a break in service is defined as no salary earned by an employee during a biweekly pay period.

ii. Substitute service is eligible for purchase provided the employment immediately precedes enrollment in TPAF. Immediately preceding enrollment is defined as employment rendered the month or biweekly pay period, prior to the date of enrollment. The period(s) of substitute service that a member can request to purchase must meet the following criteria:

(1) A year of substitute service wherein a 10-month employee worked an average of 10 days per month and an aggregate of 100 days during a regular work year. A 12-month employee is required to have worked an average of 10 days per month and an aggregate of 120 days per year.

(2) Substitute service for a period of less than one year immediately preceding enrollment is eligible for purchase provided the member worked a minimum average of 10 days per month for each month of substitute service.

(3) When more than one year of substitute service is requested for purchase, each year of substitute service rendered prior to enrollment is reviewed and each year is required to meet the criteria set forth under the provisions of (a)3ii(1) above.

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 that the illness existed for the length of the leave;

5. Eligible out-of-State public employment, or employment in schools within and outside the United States operated by a department of the United States Government for the instruction of the children of United States Government employees, up to a total purchase of 10 years. Pursuant to N.J.S.A. 18A:66-39(b) this service cannot be used to qualify for an ordinary disability retirement;

6. Service established under a local municipal or county retirement system within the State of New Jersey; and

7. Non-concurrent PERS service if a dual member of TPAF and PERS pursuant to P.L. 2001, c. 6 (N.J.S.A. 18A:66-15.1). All or a portion of non-concurrent service in the PERS from an expired or withdrawn account may be purchased.

(b) The types of purchases indicated in (b)1 and 2 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 annual base salary or highest fiscal year base salary. The computed lump sum purchase cost will then be doubled to establish the full cost to the member. This cost is calculated in this manner as N.J.S.A. 18A:66-13 provides 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 honorable full-time duty in the active military service of the United States, which is the same as the Federal definition found at 10 U.S.C. §101. 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, 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 midshipman at one of the service academies. Military service before enrollment cannot be used to qualify for an ordinary disability retirement; and

2. Employment with the Federal government. Pursuant to N.J.S.A. 18A:66-39(b) U.S. Government service cannot be used to qualify for an ordinary disability retirement.

(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 neither receiving nor will be entitled to receive a future retirement allowance for such service from any other public retirement system and provides proof to the Division that the member is not eligible to receive a current or future retirement benefit from that service. 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.

(d) Rules concerning the purchase and/or conversion of Class A credit include the following:

1. The cost of Class B service credit is based on the actuarial factors and such factors provide a retirement benefit which is $\frac{1}{6}$ greater than service credited as Class A. If Class A credit is purchased, the cost will be $\frac{6}{7}$ of the amount computed for a Class B purchase. The computation is based on the member's present salary or highest fiscal year base salary multiplied by the actuarial purchase factor for the member's age at the time of purchase with regular interest.

2. If a Class A member converts to Class B, the member will contribute an additional $\frac{1}{6}$ of the total contributions that would have been payable based on the member's full Class A contribution rate with regular interest.

As amended, R.1983 d.78, effective March 21, 1983.

Sec: 14 N.J.R. 1002(b), 15 N.J.R. 449(b).

Language added at (b), 1. re: State-administered retirement systems.

Amended by R.1987 d.47, effective January 20, 1987.

See: 18 N.J.R. 2120(a), 19 N.J.R. 244(a).

benefit raised from $\frac{1}{5}$ to $\frac{1}{6}$ greater.

Amended by R.1999 d.387, effective November 15, 1999.

See: 31 N.J.R. 2298(a), 31 N.J.R. 3741(a).

Rewrote the section.

Amended by R.2001 d.267, effective August 6, 2001.

See: 33 N.J.R. 1506(a), 33 N.J.R. 2677(b).

In (a)(1), inserted "New Jersey" preceding "State-administered"; rewrote (a)(3); in (a)(5), substituted "Pursuant to N.J.S.A. 18A:66-39(b) this" for "This"; added (a)7.

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

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

Rewrote (a)3; in (a)7, substituted "PERS" for "Public Employees' Retirement System" and "c. 6" for "c.6"; in (b)1, inserted the second through fifth sentences; and in (c), inserted "will be" and "future", deleted "of Pensions and Benefits" following "Division" and substituted "is not eligible to receive a current or future retirement benefit from that service" for "has withdrawn from such other system".

Case Notes

New Jersey makes no provision for purchase of additional credit for out-of-state employment periods during leaves of absence. *Schuman v. Teachers' Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 17.

Rule provision stating that per diem teaching service is not creditable for pension purposes held invalid as inconsistent with statutory provision allowing credit to be purchased for such services (citing former N.J.A.C. 17:3-5.4). *Antonchak v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 3 N.J.A.R. 83 (1980).

17:3-5.6 Methods of payment

(a) Methods of payment for purchases include the following:

1. Lump sum;
2. Partial lump sum; balance by additional payroll deductions; or
3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years.

(b) Additional payroll deductions under (a)2 or 3 above will include regular interest for the term of the installment.

(c) Lump sum payments and partial lump sum payments can include the direct rollover of transfer of tax-deferred contributions from financial plans that qualify under terms specified under I.R.C. §401(a)(31) (2007) of the Internal Revenue Service. All payments remitted to the Division must be accompanied by a properly completed Direct Rollover/Trustee-to-Trustee Transfer of Funds for the Purchase of Additional Service Credit form. 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.

