

G. PHILIP LEWIS, ESQ.
105 STOCKINGTON ROAD
WOODSTOWN, NJ 08098
(856) 769-3322 FAX: (856)769-3810
MEMBER, NEW JERSEY AND PENNSYLVANIA BARS

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John DeSimone, Esq.
DeSimone Law Offices
66 Euclid Street, Suite B
PO Box 237
Woodbury, NJ 08086-7057

Re: PERS' "Final Administrative Determination" 9/19/2002

Dear John,

I have received a copy of the "Final Administrative Determination" from PERS, dated September 19, 2002 and I have finally had a chance to calm down enough to share my thoughts.

1. Does **ANYBODY** in the AG's Office remember their law school course on statutory construction? The one where it tells students that the legislature never puts in excess words and **EVERY** word in a statute must be considered when reading and applying the statutory law?

How many damn times must we explain to these fools that the statute includes the word,

TEMPORARY

Ms. Coates, Board Secretary, in her letter explaining their reasoning says, on Page 2, last paragraph, first sentence, that the statute "provided that **temporary** employees..." In the next sentence she says, "The law also provided that **temporary** employees..." Yet, in the very next sentence she underlines the word "any employees" in referring back to her prior statements regarding "temporary employees." As we have explained on every personal appearance before the Board of Trustees and as I have explained to them continuously since they kicked us out in 1986, the State **never** removed any of its employees who were paid by JTPA funds and they never removed any Vocational School, Community College or Welfare Board employees anywhere in the State who were paid with JTPA funds. I also advised the Board or the PERS staff on many occasions that there were, and still are, non-permanent, non Civil Service employees in many County Offices of Employment as well as Welfare Board, Vocational School and Community College employees who are **still** enrolled and many, including Charles A. Thomas, Director of Cumberland County JTPA Office who **have retired and ARE collecting pensions from PERS.**

And then, in the first paragraph on Page 3, she makes the same stupid leap that these folks have been making for over 16 years - she applies her logic to include **all** JTPA employees instead of just those which the law covers - temporary JTPA employees. "Because this law specifically prohibits PERS membership to JTPA employees after September 18, 1986..." **WRONG, WRONG, WRONG.** The law specifically prohibits PERS membership to **TEMPORARY** JTPA employees after that date. Again in the last sentence of that paragraph she misreads the damn statute and says that subsection (h) "... required that all membership for those JTPA employees be terminated on or before..."

In the next paragraph she cites N.J.S.A. 43:15A-7(b) and claims that the temporary employee with one year service is included but neglects to note the Vliet case which I cited to you in my letter of August 21, 2002 citing N.J.A.C. 17:2-2.4 and noting a December 18, 1972 effective date for temporary employees mandatory enrollment. (VLIET v. BD. TRUSTEES PUB. EMP. RETIRE. SYST., 156 N.J. Super. 83 (1978))

Then, in the middle of that paragraph she says they reviewed the legislative history and noted that, “**all** JTPA employees were precluded...” (Emphasis in her original) Further in that same paragraph she states that,

“Governor Keen declared that the bill must be ‘amended to make its provisions apply to all JTPA employees, regardless of whether they are currently enrolled in the PERS.’ As a result, the statute was enacted and all JTPA employees, who were permitted membership prior to September 18, 1986, were terminated from such membership and all previous contributions were refunded. Consistent with this clear statutory mandate, the Board determined that Mr. Lewis should not be entitled to the purchase of such service to which he was formerly not permitted credit.”

WHAT ‘**CLEAR STATUTORY MANDATE**’? Show me one place in that ENTIRE subsection (h) where it says **ALL**. **Nowhere** in subsection (h) does it refer to **ALL** but it does say **TEMPORARY** twice. How on earth can a practicing attorney find a ‘clear statutory mandate’ in there for **ALL**?

The Governor’s Conditional Veto is just that, a **conditional** veto. His statement that it should apply to **ALL** is just that, a **statement**. It is **NOT** a part of the law which the legislature passed and he signed. If there is **ANYTHING** clear in the statute it is that the legislature read the Governor’s conditional veto, considered the wishes he expressed in his statement and passed a law which **clearly and unequivocally rejects** the Governor’s **ALL** statement by including the word **TEMPORARY** twice in the same sentence.

In the third paragraph on Page 3 she says we “provided no argument” about the veteran status? Did she fall asleep during our presentation?

EVEN IF her contention is valid that JTPA employees who are also veterans must have eligibility as a condition precedent to enrollment, how on earth can she say that almost 12 years of continuous service does not satisfy that ‘condition precedent’? N.J.A.C. 17:2-2.4 covers my eligibility and was in effect for 2 years and 5 days **BEFORE** I was originally hired by the County of Salem.

Again, in the last sentence on Page 3 she finds that “(h) carves out an absolute exception for all JTPA employees.” There’s that **ALL** word again. Where, in that statute or any other statute for that matter, does it say **ALL JTPA EMPLOYEES**? It doesn’t.

There are only three reasons I can find for this kind of decision - ineptitude, laziness or incompetence. The law is specific. The statute and the regulations for the PERS Board of Trustees are clear on their face that all veterans shall be enrolled and that temporary JTPA employees shall not be enrolled. I am a veteran and I was not temporary. What more is there?

Thanks for your patience and efforts to get this resolved. I do hope we can find a means to force the State of New Jersey to reimburse me for the thousands of dollars in legal fees which their ineptitude, laziness and/or incompetence have caused me to incur.

Sincerely,