

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

G. PHILIP LEWIS,

)

Civil Action

)

Appellant,

)

On Appeal from a Final
Administrative Decision
of the Board of Trustees,
Public Employees' Retirement
System

v.

)

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,

)

)

Respondent.

**BRIEF AND APPENDIX OF RESPONDENT,
BOARD OF TRUSTEES, PUBLIC EMPLOYEES'
RETIREMENT SYSTEM**

PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW JERSEY
R. J. Hughes Justice Complex
P.O. Box 112
Trenton, New Jersey 08625
Attorney for Respondent
(609) 292-8557

PATRICK DeALMEIDA
Deputy Attorney General
Of Counsel

DEBRA A. ALLEN
Deputy Attorney General
On the Brief

TABLE OF CONTENTS

	<u>PAGE</u>
PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS	3
PRELIMINARY STATEMENT	1
ARGUMENT	
POINT I	
THE BOARD REASONABLY DETERMINED, BASED ON SUBSTANTIAL CREDIBLE EVIDENCE, THAT A PORTION OF APPELLANT'S JTPA SERVICE TIME COULD NOT BE PURCHASED BY OPERATION OF N.J.S.A. 43:15A-7(h) AND THUS THE BOARD'S DETERMINATION WAS CORRECT AND SHOULD BE AFFIRMED	8
A. Introduction	8
B. N.J.S.A. 43:15A-7(h) categorically bars all JTPA employees from membership in the PERS	10
C. N.J.S.A. 43:15A-7(h) Is An Absolute Exception to N.J.S.A. 43:15A-7(b) For Membership in the PERS	14
1. Appellant is not eligible for membership by virtue of his veteran status	14
2. The effect of N.J.S.A. 43:15A-7(h) is that JTPA no longer qualifies as a valid State employer for pension purposes	15
D. Appellant Does Not Qualify For PERS Membership Under <u>N.J.S.A.</u> 43:15A- 7(d)	17

POINT II

IN THE ALTERNATIVE, N.J.S.A. 43:15A-7(h)
TRUMPS N.J.S.A. 43:15A-7(b) BECAUSE THE CANONS
OF STATUTORY CONSTRUCTION REQUIRE THAT MORE
SPECIFIC PROVISIONS TAKE PRECEDENCE OVER MORE
GENERAL PROVISIONS 20

CONCLUSION 23

INDEX TO APPENDIX

Excepts of Legislative History Checklist of
N.J.S.A. 43:15A-1 et seq. Ra1-Ra12

TABLE OF AUTHORITIES

CASES CITED

Atkinson v. Parsekian, 37 N.J. 143 (1962) 9

Boyle v. Riti, 175 N.J. Super. 158 (App.
Div. 1980) 9

Creque v. Luis, 803 F.2d 92 (3d. Cir. 1986),
93 S.Ct. 477, 480 (1972) 21

Erlenbaugh v. United States, 409 U.S. 239
(1972), 34 L.Ed.2d 446 (1972) 21

Gerba v. Board of Trustees, Public Employees'
Retirement System, 83 N.J. 174 (1980) 9

Henry v. Rahway State Prison, 81 N.J. 571
(1980) 9

Hillman v. Board of Trustees, Public Employees'
Retirement System, 109 N.J. Super. 449 (App.
Div. 1970) 9

In Re Glen Rock, 25 N.J. 241 (1957), overruled
on other grounds, City of No. Wildwood v. Board
of Comm'rs, 71 N.J. 354 (1976) 9

<u>Mount v. Board of Trustees, Public Employees' Retirement System, 133 N.J. Super. 72 (App. Div. 1975)</u>	9
<u>Richard's Auto City v. Director, Division of Taxation, 140 N.J. 523 (1995)</u>	20

STATUTES CITED

29 <u>U.S.C.</u> § 1501	10
<u>N.J.S.A.</u> 43:15A-7	<u>passim</u>
<u>N.J.S.A.</u> 43:15A-7(b)	14-17, 20, 22
<u>N.J.S.A.</u> 43:15A-7(h)	<u>passim</u>
<u>N.J.S.A.</u> 43:15A-11	13
<u>N.J.S.A.</u> 43:15A-17	9

PRELIMINARY STATEMENT

The issue on appeal is whether Appellant, G. Philip Lewis, is permitted to purchase additional service credit in the Public Employees' Retirement System ("PERS") from September 19, 1986 through April 1, 1993 while employed in various temporary positions in Salem County created under the federal Job Training Partnership Act ("JTPA"). The applicable law is N.J.S.A. 43:15A-7, and specifically, subsection (h) bars temporary employees employed under the JTPA from membership in the PERS. The law also provides for a termination of PERS membership and refund of contributions for all temporary employees of the JTPA who were enrolled in the PERS on or before September 19, 1986.

Since Appellant had been enrolled in the PERS in 1985 as a JTPA employee, his membership in the pension system had to be terminated by operation of N.J.S.A. 43:15A-7(h). Thus, the effect of this law was that JTPA no longer qualified as a State employer for the purposes of membership in the pension system. Nevertheless, Appellant was able to become a member of the PERS again in April 1993 when Salem County passed a resolution converting his temporary employment status to that of a full-time County employee entitled to pension benefits.