Amended by R.1991 d.444, effective August 19, 1991.
See: 23 N.J.R. 1073(a), 23 N.J.R. 2522(a).

In (a)3, deleted class A to B conversions, compulsory and temporary service purchases.

Amended by R.2001 d.374, effective October 15, 2001.
See: 33 N.J.R. 2402(a), 33 N.J.R. 3671(a).

In (a)2, deleted “of \$250.00 or more”.
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), inserted “for purchases” following “payment” and recodified former 4 as (b).

Amended by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (a)2, substituted “additional” for “extra”, and inserted “or” at the end; in (a)3, substituted a period for a semicolon at the end; in (b), substituted “Additional” for “Extra” and inserted “under (a)2 or 3 above”; and added (c).

17:3-5.7 (Reserved)

Repealed by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Section was “Military leave”.

17:3-5.8 Service ineligible for purchase

(a) A member will not be granted, nor may a member purchase, prior service or membership credit, including, but not limited to, the following situations:

1. Service rendered outside of the United States, with the exception of service rendered to a local school board in territories or possessions of the United States, Washington, DC and the Canal Zone;
2. Additional service credit for out-of-State employment periods during leaves of absence;
3. Service rendered that is concurrent with service time or employment that the member has received membership service credit in the Fund;
4. Any service rendered, which was covered by the Alternate Benefits Program (ABP) or another defined contribution plan including any service associated with pension contributions transferred to the ABP;
5. A period of time when a member was on a suspension without pay during their employment; or

6. Any public service that was not eligible for either compulsory or optional enrollment in a State-administered retirement system at the time the service was rendered.

Amended by R.1999 d.387, effective November 15, 1999.
See: 31 N.J.R. 2298(a), 31 N.J.R. 3741(a).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Rewrote the section.

17:3-5.9 Lump-sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the TPAF Law (N.J.S.A. 18A:66-1 et seq.) and the rules of the Fund.

New Rule, R.1989 d.360, effective July 17, 1989.
See: 21 N.J.R. 980(b), 21 N.J.R. 2055(b).

Provision of immediate credit for service purchased by a lump-sum payment.

Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Substituted “Fund” for “retirement system” in the second sentence.
Amended by R.2008 d.94, effective April 21, 2008.

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

Substituted “TPAF” for “Teachers’ Pension and Annuity Fund”.

SUBCHAPTER 6. RETIREMENT

17:3-6.1 Applications

(a) Applications for retirement must be made on forms required by the Fund. Such forms must be completed in all respects and filed with the 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. Members enrolled at multiple TPAF locations must retire from employment in all covered positions before a retirement shall become effective.

(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) A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable as defined by N.J.A.C. 17:3-6.2, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates a beneficiary, that beneficiary cannot be changed. P.L. 2001, c. 120 provides for additional payment options that allow the member to choose an actuarially reduced retirement allowance in order to provide a beneficiary with an allowance equivalent to the full

amount, three-quarters, one-half or one-quarter of the reduced allowance. If the beneficiary dies before the retiree, the retiree's allowance will increase to the maximum amount. These additional payment options shall be known as Options A, B, C, and D as defined below. The options, as established by N.J.S.A. 43:15A-50, include the following:

1. Maximum Option provides the largest allowance for the member but does not include a pension benefit paid to a beneficiary upon the member's death. If the total amount of retirement allowances received by a member or beneficiary under the option selected is less than the value of the member's contributions and regular interest on those contributions, the balance of contributions and regular interest shall be paid in a lump sum to the member's designated beneficiary or estate.

2. Option 1 provides a reducing retirement reserve to one or more beneficiaries. At retirement, a reserve amount is established to pay the member's lifetime retirement allowance. This reserve is reduced each month by the member's original monthly retirement allowance. Upon the member's death, the beneficiary or beneficiaries receive the balance of the reserve, if any.

3. Option 2 provides, upon the member's death, a lifetime monthly retirement allowance equal to 100 percent of the member's monthly retirement allowance to a beneficiary.

4. Option 3 provides, upon the member's death, a lifetime monthly retirement allowance equal to 50 percent of the member's monthly allowance to a beneficiary.

5. Option 4 provides, upon the member's death, a lifetime monthly retirement allowance to one or more beneficiaries. The member determines the retirement allowance which in the aggregate cannot be more than the Option 2 allowance.

6. Option A provides, upon the member's death, a lifetime monthly retirement allowance equal to 100 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

7. Option B provides, upon the member's death, a lifetime monthly retirement allowance equal to 75 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

8. Option C provides, upon the member's death, a lifetime monthly retirement allowance equal to 50 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

9. Option D provides, upon the member's death, a lifetime monthly retirement allowance equal to 25 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

(d) 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, proof of the beneficiary's age, if the member elected Option A, B, C, D, 2, 3 or 4, 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.

(e) In addition to the requirements in (a) through (d) above:

1. An application for a physical disability retirement must be supported by at least two reports, one by the member's personal or attending physician and the other may be either hospital records supporting the disability or a report from a second physician; and

2. An application for a mental health medical disability retirement must be supported by at least two medical reports, one by the member's personal or attending psychiatrist or psychologist and the other in the form of either hospital records supporting the disability or a report from a second psychiatrist or psychologist or from the member's personal or attending physician or licensed clinical social worker.

