



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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April 5, 2024

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lt. Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

Sent via email to: [REDACTED]

SHIMBERG & FRIEL, PC  
Barbara E. Riefberg, Esq.



RE: Jennifer Kackos  
TPAF # [REDACTED] (Tier 5)  
TPAF # [REDACTED] (Expired Account)

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Ms. Riefberg,

At its meeting on March 7, 2024, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your client, Jennifer Kackos' appeal of the Board's denial of her request to maintain her expired TPAF Tier 1 membership status. The Board originally denied her request at its meeting of December 7, 2023. You appealed the Board's decision via letter dated January 11, 2024.

The Board considered your personal statements, reviewed your written submissions, accompanying documentation, and statutes and relevant case law governing the TPAF. Accordingly, the Board denied Ms. Kackos' request to maintain her expired Tier 1 membership status. Finding no genuine issue of material fact in dispute, the Board also denied the request for an administrative hearing. The findings of fact and conclusions of law, as outlined below, were presented to and approved by the Board at its April 4, 2024 meeting.

### **FINDINGS OF FACT**

The record before the Board establishes that on September 1, 1998, Jennifer Kackos was enrolled in the TPAF as a result of her employment with Middletown Township Board of Education. On September 1, 2001, Ms. Kackos transferred to Ocean County Vocational Schools. On February 1, 2007, she transferred to Manasquan Board of Education. On July 1, 2015, she transferred to Monmouth Regional Schools (Monmouth) where she was employed as a Learning Disabilities Teacher. Pension contributions with this employer continued through June 30, 2016.

By letter dated April 6, 2016, Monmouth notified Ms. Kackos that in accordance with N.J.S.A. 18A:27-10 (Written offer or notice to non-tenure teachers), she would not be rehired for the 2016-2017 school year.

On March 12, 2018, the Division notified Ms. Kackos that the last contribution to her TPAF membership account was on June 30, 2016, and that at that time she had 10 or more years of service and was eligible to apply for a retirement benefit. After two years with no pension contributions, Ms. Kacko's TPAF membership account expired effective June 30, 2018, pursuant to the provisions of N.J.S.A. 18A:66-7(a).

On October 1, 2018, Neptune Board of Education (Neptune) hired Ms. Kackos as a Teacher and submitted a Report of Transfer on her behalf. The Division informed Neptune via letter dated October 16, 2018, that the enrollment application for Ms. Kackos could not be processed because her account was inactive, and instructed them to enroll her online through the Employer Pensions and Benefits Information Connection (EPIC). Having met the requirements for membership pursuant to N.J.S.A. 18A:66-4, Ms. Kackos was properly enrolled in the TPAF with a new Tier 5 membership account on October 1, 2018.<sup>1</sup>

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<sup>1</sup> Neptune submitted an *Enrollment Application* for Ms. Kackos through EPIC on February 5, 2019.

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By letter dated November 22, 2022, Andrew Temple, Superintendent, Monmouth Regional High School, advised that at the end of the 2015-2016 school year, they eliminated one of their Learning Disability Teacher positions, which resulted in Ms. Kackos' contract not being renewed, and claimed it was a reduction in force. The Division's Enrollment Section requested additional paperwork to substantiate a reduction in force (i.e. board minutes; layoff notice). In response, Mr. Temple advised that the official board action was that Ms. Kackos was not on the renewal list of non-tenured employees in June 2016.

On May 2, 2023, you wrote to the Division to advise them that you are representing Ms. Kackos. In your letter, you assert that there was a period of time (during the 2015-2016 school year) that Ms. Kackos was on Workers' Compensation and did not receive service credit. You also requested that the Division merge her two TPAF accounts, and enclosed a copy of the November 22, 2022 letter from Monmouth as evidence that her Tier 1 account should have remained active pursuant to N.J.S.A. 18A:66-8.

After additional review, via letter dated September 25, 2023, the Enrollment Section informed you that Ms. Kackos' original TPAF membership account expired on June 30, 2018, as she did not return to a TPAF-eligible position within two years of the last contribution to her account. As a result, she was properly enrolled in a new Tier 5 TPAF account when she was hired by Neptune. The letter further explained that your position that Ms. Kackos' was subject to a reduction in force is incorrect, as Monmouth indicated both in the IROC report and in their April 6, 2016 letter that she was terminated effective July 1, 2016 because her contract was not renewed.

On October 12, 2023, you filed an appeal of the administrative determination. In your appeal, you reiterated your claim that Ms. Kackos' TPAF accounts should be combined or merged and requested a hearing before the Board. Included in your appeal were copies of the aforementioned documents submitted by Monmouth along with the Division's September 25,

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2023, administrative determination letter. You assert that Ms. Kackos would qualify for the statutory exemption of expiration of membership beyond two years, thus allowing her to maintain her TPAF Tier 1 membership status. The Board disagreed.

At its meeting of December 7, 2023, the Board considered Ms. Kackos' request to maintain her Tier 1 membership status. After careful consideration, the Board denied her request finding that Ms. Kackos' annual contract with Monmouth was not renewed and her non-tenured teaching position ended June 30, 2016.

