

CHAPTER 4

POLICE AND FIREMEN'S RETIREMENT SYSTEM

Authority

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

Source and Effective Date

R.1996 d.166, effective April 1, 1996.
See: 27 N.J.R. 4270(a), 28 N.J.R. 1873(a).

Executive Order No. 66(1978) Expiration Date

Chapter 4, Police and Firemen's Retirement System, expires on April 1, 2001.

Chapter Historical Note

Chapter 4, Police and Firemen's Retirement System, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 4 was readopted as R.1990 d.329, effective June 8, 1990. See: 22 N.J.R. 908(a), 22 N.J.R. 2032(b). Chapter 4, Police and Firemen's Retirement System, expired on June 8, 1995 pursuant to Executive Order No. 66(1978).

A new Chapter 4, Police and Firemen's Retirement System, was adopted as R.1996 d.166, effective April 1, 1996. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ADMINISTRATION

- 17:4-1.1 Board meetings
- 17:4-1.2 Fiscal year
- 17:4-1.3 Officers and committees
- 17:4-1.4 Election of member-trustee
- 17:4-1.5 Certifying agent (employer)
- 17:4-1.6 Records
- 17:4-1.7 Appeal from Board decisions
- 17:4-1.8 Suspension of pension checks
- 17:4-1.9 State employees; biweekly salaries
- 17:4-1.10 Survivor benefits; establishing dependency
- 17:4-1.11 Travel
- 17:4-1.12 Proof of age
- 17:4-1.13 Election of retired member-trustee

SUBCHAPTER 2. ENROLLMENT

- 17:4-2.1 Eligible positions
- 17:4-2.2 Compulsory enrollment
- 17:4-2.3 Medical requirements
- 17:4-2.4 (Reserved)
- 17:4-2.5 Age requirements
- 17:4-2.6 Enrollment date

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

- 17:4-3.1 Computation of insurance benefits
- 17:4-3.2 Leave for illness
- 17:4-3.3 Proof of insurability
- 17:4-3.4 Survivor benefits
- 17:4-3.5 Beneficiary designation; pension contributions
- 17:4-3.6 (Reserved)

SUBCHAPTER 4. MEMBERSHIP

- 17:4-4.1 Creditable compensation
- 17:4-4.2 Prior service
- 17:4-4.3 Continuance of membership; transfer

- 17:4-4.4 Loan tolerance
- 17:4-4.5 Deductions
- 17:4-4.6 Minimum adjustment
- 17:4-4.7 Suspension
- 17:4-4.8 Military leave
- 17:4-4.9 Eligibility for loan
- 17:4-4.10 Termination; withdrawal
- 17:4-4.11 Active employment; membership requirement

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

- 17:4-5.1 Temporary service
- 17:4-5.2 (Reserved)
- 17:4-5.3 Optional purchases of eligible service
- 17:4-5.4 Methods of repayment
- 17:4-5.5 Reinstatement of membership credit
- 17:4-5.6 Elected officials; continuation of membership
- 17:4-5.7 Lump-sum purchases

SUBCHAPTER 6. RETIREMENT

- 17:4-6.1 Applications
- 17:4-6.2 Effective dates; changes
- 17:4-6.3 Effective date; death prior thereto
- 17:4-6.4 Outstanding loan
- 17:4-6.5 Willful negligence
- 17:4-6.6 Retirement credit
- 17:4-6.7 Disability determination
- 17:4-6.8 (Reserved)
- 17:4-6.9 Average final compensation; 10 and 12-month members
- 17:4-6.10 Employer disability application; employee notice
- 17:4-6.11 Service or special retirement; eligibility
- 17:4-6.12 Disability retiree; annual medical examinations
- 17:4-6.13 Medical examinations; physicians
- 17:4-6.14 Compulsory retirement
- 17:4-6.15 Employer and employee notices
- 17:4-6.16 Average final compensation; biweekly salary computation for State employees reported by centralized payroll
- 17:4-6.17 Work-related travel; accidental disability retirement and accidental death benefit coverage

SUBCHAPTER 7. TRANSFERS

- 17:4-7.1 Interfund transfers/State-administered retirement systems
- 17:4-7.2 (Reserved)
- 17:4-7.3 Intrafund transfers

SUBCHAPTER 1. ADMINISTRATION

17:4-1.1 Board meetings

The Board of Trustees shall meet on the third Monday of each month, unless a change is declared in order by the chairman at an appropriate time.

17:4-1.2 Fiscal year

(a) Fiscal year shall mean the 12-month period of fiscal transactions commencing July 1 and running until June 30 following.

(b) All reports and statements will consider such a fiscal year except special reports not having direct relationship to the financial transactions of the retirement system.

17:4-1.3 Officers and committees

(a) The chairman and vice chairman of the Board will be elected by a majority vote of the members in attendance at the first meeting of each fiscal year, not less than five members to be present at such a meeting.