(f) Retired members, who return to public employment, shall have their previous retirement allowances cancelled and be reenrolled in the Fund pursuant to N.J.S.A. 18A:66-40 for those who retired on disability retirements or N.J.S.A. 18A:66-53.2 for those who retired on early, service, veteran or deferred retirements. A member who ceases covered employment and retires again must file a new retirement application with the Division in accordance with (a) through (e) above in order to initiate payment of the retirement allowance. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based upon 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. The retirement allowance shall become effective on the first of the month following receipt of the application unless a future date is requested.

(g) A member filing for a disability retirement shall not file a separate application for any other type of retirement while a disability application is pending.

(h) If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant will be required to submit a separate application for retirement. If the applicant submits the sep-

arate application for retirement within 30 days of the Board's decision, the applicant may retain the retirement date designated on the disability retirement application.

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

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

Amended by R.1987 d.10, effective January 5, 1987.

See: 18 N.J.R. 1519(b), 19 N.J.R. 140(b).

Substantially amended.

Amended by R.2001 d.147, effective May 7, 2001.

See: 33 N.J.R. 637(a), 33 N.J.R. 1398(b).

Rewrote the section.

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

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

Rewrote the section.

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

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

In (a), deleted "of Pensions and Benefits (Division)" following "Division"; in the introductory paragraph of (c), substituted "c. 120" for "c.120"; in (c)1, inserted the last sentence; rewrote (e); and added (g) and (h).

Case Notes

Petition for acceptance of retirement application, filed more than 30 days after retirement date, denied; after notification by Board that disability retirement application was denied and advising petitioner to file for service retirement, which she did not do for three months, petitioner held not entitled to retroactively effectuate retirement application to her actual retirement date (citing former rule). *Sobel v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 139 N.J.Super. 55, 352 A.2d 585 (App.Div.1976).

Estoppel did not entitle teacher to retroactive retirement date. *Berk v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 348.

Board of Trustees not equitably estopped from correcting erroneous retirement allowance; detrimental reliance not established. *Sgombick v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 107.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.2 Effective date

(a) 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 30 days after the date of retirement, whichever is later.

Recodified from N.J.A.C. 17:3-6.3 and amended by R.2002 d.352, effective November 4, 2002.

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

Deleted (b); recodified former (c) as (b) and neutralized gender references. Former N.J.A.C. 17:3-6.2, Effective date; changes, recodified to N.J.A.C. 17:3-6.3.

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

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

Section was "Effective date; death prior thereto". Deleted (b).

Case Notes

31-day period for conversion of individual life policy began to run after receipt of approval rather than date of approval of retirement. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

For purpose of statute, notice of termination of employment and notice of existence of right to convert to individual life policy were not synonymous. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

Initial Decision (2007 N.J. AGEN LEXIS 193) adopted, which found that a widow was properly denied a request to change the pension retirement option selected by her late husband because, although the widow submitted testimony of those close to the husband as to his state of mind, there was no medical testimony in support of her claim that at the time the husband made his election of benefits he lacked the capacity to do so. In re *Alston*, OAL Dkt. No. TYP 8534-03, 2007 N.J. AGEN LEXIS 1191, Final Decision (May 4, 2007).

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.3 Effective date; changes

(a) Except as provided by N.J.A.C. 17:3-6.7, 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 of retirement date or option selection before the member's 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 30 days have elapsed following the effective date or 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 60th birthday. Should the member's 60th birthday fall on the first of the month, the member may elect the retirement to commence on that date, provided that an application is received by the Division in accordance with N.J.A.C. 17:3-6.1.

(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. This restriction also applies to payments of accrued sick or vacation time that is paid in periodic payments on the employer's regular payroll schedule.

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1974 d.24, effective January 31, 1974.

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

As amended, R.1975 d.140, effective May 27, 1975.

See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).

As amended, R.1983 d.78, effective March 21, 1983.

See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).

Subsection (f), added.

Recodified from N.J.A.C. 17:3-6.2 and amended by R.2002 d.352, effective November 4, 2002.

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

Rewrote the section. Former N.J.A.C. 17:3-6.3, Effective date; , death prior thereto, recodified to N.J.A.C. 17:3-6.2.

Amended by R.2005 d.394, effective November 21, 2005.

See: 37 N.J.R. 1928(a), 37 N.J.R. 4460(a).

In (a), substituted "Except as provided by N.J.A.C. 17:3-6.7, a" for "A"; rewrote (e).

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

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

In (c), rewrote the last sentence; and in (e), inserted the last sentence.

Case Notes

Denial of retiree's request to convert ordinary plan to early service retirement was not arbitrary or capricious. *Steinmann v. State, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund*, 235 N.J.Super. 356, 562 A.2d 799 (A.D.1988) reversed 116 N.J. 564, 562 A.2d 791.

