

CHAPTER 3

TEACHERS' PENSION AND ANNUITY FUND

Authority

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

Source and Effective Date

R.1998 d.578, effective November 13, 1998.
See: 30 N.J.R. 3376(a), 30 N.J.R. 4254(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 3, Teachers' Pension and Annuity Fund, expires on May 11, 2004. See: 34 N.J.R. 1997(a).

Chapter Historical Note

Chapter 3, Teachers' Pension and Annuity Fund, was filed 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 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 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: Source and Effective Date.

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

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

(c) The current rules within Roberts' Rules of Order, effective as of April 4, 1994, as well as future amendments thereto, are adopted and incorporated herein by reference as the source to be used by the Board of Trustees of the Teachers' Pension and Annuity Fund 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).

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 chairman for the forthcoming year at its regular meeting in June.

(b) The chairman of the Board shall preside at all meetings or in the absence of the chairman, such presiding officer as the Board shall determine.

(c) The chairman 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) There shall be three standing committees of three members each:

1. Finance Committee;
2. Retirement Committee; and
3. Procedures and Policies Committee.

(e) The Committee shall be appointed at the June Board meeting by the chairman elect for the forthcoming fiscal year.

(f) The State Treasurer and the person designated to represent the Fund on the State Investment Council shall serve as members of the Finance Committee.

(g) 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.

(h) The Retirement Committee shall consider all cases referred to it by the Secretary and submit its recommendations to the Board at its next meeting.

(i) The Procedures and Policies Committee shall consider all cases referred to it by the secretary and submit its recommendations to the Board at its next meeting.

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

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

17:3-1.4 Election of member-trustee

(a) The Board shall hold an annual convention of delegates of the membership of the Fund each year for the purpose of:

1. Electing a member-trustee to the Board of Trustees;
2. Presenting its annual report; and
3. Conducting a general discussion period on any questions concerning the report or matters pertaining to the Fund.

(b) Such convention shall be held annually at a time and location designated by the Board.

(c) The chairman of the convention will be a member of the Board of Trustees elected by the Board.

(d) The secretary of the Board shall act as the secretary of the convention.

(e) The delegates to the convention must be active members of or former members receiving a retirement allowance from the Fund.

(f) The delegates shall be selected from the membership of each county. The selection date shall be determined by the Board.

1. Notice of the time and place of the county meeting shall be issued by the county superintendent at least 10 days before the date of the meeting.

2. The County Superintendent within five days after the meeting, shall forward to the secretary of the Board a certificate containing the membership numbers, retirement numbers, names, addresses and school districts of the delegates and alternates.

(g) Each county shall be entitled to one delegate for each 550 members employed in or retired from the county or major fraction thereof.

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

(i) The secretary of the Board shall forward to each delegate and alternate his or her identification for admission to the convention, a copy of the election rule, convention agenda, annual report of the Board of Trustees for the preceding fiscal year and the name of the trustee whose term is expiring.

(j) The candidate for trustee must be employed in or retired from one of the counties of the group so designated for electing a trustee that year and must be a resident of New Jersey.

(k) The secretary of the Board shall also notify each delegate and alternate of the names of the candidates to be nominated for trustee that have been registered.

(l) The county grouping for election of 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

(m) The election of a member-trustee shall be for a three-year term beginning the succeeding January 1.

(n) The nominating speech shall be limited to five minutes, with not more than one seconding speech of three minutes.

(o) A candidate to be elected must receive a majority of the total votes cast by the seated delegates or their alter-

nates. In the event no candidate receives a majority, the candidate who has received the least number of votes shall be eliminated. This procedure shall be repeated on each succeeding ballot until one candidate has received a majority of the total vote.

(p) The trustee for the three-year term commencing January 1, 1997, must be employed in a county in Group A; for the three-year term commencing January 1, 1998, in a county in Group B; for the two-year term commencing January 1, 1997, in a county in Group C and so forth. Members elected thereafter shall serve three-year terms.

(q) Only delegates with proper identification will be admitted to the main floor of the convention.

(r) Alternates and visitors shall be seated in a specified area.