Upon retirement, Appellant wished to purchase his prior temporary service time. The Board of Trustees of the PERS approved Mr. Lewis' purchase of eighteen years temporary service time. The only time, however, that the Board could not approve for purchase

was the seven-and-one-half years JTPA service time that was precluded by statute as creditable PERS service.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

G. Philip Lewis appeals a denial by the Board of Trustees, Public Employees' Retirement System of his request to purchase prior service time from September 19, 1986 through April 1, 1993 earned under the federal JTPA program in Salem County, New Jersey. Appellant was employed in various temporary positions by Salem County from December 1, 1974 through June 30, 2000.

All of the positions held by Mr. Lewis prior to April 7, 1993 were deemed temporary by Salem County. (Pa16)². The positions were designated as either JTPA, or as under the Comprehensive Employment and Training Act ("CETA"). Mr. Lewis' first job at Salem County was as a Teachers' Aide under the CETA Program. Appellant held this position from December 1, 1974 through December 2, 1976. (Pa16). Appellant's next position was under CETA, as a Community Service Planner, was held for a few weeks, from December 13, 1976 through December 31, 1976. Effective that next year on January 1, 1977, Mr. Lewis obtained a third CETA post as a Senior Community Service Planner. (Pa16). Six months later, on July 1, 1977, Appellant became the Deputy Director for the Department of Community Development with CETA. Mr. Lewis held

¹The Procedural History and Counterstatement of Facts are closely related and therefore, have been combined for purposes of this brief.

²"Pa#" refers to "Appellant's Appendix;" "Ab#" refers to "Appellant's Brief;" and "Ra#" refers to "Respondent's Appendix."

this job title from July 1, 1977 through December 31, 1979. On January 1, 1980, Appellant took the job title of Manpower Coordinator with CETA. This position continued until September 30, 1983 and was the last CETA title Appellant held at Salem County. (Pa16).

In October 1983, Mr. Lewis accepted his first JTPA position as an Administrator. (Pa16). He worked in this position from October 1, 1983 through June 30, 1988. During this time as Administrator, Mr. Lewis received raises that appeared to coincide with renewal periods on July 1, 1984, July 1, 1985 and July 1, 1986. The next JTPA position Appellant held as a Human Resources Coordinator commenced on July 1, 1988. (Pa16). Mr. Lewis received raises in this position also, effective July 1, 1988, January 1, 1990, July 1, 1990, July 1, 1991 and July 1, 1992. The Human Resources Coordinator title under JTPA was the last temporary position Appellant held at Salem County. (Pa16). As of April 7, 1993, Mr. Lewis became a permanent employee of Salem County via resolution passed by the Salem County Board of Chosen Freeholders. (Pa16).

Mr. Lewis remained a permanent employee of the County until June 30, 2000. (Pa25). Soon after, Appellant sought to collect his retirement benefits and requested to purchase prior service time to augment his pension. (Pa25). Appellant contacted the Division of Pensions and Benefits ("DPB") and was informed that

he was eligible to purchase 141 months of Temporary/Substitute service from December 23, 1974 through September 18, 1986 as well as 45 months of military time earned from March 14, 1967 through November 30, 1970 with the United States Navy. (Pa25).

In correspondence dated February 16, 2001 from Sandra Horan, Chief of DPB's Enrollment and Purchase Bureau, Appellant was initially informed that his period of employment with Salem County from December 23, 1974 through April 7, 1993 was ineligible for purchase. (Pa1). However, in a follow-up letter dated February 28, 2001 from Ms. Horan, Appellant learned that he was, in fact, able to purchase a portion of this time that had been denied previously. (Pa2). DPB reconsidered Appellant's purchase request in light of employment information received from Salem County that clarified which positions held by Appellant were within CETA and JTPA. (Ra2). Consequently, Appellant was eligible to purchase all of his CETA service and that portion of JTPA service allowable under the law. (Pa2).

The PERS Board initially considered Mr. Lewis' purchase request at its meeting of March 21, 2001. (Pa8). The Board considered Appellant's submissions at this meeting and granted a one-month extension to give Appellant the opportunity to provide further documentation and argument. (Pa8).

One month later, the PERS Board reconsidered Mr. Lewis' purchase request at its meeting of April 18, 2001. (Pa6). At this

meeting, Appellant appeared personally before the Board and clarified for the Board the designation of all the employment positions he held at Salem County. The Board voted to approve the purchase of additional service time from December 23, 1974 to September 18, 1986, using a purchase request date of October 14, 1998. (Pa6). The only time that the Board could not approve for purchase was Appellant's JTPA service time from September 19, 1986 through April 1, 1993. (Pa8). The basis for the Board's denial was that N.J.S.A. 43:15A-7(h) specifically disallows membership in the PERS for any person employed under the JTPA and consequently, JTPA service time was not creditable and could not be purchased. (Pa8).

At this same meeting, the Board denied Appellant's request for a hearing in the Office of Administrative Law as the Board determined that the matter did not involve disputed factual issues. The Board then issued a Final Administrative Determination denying Appellant's purchase request in a letter to Appellant dated May 17, 2001. (Pa8).

Appellant filed a Notice of Appeal in the Superior Court of New Jersey, Appellate Division, on June 26, 2001. (Pa27). 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. (Pa1-10).

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. (Pa14). However, a Final Administrative Determination ("FAD") was not issued on that date. (Pa14).

On September 11, 2002, Appellant filed a Notice of Motion for Leave to Appeal. (Pa22). 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. (Pa15-18). The FAD was mailed to Appellant on September 19, 2002. (Pa22). 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. (Pa22). This Court denied Appellant's motion. (Pa22). This appeal followed.

