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Date: 01/28/03

Re: G. Philip Lewis
Docket No. A-001093-02T2

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Dear Phil:

Attached is a copy of the Brief for the Appellate Division. We need to file this before January 31, 2003.

John hasn't reviewed this draft yet.

Please review and advise as soon as possible.

Thanks so much, Joyce

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001093-02T2

G. PHILIP LEWIS, Appellant,

v. Civil Action

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES RETIREMENT SYSTEM

On Appeal from
State of New Jersey Department of
Treasury, Department of Pensions
and Benefits Final Administration
Determination

BRIEF OF APPELLANT, G. PHILIP LEWIS

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TABLE OF CONTENTS

TABLE OF CASES

TABLE OF CITATIONS

APPENDIX

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Re: G. Philip Lewis v. Board of Trustees, Public Employees Retirement System Docket No. A-1093-02T2

Dear Mr. Flynn:

Please accept this Letter Brief in lieu of a more formal submission on behalf of Appellant, G. Philip Lewis (hereinafter "Appellant").

PROCEDURAL HISTORY

This is the second appeal that has been taken by Appellant, G. Philip Lewis, in this matter.

On May 17, 2001, a Final Administrative Determination was forwarded to the Appellant who took an appeal on June 24, 2002. The Appellate Division reversed and remanded the Board of Trustees, Public Employees Retirement System (hereinafter "PERS") decision for further proceeding. *See Pa. 1-10 for a copy of the Appellate Division's June 24, 2002 Court Order.*

On August 21, 2002, the PERS Board did not have before them a copy of the June 24, 2002 Order (the Appellant provided the PERS Board his copy to review during their decision process) and following testimony by the Appellate who plead his Veteran status and employment status, the PERS Board reconsidered the matter and voted to reaffirm its determination made on May 17, 2001. *Please see Pa. 11 13* for a copy of the May 17, 2001 Final Administrative Determination and *Pa.14* for a copy of PERS Board letter to Appellant's counsel dated August 23, 2002 reaffirming the PERS Board May 17, 2001 determination.

On September 11, 2002, Appellant filed a Notice of Motion for Leave to Appeal based on the August 23, 2002 letter forwarded to the Appellant's counsel. *Please see Pa. 14.* The Final Administrative Determination (hereinafter "FAD") had not been issued by the PERS Board at that time.

On September 19, 2002, the PERS Board approved a FAD reaffirming its prior determination made on May 17, 2001 to deny Appellant's purchase request. Also, the PERS Board denied Appellant's request for hearing, thereby enabling the Appellant to proceed with this Appeal. *Please see Pa. 15 18* for a copy of the September 19, 2002 FAD.

On September 20, 2002, the PERS Board responded to the Appellant's Motion for Leave to Appeal, which resulted in a Reply Brief filed by the Appellant on October 2, 2002. The Appellate Division denied the Appellant's Motion for Leave to Appeal, entitled Docket No. AM-63-02T5.

The FAD issued September 19, 2002 is the subject of the Appeal. *Please see Pa. 15-18.*

STATEMENT OF FACTS

When the PERS Board denied the Appellant's request to purchase additional service credit and provided the FAD dated May 17, 2001, the Appellant appealed. *Please see Exhibit Pa. 11-13 for a copy of the May 17, 2001 FAD.*

On June 24, 2002, the Appellate Division reversed and remanded the PERS Board Decision for further proceedings in conformity with the Appellate Division's opinion. *Please see Pa. 1-10.*

On August 18, 2002, the Appellant appeared before the PERS Board. He plead his Veteran status, employment status and referred to the statute applicable to him. The Appellant and made a request for an Administrative Hearing so a more formal decision would become a part of the Board's Final Determination. This request was denied. *Please see Pa. 14,* the PERS Board letter denying Administrative Hearing.

Counsel?

