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G. PHILIP LEWIS,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Appellant,	:	
v.	:	DOCKET NO: A-001093-02T2
	:	
BOARD OF TRUSTEES,	:	<u>CIVIL ACTION</u>
PUBLIC EMPLOYEES' RETIREMENT	:	
SYSTEM,	:	PROOF OF SERVICE
	:	
Respondent.	:	
	:	

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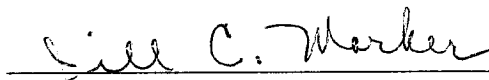
The original of the within Brief of Appellant, G. Philip Lewis, and Proof of Service were hand delivered for filing with **James M. Flynn**, Clerk, Appellate Division, Superior Court of New Jersey, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey 08625.

On Friday, January 31, 2003, I, the undersigned, had hand delivered to **Kathleen Coates**, CEBS, Secretary, Public Employees' Retirement System, 50 West State Street, Trenton, New Jersey 08625-0295; and **David Dembe**, SDAG and **Debra A. Allen**, DAG, both located at the Office of the Attorney General, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey 08625.

**BRIEF OF APPELLANT, G. PHILIP LEWIS, and PROOF OF SERVICE**

I certify that the foregoing statements made by me are true, I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 31, 2003

  
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JILL C. MARKER

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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,

Respondent.

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

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BRIEF OF APPELLANT, G. PHILIP LEWIS

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January 31, 2003

*Via Hand Delivery by Courier Service*

James M. Flynn, Clerk  
Appellate Division  
Superior Court of New Jersey  
Hughes Justice Complex  
25 West Market Street  
Trenton, New Jersey 08625

**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. *Please 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 this Appeal. Please see Pa. 15-18, for a copy of the September 19, 2002 FAD.

#### 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 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.

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 *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*, for 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 PROVE 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 prove *N.J.S.A. 43:15A-7(h)* carves out an absolute exception that would deny this Appellant with this Appellant's set

of facts, applied to the law membership in the retirement system. The PERS Board said in their September 19, 2002 FAD, as described at Pa. 17, 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)*. Please see Pa. 19 for a complete copy of *N.J.S.A. 43:15A-7 et seq.* Moreover, 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 (2<sup>nd</sup> OCR) states that eligibility is a condition precedent for a Veteran. Please see Pa. 29-32 for a copy of Senate Bill No. 1471 (2<sup>nd</sup> 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 subsections (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.*

The general rule that "[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), is important to this case.

Applying this well recognized canon 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. Incidentally, 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 unambiguous on its face in that there is only one interpretation of N.J.S.A. 43:15A-7(b) and that interpretation 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 rule is to interpret a statute in accordance with its plain meaning, then subsection (b) is clear and unambiguous on its face that the Appellate should be enrolled. This subsection 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 required to be a member of the Retirement System. Membership is not an option for a veteran, it is mandatory. 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 Appellant 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, in *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) the Court 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 whether the words in *N.J.S.A.* are expanded or limited, the obvious purpose of the law is that 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 continuously served for 25-1/2 years, 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 *N.J.S.A. 43:15A-7(d)*, a member in the Retirement System is optional for elected officials **other than Veterans** [emphasis added]. Please see Pa. 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 because the Appellant has no choice; enrollment for a Veteran is not an option, it is automatic and mandatory. It is clear and unambiguous; the PERS Board's decision is not in accord with the basic intent of the act.

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 the Courts emphasized that when examining the words of a statute it is done with the intent to determine the statute's plain meaning. The PERS Board said in their September 19, 2002 FAD, they interpret the statute liberally and in light, most favorable, to their members; however, this standard was not applied in the Appellant's request for benefits. If the PERS Board applied their standard and considered the plain meaning standard as articulated in McCann, Id. and Carpenter, Id., then every Veteran, including a "temporary" employee with at least one year's continuous service, should have mandatory 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 do the following: "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, the PERS Board failed 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 in their interpretation that *N.J.S.A.* 43:15A-7(h) is an absolute exception to Veteran enrollment as provided in *N.J.S.A.* 43:15A-7(b). In the PERS Board September 19, 2002 FAD, at page 3, paragraph 2, denying the Appellant benefits the PERS Board 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 statute] 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 to this issue is also contrary to that of the PERS Board. If it were the legislative intent to

affect "all" employees, then the word "all" as interpreted by the PERS Board would have been used by our legislature, but again it was not. Instead our legislature used the word "temporary" not just once, but three (3) times in *N.J.S.A. 43:15A-7 et seq.* Please see *Pa. 19-21* for a complete copy of the statute. The word "temporary" 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 [emphasis added].**

In addition to the Appellant's Veteran status, the Appellant is further eligible for benefits based upon the Appellant's having served the County of Salem for at least one year of continuous service. Even if the Appellant was considered a "temporary" employee, as the PERS Board said thereby not making him eligible for benefits the PERS Board 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 unambiguously means this Appellant is eligible for the following reason. 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 and factually, the Appellant served 25-1/2 continuous years. 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.**

No, N.J.S.A. 43:15A-7(h) does not apply 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. The then Governor Kean further amended the bill attempting to exempt all JTPA employees from membership in PERS; however, the bill was not passed to include all JTPA employees. The PERS Board in their FAD dated 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, the amendment is not what our legislature passed in the end. In reviewing N.J.S.A. 43:15A-7 et seq. 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, Pa. 19-21 for a complete copy of N.J.S.A. 43:15A-7 et seq. and compare these to Pa. 29-32 Senate Bill No. 1471 (2<sup>nd</sup> OCR).

In reviewing the September 25, 1986 State of New Jersey Executive Department Senate Bill No. 1471 (2<sup>nd</sup> 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 (2<sup>nd</sup> OCR) be amended follow. The Court will see a vast difference in all three (3) documents, which affect this Appellant.

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 did not address the Veteran's benefit eligibility sections of Senate Bill No. 1471 (2<sup>nd</sup> OCR) or *N.J.S.A. 43:15A-7 et seq.*

Now although the amendments in Senate Bill No. 1471 (2<sup>nd</sup> OCR) did 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 (2<sup>nd</sup> OCR) that emphasizes veteran eligibility. *Please see Pa. 30* where 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 (2<sup>nd</sup> OCR) was not returned exempting all JTPA employees but 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 then Governor's recommendation 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 appears 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 unequivocally 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 subsection (h) of the amended Senate Bill No. 1471 (2<sup>nd</sup> 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 exactly that, but it does not. The PERS Board is incorrect in their interpretation of the

amended Senate Bill No. 1471 (2<sup>nd</sup> 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 for part of the June 24, 2002 Court Order and Pa. 29-32 for Senate Bill No. 1471 (2<sup>nd</sup> OCR).