ARGUMENT

POINT I

THE BOARD REASONABLY DETERMINED, BASED ON
SUBSTANTIAL CREDIBLE EVIDENCE, THAT A PORTION
OF APPELLANT'S JTPA SERVICE TIME COULD NOT BE
PURCHASED BY OPERATION OF N.J.S.A. 43:15A-7(h)
AND THUS THE BOARD'S DETERMINATION WAS CORRECT
AND SHOULD BE AFFIRMED

A. Introduction

Appellant G. Philip Lewis seeks to purchase a portion of service time earned with Salem County as part of its Job Training and Partnership Program (JTPA). The Board of Trustees of the Public Employees' Retirement System ("PERS Board") reasonably determined, based on substantial credible evidence, that it did not have the discretion to allow for such a purchase under the relevant pension law. N.J.S.A. 43:15A-7(h) specifically prohibits JTPA employees from membership in the PERS from September 19, 1986 forward. Since the law precludes PERS membership for JTPA employees, it is evident that JTPA time during this period of time is not creditable PERS service time and thus cannot be purchased to augment a pension. This conclusion is amply supported by the record and should be affirmed.

As a general matter, it is well settled that an administrative agency's determination carries the presumption of correctness and, on review of the facts, a court will not substitute its own judgment for that of an agency where the

agency's findings are supported by substantial credible evidence. Gerba v. Board of Trustees, Public Employees' Retirement System, 83 N.J. 174, 189 (1980); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); Hillman v. Board of Trustees, Public Employees' Retirement System, 109 N.J. Super. 449, 461 (App. Div. 1970). Only where an agency's decision is arbitrary or capricious, or unsupported by substantial credible evidence in the record may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); Atkinson v. Parsekian, supra, 37 N.J. at 149. Moreover, it is the party who challenges the validity of the decision who bears the burden of showing that it was arbitrary, unreasonable or capricious. Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980).

In this regard, pursuant to N.J.S.A. 43:15A-17, the Board of Trustees is vested with the general responsibility for the operation of the Public Employees' Retirement System. Its administrative interpretations of the statute are thus entitled to great weight. Cf. In Re Glen Rock, 25 N.J. 241, 246 (1957), overruled on other grounds, City of No. Wildwood v. Board of Comm'rs, 71 N.J. 354, 357 (1976). Moreover, the Board of Trustees acts in a fiduciary capacity and has a duty to the pension fund and the interests of all of its beneficiaries, not just to the member seeking a retirement allowance. Mount v. Board of Trustees, Public Employees' Retirement System, 133 N.J. Super. 72, 86 (App. Div. 1975). However, the Board is directed by the Legislature to

interpret its statutes in the light most favorable to its members, and, where possible, to administer its fund consistently with the other State-administered pension systems.

B. N.J.S.A. 43:15A-7(h) categorically bars all JTPA employees from membership in the PERS

The applicable pension law barring Appellant's purchase request is N.J.S.A. 43:15A-7(h). The amended statute unambiguously states that:

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) establishes that all JTPA employees are ineligible for membership in the PERS. The law specifically states that the PERS membership for any JTPA employee be terminated effective September 19, 1986. Upon termination of membership, the law provides for a return of pension contributions to the affected employee.

The legislative intent of the law is evident from its clear statutory construction. The legislative history behind N.J.S.A. 43:15A-7(h), namely the Governor's Reconsideration and Recommendation Statement which accompanied Senate bill No. 1471 in 1986, indicates that JTPA employees were excluded from the class of temporary employees who were eligible for membership in the PERS. This statement reads as follows:

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 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 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 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 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 (emphasis supplied)].

The intent of Governor Kean's suggested amendments, which were subsequently adopted by the Legislature, to bar all JTPA employees from membership in the PERS is unequivocal. Thus, if JTPA employees are ineligible for PERS membership, then any service time the employees earn cannot be purchased as the service cannot be considered creditable in the PERS.

The legislative history of Senate bill, No. 1471 is equally compelling in showing that the Legislature and former Governor Kean intended to exclude JTPA employees from membership in the PERS. (Pa29). Specifically, the history includes a conditional veto by then Governor Kean that rejected a provision to allow current JTPA employees to remain the pension system after the

effective date of the law. The Legislature amended the bill to "broaden its scope" by applying all the provisions to "all JTPA employees, regardless of whether they are currently enrolled in the PERS." (Pa29-Pa30).

In keeping with its legislative mandate, the Board construed the pension laws most favorably to Appellant and approved almost all of Appellant's purchase request. The Board allowed the purchase of all of Appellant's CETA time, from December 23, 1974 through September 30, 1983, pursuant to N.J.S.A. 43:15A-11. (Pa16). This statute enables members to purchase temporary service time so long as the service was uninterrupted and resulted in a permanent appointment with the same employer. In addition, the Board approved the purchase of all JTPA service earned prior to the 1986 amendment to N.J.S.A. 43:15A-7(h). (Pa8). The Board's reasoning for allowing this purchase was that JTPA service was just another type of temporary service and therefore could be legitimately purchased up until the enactment of N.J.S.A. 43:15A-7(h) in 1986. Thus, Appellant was permitted to purchase PERS credit for his JTPA service from the first day he worked in a JTPA position, October 1, 1983, through the last possible day allowable under the statute, September 18, 1986.