(s) The secretary of the convention will conduct a roll call of the delegates. Alternates will be seated in the place of respective county absentee delegates in the order in which they are listed by the secretary of the county meeting:

1. The election of the member-trustee shall require a majority vote among the delegates actually seated in the convention.

(t) A majority of all of the delegates entitled to seats in the convention shall constitute a quorum for transacting the business of the convention.

(u) The minutes of the convention shall be submitted by the secretary for approval at the next annual meeting.

(v) Visitors and alternates not seated at the convention will only be recognized during the convention at the discretion of the chairman.

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

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.

17:3-1.5 Certifying agent (employer)

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

(b) The secretary, as the certifying agent, shall be responsible for the duties prescribed 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 agent for such units.

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

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) 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) All medical testimony obtained in connection with an application for disability retirement shall be restricted for the confidential use of the Board of Trustees.

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 his legal representative:

"If you disagree with the determination of the Board of Trustees in this matter, you may appeal by sending a written statement to the Board within 45 days from the date of this letter informing the Board of your disagreement and all of the reasons therefor. If no such written statement is received within the 45-day period this determination shall be considered final."

As amended, R.1971 d.63, effective April 28, 1971.
See: 3 N.J.R. 48(a), 3 N.J.R. 117(a).

17:3-1.8 Suspension of pension checks

(a) The disbursement of pension checks shall be suspended under the following circumstances and such suspension 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 his 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.

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).

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 Travel

Travel to and from work when it is to and from the regular place of employment is not considered duty rendered in the course of employment for the purpose of determining eligibility for accidental disability or accidental death benefits.

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

Case Notes

Estate of teacher who died as result of fall in parking lot on way to work was not entitled to award of accidental death benefits. *Estate of Matza v. Board of Trustees of Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 224.

17:3-1.11 Proof of age

(a) All members may be required to establish proof of their age with the Fund. A person enrolling in the Fund may be requested to submit proof of his or her age at the time of such enrollment, and will be required to submit such proof of age before a period of six years has been elapsed from the date of enrollment.

(b) In the event a member dies before satisfactory evidence of his or her date of birth has been filed with the Fund, appropriate evidence may be required before any death claim is processed for settlement.

(c) In the event proof of age has not been filed with the 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.

17:3-1.12 State employees; biweekly salaries

(a) Retirement and death benefits as well as service credit will be determined on the basis of biweekly pay periods for State employees paid by centralized payroll.

(b) In the event a member is reported on a combination of monthly and biweekly pay periods, his last year's salary or final compensation as well as his 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).

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

(a) An individual, who is six months or more past his or her most recent birthdate at the time of his or her enrollment will have his or her pension contribution rate and retirement factor based upon the age on his or her next birthday.

(b) Retired members will have their retirement benefits, as well as their survivors' benefits, calculated upon the basis of the factors applicable to their age on their next birthday.

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

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

SUBCHAPTER 2. ENROLLMENT

17:3-2.1 Eligible positions

(a) With the exception of the public institutions and the Department of Higher Education, any person who is appointed by the State or local board of education in the State, as a regular full-time employee to one of the following teaching or professional staff positions shall be required to become a member of the Fund effective as of the date of their employment:

1. Regular teacher;
2. Special teacher;
3. Helping teacher;
4. Teacher-clerk;
5. State Commissioner;
6. Principal;

7. Vice-principal;
8. Assistant principal;
9. Guidance director;
10. School social worker;
11. School physical therapist;
12. Supervisor;
13. Supervising principal;
14. Assistant Commissioner of Education;
15. Director;
16. Superintendent;
17. City Superintendent;
18. Assistant city superintendent;
19. Teacher-counselor;
20. School nurse;
21. School psychologist;
22. County superintendent;
23. School administrator;
24. Subject supervisor;
25. Librarian;
26. Music teacher;
27. Recreation director;
28. Coordinator;
29. Coordinator for distributive education;
30. Guidance and placement counselor;
31. Vocational supervisor;
32. Assistant superintendent in charge of business;
33. General supervisor of instruction;
34. General secondary supervisor;
35. General elementary supervisor;
36. Assistant subject supervisor;
37. School occupational therapist;
38. Speech therapist;
39. Vocational administrator;
40. Vocational trade and industrial coordinator;
41. Vocational trade and industrial teacher;
42. Director, administrator or supervisor of guidance and student personal services;
43. School business administrator;
44. Learning disability specialist.