On August 23, 2002, the PERS Board sent a letter to the Appellant's attorney reaffirming the PERS Board's first denial, dated May 17, 2001. *Please see Pa. 14* for letter dated August 23, 2002 and *please see Pa. 11-13* for the first denial FAD issued May 17, 2001.

On September 11, 2002, the Appellant filed a Notice of Motion for Leave to Appeal, asserting that the PERS Board did not conduct further proceedings in conformity with the Court's June 24, 2002 opinion.

Please see *Pa. 1 10*, the Appellate Division's June 24, 2002 Opinion. The Appellant requested the Appellate Division grant a stay and deny PERS in conjunction with the Attorney General's Office, from issuing another FAD. Additionally, the Appellant requested the Appellate Division retain jurisdiction and have the Court decide on the issue the Appellate Division had returned to the PERS Board on June 24, 2002. This Notice of Motion for Interlocutory Appeal was denied.

On September 19, 2002, the PERS Board issued another FAD, which is the subject of this Appeal. *Please see Pa. 15-18*, for a copy of the PERS Board's FAD dated September 19, 2002.

LEGAL ARGUMENT

I. WHETHER OR NOT THE PERS BOARD FAILED TO EXPLAIN THAT N.J.S.A.43:15A-7 (h) CARVES OUT AN ABSOLUTE EXCEPTION THAT WOULD DEPRIVE APPELLANT, G. PHILIP LEWIS, A VETERAN "IN CONTINUOUS SERVICE" OF MEMBERSHIP IN THE RETIREMENT SYSTEM A RIGHT TO PURCHASE SERVICE CREDIT.

Yes. The PERS Board failed to show an absolute exception that would deprive this Veteran his right to purchase service credit. The PERS Board said in their September 19, 2002 FAD, as described at *Pa. 17* attached hereto, the following:

> Further you argue that Mr. Lewis should be exempted from subsection (h) because he is a veteran. However, you provide no support for this argument. While Veterans are provided with enhanced benefits under certain specific statutes, they are not exempted from JTPA exception to the membership statute … N.J.S.A. 43:15A-7. Eligibility for enrollment in this System is a condition precedent before a Veteran may be entitled to any benefits under the System. Thus, Mr. Lewis may not be a member of the PERS solely by virtue of his Veteran's status; he must be eligible for enrollment pursuant to the statute. Clearly, subsection (h) exempts him from membership.

The PERS Board is incorrect in that the Appellant did argue his exemption because of his Veteran status. The Appellant argued his eligibility under N.J.S.A. 43:15A (b). Furthermore, the PERS Board is incorrect in their interpretation that eligibility for a Veteran is a condition precedent. There is nothing in N.J.S.A. 43:15A-7 et.seq. that says eligibility is a condition precedent for a Veteran to be entitled to the benefits. *Please see Pa. 19-21* for a complete copy of N.J.S.A. 43:15A-7 et.seq. Furthermore, nothing in Senate Bill No. 1471 (2nd OCR) states that eligibility is a condition precedent for a Veteran. *Please see Pa. 29-32* for a copy of Senate Bill No. 1471 (2nd OCR). When construing a statute, words must be considered in the context of the entire act and given a common sense meaning, which advances the legislative purpose. The entire act includes subparagraph (b)-(d) of N.J.S.A. 43:15A-7 which specifically addresses a Veteran's eligibility. *Please see Pa. 19-21* for a complete copy of N.J.S.A. 43:15A-7 et.seq.

As a general rule "[a] Statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation," as cited in Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 725 A.2d 1104, 1999 N.J.LEXIS 181 (1999).

Applying this well recognized cannon sp? of statutory construction it is clear and unambiguous that N.J.S.A. 43:15A-7 (b) applies to the Appellant. In this instance the Appellant, G. Philip Lewis is a Veteran, having served in the United States Navy during the period of the Vietnam conflict and having received an honorable discharge.