(b) The chairman of the Board shall preside at all meetings that he or she attends and in his or her absence the vice chairman or, if absent, another member selected by the majority of the members in attendance will preside for that single meeting.

(c) The secretary of the Board will be the Chief of the Bureau of Police and Fire Funds, Division of Pensions.

(d) Upon recommendation of the Chief, the Board will also select from the staff of such Bureau, an assistant secretary who will serve in the absence of the secretary.

(e) The chairman will appoint such committees from the Board members as he deems necessary to facilitate the Board's operations. Such committee appointments will be for a one year period, commencing each July 1.

17:4-1.4 Election of member-trustee

(a) The procedures for the election of a police or fire trustee representative to the Board of Trustees are set forth in this section.

(b) Eligible candidates shall include any active or retired member of the Police and Firemen's Retirement System. Only police members may seek police seats and only fire members may seek firemen seats on the Board of Trustees. All candidates shall comply with any and all requirements as provided by law and these rules. Any candidate who fails to comply with the law and these rules is automatically disqualified as a candidate.

(c) The following apply to election notices:

1. At least four months prior to the expiration of the term of each elected trustee or immediately upon a vacancy on the Board, a notice shall be prepared and distributed by the Secretary of the Board through the certifying officers to each member who is eligible to vote. The notice shall also inform the members that petition forms are available at the office of the retirement system.

2. The election notice shall also:

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

3. Election notices shall be forwarded in bulk and in appropriate number to the certifying officer or other appropriate fiscal officer of each employing agency, together with instructions as to who is to receive the notices.

4. A receipt and report shall also be forwarded to each certifying officer or appropriate fiscal officer. Such form shall be returned to the Secretary and shall include documentation of:

i. Receipt of the notice by the certifying officer or other appropriate fiscal officer; and

ii. The extent to which the certifying officer or other appropriate fiscal officer has distributed the notice to eligible members.

5. Election notices shall be distributed to each member who is eligible to vote, as shown on a master list of members that shall be compiled by the Secretary and made available for review to any candidate at the office of the Division of Pensions and Benefits. Any challenge or questions concerning eligible voters shall be made prior to the close of the voting deadline. Failure to challenge the list or any part of it prior to this deadline shall disallow any challenge or question raised after the close of voting.

(d) The following apply to nominating petitions:

1. Nominating petition forms shall be available at the office of the Secretary of the Police and Firemen's Retirement System.

2. Nominating petitions shall be forwarded to each active or retired member requesting them.

3. The petition forms shall explain that:

i. For police trustee, at least 500 active police members, who are eligible to vote for the position, are required to sign the petition for the candidate.

ii. For fire trustee, at least 300 active fire members, who are eligible to vote for the position, are required to sign the petition for the candidate.

4. The petition form shall require the candidate's name and employer, and the membership number or Social Security of each petitioner.

5. The form shall explain that a member shall sign only one petition, with police members petitioning for a police candidate and fire members petitioning for a fire candidate.

6. The dates for filing and returning the petitions shall be identified, as well as the approximate date that ballots shall be sent to employers for distribution to voters.

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

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

(e) The following apply to distribution of ballots:

1. For each eligible voter, there shall be forwarded to the certifying officer a ballot which shall include the following information and instructions:

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

2. The ballot positions shall be determined by a drawing conducted at a time and place determined appropriate by the Secretary of the retirement system. All candidates shall be invited to attend such a drawing.

3. The ballots, together with postage-paid return envelopes, shall be distributed by the certifying officers.

4. A receipt shall be signed by each certifying officer, acknowledging the receipt and distribution of the ballots.

5. The instructions shall also advise that the signature identifying the voter shall be severed from the ballot before it is removed from the envelope, thus assuring a secret ballot.

6. Failure to sign a ballot or voting for more candidates than instructed shall be cause for rejection of the ballot.

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

8. The candidate receiving the highest number of legal votes shall be elected to the position.

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

10. The candidates whose names are printed upon the ballots shall be informed as to the method and the date of counting the ballots and shall be invited to be present or to be represented at the counting of the ballots.

(f) The following apply to biographical information:

1. An informational sheet of biographical information regarding each candidate shall be prepared by the Division of Pensions and Benefits. The information regarding each candidate shall be submitted by the candidate and the informational sheet shall also be approved by the Board of Trustees.

2. The Secretary shall inform each candidate that a background may be included with or upon the ballot and provide them with the opportunity to submit information regarding such material.

3. If not included upon the ballot, the biographical information shall be distributed to the certifying officer of each employing agency at the time of distribution of ballots or notice of election without balloting or otherwise distributed as approved by the Board of Trustees so that the members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

4. Copies of the informational sheet shall be distributed to the certifying officer of each employing agency at the time of distribution of ballot or notices of election without balloting.