The only time that Appellant was not permitted to purchase was his JTPA service time from September 19, 1986, the first day the amended N.J.S.A. 43:15A-7(h) took effect, until April

7, 1993, the first day Appellant was deemed a permanent member of the PERS. (Pa12). The Board did not have the discretion to permit the purchase of this period of service due to the clear language of N.J.S.A. 43:15A-7(h) and its definite and unambiguous legislative commentary that barred JTPA employees from the PERS. The Board, thus, was constrained by the four corners of the statute and could not approve that portion of Appellant's purchase request disallowed by law.

C. N.J.S.A. 43:15A-7(h) Is An Absolute Exception to N.J.S.A. 43:15A-7(b) For Membership in the PERS

1. Appellant is not eligible for membership by virtue of his veteran status

Appellant erroneously claims that N.J.S.A. 43:15A-7(h) is not an absolute bar for membership in the PERS, and that he qualifies for enrollment under N.J.S.A. 43:15A-7(b) as a veteran. (Ab10). N.J.S.A. 43:15A-7(b) provides that the membership of the retirement system shall include:

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. 43:16A-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.

Appellant claims that he is entitled to PERS membership under N.J.S.A. 43:15A-7(b) because he is a veteran and this subsection of the law applies to veterans. (Ab5-6). However, the PERS Board has clearly explained that veteran status only provides pension members with enhanced benefits under the system. (Pa17). Veteran status could not possibly be the basis for Appellant's entry or retention in the PERS because any veteran, therefore, could claim entitlement to a PERS pension under Appellant's logically flawed argument. Such a result would be preposterous and would certainly not be the intention of the Legislature. Thus, the threshold for membership eligibility in the PERS, and the focal point of N.J.S.A. 43:15A-7(b), is employment status and not veteran status. (Pa17).

2. The effect of N.J.S.A. 43:15A-7(h) is that JTPA no longer qualifies as a valid State employer for pension purposes

Appellant became eligible for PERS membership in 1985 in accordance with N.J.S.A. 43:15A-7(b), but not because of his veteran status. Rather, Appellant qualified for PERS membership at that time because he was a temporary employee of "another employer," having at least one year's continuous service. (Pa17). Prior to the enactment of N.J.S.A. 43:15A-7(h) in September 1986, JTPA qualified as "another employer" for the purposes of N.J.S.A. 43:15A-7(b), and consequently, Appellant's temporary service with this employer qualified him for admission into the PERS.

Nevertheless, the passage of N.J.S.A. 43:15A-7(h) one year later in 1986 affected PERS eligibility for all JTPA employees, including those who had already qualified for PERS membership, because JTPA no longer qualified as "another employer" under N.J.S.A. 43:15A-7(b). Thus, from September 19, 1986 through April 1, 1993, Appellant was employed by a non-qualifying employer, as defined by N.J.S.A. 43:15A-7(b), for the purposes of PERS membership.

To accept Appellant's contention that he should be eligible for PERS membership due to his veteran status is a gross interpretation of N.J.S.A. 43:15A-7(b) and an implied repealer of N.J.S.A. 43:15A-7(h). Had the Legislature wanted to exempt veterans or other members of the PERS who were JTPA employees from N.J.S.A. 43:15A-7(h), they would have made such provisions when the law was enacted. The legislative history of N.J.S.A. 43:15A-7(h) is extensive, and there is no discussion of exemptions under the law, except for the commentary regarding then existing PERS members. The history is compelling proof that all JTPA employees, regardless of whether they were already members of the PERS, could no longer be part of the pension system as of September 19, 1986 because JTPA was no longer considered an "employer" under N.J.S.A. 43:15A-7(b). N.J.S.A. 43:15A-7(h) is directly on point in this matter, as an absolute exception to N.J.S.A. 43:15A-7(b).

D. Appellant Does Not Qualify For PERS Membership Under N.J.S.A. 43:15A-7(d) By Virtue of His Veteran Status

As discussed in section C1. of this brief, Appellant contends that his status as a veteran requires his membership in the PERS in accordance with N.J.S.A. 43:15A-7(b). (Pa6). However, Appellant also claims that he is eligible for PERS membership as a veteran pursuant to N.J.S.A. 43:15A-7(d). N.J.S.A. 43:15A-7(d) states, in pertinent part, that:

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...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 the 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 employment, regardless of age....[N.J.S.A. 43:15A-7(d)].

In citing N.J.S.A. 43:15A-7(d), Appellant claims that his membership in the PERS as a veteran is mandatory and that "the Board's decision is not in accord with the basic intent of the act." (Ab8). However, Appellant's assertion is not supported the legislative history of "the act," which required, from the inception of the PERS, that veterans must be employed by a State employer in order to gain entry into the PERS. (Ra4).

The PERS was established in 1954 via the enactment of P.L. 1954, c. 84, S. 304. (Ra2). At this time, the pertinent parts of N.J.S.A. 43:15A-7 read as:

There is hereby established the Public Employees' Retirement System of New Jersey. The membership in the retirement system shall include:

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

b. Any person becoming a permanent employee of the State after the effective date of this section; and

c. Every State employee veteran in the employ of the State on the effective date of this section who shall not have notified the board of trustees within 30 days of such date that he does not desire to become a member. (Ra4). [(Emphasis supplied).]