(b) Any person coming under the definition of “teacher”, who is appointed to a regular full-time position in the following schools, shall be eligible for enrollment:

1. The Accredited Evening High Schools at Camden, East Orange, Newark, Bayonne, Jersey City, Trenton, Woodbridge, Asbury Park and Morristown. A minimum of five periods per evening is required to qualify as a full-time employee.

2. Belleville Cerebral Palsy Center.

(c) If a person, who is employed under the Federal Elementary and Secondary Education Act of 1965, meets all three of the following prerequisites, he shall be eligible for enrollment in the fund:

1. He is a regular full-time employee of the board of education;

2. He is appointed to a position which comes within the classification of “teacher;”

3. He has a valid certificate of the State Board of Education for the position that he holds under the Federal Act.

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;”

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 title which does not specifically appear in section 2.1 (Eligible positions) of this chapter, in order to determine such person’s eligibility for enrollment, his employer shall be required to support the enrollment application with a statement setting forth the duties, qualifications, tenure rights and State Board Certification requirements of the position.

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 Full-time

(a) A “teacher” employed under a regular annual contract and performing all the duties required of the position, although he may only work part of the day every day or only two or three days every week shall be considered a full-time employee subject to enrollment in the Fund.

(b) The same provision shall also apply with respect to a “teacher” employed by two or more boards of education where the combined employment constitutes full-time employment. Such a “teacher” must enroll in each of his positions.

(c) The compulsory enrollment of “teachers” coming under this rule was not effected until January 1, 1956. Any employee, other than a veteran, who was employed under these circumstances prior to January 1, 1956 was given the option to enroll or not enroll and he shall continue to retain this option provided there has been no change in his employment since January 1, 1956.

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 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 his 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 his 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).

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 Ineligible positions; interim appointment to Boards of Education

(a) Any person whose benefit has become due and payable as provided by N.J.A.C. 17:3-6.3 from the Teachers' Pension and Annuity Fund who is temporarily appointed to any position listed in N.J.A.C. 17:3-2.1 or the functional equivalent thereof shall be ineligible for enrollment in the retirement system if the total time for all interim appointments with one board of education does not exceed six months. If the total time for all the interim appointments with one board of education exceeds six months, the individual shall be declared an employee for pension purposes and shall be enrolled in the Fund effective the first day of the seventh month of service.

(b) At the TPAF Board's discretion, an extension of no more than six months of service with one board of education may be granted on a case-by-case basis. The retired member must submit the request for an extension. Factors to be considered by the TPAF Board when considering an extension include, but are not limited to, the following:

1. The availability of an on-site replacement;
2. External factors such as:
 - i. Pending litigation;
 - ii. Medical leaves/death;
 - iii. Construction/reconstruction;
 - iv. Disasters; and
 - v. Rapid turnover of interims in the position;
3. The degree of student contact;
4. Whether a contract has been issued for the position (interim to fill gap until new hire is able to start position);
5. The time of year; and
6. The board of education's policy on hiring including:
 - i. Quality of search;
 - ii. Length of search; and
 - iii. Rejection factors.

New Rule, R.1999 d.430, effective December 20, 1999.

See: 31 N.J.R. 2708(a), 31 N.J.R. 4293(a).

Amended by R.2001 d.373, effective October 15, 2001.

See: 33 N.J.R. 2400(a), 33 N.J.R. 3669(b).

In (a), added the designation and substituted "whose benefit has become due and payable as provided by N.J.A.C. 17:3-6.3" for "retired"; added (b).

17:3-2.7 Enrollment following deferred retirement

(a) The membership account under which a member elected deferred retirement, who resumes regular service prior to the normal retirement age, shall be reinstated.

1. He shall be assigned his original rate of contribution if he resumes service before a period of two years has elapsed since he last made a contribution to his account.