5. The informational sheets shall be posted at appropriate places throughout the workplace of each employing agency or be otherwise distributed as approved by the Board of Trustees so that the members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

(g) The following apply to recount procedures:

1. Any candidate or member, who shall have reason to believe that an error has been made in counting or declaring the vote, may, within 20 days of the certification of the results of the election, request, in writing, that the Board of Trustees shall, at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such hearing, any member of the Board, who is a candidate on the contested ballot, shall not vote in the Board's decision on the request. Each candidate on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support his or her beliefs.

2. If a candidate or other interested party requests a recount within the prescribed time, this request shall be granted if a recount could possibly affect the results of the election. All ballots received shall then be recounted and the recount shall be supervised by the election board. The election board shall certify the results of the recount to the Board of Trustees. If a recount is not requested within 20 days, the ballots may be destroyed.

3. Upon election and the taking of an oath of office, police and fire member trustees shall serve for a term of

four years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board of Trustees.

17:4-1.5 Certifying agent (employer)

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

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

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

17:4-1.6 Records

(a) The minutes of the Board are a matter of public record and may be inspected during regular business hours in the office of the Board secretary.

(b) The mailing addresses of all active and retired members are considered to be a part of the member's confidential files and shall not be released for any purpose.

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

17:4-1.7 Appeal from Board decisions

The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination is contrary to the claim made by the claimant or his or her 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 disagreements and all of the reasons therefor. If no such written statement is received within the 45-day period, this determination shall be considered final."

17:4-1.8 Suspension of pension checks

(a) Monthly retirement allowances will be suspended under the following circumstances and the suspension will continue during the period of default:

1. If a disability retiree fails to appear for a medical examination;
2. If a widow, widower, parent or guardian of a minor child(ren) fails to file a certificate of eligibility which is normally mailed to such beneficiaries on an annual basis;

3. 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.

17:4-1.9 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.

17:4-1.10 Survivor benefits; establishing dependency

(a) Proof of dependency shall be established by the filing of an affidavit of dependency, supported by the deceased and the claimant's income tax returns, for the period immediately preceding the death or accident.

(b) A widower or parent will be deemed to be dependent on the member if they were accepted as dependents of the member for Federal income tax purposes. If the member and spouse file separate or joint tax returns, the widower will be deemed dependent on the member, if the claimant's income was less than one-half of the total income of both spouses.

17:4-1.11 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.

17:4-1.12 Proof of age

(a) All members may be required to establish proof of their age with the System. A person enrolling in the System 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 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 System, appropriate evidence may be required before any death claim is processed for settlement.

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

17:4-1.13 Election of retired member-trustee

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

(b) Eligible candidates shall include all retired members of the Police and Firemen's Retirement System. A retired member is one who meets the criteria set forth in N.J.A.C. 17:4-6.3(a). All candidates shall comply with any and all requirements as provided by law and these rules. Any candidate who fails to comply with the law and these rules is automatically disqualified as a candidate.

(c) The following apply to election notices:

1. At least six months prior to the expiration of a term of office of a retired member-trustee or immediately upon a vacancy on the Board, a notice shall be prepared and distributed by the Secretary of the Board to each retired member eligible to vote. This notice will be sent to the member's last known mailing address and shall inform the members that the nominating petition forms are available at the Office of the Secretary, Police and Firemen's Retirement System.

2. The election notice shall also:

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

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

4. Election notices shall be distributed to each retired member who is eligible to vote as shown on a master list of retired members compiled by the Division of Pensions and Benefits. This list may be reviewed by a candidate or other interested parties. Retired members' home addresses shall be excluded from this master list. Any challenge or questions concerning eligible voters shall be made prior to the close of the voting deadline. Failure to challenge the list or any part of it prior to this deadline shall disallow any challenge or questions raised after the close of voting.

(d) The following shall apply to nominating petitions:

1. Nominating petition forms shall be available at the Office of the Secretary of the Police and Firemen's Retirement System.

2. Nominating petitions shall be provided to each retired member requesting them.

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

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

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

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

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

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

(e) The following shall apply to the distribution of ballots:

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

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

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

3. The ballots, together with postage-paid return envelopes, shall be distributed by the vendor selected to conduct the election.

4. The ballot will require the signature of the retired member identified upon it. Signatures on ballots or envelopes shall be assumed to be the signature of the voter unless challenged within 20 days of the closing of balloting.

5. The instructions shall also advise that the signatures identifying the voter shall be severed from the ballot before it is removed from the envelope, thus assuring a secret ballot.

6. Failure to sign a ballot or voting for more candidates than instructed will be cause for rejection of the ballot.

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

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

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

10. The candidates whose names are printed upon the ballots shall be informed as to the method and the date of the counting of the ballots and shall be invited to be present or to be represented at the counting of the ballots.