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<sup>1</sup> in a legislative enactment should not be readily entertained," and in both the amendment to Senate Bill No. 1471 (2<sup>nd</sup> OCR) 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" on two separate occasions gives no reason to infer that the word "temporary" was mere 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 governmental entities and this Appellant would have been removed. If our legislature was in support of the recommended amendments to affect all JTPA employees they would have simply omitted the word "temporary" from the act and only then would our State's then Governor Kean's objective to broaden the statute to exempt all JTPA employees has been met. Thus the PERS Board would have been correct in their interpretation described in their September 19, 2002 FAD; however, as described in this Brief, the PERS Board is incorrect in their interpretation to include all JTPA employees. Please see Pa. 17 PERS Board interpretation of the legislative intent.

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<sup>1</sup> 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. 2<sup>nd</sup> 785, (1964) Tex. App. LEXIS 2839. Black's Law Dictionary, 6<sup>th</sup> Edition, (1990) at 1443.

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 of *N.J.S.A. 43:15A-7(h)* as enacted September 25, 1986 that subsection (h) was the absolute exception to mandatory enrollment provided in subsection (b), defeating the Appellant's interpretation as to subsection (b), thus, the PERS Board considered the Appellant ineligible by relying on subsection (h) as an absolute exception for mandatory enrollment as provided in subsection (b).

What the PERS Board failed to provide in their interpretation of subsection (h) 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 Appellant's date of hire (December 23, 1974) to the date of the Appellant's retirement (June 30, 2000) 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 is the application of *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, even after the PERS Board described mandatory enrollment for temporary employees in the second paragraph of the September 19, 2002 FAD, the PERS Board continues to assert that subsection (h) applies to all JTPA employees, regardless of employment status. Please see Pa. 17 describing mandatory enrollment. The PERS Board having asserted subsection (h) applies to all JTPA employees is contrary to the express provisions as described in amended Senate Bill No. 1471 (2<sup>nd</sup> OCR) at subsection (h) in that the word "temporary" is used twice and according to N.J.S.A. 17:2-2.4, the Appellant's continuous service makes him eligible. More importantly, the Appellant has qualified his eligibility status whether or not the word "temporary" is used in N.J.S.A. 43:15A-7(h) or N.J.A.C. 17:2-2.4 in that a veteran is to receive automatic enrollment. The express policy for an enrollment date and eligibility as described in N.J.A.C. 17:2-2.4 further supports the Appellant's position of the Appellant's right to membership if the Appellant were considered a "temporary" employee. Please see Pa. 34, copy of N.J.A.C. 17:2-2.4(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", have been discussed throughout this Brief, specifically at Pb. 10 and Pb. 12-14. To further rebut PERS Board's FAD dated September 19, 2002 where the PERS Board said the PERS Board's position is "[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 nowhere in N.J.S.A. 43:15A-7 et seq. that says the statute applies to all [emphasis added] JTPA benefit

eligible members that should prevent this Appellant from receiving benefits. The statute was crafted in plain language, clear, unambiguous and 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, LLC - ATTORNEYS AT LAW



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

JGD:jld/jcm

Cc: Kathleen Coates, CEBS, Secretary, Board of Trustees, PERS  
Debra A. Allen, DAG  
David Dembe, SDAG  
G. Philip Lewis

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5660-00T3

IN THE MATTER OF  
G. PHILIP LEWIS

---

G. PHILIP LEWIS,  
Appellant,

v.

BOARD OF TRUSTEES, PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM,

Respondent.

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**FILING DATE**  
APPELLATE DIVISION

JUN 24 2002

*Jon Flynn*  
CLERK

Submitted June 4, 2002 - Decided JUN 24 2002

Before Judges Eichen and Parker.

On appeal from the Board of Trustees, Public  
Employees' Retirement System, 1065648.

John G. DeSimone, attorney for appellant.

David Samson, Attorney General, attorney for  
respondent (Patrick DeAlmeida, Deputy Attorney  
General, of counsel; Debra A. Allen, Deputy  
Attorney General, on the brief).

PER CURIAM

Appellant G. Philip Lewis appeals from the final determination of the Board of Trustees (Board) of the Public Employees Retirement System (PERS), dated May 17, 2001, denying his request to purchase service credit. His ineligibility spans the period September 19, 1986, the effective date of N.J.S.A. 43:15A-7h, which disallowed

membership in PERS of "a temporary employee who is employed under the federal Job Training Partnership Act [JTPA], Pub. L. 97-300 (29 U.S.C. § 1501)," until April 7, 1993, the date the Salem County Board of Chosen Freeholders passed a resolution establishing the JTPA as a department of the County (the Resolution). The Resolution also consolidated "the employees serving in the JTPA Office" "into the civil service system," rendering appellant a permanent employee as of that date. We reverse and remand for further proceedings.

These are the relevant facts. Appellant served in the United States Navy from March 14, 1967 to November 30, 1970. Beginning in 1974, he worked in various capacities in Salem County first under the Comprehensive Employment and Training Act Program (CETA), 29 U.S.C. §§ 801 - 999 (2001) and then for the Job Training Partnership Act (JTPA), 29 U.S.C. §§ 1501 - 1792b (2001).<sup>1</sup>

Appellant's first County job was in 1974 as a teacher's aide working for CETA. He remained working for CETA earning promotions and raises until October 1, 1983, when he became the JTPA Administrator. On July 1, 1988, appellant became the Human Resource Coordinator for JTPA. Apparently, throughout this period, appellant was not a civil service employee but was considered a temporary employee of the County. However, on April, 7, 1993, by

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<sup>1</sup> The CETA and JTPA were federal programs enacted by Congress during the period in question to provide job training, services and employment opportunities to the economically disadvantaged. The acts authorizing the programs have been repealed.



virtue of the Resolution adopted by the Board of Chosen Freeholders, appellant's status was converted to that of a permanent employee. Appellant remained a permanent employee of the County through June 30, 2000 when he retired. Appellant worked for the County for twenty-six years without interruption in his employment.

Initially, by letter dated December 21, 1998, the Board granted appellant's request to enroll in PERS, indicating that the Board had "also voted to allow Salem County JTPA employees the ability to purchase temporary service under the provisions of N.J.S.A. 43:15A-11 if the temporary service resulted, without interruption, in a permanent appointment with the same employer."<sup>2</sup> However, in a subsequent letter dated February 16, 2001, PERS reversed its position, advising appellant that he was not eligible to purchase service credit for any of the time he worked for the County, but only for the time he served in the United States Navy, i.e., from March 1967 to November 1970.

On April 3, 2001, appellant's attorney wrote to PERS on behalf of appellant requesting to purchase additional service credit.<sup>3</sup> A meeting of the Board followed on April 18, 2001 at which appellant and his counsel were present. Two days later, by letter dated

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<sup>2</sup> N.J.S.A. 43:15A-11 permits "any person employed temporarily by an employer whose temporary employment resulted, without interruption, in permanent employment ... [to] purchase credit for that temporary service."