Incidently, the Appellant previously presented a copy of his DD-214 to the PERS Board and it was entered into and made part of his permanent PERS record. More specifically, the meaning of N.J.S.A. 43:15A-7 (b) is clear and ambiguous on its face in that there is only one interpretation of N.J.S.A. 43:15A-7 (b) and that interpretation would would entitle the Appellant of PERS eligibility. N.J.S.A. 43:15A-7 (b) says those eligible are:

> Any person becoming an employee of the State or other employer, after January 2, 1955 and ***every Veteran*** [emphasis added] other than a retired member who returns to service pursuant to subsection (b) of Section 27 of P.L. 1966, C. 217 (See N.J.S.A. 43:15A-57.2). Other than those appointments that are seasonal, becoming an employee of the State or other employer after such date, including a temporary employee with at least one year's continuous service.

If the general rule of a statute being interpreted in accordance with its plain meaning, then this subsection (b) is clear and unambiguous on its face. It does not state that eligibility for enrollment in the System is a condition precedent before a Veteran may be entitled to any benefits under the System. N.J.S.A. 43:15A-7 (b) is clear and unambiguous on its face in that any person becoming an employee of the State or other employer after January 2, 1955 and ***every Veteran*** [emphasis added] ... including a temporary employee with at least one year's continuous service is considered a member of the Retirement System. The Appellant is a Veteran who served the County of Salem continuously for 25-1/2 years. Therefore, when applying the facts presented by the Appellate with the plain meaning of N.J.S.A. 43:15A-7 (b), it is clear and unambiguous this interpretation only has one meaning. The meaning is the Appellate is entitled to PERS benefits.

Furthermore, State of New Jersey v. Alexandra Ochoa, 314 N.J. Super. 168, 714 A.2d 349; 1998 N.J. Super. LEXIS 347 (App. Div. 1998) (citations omitted) said, "that words may be expanded or limited according to the manifest reason and obvious purpose of the law" and in this case the obvious purpose of the law is that membership into the Retirement System is not optional for Veterans, but membership in the Retirement System is automatic for Veterans. Moreover, N.J.S.A. 43:15A-7 (h) does not carve out an absolute exception that would deprive a JTPA employee, who is also a Veteran and having served continuously served, membership in the Retirement System. As cited in Ochoa, Id. It said, "where a literal rendering will lead to a result not in accord with the essential purpose and design of the act, the spirit of the law will control the letter" and in further support of the Appellant's eligibility because of his Veteran status, where the PERS Board has lead to a result not in accord with purpose of the act, N.J.S.A. 43:15A-7 (d) says with specificity that:

> Membership in the Retirement System shall be optional for elected officials **other than Veterans** [emphasis added] and for school crossing guards, who have become eligible for benefits under other pension systems are so employed on a part-time basis ... [and] [N]o person in employment, office or position, for which the annual salary or remuneration is fixed at less than $1,500.00 shall be eligible to become a member of the Retirement System.

As described in this subsection (d) of N.J.S.A. 43:15A-7 et.seq., a member in the Retirement System is optional for elected officials ***other than Veterans*** [emphasis added]. *Please see Pg. 19-21 for a* complete copy of N.J.S.A. 43:15A et.seq. The manifest reason N.J.S.A. 43:15A-7 (d) is formed the way it is, is because the Appellant has no choice; enrollment for a Veteran is automatic. It is clear the PERS Board's decision is not in accord with the basic intent of the act.

and mandatory

Moreover, the PERS Board in footnote 1 at page 2 of their September 19, 2002 FAD said: "[T]he Board consistently attempts to read statutes liberally and in light most favorable to the member," however, this standard as described by the PERS Board is not correct. The correct standard applicable when interpreting a statute is cited in Gerald McCann v. Clerk of Jersey City, 338 N.J. Super. 509, 770 A.2d 723; 2001 N.J. Super. LEXIS 142 (App. Div.), aff'd., 167 N.J. 311 (2001) (Citation omitted), and Carpenter Tech Corp. v. Admiral Ins. Co., 172 N.J. 504, 800 A.2d 54, 2002 N.J. LEXIS 739 (2002) where they emphasize that the examining of the wording of a statute is done to determine the plain meaning. If the standard of plain meaning and not liberally read statute read in light most favorable to the member, then every Veteran, including a temporary employee with at least one year's continuous service would be eligible for membership into PERS pursuant to N.J.S.A. 43:15A-7 et.seq.