(f) The following shall apply to biographical information:

1. An informational sheet of biographical information regarding each candidate shall be prepared by the Division of Pensions and Benefits. Information regarding each candidate shall be submitted by the candidate and the informational sheet shall be approved by the Board of Trustees.

2. The Secretary shall inform each candidate that a biography may be included with or upon the ballot and provide them with the opportunity to submit information regarding such material.

3. If not included upon the ballot, the biographical information shall be distributed to the eligible voters at the time of distribution of the ballots or otherwise distributed as approved by the Board of Trustees so that the members of the retirement system shall have reasonable opportunity to read and consider the biographical information regarding the candidates.

(g) The following shall apply to recount procedures:

1. Any candidate or member who shall have reason to believe that an error has been made in counting or declaring the vote may, within 20 days of the certification of the results of the election, request in writing that the Board of Trustees shall, at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether or not a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such hearing, any member of the Board who is a candidate on the contested ballot shall not vote in the Board's decision on the request. Each candidate on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support his or her ballots.

2. If a candidate or other interested party requests a recount with the prescribed time, this request shall be granted if a recount could possibly affect the results of the election. All ballots received shall then be recounted and the recount shall be supervised by the Election Board. The Election Board shall consist of three Board members appointed by the Chairman. The Election Board shall certify the results of the recount to the Board of Trustees. If a recount is not requested within 20 days, the ballots may be destroyed.

3. Upon election and the taking of an oath of office, a police and fire member-trustee shall serve for a term of four years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board of Trustees.

New Rule, R.1997 d.28, effective January 21, 1997.
See: 28 N.J.R. 1605(b), 29 N.J.R. 376(a).

SUBCHAPTER 2. ENROLLMENT

17:4-2.1 Eligible positions

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

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

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

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

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

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

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

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

7. "Firefighting unit" means a municipal fire department, a fire district, or an agency of a county or the State which is responsible for control and extinguishment of fires.

8. "Fireman" shall have the meaning ascribed to that term by P.L. 1989, c.204 (N.J.S.A. 43:16A-1) as the same may be amended and supplemented from time to time.

9. "General supervision" means direct supervision of employees who perform direct supervision.

10. "Law enforcement unit" means any police force or organization in a municipality or county which has by statute or ordinance the responsibility of detecting crime and enforcing the criminal laws of this State.

11. "Policeman" shall have the meaning ascribed to that term by P.L. 1989, c.204 (N.J.S.A. 43:16A-1) as the same may be amended and supplemented from time to time.

12. "Police powers" means the statutory authority, under the appropriate circumstances in accordance with law, to arrest and detain and to control the actions of the public, or those individuals who come under the jurisdiction of the public employer's jurisdiction.

13. "Position" means a job title.

14. "Retirement system" or "system" means the Police and Firemen's Retirement System of New Jersey as defined in N.J.S.A. 43:16A-2.

(c) Determinations by the Director and the Board of whether an employee of a law enforcement unit or firefighting unit is an administrative employee within the meaning of the definitions of "policeman" or "fireman" under the law and these rules shall be on a case-by-case basis. An employee may perform some administrative functions without being an administrative employee. In determining whether an employee is an administrative employee, the Board shall consider the following factors:

1. Whether and to what extent the employee is responsible for preparing or recommending budgets contracting for goods or services, processing employment actions, managing information systems, and the provision of administrative support;

2. Whether the administrative tasks performed by the employee are central to, rather than incidental to, the primary responsibilities of the employee; and

3. Whether the career path to become an administrative employee begins with or includes positions as non-administrative policemen or firemen.

(d) Determinations by the Director and the Board of whether an employee of a law enforcement unit or firefight-

ing unit is a supervisory employee within the meaning of the definitions of "policeman" or "fireman" under the law and these rules shall be on a case-by-case basis. An employee may perform some supervisory functions without being a supervisor. In determining whether an employee is a supervisory employee, the Board shall consider the following factors:

1. Whether and to what extent the employee is responsible for conducting performance evaluations, disciplining, adjusting the grievances, rewarding, and assigning and directing the work of non-supervisory policemen or firemen or effectively recommending such actions;

2. Whether the individual policemen or firemen subject to some supervision by the employee have a primary supervisor other than the employee;

3. Whether the supervision performed by the employee is central to, rather than incidental to, the primary responsibilities of the employee; and

4. Whether the career path to become a supervisor begins with or includes positions as non-supervisory policemen or firemen.

(e) Employers shall not use the same job title for both individuals whose job functions meet the definition of "policeman" or "fireman" and individuals whose job functions do not meet those definitions. In the event that the Board determines that an employee's primary duties qualify that employee as a "policeman" or "fireman," but that employee holds a position held by other individuals whose primary duties do not qualify those employees as a policeman or fireman, then the employer shall promptly take the necessary actions to create a new job title to ensure that the same job title is not used both for individuals whose job functions meet the definition of "policeman" or "fireman" and individuals whose job functions do not meet those definitions.