According to the Sponsor's Statement in the statute's history, public employee veterans were required to enroll in the PERS, pursuant to subsection (c), while other classes of public employees had the option of enrolling in the pension system at the time the system was established in 1954. (Ra6). The reason for the mandatory enrollment for public employee veterans was to resolve "the financial problems attached to the present noncontributory Veterans' Retirement Act." Thus, public employee veterans were now in a position to receive enhanced retirement and death benefits,

including federal Social Security benefits, and free credit in the pension system for past service. (Ra6).

While it is true that the legislative history of N.J.S.A. 43:15A-7 shows that public employee veterans did not have the option of enrolling in the PERS, it is equally clear that the law in 1954 required veterans to be "public employee veterans." Thus, only veterans who were employed by a qualifying State employer were to be enrolled in the PERS at the time of the system's inception. Almost fifty years later, the qualification for membership in the PERS for veterans is the same: employment by a "State employer."

Here, by operation of N.J.S.A. 43:15A-7(h), Appellant, as an employee of JTPA, was no longer working for a qualifying State employer from September 19, 1986 through April 1, 1993. Therefore, Appellant's request to purchase time for service earned with a non-qualifying State employer was appropriately denied.

POINT II

IN THE ALTERNATIVE, N.J.S.A. 43:15A-7(h)
TRUMPS N.J.S.A. 43:15A-7(b) BECAUSE THE CANONS
OF STATUTORY CONSTRUCTION REQUIRE THAT MORE
SPECIFIC PROVISIONS TAKE PRECEDENCE OVER MORE
GENERAL PROVISIONS

If, in the alternative, if it is found that subsections (b) and (h) of N.J.S.A. 43:15A-7 are in conflict, the Board's denial of Appellant's purchase request should be affirmed because the canons of statutory construction dictate that subsection (h) controls the outcome in this matter.

In general, the first step in the "enterprise of statutory construction" is the "examination of the provisions of legislative enactment to ascertain whether they are expressed in plain language that, in accordance with ordinary meaning, clearly and unambiguously yields only one interpretation." Richard's Auto City v. Director, Division of Taxation, 140 N.J. 523, 531 (1995) (citing GE Solid State v. Director, Division of Taxation, 132 N.J. 298, 306 (1993)). In applying this canon of construction to the instant case, N.J.S.A. 43:15A-7(h) and N.J.S.A. 43:15A-7(b) stand independently and can be interpreted in only one way--that subsection (h) is an exception to subsection (b).

However, in the alternative, if it is determined that there is more than one interpretation of N.J.S.A. 43:15A-7, the rule of in pari materia is to be applied. This canon of construction is applied where an inconsistency in one statute may

be resolved by looking at another statute on the same subject. Thus, the statutes are to be construed together. Black's Law Dictionary. The principle of in pari materia has been extended to a single statute where individual sections that are in conflict are to be construed together in order to integrate the statute. Erlenbaugh v. United States, 409 U.S. 239, 244 (1972), 93 S.Ct. 477, 480 (1972), 34 L.Ed.2d 446, 451 (1972).

Applying this principle to the present matter, sections (b) and (h) of N.J.S.A. 43:15A-7 are to be construed together. Furthermore, subsection (b), as a general act, and subsection (h), as a specific act, are to be construed together because they relate to the same subject matter--membership in the PERS. See Creque v. Luis, 803 F.2d 92 (3d. Cir. 1986). In discussing the analysis that is to be applied where a general act and a specific act are in conflict, the court in Creque quoted late Harvard Law School professor Arthur Sutherland, whose "treatise is still the classic on statutory construction." Id. at 94. The treatise provides:

General and specific acts may be read in pari materia. If so, they should be construed together. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail. Sutherland Statutory Construction § 51.05 (4th ed. 1984). [Ibid.]

Here, N.J.S.A. 43:15A-7(b) is a general provision pertaining to the membership of the PERS. The member class under N.J.S.A. 43:15A-7(b) is broad, including temporary employees of the State with at least one year's continuous service. Conversely, N.J.S.A. 43:15A-7(h) is a specific provision relating only to JTPA employees, a much narrower member class. Therefore, applying Professor Sutherland's analysis, N.J.S.A. 43:15A-7(b) and N.J.S.A. 43:15A-7(h) should be harmonized but cannot be because a member, such as Appellant, can be a member of both classes. Thus, the two subsections are in conflict, and N.J.S.A. 43:15A-7(h) controls the outcome of this matter because it is the more specific of the two subsections. N.J.S.A. 43:15A-7(h) is directly on point with the narrow class of temporary members, JTPA employees, who were excluded from membership in the PERS.

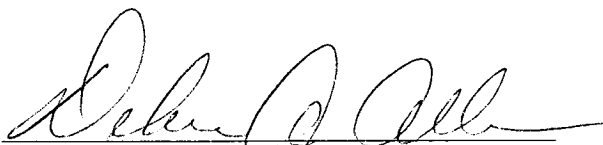
Appellant, as a member who gained entry into the PERS in 1985 by virtue of his temporary positions with JTPA, lost this membership at the time N.J.S.A. 43:15A-7(h) was enacted. Appellant, therefore, is precluded from purchasing the time requested as a result of this law's enactment. Therefore, the decision of the PERS Board to deny Appellant's purchase request is correct and should be affirmed.