Also, in the Respondent's Civil Case Information Statement they say: [on] "June 24, 2002, this Court reversed and remanded the matter so that the PERS Board could address Appellant's additional arguments regarding his status as a Veteran and status as a temporary employee with continuous service for at least one year." *Please see Pa. 22.* This is not what the Appellate Division ordered. The Appellate Division ordered on June 24, 2002, that the PERS Board was to "explain the rationale for concluding (if it does) that subsection (h) describe an absolute exception that would deprive a JTPA employee, who is a Veteran "in continuous service", of membership in the Retirement System the right to purchase service credit." *Please see Pa. 9* for the Court's opinion. Comparing the PERS Case Information Statement at Pa.

22 as quoted above with the Appellate Division's holding of June 24, 2002 at *Pa. 9* and quoted above, the PERS Board opted not to decide this matter consistent with the Court's opinion, therefore failing to carve out an absolute exception that would deprive the Appellate the right to purchase service credit.

II. WHETHER OR NOT THE PERS BOARD IS INCORRECT IN THEIR INTERPRETATION OF N.J.S.A. 43:15A-7 (h) IN THAT SUBSECTION (h) IS AN ABSOLUTE EXCEPTION TO THE VETERAN ENROLLMENT AS PROVIDED IN N.J.S.A.43:15A-7 (b).

Yes, the PERS Board is incorrect that N.J.S.A. 43:15A-7 (h) is an absolute exception to Veteran enrollment described in N.J.S.A. 43:15A-7 (b). In the PERS Board's September 19, 2002 FAD, at page 3, paragraph 2, denying benefits they relied on their longstanding interpretation of the Division of Pension and Benefits by comparing subsection (h) to subsection (b) of N.J.S.A. 43:15A-7 et.seq. The PERS Board concluded that it was the legislative intent "to make provisions it [the statutes] apply to **all** [emphasis added] JTPA employees, regardless of whether they are currently enrolled in the PERS". However, if provisions applied to **all** [emphasis added] JTPA employees, as interpreted by the PERS Board then the legislature would have used the exact word "all", in the legislative enactment, but the legislature did not. If the legislature agreed with the then Governor Kean then every subsection of N.J.S.A. 43:15A-7 would have been amended to include the word "all", but again it was not. For example, the PERS Board argues the Appellant was a "temporary" employee, therefore, not eligible and the Appellant's position as this issue is contrary to that of the PERS Board. If it were the legislative intent to affect "all" employees, then the word "all" as used in PERS FAD, would apply but the

legislature used the word "temporary" which applies to this Appellant, thereby making him eligible for benefits.

Specifically, N.J.S.A. 43:15A-7 (b) says:

> Any person becoming an employee of the State or other employer after January 2, 1955 and every Veteran, other than a retired member who returns to service pursuant to subsection (b) of Section 27 P.L. 1966, C. 217 (See N.J.S.A. 43:15A-57.2) and other than those appointments are seasonal, becoming employee of the State or other employer after such date, including a temporary employee with at least one year's continuous service, is eligible for the benefits of membership.