(f) In the event an employee, not currently included as a member of the system, believes that he or she performs duties that meet the definition of "policeman" or "fireman," the employee may file an application for membership in the system with the Director, stating in detail the basis for the employee's belief that the employee is a policeman or a fireman. A copy of the application shall be served on counsel for the employee's employer.

(g) The Director shall review the application and determine whether the employee meets the definition of "policeman" or "fireman." The Director shall then make a recommendation to the Board as to whether the employee should be included in the system.

(h) If, after considering the recommendation of the Director, the Board determines that the employee meets the definition of "policeman" or "fireman" the Board shall, prior to making a final determination, publish in the New Jersey Register a notice that it proposes to include the

employee's position in the System. Interested parties shall be given at least 30 days to comment on the proposal.

(i) If, after considering the recommendation of the Director, the Board determines that the employee does not meet the definition of "policeman" or "fireman," the employee shall be offered an opportunity for a hearing in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(j) If the employee requests a hearing, the Board shall publish in the New Jersey Register a notice that a hearing will be conducted on the application of the employee that the employee's position be deemed to meet the definition of "policeman" or "fireman" as the case may be, and that interested parties may seek to intervene in accordance with N.J.A.C. 1:1-16.

Repeal and New Rule, R.1996 d.463, effective October 7, 1996.

See: 28 N.J.R. 2512 (a), 28 N.J.R. 4508(b).

Section was "Policeman and fireman defined".

Public Notice: Forest Fire Observer (State-Civil Service).

See: 31 N.J.R. 905(c).

Public Notice: Fire Official/Fire Protection Subcode Official UFD (Municipal-Civil Service), Chief Bureau of Law Enforcement Environmental Protection (State-Civil Service), Fire Fighter (Washington Township), Fire Fighter/Fire Inspector (Washington Township), Fire Fighter/Fire Fighter Apparatus Mechanic (Washington Township), Fire Fighter/Chief Maintenance Mechanic (Washington Township) and Fire Chief (Washington Township).

See: 31 N.J.R. 1388(a).

Public Notice: Supervising Parole Officer (State Civil Service), Assistant Director Parole Supervisor (State Civil Service) and District Parole Supervisor (State Civil Service).

See: 31 N.J.R. 1643(b).

Public Notice: Investigator Secured Facilities—Juvenile Justice Commission, Senior Investigator Secured Facilities—Juvenile Justice Commission, Principal Investigator Secured Facilities—Juvenile Justice Commission, Assistant Chief Investigator Secured Facilities—Juvenile Justice Commission and Chief Investigator Secured Facilities—Juvenile Justice Commission.

See: 31 N.J.R. 3538(b).

Public Notice: Police Officer Bilingual Spanish/English Municipal, Police Officer Bilingual Spanish/English County, Police Officer Bilingual Korean/English Municipal and Police Officer Bilingual Korean/English County.

See: 31 N.J.R. 3539(a).

Public Notice: Correction Officer Recruit/Bilingual Spanish/English, Parole Officer Recruit/Bilingual Spanish/English and Senior Parole Officer/Bilingual Spanish/English.

See: 31 N.J.R. 3539(b).

Public Notice: Parole Officer Recruit—Bilingual Spanish/English Juvenile Justice Commission and Senior Parole Officer Bilingual Spanish/English Juvenile Justice Commission.

See: 31 N.J.R. 3539(c).

Public Notice: Police Sergeant Bilingual Spanish/English—Municipal, Police Sergeant Bilingual Spanish/English—County, Police Lieutenant Bilingual Spanish/English—Municipal and Police Lieutenant Bilingual Spanish/English—County.

See: 31 N.J.R. 4132(a).

Public Notice: Fire Officer 1—County, Fire Officer 1—Municipal, Fire Officer 2—County, Fire Officer 2—Municipal, Fire Officer 3—County, Fire Officer 3—Municipal, Fire Officer 4—County, Fire Officer 4—Municipal.

See: 32 N.J.R. 2262(a).

17:4-2.2 Compulsory enrollment

(a) Membership in the Police and Firemen's Retirement System of New Jersey is mandatory, a condition of employment for every "policeman or fireman" appointed after July 1, 1944, in a county or municipality which had prior to July 1, 1944, adopted the provisions of N.J.S.A. 43:10, or in such county or municipality first providing coverage for such employees by referendum under N.J.S.A. 43:16A, or pursuant to the provisions of Chapter 92, P.L. 1973.

(b) It shall also be mandatory for eligible employees of the State or counties as provided by Chapter 156, P.L. 1973.