<sup>3</sup> Because that letter is not in the record, we do not know the reasons given for the request to purchase additional credit.

April 20, 2001, the Board approved appellant's request to purchase additional service credit from December 23, 1974 to September 18, 1986, and from April 2, 1993 until his retirement; however, it denied his request "to purchase the JTPA service from September 19, 1986 to April 1, 1993,"<sup>4</sup> because the Board concluded he was ineligible for membership under N.J.S.A. 43:15A-7h.

On May 17, 2001, PERS issued a "Final Administrative Determination" formally denying appellant's request to purchase additional service credit and denying him a hearing in the Office of Administrative Law. In its final decision, PERS set forth its findings of fact and conclusions of law, relying on N.J.S.A. 43:15A-7h as the basis for its denial of appellant's request.

The letter from PERS reproduced subsection h of the statute as follows:

A temporary employee who is employed under the federal Job Training Partnership Act, Pub. L. 97-300 (29 U.S.C. § 1501) shall not be eligible for membership in the system. Membership for temporary employees employed under the Job Training Partnership Act, Pub. L. 97-300 (29 U.S.C. § 1501) who are in the system on September 19, 1986 me [sic] shall be terminated, and affected employees shall receive a refund of their accumulated deductions as of the date of commencement of employment in a Federal Job Training Partnership Act program. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his

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<sup>4</sup> That is the period between the enactment of N.J.S.A. 43:15-7h and the adoption of the Resolution making him a permanent employee. A discrepancy in dates exists as reflected in the letter of April 20, 2001 (April 1, 1993) and the Resolution (April 7, 1993) which we need not resolve.

dependent or dependents, or to any of his beneficiaries under the retirement system.

After quoting the statute, the letter concluded:

N.J.S.A. 43:15A-7(h) provides that a temporary employee who was employed under the Federal Job Training Partnership Act is ineligible for membership in the PERS. The law also provided that employees who were enrolled in the PERS on or before September 19, 1986, would have their membership terminated and all contributions refunded. The refund served as a waiver of any future benefits payable to the employee or beneficiary.

Because this law specifically prohibits PERS membership to JTPA employees after September 18, 1986, the Division is without discretion to permit your request. Mr. Lewis' request to purchase his employment with the County of Salem pursuant to the CETA program was granted. Additionally, the request to purchase the JTPA employment from October 1, 1983, through September 18, 1986 was approved.

In its final decision, PERS did not mention any other subsections of the statute in denying appellant's request.

On appeal, appellant raises the following arguments:

POINT I

WHETHER OR NOT G. PHILIP LEWIS' JOB TRAINING PARTNERSHIP ACT (JTPA) TIME SHOULD NOT BE CONSIDERED UNDER THE PROVISIONS OF N.J.S.A. 43:15-7 ET SEQ.

POINT II

WHETHER OR NOT G. PHILIP LEWIS' EMPLOYMENT STATUS [SHOULD] BE CONSIDERED A PERMANENT EMPLOYEE MAKING HIM ELIGIBLE TO RECEIVE BENEFITS FROM THE STATE OF NEW JERSEY RETIREMENT FUND.

POINT III

THE STATE OF NEW JERSEY, DEPARTMENT OF

TREASURY, DIVISION OF PENSIONS AND BENEFITS  
(PERS) ERRED IN THEIR INTERPRETATION OF SENATE  
BILL NO. 1471 (2nd OCR) SUBMITTED BY GOVERNOR  
THOMAS H. KEENE TO THE SENATE, APRIL 21, 1986.

Under these point headings, appellant urges us to reverse PERS's final decision. He contends he is eligible for membership in PERS as a "veteran" with more than "one years' continuous service" under subsection b of the statute, and maintains that he was a "permanent" employee. He further argues that, under subsection d, as a veteran, he is automatically a member of the retirement system because veterans are not permitted to opt out of the system irrespective of an employee's status under subsection h as "a temporary employee." He also cites two non-pension cases suggesting he is entitled to purchase service credit for this JTPA period because the County somehow deprived him of "the opportunity to become a permanent employee." See Kyer v. City of East Orange, 315 N.J. Super. 524 (App. Div. 1998); Kennedy v. Westinghouse Electric Corp., 29 N.J. Super. 68 (App. Div. 1953).

In his brief, the Attorney General counters that subsection h "carves out an exception" to membership eligibility in PERS for all temporary employees under the JTPA, and appellant was a temporary employee until the County adopted the Resolution on April 7, 1993, changing his status to a civil service employee. Relying on the legislative history of the subsection,<sup>5</sup> the Attorney General argues

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<sup>5</sup> See Governor's Reconsideration and Recommendation Statement accompanying Senate Bill No. 1471 that resulted in the language of N.J.S.A. 43:15A-7h, which states:

that the exception eliminates any rights appellant may have had under b or d as a veteran. The Attorney General further asserts that subsection b requires a "veteran" to be a permanent employee to obtain retirement benefits, and appellant was not considered a permanent employee until the County passed its resolution, [t]hus, Appellant could not have been enrolled in the PERS." In addressing appellant's "continuous service" argument, the Attorney General also asserts that while his service with the County may have been "continuous," it was not "permanent."

The preamble to N.J.S.A. 43:15A-7 sets forth those persons who are to be included in the retirement system. It states as follows:

There is hereby established the Public Employees' Retirement System of New Jersey in the Division of Pensions and Benefits of the Department of the Treasury. The membership of the retirement system shall include:

Subsection b then provides:

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 of P.L. 1966, c. 217 (C.43:15A-57.2) and 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

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The effect of these amendments will be to exempt all JTPA employees in this State from membership in the PERS. This is a necessary step if we wish to keep JTPA employment at current levels.

[Senate, No. 1471 - L. 1986, c. 109, Governor's Reconsideration and Recommendation Statement.]

one year's continuous service.

[N.J.S.A. 43:15A-7b (emphasis added).]

Subsection d of N.J.S.A. 43:15A-7 provides:

Membership in the retirement system shall be optional for elected officials other than veterans, and for school crossing guards, who having become eligible for benefits under other pension systems are so employed on a part-time basis.... No 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.

[N.J.S.A. 43:15A-7d.]

Contrary to the Attorney General's argument, subsection b expressly states that "a temporary employee with at least one year's continuous service" is included in PERS. Hence, its plain language contradicts the Attorney General's assertion that subsection b requires the employee to be "permanent." In addition, we note that N.J.S.A. 43:15A-7b states that "every veteran" "shall [be] includ[ed]" in PERS; yet subsection h states a temporary JTPA employee is ineligible for membership in PERS. Thus, N.J.S.A. 43:15A-7b appears to be in conflict with N.J.S.A. 43:15A-7h, as does N.J.S.A. 43:15A-11.