In addition to the Appellant's Veteran status, the Appellant is further eligible for the benefits based upon the Appellant's at least having one year's continuous service. Even if the Appellant was considered a "temporary" employee, as the PERS Board said thereby not making him eligible for benefits this position is trumped in that N.J.S.A. 43:15A-7 (b) says "any person becoming an employee of the State or other employer after January 2, 1955 and every Veteran ... including a temporary employee with at least one year's continuous service, is eligible for enrollment", plainly and unanimously means this Appellant is eligible. The Appellant was employed continuously by the County of Salem from December 23, 1974 until June 30, 2000, which spanned continuous employment for 25-1/2 years. From the inception of the Federal Job Training Partnership Act in October 1983 to its termination on June 30, 2000 (with its replacement of the new Federal Workforce Investment Act on July 1, 2000), the Appellant, G. Philip Lewis, was an employee paid with funds from the Federal Job Training Partnership Act. The Appellant's employment was continuous and uninterrupted having served at least one year. Factually, the Appellant served 25-1/2 continuous years. He was continuously employed

by the County of Salem from December 23, 1974 to June 30, 2000. This employment was not contested by the PERS Board.

III. WHETHER OR NOT N.J.S.A. 43:15A-7 (h) APPLIES TO ALL JTPA EMPLOYEES INCLUDING VETERANS CONSIDERED A TEMPORARY EMPLOYEE WITH MORE THAN ONE YEAR OF CONTINUOUS SERVICE.

In PERS' FAD dated September 19, 2002 it says "[T]he legislative history of subsection (h) was reviewed at the Board meeting, wherein it was noted that **all** JTPA employees were precluded from PERS membership. Specifically, the history included a conditional veto by the then Governor Kean with Senate Bill No. 1471, which initially applied to only JTPA employees "not currently enrolled in the PERS". *Please see Pa. 18.* However, the then Governor Kean further amended the bill attempting to exempt all JTPA employees from membership in PERS but the bill was not passed to include all JTPA employees. The PERS Board in the FAD of September 19, 2002 takes the position that PERS decision is "consistent with this amendment, and therefore, the Appellant should not be entitled to the purchase of any such service, in that "he was formally not permitted credit." However, that is not what our legislature did. The statute does not exempt all JTPA employees, therefore, not all JTPA employees are exempt. *Please see Pa. 17,* for the PERS Board's September 19, 2002 FAD.

In reviewing the September 25, 1986 State of New Jersey Executive Department Senate Bill No. 1471 (2nd OCR), then Governor Kean amended the bill in two areas. *Please see Pa. 29-32.* The two specific areas recommending that Senate Bill No. 1471 (2nd OCR) be amended follow. The effect of the amendments was to exempt all JTPA employees from membership.

Recommendation number 1 was made because the prior amendment did not assist the majority of service delivery areas in the state because many of the employees were already in the system. *Please see Pa. 29 and 30.*

The second recommended amendment was to delete optional pension membership for any group of public employees because it would set an undesirable precedent that could affect the actual stability of the State Administered Pension Systems. *Please see Pa. 30.*

Clearly, there is nothing in the recommended amendments returned to the Senate to preclude a Veteran who has had more than one year of continuous service from receiving benefits. The recommendations for change to the statute do not address the Veteran's benefit eligibility sections of Senate Bill No. 1471 (2nd OCR) or N.J.S.A. 43:15A-7 et.seq.

Although the amendments in Senate Bill No. 1471 (2nd OCR) say "[T]he effect of these amendments will be to exempt all JTPA employees in this state from membership in the PERS", it does not address the Veteran eligibility sections. Instead of broadening the amendment to exclude Veterans, the then Governor Kean inserted the following recommendation at page 1, section 1, lines 1 through 8 of Senate Bill No. 1471 (2nd OCR). *Please see Pa. 30.* It says:

> "1. Section 7 of P. L. 1954, C. 84 (See N.J.S.A. 43:15A-7) is amended to read as follows:
>
> 7. There is hereby established the Public Employees' Retirement System of New Jersey in the Division of

Pensions of the Department of Treasury. The membership of the retirement system shall include:

a. The members of the former "State Employees' Retirement System of New Jersey" enrolled as such as of December 30, 1954 who shall not have claimed for refund their accumulated deductions in said system as provided in this section;

b. Any person becoming an employee of the State or other employer after January 2, 1955 and **every veteran,** [emphasis added] other than those whose appointments are seasonal, becoming an employee of the State or other employer after such date including a temporary employee with at least one year's continuous service; [and]

c. **Every employee veteran** [emphasis added] in the employ of the State or other employer on January 2, 1955 who is not a member of any retirement system supported wholly or partly by the State."