2. If there has been a lapse of more than two years, a commuted rate shall be assigned. Such commuted rate of contribution shall be determined by adding the lapsed period to his age as of the date of his original enrollment.

As amended, R.1980 d.103, effective March 5, 1980.
See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

17:3-2.8 (Reserved)

The rule formerly at this cite was entitled "Insurance liability for unenrolled members." It was repealed by R.1983 d.439, effective October 17, 1983. See: 15 N.J.R. 1177(a), 15 N.J.R. 1773(a).

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:3-3.1 Compulsory and optional enrollment

(a) For the purpose of contributory insurance, all eligible compulsory enrollees 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 of all compulsory enrollees who filed an enrollment application beyond the year they first became eligible for membership in order to qualify for non-contributory and contributory insurance coverage.

(b) Optional enrollees may qualify for non-contributory 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 he became eligible for enrollment, evidence of insurability will be required for noncontributory and contributory coverage.

(c) One year of insurance premiums will be required from the date the member's insurance premiums are effective, whereas insurance benefits will be effective on the date the member is enrolled in the System.

(d) 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 him that he must prove insurability by taking 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.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).

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 Participation in the program

(a) Participation in the program for members who obtained contributory insurance coverage on or after July 1, 1971, means the sum of the years of service credited for retirement purposes at the time of retirement.

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

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.

17:3-3.3 Computation of insurance benefits

(a) Any member who is reported on a 10-month basis and who has not resigned or been discharged, shall be covered by his insurance benefits for the months of July and August provided he has filed a contract of employment for the next school year, or where the member has tenure. The death benefits shall be based on the base salary upon which contributions to the Annuity Savings Fund were actually made during the 12-month or 26 biweekly pay periods immediately preceding his death. The salary, in the month or biweekly pay period in which no salary was paid, shall be counted as zero.

(b) Full salary credit will be given for the month or biweekly pay period in which a member dies, if he was paid salary to date of death and the salary paid was sufficient to permit a full normal month's or biweekly pension and insurance contribution deduction provided such deduction was made by the employer.

(c) If a member dies within the first year following the date of his enrollment, the contributory insurance benefit shall be two times the member's annual base salary on which he contributed or would have contributed immediately prior to his death. The noncontributory insurance benefit shall be 1½ 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.

(d) For a member dying after the first year following his date of enrollment, both noncontributory and contributory insurance benefit shall be determined on the base salary on which contributions to the Annuity Savings Fund were made or would have been made during the 12-month or 26 biweekly pay periods preceding death.

(e) If a member has contributed pension contributions for less than a year but his enrollment has been in effect for more than a year, only those wages upon which pension contributions were based can be used as salary to determine the value of the noncontributory insurance benefit, whereas the contributory insurance benefit will be based on the member's annual salary on which he last contributed.

(f) Where a post-audit of insurance claim payments indicates the pension contributions reported by an employer were incorrect and resulted in the overpayment of an insurance claim to a member's designated beneficiary or estate, the employer will be billed for the value of the overpayment of the insurance benefits. Where post-audits establish the insurance benefits were underpaid, an additional check would 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 or received during their last year (ten and 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 State employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by multiplying the total by the factors supplied by the actuary; such adjustment will compensate for State biweekly payroll schedules.

(j) In computing subsection (i) of this Section in the case of State employees reported on a ten-month basis, the total biweekly pays 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 subsection (i) of this Section shall not be made.

(k) If a member was reported on a biweekly basis on any combination of ten and 12-month contract years, the last year's salary prior to death or retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

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).

17:3-3.4 Contributory insurance rate

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

As amended, R.1980 d.175, effective April 21, 1980.
See: 12 N.J.R. 157(e), 12 N.J.R. 354(a).

17:3-3.5 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.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

17:3-3.6 Leave for illness

(a) 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 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).

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.

17:3-3.7 Survivor benefits

(a) Payment of benefits to eligible survivors shall become effective on the first of the month of the member's death and shall terminate as of the month in 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 immediately preceding 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).