PERS did not discuss N.J.S.A. 43:15A-7b or 7d or N.J.S.A. 43:15A-11 in its final determination to declare appellant ineligible for membership, addressing only subsection h in denying his request to purchase additional credit for the period in question. We assume these were not raised by appellant at the hearing. Ordinarily, we would consider his arguments in respect of

these subsections to be waived; however, because the appeal implicates a statute bearing upon matters of public interest, Nieder v. Royal Indemnity Ins. Co., 62 N.J. 229, 234 (1973), we are reluctant to preclude appellant's arguments without some consideration of them by the agency. While we frequently defer to an agency's expertise when it is interpreting the statutes and regulations it is charged with enforcing, see Div. of Med. Assistance and Health Services, 350 N.J. Super. 175, 185 (App. Div. 2002), we need not show the same deference to the views of the Attorney General.

Because of the policy implications involved in interpreting the statute, especially where veterans' rights are implicated, we believe it is preferable to have the agency with the presumed expertise charged with its administration interpret the statute, rather than rely on the Attorney General's interpretation of the statutes in a brief. The Board itself should explain the rationale for concluding (if it does) that subsection h carves out an absolute exception that would deprive a JTPA employee, who is also a veteran "in continuous service," of membership in the retirement system the right to purchase service credit. This is especially so in light of PERS's initial decision that appellant was eligible, its subsequent decision that he was completely ineligible except for his military credits, and its final decision granting some credit, but not others.

Accordingly, we remand to PERS for it to consider appellant's additional statutory arguments. However, we reject appellant's arguments grounded on unspecified allegations of wrongdoing by the County inasmuch as they are factual in nature and could have been made at the time of the meeting on April 18, 2001, when PERS made its decision. Therefore, they are considered waived. Nieder, supra, 62 N.J. at 234.<sup>6</sup>

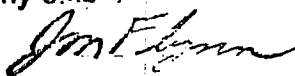
Reversed and remanded for further proceedings in conformity with this opinion. We do not retain jurisdiction.

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<sup>6</sup> Appellant's claims of negligence were not illuminated by any competent evidence below, such as an affidavit from appellant setting forth any facts to the effect he did not understand he was not civil service until the Resolution was passed, or that someone in the County breached a duty to him in not advising him of his status. We assume they were not asserted because they had no basis in fact.

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I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION





State of New Jersey  
DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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Acting State Treasurer  
THOMAS P. BRYAN  
Director

May 17, 2001

John G. DeSimone, Esquire  
PO Box 237  
Woodbury, NJ 08096

Re: **G. Philip Lewis**  
**PERS #1065648**

**FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. DeSimone:

I am writing in reference to the action of the Board of Trustees of the Public Employees' Retirement System ("PERS Board") in denying your request on behalf of G. Philip Lewis to purchase additional service credit in the PERS from September 19, 1986 until April 1, 1993 when Mr. Lewis was an employee, pursuant to the Job Training Partnership Act (JTPA) at the County of Salem. The PERS Board reviewed this request at its March 21, 2001, and April 18, 2001, meetings and denied your request. Findings of Fact and Conclusions of Law, as outlined below were presented and approved by the PERS Board at its May 16, 2001, meeting.

The PERS Board has reviewed your written submissions and the documentation accompanying your appeal. Based upon the facts presented in those documents and the statutes and regulations governing the PERS, the PERS Board, cannot grant your request to allow Mr. Lewis to purchase the JTPA service from September 19, 1986 to April 1, 1993.

The Board made the following findings of fact. Mr. Lewis was employed through the County of Salem under the CETA program as a Teachers Aide from December 1, 1974 through December 2, 1976. On December 13, 1976 Mr. Lewis became the Community Service Planner with CETA. On January 1, 1977 he became the Senior Community Service Planner. On July 1, 1977 Mr. Lewis became the Deputy Director for the Department of Community Development with CETA. On January 1, 1980 he became the Manpower Coordinator with CETA. This position continued until October 1, 1983 when Mr. Lewis became the JTPA Administrator. On July 1, 1988 Mr. Lewis became the Human Resource Coordinator continuing in the JTPA. Mr. Lewis' position became permanent with the County of Salem on April 7, 1993.

At its meeting of March 21, 2001, the Board considered your submissions and granted an extension of one month to permit you to provide any documentation or argument as to why N.J.S.A. 43:15A-7(h) was inapplicable to Mr. Lewis' purchase request.

John G. DeSimone, Esq.  
Re: G. Philip Lewis  
Page 2  
May 17, 2001

At its meeting of April 18, 2001, the PERS Board reviewed your correspondence of April 3, 2001, and upon consideration voted to deny your request to allow Mr. Lewis to purchase a portion of his JTPA employment from September 19, 1986 through April 1, 1993. In support of its determination the Board cited N.J.S.A. 43:15A-7(h).

At the Board's meeting of April 18, 2001, you orally requested a hearing in the Office of Administrative Law. On April 30, 2001, you forwarded a letter to the PERS Board appealing the Board's April 18, 2001 decision. This Final Administrative Determination serves as formal notice that the Board has denied your request for a hearing.

The Board made the following conclusions of law:

The provisions of N.J.S.A. 43:15A-7(h):

A temporary employee who is employed under the Federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. s 1501) shall not be eligible for membership in the system. Membership for temporary employees employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. s 1501) who are in the system on September 19, 1986 shall be terminated, and affected employees shall receive a refund of their accumulated deductions as of the date of commencement of employment in a Federal Job Training Partnership Act program. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

N.J.S.A. 43:15A-7(h) provides that a temporary employee who was employed under the Federal Job Training Partnership Act is ineligible for membership in the PERS. The law also provided that temporary employees who were enrolled in the PERS on or before September 19, 1986, would have their membership terminated and all contributions refunded. The refund served as a waiver of any future benefits payable to the employee or beneficiary.

Because this law specifically prohibits PERS membership to JTPA employees after September 18, 1986, the Division is without discretion to permit your request. Mr. Lewis' request to purchase his employment with the County of Salem pursuant to the CETA program was granted. Additionally, the request to purchase the JTPA employment from October 1, 1983, through September 18, 1986 was approved.

As noted above, the PERS Board has reviewed your written submissions including your written request for a formal hearing, in the Office of Administrative Law in accordance with the provisions of N.J.A.C. 17:1-1.5. Because your matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final

John G. DeSimone, Esq.  
Re: G. Philip Lewis  
Page 3  
May 17, 2001

Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Sincerely,



Wendy Jamison, Secretary  
Board of Trustees  
Public Employees' Retirement System

wj/G-3

c: David Dembe, SDAG

G. Philip Lewis  
105 Stockington Road  
Woodstown, NJ 08098



State of New Jersey

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State Treasurer

THOMAS P. BRYAN  
Director

JAMES E. MCGREEVEY  
Governor

August 23, 2002

DeSIMONE LAW OFFICES  
John G. DeSimone, LLC  
66 Euclid Street – Suite B  
P.O. Box 237  
Woodbury, NJ 08096-7057

Re: G. Philip Lewis  
PERS #1065648  
A-5660-00T3

Dear Mr. DeSimone:

The Board of Trustees of the Public Employees' Retirement System (PERS) at its meeting of August 21, 2002 reconsidered and reaffirmed their final administrative determination of May 16, 2001 specifically denying Mr. Lewis the purchase of additional service credit in the PERS from September 19, 1986 until April 1, 1993 when Mr. Lewis was an employee, pursuant to the Job Training Partnership Act (JTPA) at the County of Salem.