Initial Decision (2008 N.J. AGEN LEXIS 1007) adopted, which concluded that good cause did not exist to change retiree's retirement classification from Ordinary Disability to Early Retirement retroactive to her retirement date since request for change was made beyond the 30-day grace period. Although retiree claimed that good cause existed because the board failed to provide her with sufficient information to enable her to make an informed decision regarding what type of retirement benefits she should apply for, and that the board should have informed her that, by choosing ordinary disability benefits, the Division of Workers' Compensation might decide to reduce the amount of her worker's compensation award, the board was not required to inform petitioner of the possibility that a separate governmental division, independent of the Division of Pensions and Benefits, could, at some point in the future, decide to reduce the amount of money that it awarded her. In re Ferroni, OAL Dkt. No. TYP 2288-08, 2009 N.J. AGEN LEXIS 58, Final Decision (January 9, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1007) adopted, which concluded that retiree failed to act with due diligence in contacting board to change her retirement classification from Ordinary Disability to Early Retirement retroactive to her retirement date after retiree became aware of the potential offset of her worker's compensation benefits by her ordinary disability benefits; retiree did not file her request to change her pension designation until approximately four years after she was put on notice about the potential offset. In re Ferroni, OAL Dkt. No. TYP 2288-08, 2009 N.J. AGEN LEXIS 58, Final Decision (January 9, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1007) adopted, which concluded that good cause did not exist to change retiree's retirement classification from Ordinary Disability to Early Retirement retroactive to her retirement date since request for change was made beyond the 30-day grace period despite retiree's claim that she was suffering from severe depression and sleep apnea which were both a result of the injury she sustained while employed and which had an adverse effect on her mental state and precluded her from making a conscious decision to choose more favorable pension benefits. In fact, however, other than stating that she was feeling stressed about filling out her pension application and that she was receiving conflicting information from different sources, her records indicated that despite her depression her insight and judgment were intact and that her thought process was normal rate, as well as logical and goal directed. In re Ferroni, OAL Dkt. No. TYP 2288-08, 2009 N.J. AGEN LEXIS 58, Final Decision (January 9, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 834) adopted, which concluded that the medical situation justifying tolling must be severe, even if not ultimately fatal. Generally, the fact that a member-retiree has elective surgery, or has a routine illness, or even is hospitalized for some

non-life threatening condition, should not result in tolling the 30-day window for making changes to the retirement application. However, as "incapacity" is the necessary element for tolling, each case must be considered on its own facts, even in the context of less than life-threatening circumstances. In re Dent, OAL Dkt. No. TYP 00029-08, 2008 N.J. AGEN LEXIS 1118, Final Decision (October 31, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 834) adopted, which concluded that the experience of a retiree with a stated retirement date of July 1, 2007, from the onset of numbness and slurred speech, through hospitalization and diagnosis, transfer by ambulance to a hospital, surgery, and after care until his release from his doctor's care, was such that it could be readily understood that from at least July 15, 2007, through July 27, 2007, he had things on his mind that could well have precluded him from concentrating on his pension benefits and the need to effectuate any change in his choice of options before the end of the 30-day period on July 31. From July 15 until July 27, 2007, a period of 13 days, retiree was "incapacitated," and the 30-day time period was properly tolled, and a change in the option from Option A to Option C on August 3, only three days after the end of the 30 days, was timely. In re Dent, OAL Dkt. No. TYP 00029-08, 2008 N.J. AGEN LEXIS 1118, Final Decision (October 31, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 834) adopted, which concluded that giving a member one last chance to determine what will be the makeup and disposition of his pension and life insurance following retirement after the reality of actual retirement arrives, as opposed to cutting his chance off at or before that fateful day, is in accord with the liberal approach guiding the administration of pension laws. The decision as to whether to toll the time limit where incapacity occurs during that "last chance" should not be affected by the fact that the employee had the opportunity to make changes during the days, weeks, or months after filing and, where it occurs before actual retirement, board approval. In re Dent, OAL Dkt. No. TYP 00029-08, 2008 N.J. AGEN LEXIS 1118, Final Decision (October 31, 2008).

Retiree may change benefits after retirement and receipt of benefits if retiree is incompetent at time of application completed. *Cicione v. Teacher's Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 84.

Tenured teacher could not obtain difference between her salary and disability pension benefits for period between when she applied for and was granted disability retirement. *Matter of Tenure Hearing of Scherr*, 95 N.J.A.R.2d (EDU) 97.

Monthly allowance selection; decedent was competent at the time he made selection. *Robertson v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 161.

No good cause or reasonable diligence existed to allow teacher to reopen early retirement designation made 12 years earlier. *Porter v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 9.

Untimely request to change effective date of retirement denied. *Jengeleski v. Board of Trustees of the Teachers' pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 5.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.4 Outstanding loan

(a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with accrued interest, as follows:

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:3-6.2; or

2. 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 accrued interest, is repaid as authorized by P.L. 1999, c. 132 (N.J.S.A. 18A:66-35.1). 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 accrued 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 or the balance of the Option 1 reserves or the balance of the retirant's accumulated deductions and regular interest that are due to the beneficiary or estate. If the retirant designated multiple beneficiaries 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.1982 d.14, effective February 1, 1982.

See: 13 N.J.R. 748(b), 14 N.J.R. 161(c).

Repealed and replaced (a) and (b).

Repeal and New Rule, R.1999 d.431, effective December 20, 1999.

See: 31 N.J.R. 2709(a), 31 N.J.R. 4293(b).

Section was "Outstanding loan".

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

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

In (a), amended the N.J.A.C. reference in 1, deleted 2 and recodified former 3 as 2; in (b), substituted "1" for "I" following "Option".

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

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

In the introductory paragraph of (a), (a)2 and (b), inserted "accrued"; and in (a)2, substituted "c. 132 (N.J.S.A. 18A:66-35.1)" for "c.132".