CONCLUSION

For the foregoing reasons, respondent Board of Trustees of the Public Employees' Retirement System respectfully requests that the Final Administrative Determination of the Board be affirmed, as Appellant is precluded by State law from purchasing a portion of his JTPA service time.

Respectfully submitted,

PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Debra A. Allen
Deputy Attorney General

Dated: April 21, 2003

43:15A-1 et seq.

LEGISLATIVE HISTORY CHECKLIST

NJSA 43:15A-1 et seq.

Laws of 1954 Chapter 84

Bill No. S304

Sponsor(s) Dumont

Date Introduced May 21, 1954

Committee: Assembly -

Senate State, County & Municipal Gov't.

Amended during passage Yes No

Senate Comm. amendments enclosed (original is 57 pages)

Date of passage: Assembly June 21

Senate June 14

Date of approval June 24, 1954

Following statements are attached if available:

Sponsor statement	Yes	No <input checked="" type="checkbox"/>
Committee Statement: Assembly	Yes <input checked="" type="checkbox"/>	No
Senate	Yes <input checked="" type="checkbox"/>	No
Fiscal Note	Yes <input checked="" type="checkbox"/>	No
Veto message	Yes <input checked="" type="checkbox"/>	No
Message on signing	Yes <input checked="" type="checkbox"/>	No

Following were printed:

Reports	Yes	No <input checked="" type="checkbox"/>
Hearings	Yes <input checked="" type="checkbox"/>	No

974.90 Schanes, Steven I.
p418 A report on the improvement of the economic security
1953 a benefits of N.J. state employees.

974.90 New Jersey. Special Commission to study state employees
p418 Retirement Act.
1953 Report of the...established under JR 7(1951)

DEPOSITORY COPY
Do Not Remove From Library

STATEMENT

This bill provides for:

1. The repeal of the State Employees' Retirement System;
2. The extension of Federal Social Security coverage to the former members of the retirement system, and to certain other public employees in positions not covered by an existing retirement system; and
3. The establishment of Public Employees' Retirement System, with a membership consisting of the membership of the former retirement system and public employee veterans in positions not covered by any other retirement system.

The above procedure conforms to the requirements of the Federal Social Security Act governing the extension of Social Security coverage to public employees.

This bill would improve the retirement and death benefits of veteran and nonveteran public employees, while, at the same time resolving the financial problems attached to the present noncontributory Veterans' Retirement Act. The benefits of Federal Social Security would be integrated with those of the new retirement system, so that public employees would receive substantial increase in survivorship benefits. In addition the bill provides for increased death benefits under the retirement system, and the vesting of the members' interest in the State's contributions after 20 years of service. Public employee veterans would receive free credit in the retirement system for past service.

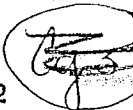
The cost to the employer on behalf of the existing membership would fall within the present cost of the retirement system. The obligations on behalf of public employee veterans would be met over a 30-year period. These total obligations would be no greater than those under the present free Veterans' Retirement Act.

This bill conforms to the recommendations contained in "A Report on the Improvement of the Economic Security Benefits of New Jersey State Employees," dated November, 1953.

LIBRARY

43:15A-7

June 9, 1972



LEGISLATIVE HISTORY OF R.S.43:15A-7
(Public Employees Retirement System-membership in System)

L.1954 - chap.84 - S304
Statement on bill (copy enclosed).
Amended during passage (copy enclosed of original section

and

The report referred to in the atatement above is:

974.90 Schanes, Steven E.
P418 A report on the improvement of the economic
1953a security benefits of New Jersey State employees. 1953

Also see:

974.90 New Jersey. Special Commission to study State
P418 employees Retirement Act.
1953 Report of the...established under J.R.7(1951)
1953

Amended by:

L.1954 - chap.244 - S379.
No statement.
Amended during passage-no substantive change - changed
date in (a) from December 29, 1954 to December 30, 1954.

L.1955 - chap.261 - S399
No statement on bill.
Amended (copy enclosed of Governor's recommended amendment)

L.1966 - chap.217 - A787.
Not amended during passage.
Statement on bill (copy enclosed).

Article located (copy enclosed).

McGarrity, J.A. "Major new legislation de-integrates, extends
P.E.R.S. coverage" in New Jersey Municipalities, Nov.,
1966 at page 14.

JH/EH
Encl.

1954 (S304) - yes
1955 (S399) - yes

Ra3

83 actual service incurred injury or disability shall be classed as a veteran
84 whether or not he has completed the 90-day service as herein provided.

85 (11) Emergency, at any time after June 23, 1950, and prior to the
86 date of termination, suspension or revocation of the proclamation of the
87 existence of a national emergency issued by the President of the United
88 States on December 16, 1950, or date of termination of the existence of
89 such national emergency by appropriate action of the President or the
90 Congress of the United States, who shall have served at least 90 days in
91 such active service, exclusive of any period he was assigned (1) for a
92 course of education or training under the Army Specialized Training
93 Program or the Navy College Training Program which course was a con-
94 tinuation of his civilian course and was pursued to completion, or (2)
95 as a cadet or midshipman at one of the service academies, any part of
96 which 90 days was served between said dates; provided, that any person
97 receiving an actual service incurred injury or disability shall be classed
98 as a veteran whether or not he has completed the 90-day service as
99 herein provided.