The Board denied the request for an administrative hearing essentially for the reason(s) set forth in the Board's letter dated May 16, 2001, which specifically relates to the request to purchase JTPA service.

Therefore, the Board has directed the Secretary, in conjunction with the Attorney General's Office, to draft a detailed Finding of Facts and Conclusions of Law consistent with its original decision that will formally outline the Board's decision and become the Board's final administrative determination. Since the Board has denied your request for a hearing and will issue its Finding of Facts and Conclusions of Law. The Board will review and adopt these findings and conclusions and send a copy of the final decision to you. Upon receipt of this final administrative determination, you will have the right to appeal the Board's decision; hence, the 45 days to appeal this decision will not begin until the Board adopts the final administrative determination.

Sincerely,  
*Kathleen Coates*

Kathleen Coates, Secretary  
Board of Trustees  
Public Employees' Retirement System

Jb/G-6

c: DAG Susanne Culliton  
DAG Debra Allen  
G. Philip Lewis



State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
(609) 292-7524 TDD (609) 292-7718  
www.state.nj.us/treasury/pensions

JAMES E. MCGREEVEY  
Governor

Mailing Address:  
PO Box 295  
Trenton, NJ 08625-0295  
Location:  
50 West State Street  
Trenton, New Jersey

JOHN E. MCCORMAC, CPA  
State Treasurer

THOMAS P. BRYAN  
Director

September 19, 2002

DeSIMONE LAW OFFICES  
John G. DeSimone, Esquire  
66 Euclid Street – Suite B  
PO Box 237  
Woodbury, NJ 08096-7057

Re: G. Philip Lewis  
PERS #1065648  
Appellate Division Docket No.  
A-5660-00T3

**FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. DeSimone:

I am writing in reference to the action of the Board of Trustees of the Public Employees' Retirement System ("PERS Board") in denying your request on behalf of G. Philip Lewis to purchase additional service credit in the PERS from September 19, 1986 until April 1, 1993 when Mr. Lewis was an employee, pursuant to the Job Training Partnership Act (JTPA) at the County of Salem. The PERS Board reviewed this request at its March 21, 2001, and April 18, 2001, meetings and denied your request. Findings of Fact and Conclusions of Law were presented and approved by the PERS Board at its May 16, 2001, meeting. The matter proceeded to the Appellate Division after you appealed these Findings of Fact and Conclusions of Law. The Appellate Division remanded the matter to the Board for further review. Specifically, the Appellate Division required "the Board [to] explain the rationale for concluding (if it does) that subsection h carves out an absolute exception that would deprive a JTPA employee, who is also a veteran 'in continuous service,' of membership in the retirement system the right to purchase service credit."

The PERS Board has reviewed your written submissions and the documentation accompanying your appeal. Additionally, the Board heard your arguments on behalf of Mr. Lewis, as well as his own arguments and those of the Attorney General. Based upon the facts presented, as well as the statutes and regulations governing the PERS, the Board cannot grant your request to allow Mr. Lewis to purchase the JTPA service from September 19, 1986 to April 1, 1993.

The Board made the following findings of fact. Mr. Lewis was employed through the County of Salem under the Comprehensive Employment Training Act (CETA) program as a Teachers Aide from December 1, 1974 through December 2, 1976. On December 13, 1976 Mr. Lewis became the Community Service Planner with CETA. On January 1, 1977 he became the Senior Community Service Planner. On July 1, 1977 Mr. Lewis became the Deputy Director for the Department of Community Development with CETA. On January 1, 1980 he became the Manpower Coordinator with CETA. This position continued until October 1, 1983 when Mr. Lewis became the JTPA Administrator. On July 1, 1988 Mr. Lewis became the Human Resource Coordinator continuing in the JTPA. Mr. Lewis' position became permanent with the County of Salem on April 7, 1993.

At its meeting of April 18, 2001, the PERS Board voted to deny your request to allow Mr. Lewis to purchase a portion of his JTPA employment from September 19, 1986 through April 1, 1993. In support of its determination the Board cited N.J.S.A. 43:15A-7(h).

The Board made the following conclusions of law:

The provisions of N.J.S.A. 43:15A-7(h):

A temporary employee who is employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. § 1501) shall not be eligible for membership in the system. Membership for temporary employees employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. § 1501) who are in the system on September 19, 1986 shall be terminated, and affected employees shall receive a refund of their accumulated deductions as of the date of commencement of employment in a federal Job Training Partnership Act program. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

N.J.S.A. 43:15A-7(h) provided that temporary employees who were employed under the federal Job Training Partnership Act are ineligible for membership in the PERS. The law also provided that temporary employees who were enrolled in the PERS on or before September 19, 1986, would have their membership terminated and all contributions refunded.<sup>1</sup> The refund served as a waiver of any future benefits payable to any employee or beneficiary.

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The Board consistently attempts to read statutes liberally and in a light most favorable to the member. Consistent with this goal and in an attempt to permit the maximum amount of PERS membership credit eligible for purchase to the member herein, the Board permitted the JTPA time that was creditable at the time of Mr. Lewis' employment. Thus, the period between October 1, 1983, and September 18, 1986, was permitted as Mr. Lewis was eligible for pension credit during these nearly three years.

Because this law specifically prohibits PERS membership to JTPA employees after September 18, 1986, the Division is without discretion to permit your request. Mr. Lewis' request to purchase his employment with the County of Salem pursuant to the CETA program was granted. Additionally, the request to purchase the JTPA employment from October 1, 1983, through September 18, 1986 was approved, as this time was not prohibited by subsection (h), which required that all membership for those JTPA employees be terminated on or before September 19, 1986.

You argue that Mr. Lewis should be entitled to membership due to his continuous employment in a temporary position, pursuant to N.J.S.A. 43:15A-7(b), which was amended on April 7, 1985. The 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, subsection (h) was enacted one year later. The Board, relying upon the longstanding interpretation of the Division of Pensions and Benefits, interprets subsection (h) as an absolute exception to the mandatory enrollment provided in subsection (b). The Legislative history of subsection (h) was reviewed at the Board's meeting, wherein it was noted that the all JTPA employees were precluded from PERS membership. Specifically, the history includes a conditional veto by then Governor Kean of Senate Bill No. 1471, which initially applied only to JTPA employees "not currently enrolled in the PERS." However, due to strong concerns for the limited resources of the federally funded JTPA program, Governor Kean 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.