There is nothing in then Governor Kean's two reasons for amendments and/or his recommended amendments that should preclude a Veteran with at least one year's continuous service from eligibility. Senate Bill No. 1471 (2nd OCR) was returned including Veterans.

In then Governor Kean's conditional veto of Senate Bill No. 1471, the Governor said that the Bill must be "amended to make its provisions apply to **all** JTPA employees regardless of whether they are currently enrolled in PERS". However, in reviewing the amendments to make provisions apply to **all** JTPA employees, regardless of whether they are currently enrolled in PERS or not, did not occur. There is one item that is abundantly clear. It appears the legislature read the Governor's conditional veto, considered the wishes he expressed in his statement and passed a law, which clearly and unequivocably rejects then Governor Kean's statement that the provisions would apply to **all** JTPA employees. The statute does not use the word "**all**" but includes

the word "**temporary**" twice in subparagraph h of the amended Senate Bill No. 1471 (2nd OCR). The word temporary is clearly distinguished from the word "all", in that if the bill were intended to preclude Veterans considered temporary employees with more than one year of continuous service, the bill would have said that, but it does not. The PERS Board is incorrect in their interpretation of the amended Senate Bill No. 1471 (2nd OCR) in that the amended Senate Bill is not inclusive of Veterans considered temporary employees with at least one year's continuous service. Subsection (h) does not carve out an absolute exception to deprive the Veteran "in continuous service" the right to membership. *Please see Pa. 30 31 and Pa. 9.*

In Foy v. Dayko, 82 N.J.Super. 8, 196 A.2d 535, 1964 N.J.Super. LEXIS 438 (1964), the Court said, "an inference of surplusage[1] in a legislative enactment should not be readily entertained," and in the amendment and N.J.S.A. 43:15A-7 (h) the word "temporary" is used twice. N.J.S.A. 43:15A-7 (h) containing the word temporary twice gives no reason to infer that the word "temporary" was more surplusage. If the then Governor Kean were successful in removing all JTPA funded employees then the many who were employed by the N. J. Department of Labor, Education, Higher Education and Human Services in addition to the various local government entities and this Appellant would have been removed. If our legislature was in support of the recommended amendments they would have simply omitted the term "temporary" and only then would then Governor Kean's objective to broaden the statute been

[1] Surplusage. Extraneous, impertinent, superfluous, or unnecessary matter. Matter in any instrument which is unnecessary to its meaning and does not affect its validity; whatever is extraneous, impertinent, superfluous or unnecessary, and in procedure means matter which is not necessary or relevant to the case. Morrow v. Morrow, 382 S.W. 2nd 785, (1964) Tex. App. LEXIS 2839 . Black's Law Dictionary, 6th Edition, (1990) at 1443.

met, to exempt all JTPA paid employees. Thus the PERS Board would have been correct in their interpretation described in their September 19, 2002 FAD. *Please see Pa. 17* PERS Board interpretation of the legislative intent.

Also, in paragraph 2 at page 3 of the PERS Board September 19, 2002 FAD, found at *Pa.* 17 the PERS Board cites N.J.S.A. 43:15A-7 (b), and says, "[T]he PERS did permit enrollment for all JTPA employees in 1985 as a result of the enactment of N.J.S.A. 43:15A-7 (b), which expressly states that a temporary employee with at least one year's continuous service is included in PERS", however, the PERS Board said in their interpretation that N.J.S.A. 43:15A-7 (h) as enacted on September 25, 1986 this was the absolute exception to mandatory enrollment provided in subsection (b), (which in subsection (h) includes the word "temporary" twice) as trumping subparagraph (b) of the statute, thereby considering the Appellant ineligible relying on subsection (h) as an absolute exception for mandatory enrollment provided in subsection (b).