17:3-6.5 Willful negligence

(a) Willful negligence is defined as:

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.

17:3-6.6 (Reserved)

Repealed by R.2004 d.244, effective July 6, 2004.

See: 36 N.J.R. 920(a), 36 N.J.R. 3267(c).

Former N.J.A.C. 17:3-6.6, Retirement credit, recodified to N.J.A.C. 17:3-4.7.

17:3-6.7 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 at the time of filing the application for a disability retirement allowance or is covered by the provisions of N.J.A.C. 17:3-6.15;

2. The member is physically or mentally incapacitated for the performance of duty; and

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 or canceled, or amended to a later retirement date than the date specified in the approved retirement application.

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

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

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

In (a), rewrote 1 and substituted "ordinary" for "ordinance" in 4; neutralized gender references throughout.

Amended by R.2005 d.394, effective November 21, 2005.

See: 37 N.J.R. 1928(a), 37 N.J.R. 4460(a).

Added (b).

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 134) adopted, which found that a former teacher was entitled to an accidental disability retirement when the teacher suffered from chronic back pain after a student threw her against a locker; the teacher corroborated her claim with medical testimony that the pain was the result of the incident and not due to a pre-existing condition of degenerative disc disease or osteoarthritis, and that she was disabled from performing her ordinary employment based on her testimony that, as a science teacher in a laboratory setting, she was required to be on her feet constantly, and could not do so following the accident. In re Teliszewski, OAL Dkt. No. TYTP 00055-2006S, 2007 N.J. AGEN LEXIS 1188, Final Decision (April 9, 2007).

Injuries sustained by industrial arts teacher when he attempted to break up fight between students were caused by traumatic event, entitling teacher to accidental disability retirement benefits. *Kopack v. Board of Trustees, Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 243.

Teacher injured while travelling to school at normal time was not entitled to accidental disability pension. *Loftus v. Teachers' Pension and Annuity Fund*, 95 N.J.A.R.2d (TYP) 14.

Accidental disability retirement benefits; slip and fall injury was not shown to be traumatic event. *Catarcio v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 99.

Ordinary disability retirement benefits were properly denied when employee failed to meet service requirement; out-of-state service. *Bewley v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 61.

Student's composition directed at teacher did not warrant accidental disability retirement in absence of actual threat. *Kablesh v. Board of Trustees*, 93 N.J.A.R.2d (TYP) 229.

Elementary school teacher with severe back pain entitled to ordinary disability benefits. *Dilascio v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 105.

Third grade teacher injured while restraining violent student permanently and totally disabled by traumatic event qualifying her for accidental disability retirement benefits. *McCulloch v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 66.

Physical assault of teacher constituted a traumatic event within meaning of accidental disability retirement statute. *Malawka v. Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 21.

17:3-6.8 Option selection; accidental disability denied

If an applicant for an accidental disability retirement benefit is rejected for an accidental disability benefit but is approved by the Board for retirement, in accordance with N.J.A.C. 17:3-6.7, the applicant will be permitted, within 30 days following Board approval of the retirement, to amend the option selection, which the applicant made on the original accidental disability retirement application.

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

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

Neutralized gender references throughout.

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

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

Section was "Option selection". Inserted a comma following "selection".

17:3-6.9 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 retirement 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 Fund 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 Fund.

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

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

Deleted the paragraph identifier in (a) and neutralized gender references throughout; deleted (b).

17:3-6.10 Involuntary disability application

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of its employees, 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 pertinent medical documentation;
3. The member has a period of 30 days to contest the involuntary retirement before the Board acts on the employer's application;

4. The member will be required to appear for an examination before a physician designated to conduct such an examination for the Fund;

5. In the event the Board finds that the member is totally and permanently incapacitated for the performance of duty, the member shall be granted the maximum retirement option, if the member does not file a completed "Application for Disability Retirement" setting forth the retirement option the member desires, before the retirement goes into effect; and

6. 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.2002 d.352, effective November 4, 2002.

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

Rewrote the section.

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

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

In (a)1, substituted "Certifying" for "Ccertifying" and deleted "and" from the end.

17:3-6.11 Early retirement; reduction

(a) Retirement with 25 or more years of credited service before the first of the month in which a member attains age 60 shall be classified as "early" retirement unless the member retires on a veteran's retirement allowance.

(b) The statutory reduction of one quarter of one percent applies to each month prior to the month in which the member attains age 55 and for the month in which the member attains age 55 if the member's 55th birthday occurs after the 15th day of the month.

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1974 d.24, effective January 31, 1974.

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

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

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

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

Rewrote the section.

Case Notes

Good cause was shown by school teacher who converted his ordinary disability retirement plan to early service retirement. *Steinmann v. State*, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund, 116 N.J. 564, 562 A.2d 791 (1989).

17:3-6.12 Service retirement; eligibility

A member becomes eligible for "Service" retirement on the first of the month following the member's 60th birthday. At the election of a member, if the member's 60th 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. 18A:66-43(a) and requests that date.

Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).
Rewrote the section.

17:3-6.13 Disability retiree; annual medical examinations

(a) All disability retirees under the normal retirement age of 60 may be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the Fund as of the anniversary date of their retirement, unless such examination requirement has been waived by the Board.

(b) Failure on the part of a retiree to submit to the required medical examination shall result in the automatic suspension of the retiree's retirement allowance until the retiree submits to a medical examination.