17:3-3.8 Withdrawal application; contributory insurance

A properly executed contributory insurance withdrawal application must be in the possession of the Fund before termination of contributory insurance can be effected. Such withdrawal application cannot be retroactive.

17:3-3.9 Withdrawal and return; contributory insurance

(a) Withdrawal from contributory insurance coverage shall apply only to the membership account under which the cancellation was exercised.

(b) A person, who has cancelled his contributory insurance coverage and withdraws from membership in the Fund, shall, upon his subsequent reenrollment in the Fund, be subject to provisions of Section 3.1 (Compulsory and optional enrollment) of this Chapter.

17:3-3.10 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.

17:3-3.11 Contributory insurance premiums; leave of absence

(a) Contributory insurance coverage will be in effect while a member is on an official leave of absence without pay for the following reasons:

1. To fulfill a residency requirement for an advanced degree;
2. As a full-time student at an institution of higher education; and
3. Up to 93 days while on an official leave for any other reason, provided insurance premiums are paid in advance of the date the leave was granted.

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

17:3-3.12 Beneficiary designation; pension contributions

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

(b) Multiple members of a retirement system are required to file new beneficiary forms when the beneficiary nomination on the multiple enrollment forms do not agree.

(c) All beneficiaries must be specifically named. The designation—"children", unless otherwise qualified by the member, shall mean all individuals, including natural or adopted children, entitled to take from the member by the New Jersey law of interstate succession, N.J.S.A. 3A:2A-1 et seq., and excludes all persons who are only stepchildren, foster children, grandchildren or any more remote descendants.

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.

17:3-3.13 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 withdraws 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 active 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.

17:3-3.14 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 Teachers' Pension and Annuity Fund 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 retirement system 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).

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. For purposes of this section:

1. "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; and

2. "Extra compensation" means individual salary adjustments which are granted primarily in anticipation of a member's retirement or as additional remuneration for performing temporary duties beyond the regular work day or work year. 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 granted for retirement credit;
- x. Increments or adjustments in recognition of the member's forthcoming retirement;
- xi. Any form of compensation which is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement or employment;
- xii. Retroactive increments or adjustments made at or near the end of a member's service, unless the adjustment was the result of an across-the-board adjustment for all similarly situated personnel;
- xiii. Any form of compensation which is not included in a member's base salary during some of the member's service and is included in the member's base salary upon attainment of a specified number of years of service;
- xiv. Compensation paid for coaching sports;
- xv. Compensation paid for teaching summer school;
- xvi. Compensation paid for performing clerical or other duties;
- xvii. Compensation in the absence of services;
- xviii. Compensation paid for working during vacation periods; and
- xix. Compensation paid for serving as a bedside instructor or for leading extracurricular activities.

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

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

(d) With respect to all claims for benefits, the Division of Pensions and Benefits shall investigate increases in compensation reported for credit which exceed 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 Teachers' Pension and Annuity Fund;

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 sixth period shall be reported in regular, periodic installments in accordance with the payroll cycle of the employer.

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".

Law Review and Journal Commentaries

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

Case Notes

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).

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

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 for such leave shall not extend beyond six months. If the leave with pay extends beyond six months, the member will receive credit and will be required to make contributions only if he is receiving 50 percent or more of his 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).

17:3-4.3 School year members

(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 credit shall be given during any consecutive 12 months.

(b) 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 Teachers' Pension and Annuity Fund 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 Teachers' Pension and Annuity Fund 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).

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 \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, 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.

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 \$3.00 or less.

17:3-4.7 Excess contributions

Excess contributions left on deposit in the Annuity Savings Fund under the provisions of N.J.S.A. 18A:66-20 must remain in the fund until the member's death or retirement.

17:3-4.8 Military leave

(a) Military leave 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 he 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 he 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).

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, and the maximum loan shall be 50 percent of the accumulated deductions posted to the member's account.

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

17:3-4.10 Waiver required

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 he is waiving in favor of withdrawal, before his application for withdrawal may be processed.

17:3-4.11 Termination; withdrawal

(a) Under the terms of the statute a member may withdraw from the fund only if he terminates all employment.