✓ 1 7. There is hereby established the Public Employees' Retirement Sys-
2 tem of New Jersey. The membership of the retirement system shall include:

3 a. The members of the former "State Employees' Retirement Sys-
4 tem of New Jersey" enrolled as of the effective date of this act; who shall
5 not have claimed for refund their accumulated deductions in said system as
6 provided in this section.

7 b. Any person becoming a permanent employee of the State after the
8 effective date of this section; and

9 c. Every State employee veteran in the employ of the State on the effec-
10 tive date of this section who shall not have notified the board of trustees
11 within 30 days of such date that he does not desire to become a member.

12 The board may deny the right to become members of the retirement sys-
13 tem to any class of elected officials or to any class of persons other than vet-
14 erans not within the classified civil service, but any person who has been a

15 member of the former "State Employees' Retirement System" for 1 or
16 more years and who has been or may hereafter be appointed to an office or
17 position in the unclassified service shall be eligible to become a member of
18 the retirement system and entitled to all the rights and privileges thereun-
19 der, if he so elects. The board of trustees may deny the right to become
20 members of the retirement system to any class of persons whose compensa-
21 tion is only partly paid by the State, or it may, in its discretion, make op-
22 tional with persons in any such class their individual entrance into mem-
23 bership. State employees who become members of any other retirement
24 system supported wholly or partly by the State as a condition of employment
25 shall not be eligible to membership in this retirement system. Notwithstand-
26 ing any other law to the contrary all other persons accepting permanent em-
27 ployment in the classified service of the State shall be required to enroll in the
28 retirement system as a condition of their employment, regardless of age.

29 Membership of any person in the retirement system shall cease if, in
30 any 4-year period which elapses after his last becoming a member, he ren-
31 ders to the State less than 2 years of service, but not otherwise except as
32 provided in this act.

33 The accumulated deductions of the members of the former "State Em-
34 ployees' Retirement System" which have been set aside in a trust fund des-
35 ignated as Fund A as provided in section 5 of this act and which have not
36 been claimed for refund within 30 days after the effective date of this section
37 shall be transferred from said Fund A to the annuity savings fund of the re-
38 tirement system, provided for in section 25 of this act. Each member whose
39 accumulated deductions are so transferred shall receive the same prior serv-
40 ice credit, pension credit, and membership credit in the retirement system as
41 he previously had in the former "State Employees' Retirement System"
42 and shall have such accumulated deductions credited to his individual ac-
43 count in the annuity savings fund. Any outstanding obligation of such mem-
44 ber shall be continued.

SPONSOR'S STATEMENT to S 304

This bill provides for:

1. The repeal of the State Employees' Retirement System;
2. The extension of Federal Social Security coverage to the former members of the retirement system, and to certain other public employees in positions not covered by an existing retirement system; and
3. The establishment of Public Employees' Retirement System, with a membership consisting of the membership of the former retirement system and public employee veterans in positions not covered by any other retirement system.

The above procedure conforms to the requirements of the Federal Social Security Act governing the extension of Social Security coverage to public employees.

This bill would improve the retirement and death benefits of veteran and nonveteran public employees, while, at the same time resolving the financial problems attached to the present noncontributory Veterans' Retirement Act. The benefits of Federal Social Security would be integrated with those of the new retirement system, so that public employees would receive substantial increase in survivorship benefits. In addition the bill provides for increased death benefits under the retirement system, and the vesting of the members' interest in the State's contributions after 20 years of service. Public employee veterans would receive free credit in the retirement system for past service.

The cost to the employer on behalf of the existing membership would fall within the present cost of the retirement system. The obligations on behalf of public employee veterans would be met over a 30-year period. These total obligations would be no greater than those under the present free Veterans' Retirement Act.

This bill conforms to the recommendations contained in "A Report on the Improvement of the Economic Security Benefits of New Jersey State Employees," dated November, 1953.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 304

STATE OF NEW JERSEY

ADOPTED JUNE 10, 1954

Amend page 4, Analysis section 73, line 100, after "of" insert "New Jersey Turnpike Authority, New Jersey Highway Authority,".

Amend page 8, section 3, line 2, omit "January 1, 1955", insert "December 31, 1954".

Amend page 12, section 6, subdivision 1, line 42, after "sailor," insert "airman,".

Amend page 12, section 6, subdivision 1, line 43, after "army" insert ", air force".

Amend page 12, section 6, subdivision 1, line 45, after "army" insert ", air force".

Amend page 14, section 7, subdivision a, line 4, after "enrolled" insert "as such".

Amend page 14, section 7, subdivision a, line 4, after "as of" omit "the effective date of this act;," insert "December 29, 1954,".

Amend page 14, section 7, subdivision a, line 6, after "section" omit the period, insert a semicolon.

Amend page 7, section 2, line 20, omit "a", insert "(1)".

Amend page 7, section 2, line 24, omit "b", insert "(2)".

Amend page 7, section 2, line 33, omit "c", insert "(3)".

Amend page 30, section 38, line 5, after "section" delete "41 (2)", insert "41. b.".

January 5, 1956

SENATE BILL NO. 399

L1955, c. 261

To the Senate:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I am returning herewith Senate Bill No. 399, with my objections, for reconsideration.

Senate Bill No. 399 contains a number of much needed amendments to the Public Employees' Retirement-Social Security Integration Act (P.L. 1954, Chapter 84). It contains one amendment, however, which I cannot in good conscience approve. The bill would provide for service credit for employment for which the annual salary or remuneration was not less than \$300.00. This monetary figure would be used not only with respect to past service to the State but would be applicable as well to service hereafter.