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

Amended by R.1998 d.324, effective July 6, 1998.

See: 30 N.J.R. 1027(a), 30 N.J.R. 2515(a).

In (a), deleted "under the normal retirement age," following "retirees" 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.2000 d.236, effective June 5, 2000.

See: 32 N.J.R. 997(a), 32 N.J.R. 2110(a).

Rewrote the section.

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

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

In (a), deleted "under the normal retirement age of 60" following "retirees"; in (b), neutralized the gender references.

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

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

In (a), inserted "under the normal retirement age of 60".

17:3-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)

(a) Pursuant to N.J.S.A. 18A:66-40, if a disability retiree is engaged in gainful employment that does not require reenrollment in the TPAF, then the amount of the retiree's pension benefit and cost-of-living increases based on the pension benefit, but not the annuity benefit, shall be reduced to an amount, when added to the amount then earned, shall not exceed the amount of salary now attributable to the position from which the member retired.

1. For the purposes of determining the amount of salary attributable to the position from which the member retired, the Division shall apply the salary assumption used by the Fund's actuaries in each calendar year of retirement to the retiree's final year's salary.

2. If the retiree can prove through written verification from the former employer that the salary for the position from which the member retired is higher than that assumed under the provisions of (a)1 above, the Division shall use that salary to determine what reduction in benefits should be made.

(b) Earnings from employment in New Jersey shall be obtained through the New Jersey Department of Labor and Workforce Development. For all other earnings the disability retirees shall be required to file a report with the Fund which may include copies of the retiree's IRS 1040 forms and W-2 forms as well as any other proofs of employment requested of a specific retiree indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of the prior year.

(c) If the Department of Labor and Workforce Development or a retiree reports employment and earnings, then the following tests shall be made by the Division:

1. If the retiree is engaged in employment, and the gross earned income for the preceding calendar year exceeds the difference between the pension portion of the retirement benefit and the salary the retiree would have been receiving had the retiree continued to work for the former employer, the retiree shall be billed for the amount of the overpayment. Further, the Division shall assume that the retiree continues to be employed at the same level of salary for the current year. Therefore, a dollar for dollar reduction may be made in anticipation of excess earnings in the current year. If, in the subsequent year, it is determined that the salary earned in the previous year was higher, appropriate repayment to the Fund shall be requested by the Division. If the salary earned was less, then a refund shall be made minus any outstanding amounts owed. If the gainful employment ends, the retiree must notify the Division in order to have the amount of reduction recalculated.

2. If it is found by the Division that gross earned income for the prior calendar year exceeded the difference between the pension portion of the retirement benefit and the salary of the retiree's former position and if the retiree does not refund the excess pension to the Fund within 30 days of notification of the difference, the pension portion of the retirement allowance shall be further reduced in order to recover the overpayment. If the remaining pension portion of the retirement benefit is not large enough to recover the amounts owed after a dollar for dollar reduction has been taken, then the annuity portion of the benefit as well as any death benefits or survivor's benefits shall be reduced by the amounts owed.

3. System interest shall be assessed on any repayment schedules.

(d) Retirees who retired on or before October 1, 1992, and who are age 60 or older, shall be exempt from the above earnings test beginning with the calendar year in which they attain the age of 60. Retirees who retired on or after November 1, 1992 are subject to the earnings test for their lifetime.

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

Amended by R.1998 d.325, effective July 6, 1998.
See: 30 N.J.R. 1028(a), 30 N.J.R. 2515(b).

Rewrote the section.

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

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

Rewrote the section.

Amended by R.2005 d.14, effective January 3, 2005.

See: 36 N.J.R. 4220(a), 37 N.J.R. 89(a).

Rewrote the section.

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

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

In the introductory paragraph of (a), substituted "TPAF" for "Teachers' Pension and Annuity Fund"; and in (a)1, deleted "of Pensions and Benefits (Division)" following "Division".

Case Notes

Initial Decision (2005 N.J. AGEN LEXIS 714) adopted, which held that although a former teacher who was receiving disability retirement benefits may have been unaware of the "earnings test" under N.J.S.A. 18A:66-40a(J-8), which allowed TPAF to reduce the pension of disability retirees if the sum of their disability pensions and their earnings from employment after retirement exceeded the amount of salary they would have earned in the position for which they were retired, actual notice was not required as a condition of its enforcement; N.J.A.C. 17:3-6.4, which permitted the Division to enforce the statute by requesting tax returns each year, existed to assist the Division in administering the enabling legislation, not to limit the Division in the manner in which it may do so. In re Burke, OAL Dkt. No. TYP 8625-04, 2006 N.J. AGEN LEXIS 125, Final Decision (February 3, 2006).

17:3-6.15 Disability retirements; filing after more than two years' discontinuance of service

(a) Following the filing of a disability retirement application, a vested member, who has not withdrawn contributions from the retirement system, and has discontinued service for more than two consecutive years, and who was otherwise eligible for disability retirement at the time service was discontinued, shall be approved to receive disability retirement benefits by the Board, if:

1. The applicant demonstrates to the satisfaction of the Board that the applicant was physically or mentally incapacitated for the performance of duty at the time service was discontinued, and continues to be so incapacitated, with the same disability or disabilities, at the time of filing; and
2. The applicant factually demonstrates to the satisfaction of the Board that service was discontinued because of the disability or disabilities.