(b) No application shall be approved, if:

1. The member is on official leave of absence and his membership is subject to continuance under N.J.S.A. 18A:66.8;
2. The member certifies that his employment contract has not expired, or that he 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 he has formally resigned from his position or there is no legal action contemplated or pending and the dismissal has been adjudged final;
4. A multiple member has not terminated employment in all covered positions;
5. The member has a claim pending for Workers' Compensation benefits.

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).

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 deduction shall be taken for the TPAF in any payroll period in which the member is paid a sufficient amount to make a full normal deduction, plus any other arrears or loan deductions then in effect.

(b) No deduction shall be taken in any pay period 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).

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 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).

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE
17:3-5.1 Eligibility for purchase

(a) Only active members of the Fund 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 written 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.

(c) The receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. Therefore, the Board of Trustees shall disallow the purchase of all or a portion of former service it deems to be dishonorable in accordance with N.J.S.A. 43:1-3.

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

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).

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 purchases or rates adjustment

(a) Members who file an application for enrollment and indicate they want to purchase the period between their regular appointment and their compulsory date of enrollment will have such purchase calculated on the basis of their net pension rate of contribution and salary as of their date of their regular appointment. If more than one year has elapsed from the date of compulsory enrollment, the purchase of all service will be based on the member's current salary times the full pension rate of contribution.

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

17:3-5.3 Reestablishing military leave credit

Any veteran, who terminated membership before January 1, 1955, and whose withdrawal of contributions included contributions paid by his employer during a period of military leave, shall receive veteran prior service credit for only the period during which he actually contributed. He can receive additional membership credit for the period of his military leave if he redeposits the amount of employer contributions, plus regular interest to the date of his authorization of such purchase.

17:3-5.4 Compulsory purchases

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

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. After August 6, 2001, continuous temporary or substitute service as a teacher immediately preceding enrollment;
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 Public Employees' Retirement System 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. 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 entitled to receive a retirement allowance for such service from any other public retirement system and provides proof to the Division of Pensions and Benefits that the member has withdrawn from such other system. A qualified veteran shall be eligible to purchase an additional five years of military service rendered during periods of war for an aggregate of 15 years of such service.

(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.

See: 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.

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 include the following:

1. Lump sum;
2. Partial lump sum; balance by extra payroll deductions;
3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years;
4. Extra payroll deductions will include regular interest for the term of the installment.

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".

17:3-5.7 Military leave

Any active member purchasing credit for out-of-State service may include in the maximum 10 years' credit to be purchased, his leave of absence for military service, provided he received credit for such leave in the State or local public retirement system in which he was participating at the time he was in military service.

17:3-5.8 Service ineligible for purchase

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, is not purchasable.

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.

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 Teachers' Pension and Annuity Fund Law (N.J.S.A. 18A:66-1 et seq.) and the rules of the retirement system.

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.

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 of Pensions and Benefits (Division) on or before the requested date of retirement. A member's retirement application becomes effective on the first of the month following receipt of the application unless a future date is requested. 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) 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 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.

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

(e) 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 (d) 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.

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.

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; changes

(a) A member shall have the right to withdraw, cancel or change an application for retirement at any time before his retirement allowance becomes due and payable; thereafter the retirement shall stand as approved by the Board.

(b) Except in the event of deferred retirement, if a member requests a change in his retirement application before his 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) If the applicant should die within 30 days following the date the Board of Trustees approved the revised application, the member shall be considered to be retired on the basis of the originally approved application for retirement, provided that the initial 30-day requirement was satisfied.

(d) A deferred retirement shall become effective on the first of the month following the member's 60th birthday.

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

(f) Should the member continue to receive a salary beyond the effective date of retirement after approval of the retirement by the Board of Trustees, 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 approved, effective date of retirement.

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.

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.

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).

17:3-6.3 Effective date; death prior thereto

(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.

(b) A member, who has applied for a retirement allowance, who dies before his retirement allowance becomes due and payable shall not be covered by insurance as a retired member.

(c) An in-service insurance benefit will be payable if the member's insurance coverage was in effect immediately prior to his retirement date.