17:4-2.3 Medical requirements

(a) Applicants must furnish evidence of good health sufficient to satisfy the Board of Trustees:

1. In this connection, the Board may accept the medical determination of the Civil Service Commission or of the physician examining for the appointing county or municipality. If either of these medical sources indicate further examination is in order, the system will select and arrange appointment with an independent physician.

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

17:4-2.4 (Reserved)

17:4-2.5 Age requirements

(a) Applicants must be appointed to an eligible title on or prior to their 35th birthday.

(b) Municipalities having adopted the provisions of Civil Service are subject to the determination of that agency in determining eligibility for such appointments. The board will recognize anyone certified from a Civil Service list as having met the age requirements of the system.

(c) N.J.S.A. 38:23A is recognized as a modification of the age maximum for certain "veterans". Persons having served in the active military service of the United States during "time of war" can for the purpose of meeting the maximum age requirement for entrance into this retirement system, reduce their actual age by the stipulated period of such military service. Should this reduced age meet the age maximum in effect at the time of entrance into such military service, the applicant will be considered as having met the age maximum for enrollment.

(d) An initial period of military service, a part of which was rendered in "time of war," will be credited in full for such purpose:

1. Any succeeding periods of military service will not be considered.

2. Maritime service or service with the merchant marine is not considered.

3. Any active military service terminating in dishonorable discharge is not creditable.

17:4-2.6 Enrollment date

(a) An employee who is appointed to a permanent position from a Civil Service list shall be considered as having begun his or her eligibility for enrollment on the date of his or her regular appointment. The compulsory enrollment date shall be fixed as the first of the month for an appointee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose regular appointment date falls between the 17th and the end of the month.

(b) An employee in the unclassified service shall be considered as beginning service on the date his or her employment began. The compulsory enrollment date shall be fixed as the first of the month for an appointee whose beginning employment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.

(c) The regular appointment of an employee appointed by a local employer not covered by Civil Service shall constitute the date the employee originally accepted employment in a regular budgeted position. The date of compulsory enrollment shall be fixed as the first of the month for an appointee whose beginning date of employment falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an appointee whose beginning employment date falls between the 17th and the end of the month.

(d) An employee who does not meet the requirements for enrollment cited in (a), (b) and (c) above may be considered a temporary employee by his employer for as long as a one year period following the employee's date of hire, but if his employment continues into his second year, he will be required to enroll immediately; his compulsory enrollment date will be the first of the month following the end of the one year (12-month) period.

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:4-3.1 Computation of insurance benefits

(a) Full salary credit will be given for the month or biweekly pay period in which a member dies, if 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.

(b) Death benefits shall be based on the base salary upon which contributions to the Annuity Savings Fund were actually made during the 12 months or 26 biweekly pay periods immediately preceding the member's death. The salary, in the month in which no salary was paid, shall be counted as zero.

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

(d) For a member dying after the first year following the date of his enrollment, the noncontributory insurance benefits 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 months 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.

(f) Where a post-audit of insurance claim payments indicate 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 they received or salary upon which pension contributions were based during their last year (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 (i) 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 (i) above shall not be made.

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

17:4-3.2 Leave for illness

Coverage during a leave of absence without pay due to illness shall apply only to the personal illness of the member. A leave of absence on account of another person's illness will not entitle the member to continued insurance coverage.

17:4-3.3 Proof of insurability

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.

17:4-3.4 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.

17:4-3.5 Beneficiary designation; pension contributions

Only a primary and a contingent designation of beneficiary may be made by the member for the payment of his accumulated pension contributions.

17:4-3.6 (Reserved)

SUBCHAPTER 4. MEMBERSHIP

17:4-4.1 Creditable compensation

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

1. "Base salary" means the annual compensation of a member, in accordance with established salary policies of the member's employer for all employees in the same position, or all employees covered by the same collective bargaining agreement, which is paid in regular, periodic installments in accordance with the payroll cycle of the employer.

2. "Extra compensation" means individual salary adjustments which are granted primarily in anticipation of a member's retirement or as additional remuneration for performing temporary duties beyond the regular workday. Forms of compensation that have been identified as extra compensation include, but are not limited to:

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

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

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

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

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

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

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

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

3. May refer any suspected submission of false information in violation of N.J.S.A. 43:16A-18, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

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

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

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

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

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

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

17:4-4.2 Prior service

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

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

17:4-4.3 Continuance of membership; transfer

Once an employee establishes membership in the retirement system, he is eligible to continue such membership should he be temporarily employed in a position covered by the system.

17:4-4.4 Loan tolerance

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, the member will be assessed.

17:4-4.5 Deductions

(a) A full deduction shall be taken for the Police and Firemen's Retirement System in any payroll period in which the member is paid a sufficient amount to make a full normal deduction, plus any other arrears or loan deductions then in effect.

(b) No deductions shall be taken in any pay period in which the employee's salary is not sufficient to cover the required deductions for the Police and Firemen's Retirement System.