(b) A disability retirement application that is filed under this rule may take effect, in accordance with the laws and rules applicable to effective dates for disability retirements, only on or after the date the application is filed.

(c) Disability retirements under this rule shall not be effective prior to February 1, 1999.

New Rule, R.1999 d.35, effective February 1, 1999.

See: 30 N.J.R. 3377(a), 31 N.J.R. 459(a).

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

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

Rewrote (c).

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

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

In the introductory paragraph of (a), (a)1 and (a)2, deleted "of Trustees" following "Board"; in the introductory paragraph of (a), deleted "his or her" following "withdrawn"; and in (a)1, substituted "the applicant" for "he or she".

17:3-6.16 (Reserved)

Repealed by R.1990 d.283, effective June 4, 1990.

See: 22 N.J.R. 329(a), 22 N.J.R. 1740(c).

Section was "Retirement of members age 71 (correction of age)".

17:3-6.17 Approved allowance

When a retirement allowance becomes effective pursuant to N.J.A.C. 17:3-6.2, the type of retirement benefit and option elected shall stand as approved.

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

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

Substituted "retirement benefit and option" for "allowance (maximum or option)".

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

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

Inserted "pursuant to N.J.A.C. 17:3-6.2".

17:3-6.18 Option 1 benefit

The reserve established under the provisions of Option 1 shall be a form of reducing term insurance, as the reserve shall reduce in value by the amount of the retirant's regular monthly allowance, whether received or not, for each month that the retirant survives after the effective date of retirement.

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

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

Inserted "regular" preceding "monthly" and neutralized gender references throughout.

17:3-6.19 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 the member's 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. 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.

New Rule, R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

17:3-6.20 Final compensation; 10 and 12-month members reported monthly

(a) In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made to the Fund for the member's final 30 months, or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

(b) In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly basis under a 12-month contract, the creditable salaries upon which contributions were made to the Fund for the member's last 36 months or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

(c) If a member was reported on any combination of 10 and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
As amended, R.1974 d.24, effective January 31, 1974.
See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).
Amended by R.2002 d.352, effective November 4, 2002.
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

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

In (a) and (b), substituted "of" for "on" following "benefits", deleted "use" following "contract," and inserted " , shall be used".

Case Notes

Applying before retiree's sixtieth birthday precludes special veterans benefits. *Sulzman v. Teacher's Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 19.

Teacher's retirement benefits corrected to reflect calculation on proportional basis where teacher worked both 10 and 12-month contract years. *Anderson v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 132.

17:3-6.21 Determination of last year's salary; veterans paid on a monthly basis

(a) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

(b) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract basis, the member's creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement, or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

(c) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

(d) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, the member's creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement, or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees, shall be used.

(e) If a member was reported on any combination of 10 and 12-month contract years in such months, the last year's salary shall be determined on a proportional basis.

New Rule, R.2002 d.352, effective November 4, 2002.

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

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

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

In (a), (c) and (d), deleted "use" following "contract,"; in (a), (b), (c) and (d), inserted ", shall be used"; in (a), inserted "or in the consecutive 10-month period in which the member achieved the greatest earnings"; in (b), deleted "use" following "contract basis," and inserted "or in the consecutive 12-month period in which the member achieved the greatest earnings,"; and in (c), substituted "10-month period" for "10 month period".

17:3-6.22 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) Such 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 payments of any benefits waived prior thereto.

As amended, R.1973 d.49, effective February 14, 1973.

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

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

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

Inserted paragraph identifiers; in (b), substituted "retired members or beneficiaries" for "person", "retroactive payments" for "payment" and neutralized the gender reference.

17:3-6.23 (Reserved)

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

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

Section was "Teachers' Retirement Fund benefits".

17:3-6.24 Part-time members

The determination of benefits, service credit and final compensation for any person (part-time teacher) who qualified for membership under this chapter shall be done on the same basis as for regular full-time teachers, with the exception that the Board shall reserve the right to review any application where there has been an unusual change in the teacher's status which might result in the payment of an abnormal benefit.

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

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

17:3-6.25 Medical examination; physicians

N.J.S.A. 18A:66-39 and 40 require the Fund 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 (referred to as an "imminent

death" case), if corroborating medical evidence of the diagnosis can be obtained.

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1975 d.140, effective May 27, 1975.

See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).

As amended, R.1977 d.96, effective March 21, 1977.

See: 9 N.J.R. 100(b), 9 N.J.R. 200(a).

As amended, R.1982 d.15, effective February 1, 1982.

See: 13 N.J.R. 749(a), 14 N.J.R. 161(d).

Deleted "in order ... by the fund" and substituted "in the cases ... can be obtained".

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

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

Rewrote the section.

17:3-6.26 Final compensation; biweekly 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 78 biweekly pensionable pay periods will be used, including any retroactive salary payments that are 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."

(c) In computing (a) above in the case of employees reported on a 10-month basis, the total biweekly pay periods will include those pay periods in the third quarter of each year in which the member does not receive a salary. The adjustment as specified in (b) above shall not be made.

(d) If a member was reported on a biweekly basis on any combination of 10- and 12-month contract years, the final average compensation prior to retirement shall be determined on a proportional basis.

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

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

As amended, R.1978 d.104, effective March 21, 1978.

See: 10 N.J.R. 37(c), 10 N.J.R. 176(a).