Further, you argue that the Mr. Lewis should be exempt 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 the JTPA exception to the membership statute -- N.J.S.A. 43:15A-7. Eligibility for enrollment in the 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 status; he must first be eligible for enrollment pursuant the statute. Clearly, subsection (h) exempts him from membership.

Mr. Lewis was barred from membership in the PERS at the time subsection (h) became effective, or September 19, 1986. Mr. Lewis again became eligible for membership in the PERS in April of 1993, when his employer enrolled him as a full-time employee. The Board permitted Mr. Lewis to purchase time for all periods sought, with the exception of the above-cited JTPA time. This finding by the Board is based upon its determination that subsection (h) carves out an absolute exception for all JTPA employees.

John G. DeSimone, Esq.  
Re: G. Philip Lewis  
Page 4  
September 19, 2002

As noted above, the PERS Board has reviewed your written submissions including your written request for a formal hearing, in the Office of Administrative Law in accordance with the provisions of N.J.A.C. 17:1-1.5. Because your matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Sincerely,



Kathleen Coates, CEBS  
Secretary, Board of Trustees  
Public Employees' Retirement System

kc/G-11

c: David Dembe, SDAG  
  
G. Philip Lewis  
105 Stockington Road  
Woodstown, NJ 08098



1 of 10 DOCUMENTS

NEW JERSEY STATUTES

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\*\*\* THIS SECTION IS CURRENT THROUGH P.A. 2001, CHAPTER 50 \*\*\*  
\*\*\* NEW JERSEY 209TH LEGISLATURE, SECOND ANNUAL SESSION (2001) \*\*\*

TITLE 43. PENSIONS AND RETIREMENT AND UNEMPLOYMENT COMPENSATION  
SUBTITLE 5. STATE, COUNTY AND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM  
CHAPTER 15A. PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
ARTICLE III. PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

N.J. Stat. § 43:15A-7 (2001)

§ 43:15A-7. Public Employees' Retirement System, established, membership

There is hereby established the Public Employees' Retirement System of New Jersey in the Division of Pensions and Benefits of the Department of the 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, other than a retired member who returns to service pursuant to subsection b. of section 27 of P.L.1966, c.217 (C.43:15A-57.2) and 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 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.

d. Membership in the retirement system shall be optional for elected officials other than veterans, and for school crossing guards, who having become eligible for benefits under other pension systems are so employed on a part-time basis. Any such part-time school crossing guard who is eligible for benefits under any other pension system and who was hired as a part-time school crossing guard prior to March 4, 1976, may at any time terminate his membership in the retirement system by making an application in writing to the board of trustees of the retirement system. Upon receiving such application, the board of trustees shall terminate his enrollment in the system and direct the employer to cease accepting contributions from the member or deducting from the compensation paid to the member. State employees who become members of any other retirement system

supported wholly or partly by the State as a condition of employment shall not be eligible for membership in this retirement system. Notwithstanding any other law to the contrary, all other persons accepting employment in the service of the State shall be required to enroll in the retirement system as a condition of their employment, regardless of age. No 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.

e. Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

f. The accumulated deductions of the members of the former "State Employees' Retirement System" which have been set aside in a trust fund designated as Fund A as provided in section 5 of this act and which have not been claimed for refund prior to February 1, 1955 shall be transferred from said Fund A to the Annuity Savings Fund of the Retirement System, provided for in section 25 of this act. Each member whose accumulated deductions are so transferred shall receive the same prior service credit, pension credit, and membership credit in the retirement system as he previously had in the former "State Employees' Retirement System" and shall have such accumulated deductions credited to his individual account in the Annuity Savings Fund. Any outstanding obligations of such member shall be continued.

g. Any school crossing guard electing to terminate his membership in the retirement system pursuant to subsection d. of this section shall, upon his request, receive a refund of his accumulated deductions as of the date of his appointment to the position of school crossing guard. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

h. A temporary employee who is employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. s.1501) shall not be eligible for membership in the system. Membership for temporary employees employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. s.1501) who are in the system on September 19, 1986 shall be terminated, and affected employees shall receive a refund of their accumulated deductions as of the date of commencement of employment in a federal Job Training Partnership Act program. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

i. Membership in the retirement system shall be optional for a special service employee who is employed under the federal Older American Community Service Employment Act, Pub.L.94-135 (42 U.S.C. s.3056). Any special service employee employed under the federal Older American Community Service Employment Act, Pub.L.94-135 (42 U.S.C. s.3056), who is in the retirement system on the effective date of P.L.1996, c.139, may terminate membership in the retirement system by making an application in writing to the board of trustees of the retirement system. Upon receiving the application, the board shall terminate enrollment in the system and the member shall receive a refund of accumulated deductions as of the date of commencement of employment in a federal Older American Community Service Employment Act program. This refund of contributions shall serve as a waiver of all benefits payable to the employee, to any

dependent or dependents, or to any beneficiary under the retirement system.

j. An employee of the South Jersey Port Corporation who was employed by the South Jersey Port Corporation as of the effective date of P.L.1997, c.150 (C.34:1B-144 et al.) and who shall be re-employed within 365 days of such effective date by a subsidiary corporation or other corporation, which has been established by the Delaware River Port Authority pursuant to subdivision (m) of Article I of the compact creating the Delaware River Port Authority (R.S.32:3-2), as defined in section 3 of P.L.1997, c.150 (C.34:1B-146), shall be eligible to continue membership while an employee of such subsidiary or other corporation.

HISTORY: 1996, c. 139; 1997, c. 23, § 1; 1997, c. 150, § 23.

TITLE IN FULL: G. Philip Lewis, Appellant,  
 v.  
 Board of Trustees, Public Employees'  
 Retirement System, Respondent.

SUPERIOR COURT OF NEW JERSEY  
 APPELLATE DIVISION  
 DOCKET NO.: A-1093-02T2

APPELLANT'S ATTORNEY(S):			
	<input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	<input type="checkbox"/> Other (Specify)
NAME	ADDRESS	TELEPHONE	CLIENT
John G. DeSimone, Esq.	33 Euclid Avenue Suite B P.O. Box 237 Woodbury, NJ 08096-7057	(856) 848-8800	G. Philip Lewis

RESPONDENT'S ATTORNEY(S)*:			
NAME	ADDRESS	TELEPHONE	CLIENT
Debra A. Allen DAG	Hughes Justice Complex PO BOX 106, Trenton, NJ 08625-0106	(609) 984-0318	Board of Trustees Public Employees' Retirement System

[\*Indicate which parties, if any, did not participate below or who were no longer party to the action at the time of entry of the judgment or decision being appealed.]

GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? Yes  No

If so, has the order been certified as final pursuant to R.4:42-2? (If not, leave to appeal must be sought. R.2:2-4, 2:5-6.) Yes  No

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R.2:5-1(h)). Yes  No

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Appellant, G. Philip Lewis, appeals a denial by the Board of Trustees, Public Employees' Retirement System (PERS) to purchase prior service time with the federal Job Training Partnership Act (JTPA) in Salem County, New Jersey. Appellant was employed in various positions by Salem County from December 1, 1974 through June 30, 2000.

Appellant had filed previously a Notice of Appeal in the Superior Court of New Jersey, Appellate Division, on June 26, 2001. 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. On August 21, 2002, the PERS Board reconsidered the matter as per this Court's directive and voted to reaffirm its prior determination to deny Appellant's purchase request. However, a Final Administrative Determination ("FAD") was not issued on that date.

On September 11, 2002, Appellant filed a Notice of Motion for Leave to Appeal. An FAD had not been issued by the PERS Board at that time. One week later, on September 18, 2002, the PERS Board, at its regular meeting, approved an FAD reaffirming its prior determination to deny Appellant's purchase request. The FAD was mailed to Appellant on September 19, 2002. The PERS Board responded to Appellant's motion for leave to appeal on September 20, 2002. Appellant filed a reply brief on October 2, 2002. This Court denied Appellant's motion. This appeal followed.

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(A) (5). (Appellant or cross-appellant only.)

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or opinion?  
If so, on what date? \_\_\_\_\_ Yes \_\_\_ No X
2. Did the trial judge issue written findings or opinion?  
If so, on what date? \_\_\_\_\_ Yes \_\_\_ No X

Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R.2:5-1(b).

Date of your inquiry: \_\_\_\_\_

Will the trial judge be filing a statement or opinion pursuant to R.2:5-1(b)? Yes \_\_\_ No X

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of issues, abbreviation of transcript and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question.

State whether you think this case may benefit from a conference. Yes \_\_\_ No X

Explain your answer: The facts and law are clear and the dispute here is not amenable to settlement.

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:
- (A) Arises from substantially the same case or controversy as this appeal? Yes \_\_\_ No X
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes \_\_\_ No X
2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? Yes X No \_\_\_

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:

Appellate Docket No.:

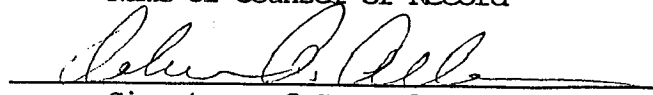
G. Philip Lewis v. Board of Trustees,  
Public Employees' Retirement System

A-005660-00T3 (closed)

Board of Trustees,  
Public Employees' Retirement System  
Name of Appellant or Respondent

Debra A. Allen  
Deputy Attorney General  
Name of Counsel of Record

Date: December 16, 2002

  
Signature of Counsel of Record

DAVID SAMSON  
Attorney General of New Jersey  
Attorney for Respondent  
R.J. Hughes Justice Complex  
P.O. Box 112  
Trenton, New Jersey 08625-0122

By: Debra A. Allen  
Deputy Attorney General  
(609) 984-0318

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1093-02T2

G. PHILIP LEWIS, )

Civil Action

Petitioner-Appellant, )

STATEMENT OF ITEMS  
COMPRISING THE RECORD  
ON APPEAL

v. )

BOARD OF TRUSTEES, )  
PUBLIC EMPLOYEES' )  
RETIREMENT SYSTEM, )

Respondent-Respondent. )

PLEASE TAKE NOTICE that the Board of Trustees of the Public Employees' Retirement System ("the PERS Board") hereby certifies and files pursuant to R. 2:5-4(b) the Statement of Items Comprising the Record on Appeal.

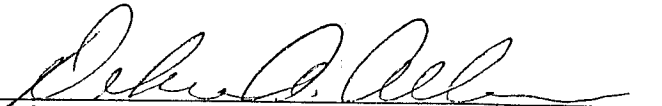
Respondent reserves the right to amend or augment the following list as may be necessary or appropriate during the pendency of this appeal.

The record consists of:

1. Statement of Items Comprising the Record On Appeal for the prior appeal, A-005660-00T3 (attached hereto).
2. Letter of the Board of Trustees of the Public Employees' Retirement System ("PERS Board"), dated August 23, 2002.
3. The Final Administrative Determination of the PERS Board, dated September 10, 2002.
4. Corrected Notice of Appeal filed November 1, 2002.

Respectfully submitted,

DAVID SAMSON  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Debra A. Allen  
Deputy Attorney General

Dated: December 17, 2002

JOHN J. FARMER, JR.  
Attorney General of New Jersey  
Attorney for Respondent  
Hughes Justice Complex  
PO BOX 106  
Trenton, New Jersey 08625-0106

By: Debra A. Allen  
Deputy Attorney General  
(609)777-3432

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-005660-00T3

G. PHILIP LEWIS, )

Civil Action

Petitioner-Appellant, )

STATEMENT OF ITEMS  
COMPRISING THE RECORD ON APPEAL

v. )

BOARD OF TRUSTEES, )  
PUBLIC EMPLOYEES' )  
RETIREMENT SYSTEM, )

Respondent-Respondent. )

PLEASE TAKE NOTICE that the Board of Trustees of the Public Employees' Retirement System ("the PERS Board") hereby certifies and files pursuant to R. 2:5-4(b) the Statement of Items Comprising the Record on Appeal.




The Division reserves the right to amend or augment the following list as may be necessary or appropriate during the pendency of this appeal.

The record consists of:

1. Agenda packet of April 18, 2001 PERS Board meeting consisting of thirty-eight pages. This packet consists of correspondence leading up to the Board meeting.
2. Petitioner-Appellant's written submission and accompanying appendix (consisting of exhibits 1-36) considered by the PERS Board at its April 18, 2001 meeting.
3. Final Administrative Determination of the PERS Board dated May 17, 2001.
4. Notice of Appeal filed June 26, 2001.

JOHN J. FARMER, JR.  
Attorney General of New Jersey  
Attorney for Respondent

By:

  
Debra A. Allen  
Deputy Attorney General

Dated: September 5, 2001

CERTIFICATION OF MAILING

I hereby certify that on December 18, 2002, two copies of Respondent's Statement of Items Comprising the Record on Appeal were sent by United States first-class, regular mail to:

John G. DeSimone, Esquire  
66 Euclid Avenue - Suite B  
P.O. Box 237  
Woodbury, New Jersey 08096-7057

Respectfully submitted,

DAVID SAMSON  
ATTORNEY GENERAL OF NEW JERSEY

By: 

Debra A. Allen  
Deputy Attorney General

Dated: December 17, 2002

SEP 25 1986

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

April 21, 1986

SENATE BILL NO. 1471 (2nd OCR)

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1471 (2nd OCR) with my recommendations for reconsideration.