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).

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 interest, as follows:

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:3-6.3;

2. By retention of retirement benefit payments, excluding authorized deductions, by the Fund until the loan balance, with interest, is repaid.

i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal and State income tax withholding; or

3. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with interest, is repaid as authorized by P.L. 1999, c.132. If the member does not request repayment in full, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(b) If a retirant dies before the loan balance, with interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments or the balance of the Option I 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".

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 Retirement credit

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

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary

increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

Amended by R.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).

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.

17:3-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by his 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 member was under the normal retirement age at the time of filing application for a disability retirement allowance; and
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 his regular or assigned duties; and
4. The member meets the service requirement for ordinance disability.

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

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

Case Notes

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

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

17:3-6.9 Employer and employee notices

(a) 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 his 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 his 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 by both the employee and his employer.

(b) Both the employer and the employee will also be advised that a copy of such notice will be placed in the member's file and will be given full consideration in any future claim for disability retirement benefits.

17:3-6.10 Employer application; employee notice

(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 his employees, the member will be promptly notified by letter that:

1. His employer has initiated a disability application, on the member's behalf; and
2. His employer has certified that the member is permanently and totally disabled for the continued performance of duty; and, if appropriate;
3. His employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties;
4. He has a period of 30 days to contest his involuntary retirement before the Board acts on his employer's application;
5. He will be required to appear for an examination before a physician designated to conduct such an examination for the Fund; and
6. In the event the Board finds that he is totally and permanently incapacitated for the performance of duty, he shall be granted the maximum retirement allowance (without option) payable under the statute, if he (the member) does not file a completed "Application for Disability Retirement Allowance" setting forth the type of allowance he desires, before his retirement goes into effect; and
7. In the event the Board finds that he 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.

17:3-6.11 Early retirement benefit

(a) The statutory reduction of $\frac{1}{4}$ of one per cent 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 his 55th birthday occurs on or after the 15th day of the month.

(b) Retirement on the first of the month in which a member attains age 55 shall be classed as "early" retirement, although a reduction is not applied if his 55th birthday occurs before the middle of such 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).

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 his 60th birthday.

17:3-6.13 Disability retirant; annual medical examinations

(a) All disability retirants 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 retirant to submit to the required medical examination shall result in the automatic suspension of his or her retirement allowance until he or she 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 "retirants" 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.

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

(a) All disability retirants shall be required to file a report with the Fund which shall include copies of the retirants' IRS 1040 forms and W-2 forms as well as any other proofs of employment requested of a specific retirant indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of each year.

1. Such report shall be filed with the Fund before the following April 30.

2. Failure on the part of the retirant to file a completed report with the Fund before April 30 shall result in the presentation of the retirant's case to the TPAF Board of Trustees who may impose penalties or suspend the retirant's entire retirement allowance for the period the report is in default.

(b) If a retirant reports employment and earnings, then the following tests shall be made by the Fund to ascertain:

1. Eligibility for reenrollment: If the retirant is engaged in a position subject to coverage by the Fund, the retirement allowance shall be canceled and the retirant

shall be reenrolled in the Fund pursuant to N.J.S.A. 18A:66-40c, effective as of the date of the retirant's appointment to such contract. Any disability retirement benefits received after this date of appointment shall be refunded to the System.

2. Adjustment of allowance:

i. If the retirant is engaged in employment and the gross earned income for the preceding calendar year exceeds the difference between the pension and the salary the retirant would have been receiving had the retirant continued to work for the former employer (normal increment steps and salary guide revisions will be considered but no promotional assumptions will be made), an appropriate adjustment to the pension for the period will be made by such difference.

ii. If it is found, on or after April 30, that gross earned income for the calendar year exceeded the difference between the pension and the salary of the former position and if the retirant does not refund the excess pension to the Fund within 30 days of notification of the difference, the pension for the succeeding 12-month period will be reduced by the excess pension received in the preceding calendar year.

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.

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 his or her 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 of Trustees, if:

1. The applicant demonstrates to the satisfaction of the Board of Trustees that he or she 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 of Trustees 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) This rule shall be applicable to all vested members and former members whose retirements were effective prior to February 1, 1999, but 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).