What the PERS Board failed to provide is an analysis of N.J.A.C. 17:2-2.4 (d) that further supports the Appellant's position of his continuous employment even if the PERS Board were to consider the Appellant a temporary employee under N.J.S.A. 43:15A-7 (h). N.J.A.C. 17:2-2.4 (d) says:

> (d) An employee of the Civil Service Employer who is not classified or unclassified position or an employee of non-civil service employer who is not in a regular budgeted position **may be considered a temporary employee by the employer for one year period following the employee's date of hire, but if employment continues into a second year, the employee will be required to enroll immediately** .. [Emphasis added]

From the employee's date of hire to the date of his retirement it covered 25-1/2 years of continuous employment thereby making the Appellant eligible for immediate enrollment. The Appellant should not only be entitled to benefits pursuant to N.J.S.A. 43:15A-7 (b), but equally as important N.J.A.C. 17:2-2.4 (d) where it sets December 18, 1972 as the effective date for temporary employees' mandatory enrollment, as cited in Vliet v. Board of Trustees of the Public Employees' Retirement System, 156 N.J. Super. 83, 383 A.2d 463, 1978 N.J.Super. LEXIS 702 (1978). Furthermore, ever after noting there is mandatory enrollment for temporary employees as described in the second paragraph of *Pa. 17*, in the September 19, 2002 FAD, the PERS Board continues to assert that subsection (h) applies to all JTPA employees, regardless of employment status. This is contrary to the express provisions as described in amended Senate Bill No. 1471 (2nd OCR) at subparagraph (h) in that the word temporary is used twice, but as shown, the Appellant has qualified his eligibility status regardless of the word temporary whether the word temporary is used in N.J.S.A. 43:15A-7 (h) or N.J.A.C. 17:2-2.4. Moreover, the express policy for an enrollment date and eligibility as described in N.J.A.C. 17:2-2.4 as the enrollment date criteria, even if the Appellant were called a "temporary" employee, further supports the Appellant's position of the Appellant's right to membership. *Please see Pa. 34, copy of N.J.A.C. 17:2 2.1 (d).*

The PERS Board said "[T]he legislative history of subsection (h) was reviewed at the Board's meeting, wherein it was noted that **all** JTPA employees were precluded from PERS membership," however, this is not what that statute said. *Please see Pa. 17* for the PERS Board

statement. There is nothing in N.J.S.A. 43:15A-7 et.seq. that uses the word "all" to not make the Appellant eligible for PERS benefits. The statute does use the word "temporary" on two occasions, and both the word "all" and "temporary", which has been discussed throughout this brief at Pb. 10, 12-14. To further rebut PERS Board's FAD dated September 19, 2002 where the PERS Board said it's position "[c]onsistent with this clear statutory mandate" in determining the Appellant is not entitled to the benefit is incorrect in that there is not a clear statutory mandate. There is no where in N.J.S.A. 43:15A-7 et.seq. that says the statute applies to **all** [emphasis added] JTPA benefit eligible members thereby preventing the Appellant from receiving benefits. The statute was crafted in plain language, clear and unambiguous, the Appellant should receive benefits.

CONCLUSION

The information described above sets forth the reasons the Appellant, G. Philip Lewis, should have been given the opportunity and the ability to purchase additional service and allowing his pension payments to begin.

Respectfully submitted,

DeSIMONE LAW OFFICES

JOHN G. DeSIMONE, ESQUIRE
Attorney for Appellant, G. Philip Lewis

JGD:jlo
cc: Kathleen Coates, CEBS, Secretary Board of Trustees, Public Employee Retirement System
David Denbe, SDAG
Deborah Allen, DAG