Senate Bill No. 1471 (2nd OCR) would supplement the law governing the Public Employees' Retirement System (PERS) to make membership in the pension system optional for employees working in a federal Job Training Partnership Act (JTPA) program in any of the 19 service delivery areas of the State. An affected employee must provide written notice of a decision not to enroll in the PERS within 90 days of the effective date of this act, or within 90 days of eligibility for membership, whichever date is later. The provisions of this act would apply only to JTPA employees not enrolled in the PERS as of the effective date of this act.

I support the purpose for which Senate Bill No. 1471 (2nd OCR) was introduced. This bill is designed to ensure that JTPA employees will not be terminated because employers must use their limited financial resources for pension contributions, rather than for salaries.

Job Training Partnership Act programs have limited financial resources for two reasons. The programs are limited in the amount that they may spend on administration. Administrative expenses include pension contributions and salaries. Additionally, JTPA programs are being affected by budget reductions in domestic programs at the federal level. The combination of a limitation on administrative expenses and a decline in federal funding means that if administrators of JTPA programs must spend administrative dollars on pension contributions, less will remain for employee salaries. The result will be immediate layoffs.

While I support the purpose for which Senate Bill No. 1471 (2nd OCR) was introduced, I must return the bill so that it may be amended in two areas.

Senate Bill No. 1471 (2nd OCR) must be amended to broaden its scope. In its current form, Senate Bill No. 1471 (2nd OCR) would apply only to

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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JTPA employees not currently enrolled in the PERS. I am advised that this will not assist the majority of service delivery areas in the State because many of their employees are already in the system. Accordingly, I recommend that Senate Bill No. 1471 (2nd OCR) be amended to make its provisions apply to all JTPA employees, regardless of whether they are currently enrolled in the PERS.

I also recommend that Senate Bill No. 1471 (2nd OCR) be amended to delete the provision making membership in the PERS optional for JTPA employees. The Division of Pensions advises that making pension membership optional for any group of public employees would set an undesirable precedent that could affect the actuarial stability of the State-administered pension systems.

The effect of these amendments will be to exempt all JTPA employees in this State from membership in the PERS. This is a necessary step if we wish to keep JTPA employment at current levels.

Accordingly, I herewith return Senate Bill No. 1471 (2nd OCR) and recommend that it be amended as follows:

Page 1, Title, Line 2: Omit "supplementing" insert "amending"

Page 1, Title, Line 3: Omit "(C.43:15A-1 et seq.)"

Page 1, Section 1, Lines 1-8: Omit in its entirety and insert new Section 1 as follows:

"1. Section 7 of P.L. 1954, c. 84 (C.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 the 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, 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]

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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c. Every employee veteran 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.

d. Membership in the retirement system shall be optional for elected officials other than veterans, and for school crossing guards, who having become eligible for benefits under other pension systems are so employed on a part-time basis. Any such part-time school crossing guard who is eligible for benefits under any other pension system and who was hired as a part-time school crossing guard prior to March 4, 1976, may at any time terminate his membership in the retirement system by making an application in writing to the board of trustees of the retirement system. Upon receiving such application, the board of trustees shall terminate his enrollment in the system and direct the employer to cease accepting contributions from the member or deducting from the compensation paid to the member. State employees who become members of any other retirement system supported wholly or partly by the State as a condition of employment shall not be eligible to membership in this retirement system. Notwithstanding any other law to the contrary all other persons accepting employment in the service of the State shall be required to enroll in the retirement system as a condition of their employment, regardless of age. No person in employment, office or position, for which the annual salary or remuneration is fixed at less than \$500.00 shall be eligible to become a member of the retirement system.

e. Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

f. The accumulated deductions of the members of the former "State Employees' Retirement System" which have been set aside in a trust fund designated as Fund A as provided in section 5 of this act and which have not been claimed for refund prior to February 1, 1955 shall be transferred from said Fund A to the Annuity Savings Fund of the Retirement System, provided for in section 25 of this act. Each member whose accumulated deductions are so transferred shall receive the same prior service credit, pension credit, and membership credit in the retirement system as he previously had in the former

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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"State Employees' Retirement System" and shall have such accumulated deductions credited to his individual account in the Annuity Savings Fund. Any outstanding obligations of such member shall be continued.

g. Any school crossing guard electing to terminate his membership in the retirement system pursuant to subsection d. of this section shall, upon his request, receive a refund of his accumulated deductions as of the date of his appointment to the position of school crossing guard. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

h. A temporary employee who is employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. §1501) shall not be eligible for membership in the system. Membership for temporary employees employed under the federal Job Training Partnership Act, Pub. L. 97-300 (29 U.S.C. §1501) who are in the system on the effective date of this 1986 amendatory act shall be terminated, and affected employees shall receive a refund of their accumulated deductions as of the date of commencement of employment in a federal Job Training Partnership Act program. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system."

Page 1, Section 2, Lines 1-4: Omit "and shall apply to" on line 1, omit lines 2-3 entirely and "Retirement System prior to the effective date of this act" on line 4

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel

LEXSTAT NJAC 17:2-2.4

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TITLE 17. TREASURY--GENERAL

CHAPTER 2. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER 2. ENROLLMENT

N.J.A.C. § 17:2-2.4

§ 17:2-2.4 Enrollment date

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

1. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose regular appointment date falls between the 17th and the end of the month.

2. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose appointment date falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose appointment date falls on any subsequent date within that pay period.

(b) If an employee is an optional enrollee the employee shall be enrolled as of the first of the month for those whose employers report on a monthly basis or the first day of the next biweekly pay period for those whose employers report on a biweekly basis following the receipt of the enrollment application.

(c) An employee in the unclassified service or an elected position shall be considered as beginning service on the date of the original appointment, or the date when the employee assumed duties of the elective office, as the case may be.

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

2. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose beginning employment date falls between the first through 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose beginning employment date falls between the 17th and the end of the month.

3. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose

date of hire falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose date of hire falls on any subsequent date within that pay period.

(d) An employee of a Civil Service employer who is not in a classified or unclassified position or an employee of a non-Civil Service employer who is not in a regular budgeted position may be considered a temporary employee by the employer for the one-year period following the employee's date of hire, but if the employment continues into a second year, the employee will be required to enroll immediately, as follows:

1. For employees whose employers report on a monthly basis compulsory enrollment date will be the first of the month following the end of the one-year (12-month) period.

2. For employees whose employers report on a biweekly basis, the compulsory enrollment date will be the first day of the pay period following the end of the one-year (12-month) period.

NOTES:

HISTORY:

Amended by R.1979 d.399, effective October 9, 1979.

See: 11 New Jersey Register 411(a), 11 New Jersey Register 596(b).

Amended by R.1987 d.144, effective April 6, 1987.

See: 18 New Jersey Register 2320(b), 19 New Jersey Register 565(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 New Jersey Register 3229(a), 32 New Jersey Register 304(a).

Chapter Note