17:4-4.6 Minimum adjustment

In order to facilitate the reconciliation of a member's account no rebates or additional contributions shall be made where an adjustment involves an amount of \$3.00 or less.

17:4-4.7 Suspension

(a) A member suspended without pay will have insurance coverage continued for a period of 93 days following the effective date of such suspension.

(b) No retirement deductions will be made during such a break in service, nor will any retirement credit accrue.

(c) If during the period of suspension or at the conclusion of the penalty period adjustment is made in favor of the member, the board may allow the payment of pension deductions to reflect the lesser penalty or the entire elimination of the suspension.

17:4-4.8 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. 43:16A-11 shall be retained by the system. Such contributions shall be transferred from the Annuity Savings Fund to the Pension Accumulation 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 payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when he entered military service.

17:4-4.9 Eligibility for loan

Only an active contributing member of the system 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.

17:4-4.10 Termination; withdrawal

(a) Under the terms of the statutes a member may withdraw from the system only if he terminates all employment. No application shall be approved if:

1. The member is on official leave of absence;
2. The member certifies that his employment has not ended or that he has taken another position subject to coverage;
3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if he has formally resigned from his position or there is no legal action contemplated or pending and the dismissal has been adjudged final;
4. The member has a claim pending for Workers' Compensation benefits.

17:4-4.11 Active employment; membership requirement

All employees, otherwise eligible, who are not actively employed on the date of their enrollment, will not be covered by the group life insurance program until they return to service.

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE
17:4-5.1 Temporary service

(a) Only active contributing members of the system shall be eligible to make application for purchase of credit.

(b) In order to be eligible to purchase temporary service, a member must submit a written request to purchase such service within one year from the date his initial pension contributions are certified to begin and such purchase must be authorized by the member before the expiration date indicated on the latter which quotes the terms of the purchase.

17:4-5.2 (Reserved)**17:4-5.3 Optional purchases of eligible service**

(a) Members, who purchase temporary service, must purchase all such service immediately preceding enrollment. The purchase will be calculated on the basis of the member's current salary multiplied by the factor established by the actuary. "Special Police" service cannot be purchased.

(b) The cost of purchase of former Police and Firemen's Retirement System or any other State-administered retirement system membership credit will be calculated on the basis of the actuarial factor established for the member's age at the time of purchase multiplied by his or her current salary. All of the service from a former membership must be included in the purchase of such service.

17:4-5.4 Methods of repayment

- (a) Methods of repayment include:

1. Lump sum;
2. Partial lump sum of \$250.00 or more; 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.

17:4-5.5 Reinstatement of membership credit

(a) A member, whose account has been terminated by withdrawal of his or her contributions from the Annuity Savings Fund or whose account has been terminated because of a two-year lapse in contribution, may be reinstated to the system under the provisions of Chapter 199, P.L. 1967, Chapter 303, P.L. 1969, or Chapter 439, P.L. 1981, provided that he or she meets the requirements of the System other than the age maximum:

1. A member reinstated under Chapter 199, P.L. 1967, shall be enrolled at a rate appropriate to his or her age at original enrollment.
2. A member reinstated under Chapter 303, P.L. 1969, shall reinstate the previous credit he or she had established in the Police and Firemen's Retirement System at enrollment. The reinstatement will result in a rate assignment appropriate to his or her age at original enrollment. The cost of reinstating the previous credit will be determined by applying the factor certified by the actuary.
3. All members reinstated and reenrolled under these acts will be required to prove insurability to resume insurance coverages.
4. Should a member reinstating such credit retire or die before the completion of his or her payments, pension credits will be recognized in proportion to the amount paid to the total arrearage.

17:4-5.6 Elected officials; continuation of membership

Any member accepting an elective position may continue his or her membership and contribute at his or her current rate of contribution on the salary being received as an elected official as long as he or she holds elective office and remains a member of the retirement system.

17:4-5.7 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 law governing the Police and Firemen's Retirement System (N.J.S.A. 43:16A-1 et seq.) and the rules of the retirement system.

SUBCHAPTER 6. RETIREMENT

17:4-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the system. Such forms must be completed in all respects and filed with the system before the requested date of retirement.

(b) In the event a member files an incomplete application, the deficiency shall be brought to his or her attention and he or she will be required to file a completed application with the system to enable acceptance for processing.

(c) Before an application for retirement may be accepted for processing, it must be supported by a certificate from the employer setting forth the employment termination date and the salaries reported for contributions in the member's final years of employment.

(d) In addition to the foregoing requirements, an application for disability retirement must be supported by a report of the member's personal or attending physician and a statement from the employer regarding the member's incapacity for further duty.

Case Notes

Retired firefighter not entitled to benefits for period prior to Retirement System's receipt of retirement application. *Sheren v. PFRS*, 96 N.J.A.R.2d (TYP) 64.