I cannot find justification in the grant of pension benefits on earnings of that amount. In returning Senate Bill No. 301 of the present session, I recommended a figure of \$500.00 which was the figure which the Board of Trustees of the former State Employees' Retirement System had adopted. I believe the figure of \$500.00 to be much too low in the light of current economy and I believe that consideration should be given to an amendment of the statute which, as to future service, will substantially increase the annual earnings figure, at least as to new employees. Until all the facts are ascertained and full consideration can be given to the problem, I am willing to go along with the figure of \$500.00 which, as stated above, was heretofore applied.

With respect to credit for past service the problem revolves about the circumstance that under the free Veterans' Retirement Act credit was granted to veterans without regard to the amount of annual earnings. I

agree that some fair solution should be reached with respect to veterans but a solution reached with respect to them cannot justifiably be extended to the non-veteran employee as to whom the minimum requirement has been the sum of \$500.00.

Accordingly, I recommend that the figure of \$300.00 with respect to future service be amended at the present time to the figure of \$500.00 and as to past service credits the figure of \$500.00 be used except as to veterans as to whom credit should be granted provided (1) the annual earnings were not less than \$300.00 and (2) such earnings were derived from service consisting of the performance of the full duties of his specific office or position.

I also recommend an amendment to eliminate an unintended error. Section 18 of the bill, in providing for an amendment of paragraph d. of Section 60 of Chapter 84, makes reference in line 54 to any "commission . . . enumerated in paragraph a. of this section". In an earlier draft certain commissions had been enumerated in paragraph a. but thereafter were eliminated. Hence the reference to such commission in paragraph d. is now meaningless.

A further amendment is desirable with respect to a provision concerning paid up contributory life insurance coverage. The bill contemplated that such coverage may be in an amount equal to $1\frac{1}{2}$ times the compensation received by the member in the last year of creditable service or in such lesser amount as the Board of Trustees may fix and the individual member may elect to purchase. The Legislature's intent, as above stated, was fully expressed at one point in the bill but at another point the fact that the amount of the insurance may be less than $1\frac{1}{2}$ times the compensation was inadvertently not expressed.

I am, therefore, returning Senate Bill No. 399 for reconsideration and with the recommendation that amendments be made to the bill as follows:

STATE OF NEW JERSEY
Executive Department

Senate Bill No. 399

- 3 -

On page 6, section 5, line 35, delete the figure "\$300.00" and insert in lieu thereof the figure "\$500.00".

On page 12, section 10, line 33, delete the figure "\$300.00" and insert in lieu thereof the figure "\$500.00".

On page 12, section 10, line 33, after the word "credited" add the following: ", except that in the case of a veteran member credit shall be given for service rendered prior to January 2, 1955 in an employment, office or position if the annual salary or remuneration therefor was fixed at not less than \$300.00 and such service consisted of the performance of the full duties of such employment, office or position".

On page 20, section 17, line 47, after the word "service" insert "or such lesser amount as may be provided by the board of trustees and purchased by such member".

On page 25, section 18, line 54, delete the words "commission or".

Respectfully,

ROBERT B. MEYNER

GOVERNOR

[SEAL]

Attest:

ROBERT J. BURKHARDT

Secretary to the Governor

4 d. P. L. 1965, chapter 234 is repealed.

1 31. This act shall take effect immediately.

STATEMENT

The purpose of this omnibus bill is to amend and supplement the act governing the Public Employees' Retirement System in order to recognize in the statutes the many administrative changes which have been prescribed in the decade following the establishment of the system. The important provisions are as follows:

1. It redefines the Korean Emergency by establishing the same period followed by the Civil Service statute.

2. It clarifies the provisions of the statute concerning reinstatement and the re-establishment of credit when a former member returns to employment.

3. The limitation on the number of loans to members follows that of the comparable Teachers' Pension and Annuity Fund statute by placing it on the basis of a calendar year rather than a fiscal year.

4. It provides for vesting after 15 years of service instead of after 20 years.

5. It provides for the payment of interest on member's contributions when he withdraws if he only has 3 years of credit instead of 5 years and thereby makes the provision identical to that of the comparable provision in the teachers' fund statute.

6. It clarifies the statute concerning accidental death to specifically provide for the inclusion of interest in the return of the member's contributions.

7. It makes changes required by recent court decisions dealing with the optional methods of settlement.

8. It amends several sections of the statute in order to provide for compulsory coverage of all newly employed, eligible nonveteran public employees. The funding of the service for employees performed before July 1, 1966 is optional with the employer on the basis of either a referendum to be conducted at a general election in the case of counties and municipalities, or by the adoption of a resolution by the governing body of a public agency. All present employees are given a year to consider their option to enroll in the retirement

system. Optional coverage is afforded to nonveteran elected officials while coverage is not extended to anyone who would not normally be eligible for membership, such as a temporary or seasonal employee, a person whose annual compensation is less than \$500.00 a year or someone who is not covered by Social Security as a result of his public employment.

9. It permits a school district composed of 2 or more municipalities to hold a separate election on the question of funding the prior service liability.

10. It clarifies the provisions concerning the designation of beneficiary.

11. It permits veterans and nonveterans who had elected not to enroll in the system in 1955 to re-enroll and establishes the necessary formula for the purchase of service.

12. It clarifies the statute for those receiving workmen's compensation benefits.