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, the type of allowance (maximum or option) elected shall stand as approved.

17:3-6.18 Option "I" benefit

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

17:3-6.19 (Reserved)

Repealed by R.2000 d.100, effective March 20, 2000.

See: 31 N.J.R. 4234(a), 32 N.J.R. 1047(a).

Section was "Maximum allowance prescribed".

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

(a) In order to determine the final compensation (three-year average) for benefits on a:

1. Member reported on a monthly basis under a ten-month contract, use the creditable salaries upon which contributions were made to the Fund for his final 30 months of service.

2. Member reported on a monthly basis under a 12-month contract, use the creditable salaries upon which contributions were made to the Fund for his last 36 months of service.

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

(c) The months for which no contributions were made shall be counted as zero.

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).

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 (veteran one-half pay retirement)

For a member reported on a monthly basis under a 10-month contract, use the member's final 10 months of creditable salaries upon which contributions were made for the period immediately preceding retirement; on a 12-month contract basis, his or her final 12 months of service; combination of 10- and 12-month contracts, 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.1985 d.547, effective November 4, 1985.

See: 17 N.J.R. 2239(a), 17 N.J.R. 2674(a).

Substantially amended.

17:3-6.22 Waiver

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. Such person may cancel the waiver effective as of the first day of any month subsequent to the receipt of the notice of cancellation; however, he may not make a claim for payment 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).

17:3-6.23 Teachers' Retirement Fund benefits

All Teachers' Retirement Fund benefits payable under the provisions of N.J.S.A. 18A:69-49 shall be exempt from consideration where the term "pension" is employed when referring to the suspension of the pension portion of a member's retirement allowance.

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 Section 2.3 (Full time) of 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.

17:3-6.25 Medical examinations; physicians

Where the statute prescribes that a physician be designated by the Fund to perform a medical examination, such

physician shall be selected from the current membership directory of the Medical Society of New Jersey and the New Jersey Association of Osteopathic Physicians and Surgeons; however, in the cases of those members whose personal physician has identified them as having a probable abbreviated life expectancy, such "imminent death" cases may be processed without the necessity of an examination by a physician designated by the Fund 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".

17:3-6.26 Final compensation; biweekly salary computation for State employees reported by centralized payroll

(a) In computing "final compensation" upon which pension contributions were based, in the case of a 12-month State employee reported on a biweekly basis, a total of 78 biweekly pays will be used, including any retroactive salary payments made within the prescribed 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 State 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 State 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 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. The biweekly pay periods for which no contributions were made shall be counted as zero.

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).

17:3-6.27 Determination of last year's salary; State employee veterans reported by centralized payroll

(a) In computing the salary upon which pension contributions were based during a member's last year of service in the case of a 12-month State employee reported on a biweekly basis, a total of 26 biweekly pays will be used,

including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by factors supplied by the actuary to compensate for State biweekly payroll schedules.

(b) In computing (a) above, in the case of State 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 the member does not receive salary. The adjustment as specified in (a) above, shall not be made.

(c) If a member was reported on a biweekly basis on any combination of ten and 12-month contract years, the last year's salary prior to death or retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

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).

SUBCHAPTER 7. TRANSFERS

17:3-7.1 Interfund transfers; State-administered retirement systems

(a) The receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. Therefore, the Board of Trustees of the present System shall disallow the transfer of all or a portion of prior service of any member of the System for misconduct occurring during the member's prior public service which renders that prior service, or part thereof, dishonorable.

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

1. A member, desiring to transfer service credit and contributions from one State-administered retirement system to another, 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.6 (N.J.S.A. 43:15A-14). P.L. 2001, c.6 provides that a member of the Public Employees' Retirement System (PERS) at the time of enrollment in the Teachers' Pension and Annuity Fund (TPAF) may transfer the non-concurrent PERS service if the member ceased to be an active contributing member of the PERS two 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 contribution 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.

(c) 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.

(d) 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.

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 (Reserved)

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

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

Section deleted.