17:4-6.2 Effective dates; 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 55th 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 system 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.

Case Notes

Retiree time-barred from requesting change in benefits three years after receiving benefits. *Esposito v. Police and Firemen's Retirement System*, 97 N.J.A.R.2d (TYP) 93.

Lack of good cause and diligence defeated request to reopen application for accidental disability benefits. *Stein v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 198.

17:4-6.3 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 the retirement, whichever is later.

(b) A member who files an application for retirement and whose insurance coverage has not lapsed prior to filing a retirement application is covered under the insurance program as an active member in the event of death prior to the date the retirement allowance becomes due and payable.

17:4-6.4 Outstanding loan

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

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:4-6.3; or
2. By retention of retirement benefit payments, excluding authorized deductions, by the retirement system until the loan balance, with interest, is repaid.
 - i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal income tax withholding. If the member does not request repayment in full, repayment is by retention of retirement benefits.

(b) A member who retires on a disability pension or because of medical illness or disability as determined by the board of trustees with an outstanding loan balance may repay the balance as follows:

1. In the manner prescribed in (a) above; or
2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with interest, is repaid.
 - i. If a member who retires on a disability pension does not request another repayment option, repayment is by deductions in the same monthly amount deducted

from the member's compensation immediately preceding retirement.

(c) A member whose retirement is other than a disability retirement and who wants to establish that the retirement is necessitated by medical illness or disability shall submit an application acceptable to the retirement system together with a report of the member's personal or attending physician and all other physicians' reports, hospital records or other medical evidence which the member can supply pertaining to the illness or disability. The medical evidence shall be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system, and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

(d) If a retirant dies before the loan balance, with interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments that are due to the beneficiary or estate. If multiple beneficiaries are to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

17:4-6.5 Willful negligence

(a) Willful negligence is defined as follows:

1. Deliberate act or deliberate failure to act; or
2. Such conduct as evidences reckless indifference to safety; or
3. Intoxication, operating as the proximate cause of injury.

17:4-6.6 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 system.

(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.

17:4-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by 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 ordinary disability.

Case Notes

Patrolman suffering heart attack triggered by violent assault with arrestee qualifies for accidental disability retirement benefits. Ciupinski v. Board of Trustees of the Police and Firemen's Retirement System, 97 N.J.A.R.2d (TYP) 99.

Accidental disability retirement allowance denied because no traumatic event occurred. Joyce v. Police and Fireman's Retirement System, 97 N.J.A.R.2d (TYP) 11.

Police officer who witnessed deaths of his father and brother while on duty suffered qualifying traumatic event entitling him to accidental disability retirement benefits. Flint v. Police and Firemen's Retirement System, 96 N.J.A.R.2d (TYP) 278.

Corrections officer who sustained back injury in trip and fall incident did not suffer traumatic event for purposes of accidental disability retirement benefits eligibility. Burzachiello v. Board of Trustees, Police and Firemen's Retirement System, 96 N.J.A.R.2d (TYP) 275.

Police officer granted disability retirement for psychiatric disorder offered sufficient proof that he no longer suffered from disorder to support his reinstatement 15 years later. Dascoli v. Police and Firemen's Retirement System, 96 N.J.A.R.2d (TYP) 231.

Bus driver injured when patients fell on her in three unrelated incidents several days apart suffered qualifying traumatic event entitling her to award of accidental disability retirement benefits. Harring v. Public Employees' Retirement System, 96 N.J.A.R.2d (TYP) 202.

Bus collision constituted traumatic event entitling driver to accidental disability retirement benefits. Fullwood v. Public Employees' Retirement System, 96 N.J.A.R.2d (TYP) 200.

Former firefighter's application for disability retirement benefits was properly dismissed where applicant was not member in service at time of filing. Kirwin v. Police and Firemen's Retirement System, 96 N.J.A.R.2d (TYP) 183.

Corrections officer who was diagnosed as suffering from multiple sclerosis while receiving treatment for on-the-job tripping injury was not entitled to accidental disability retirement benefits. McBride v. Police and Firemen's Retirement System, 96 N.J.A.R.2d (TYP) 162.

Incident in which corrections officer was surrounded and threatened by prison inmates, and which resulted in officer's total psychiatric disability, constituted traumatic event entitling him to accidental disability retirement benefits. Flume v. Police and Firemen's Retirement System, 96 N.J.A.R.2d (TYP) 153.

17:4-6.8 (Reserved)

17:4-6.9 Average final compensation; 10 and 12-month members

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

1. Member reported on a monthly basis, use the creditable salaries upon which pension contributions were made to the retirement system for his last 36 months of service.
2. If a member was reported on any combination of 10 and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.
3. The months for which no contributions were made shall be counted as zero.

17:4-6.10 Employer disability 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 or her 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 retirement system; 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 payable under the statute, if he 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