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

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

Rewrote (a); in (b), deleted "State" preceding "biweekly"; in (c), deleted "state" preceding "employees" and substituted "pay periods" for "pays"; in (d), deleted the last sentence.

17:3-6.27 Determination of last year's salary; veterans reported on a biweekly basis

(a) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a biweekly basis under a 12-month contract, use a

total of 26 biweekly pays, including any across the board retroactive salary payments made within the covered period. The total salary will be adjusted by factors supplied by the actuary to compensate for biweekly payroll schedules.

(b) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a biweekly basis under a 10-month contract, include in the total 26 biweekly pay periods those pay periods in the third quarter of each year in which the member does not receive salary, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees. The adjustment as specified in (a) above shall not be made.

(c) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a biweekly basis under a 12-month contract, use the member's creditable salaries upon which contributions were made in the member's final 26 biweekly pay periods of pensionable service preceding retirement, or in the 26 consecutive pay periods in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees. The total salary will be adjusted by factors supplied by the actuary to compensate for biweekly payroll schedules.

(d) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a biweekly basis under a 10-month contract, use the member's creditable salaries upon which contributions were made in the member's final 26 biweekly pay periods of pensionable service preceding retirement, or in the 26 consecutive pay periods in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees. The total 26 biweekly pay periods will include those pay periods in the third quarter of each year in which the member does not receive salary. The adjustment as specified in (a) above shall not be made.

(e) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the last year's salary prior to retirement shall be determined on a proportional basis.

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

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

As amended, R.1978 d.104, effective March 21, 1978.

See: 10 N.J.R. 37(c), 10 N.J.R. 176(a).

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

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

Rewrote the section.

SUBCHAPTER 7. TRANSFERS

17:3-7.1 Honorable service; 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 the new State-administered retirement system shall disallow the transfer of all or a portion of prior service of any member of the former State-administered retirement system for misconduct occurring during the member's prior public service, which renders that prior service, or part thereof, dishonorable.

(b) A member is eligible to transfer membership from another State-administered retirement system, provided the membership has not expired or has not been withdrawn and provided that all service eligible for participation has ceased.

(c) 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, must file an "Application for 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, full interest included, 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 and a copy forwarded to the old account.

4. The member's service credits established in the present system shall be transferred into 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) unless the member meets the criteria established by P.L. 2001, c. 341 (N.J.S.A. 43:15A-14). P.L. 2001, c. 341 provides that a member of the PERS at the time of enrollment in the TPAF may transfer the non-concurrent PERS service if the member ceased to be an active contributing member of the PERS three or less years from the date of enrollment in the TPAF. The member must apply to transfer this service no more than two years from the date of the last con-

tribution in the PERS unless the member is vested in the PERS, or the member's PERS account has not expired due to the provisions of N.J.S.A. 43:15A-8. A member who transfers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service; or

iii. The account has expired (it has been more than two years from the date of the last contribution, and the member is not vested, nor has the member's account remained active due to the provisions of N.J.S.A. 18A:66-8).

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

(d) The reserves accrued in the present system shall 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.

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

As amended, R.1973 d.49, effective February 14, 1973.

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

As amended, R.1975 d.140, effective May 27, 1975.

See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).

As amended, R.1983 d.78, effective March 21, 1983.

See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).

Sections 7.1 and 7.2 formerly containing rules on PERS and Police and Firemen's and State Police Retirement Systems, were repealed and replaced with new language covering all state-administered systems.

Amended by R.1988 d.122, effective March 21, 1988.

See: 20 N.J.R. 47(a), 20 N.J.R. 672(b).

Added text to (a)5 "has credit in the ..." to replace deleted text "does not make ...".

Added text to (d) "The contribution rate ...".

Correction: Deleted "rate of contribution and" from (a)4.

See: 20 N.J.R. 2482(a).

Amended by R.2001 d.267, effective August 6, 2001.

See: 33 N.J.R. 1506(a), 33 N.J.R. 2677(b).

Rewrote the section.

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

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

In (b)ii, amended N.J.S.A. references.

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

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

In (a), deleted "of Trustees" following "Board", substituted "new State-administered retirement system" for "present System" and "former State-administered retirement system" for "System" and inserted a comma following the second occurrence of "service"; added new (b); recodified former (b) as (c); in (c)5ii, substituted "c. 341" for "c.341" twice, substituted "PERS" for "Public Employees' Retirement System (PERS)" and "TPAF" for "Teachers' Pension and Annuity Fund (TAPF)"; and recodified former (c) and (d) as (d) and (e).

Cross References

Interfund transfers, accumulated interest, see N.J.A.C. 17:1-12.5.

Case Notes

Former employee not entitled to interfund transfer of credit after more than two year separation from employment, despite ongoing litigation with former employer. *Gilbert v. Board of Trustees*, 93 N.J.A.R.2d (TYP) 107.

17:3-7.2 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 pension 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 their contributions;
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;

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

4. The member is not on a leave of absence from the first employer.

(b) To transfer the member's account to the new employer, the new employer should file a Report of Transfer with the Division 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 the report of transfer was received by the Division plus an additional two months for administrative processing time, the employer will be assessed a late enrollment employer liability penalty plus delayed appropriation costs.

New Rule, R.2002 d.352, effective November 4, 2002.

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

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

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

In (a)3, deleted "of Trustees" following "Board"; and in (b), deleted "of Pensions and Benefits" following "Division" in the first sentence.