By letter dated January 11, 2024, you filed an appeal of the Board's decision. At its meeting of March 7, 2024, the Board considered your appeal and request for a hearing. The Board ultimately found that no genuine issue of material fact was in dispute and directed the Board Secretary to draft detailed findings of fact and conclusion of law for review at its meeting of April 4, 2024.

### **CONCLUSIONS OF LAW**

The issue before the Board is whether Ms. Kackos is eligible to maintain her expired Tier 1 membership status. As noted above, the last contribution to her TPAF Tier 1 membership account was on June 30, 2016, after her contract with Monmouth ended. After no contributions for two years, Ms. Kackos' account expired on June 30, 2018.

N.J.S.A. 18A:66-7(a) states:

Membership of any person shall cease:

(a) if, except as provided in section 18A:66-8, **he shall discontinue his service for more than two consecutive years;**

[emphasis added].

However, under N.J.S.A. 18A:66-8(a), if a teacher:

(1) is dismissed by an **employer by reason of reduction in number of teachers employed in the school district**, institution or department when in the judgment of the employer it is advisable to abolish any office, position or employment for reasons of a

reduction in the number of pupils, economy, a change in the administrative or supervisory organization or other good cause; or becomes unemployed by reason of the creation of a regional school district or a consolidated school district; or has been discontinued from service without personal fault or through leave of absence granted by an employer or permitted by any law of this State; and

(2) has not withdrawn the accumulated member's contributions from the retirement system, the teacher's **membership may continue, notwithstanding any provisions of this article, if the member returns to service within a period of 10 years from the date of discontinuance from service.**

[emphases added].

The crux of your argument is that you contend Ms. Kackos' position was eliminated as the result of a reduction in force by Monmouth and for that reason her Tier 1 Account should remain active beyond the two years of inactivity pursuant to N.J.S.A. 18A:66-8(a).

The Board found that Monmouth informed Ms. Kackos, a non-tenured teacher, that her employment contract for the 2016-2017 school year would not be renewed. The non-renewal of a non-tenured teacher's annual contract does not constitute a reduction in number or a discontinuance of service, which both pertain to tenured teachers. Cf. Pascack Valley Reg'l High Sch. Bd. of Educ. v. Pascack Valley Reg'l Support Staff Ass'n, 192 N.J. 489, 497 (2007) ("The practice of offering separate, annual employment contracts to non-tenured school employees is long-standing."); Id. at 491 (noting nontenured school employees "have no right to the renewal of their individual contracts"); Bd. of Educ. v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497, 501 (App. Div. 1979) ("the right not to renew the contracts of non-tenured teachers" is "a management prerogative"). Further, in two unpublished decisions, the Appellate Division has found—as a matter of law—the extension contained in N.J.S.A. 18A:66 does not apply to non-tenured teachers whose yearly contract is not renewed. Harwelik v. Bd. of Trs., 2023 N.J. Super. Unpub. LEXIS 195, at 13 (The court found that "the central issue was whether the statutory exemption applied to non-tenured teachers, such as Harwelik, whose contracts were not renewed. As a matter of

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law, it does not.”); Buskey v. Board of Trs., 2021 N.J. Super. Unpub. LEXIS 2875, at 8 (The court rejected “Buskey's assertion the Board was required to refer the matter to the OAL for factfinding. The central issue was whether the statutory exemption applies to non-tenured teachers. As a matter of law, it does not. Therefore, a factfinding hearing was not required.”).

The Board determined that the circumstances which resulted in non-renewal of Ms. Kackos' contract with Monmouth were not a reduction in force which would qualify for the statutory exemption of expiration of membership beyond two years. Instead, Ms. Kackos' annual contract was not renewed and her employment ended on June 30, 2016.

N.J.A.C. 17:3-7.2(a)2 provides a TPAF member with the option to transfer their membership to a new TPAF employer, provided they meet all conditions. In order for the Intrafund transfer to have occurred, Ms. Kackos would have had to return to a TPAF eligible position before her original TPAF membership account expired on June 30, 2018. This did not occur. Ms. Kackos did not return to a TPAF eligible position until October 1, 2018.

Furthermore, Ms. Kackos' claim that she should have received service credit while she was receiving Workers' Compensation benefits is incorrect. The Board noted your submissions, which included documents that established Ms. Kackos did receive payments as part of a Workers' Compensation claim.<sup>2</sup> However, it was noted that she was no longer an employee at the time she received these payments. After an employee is properly terminated, the employer is no longer required to pay pension contributions solely because the employee obtains a Workers' Compensation award for pre-termination injuries. N.J.S.A. 43:15A-25.1; James v. Bd. of Trs., Pub. Emps.' Ret. Sys., 323 N.J. Super. 100, 111 (App. Div. 1999). Accordingly, once Ms. Kackos' contract was not renewed, her employer no longer had any obligation to pay pension contributions

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<sup>2</sup> Ms. Kackos was paid temporary benefits as a result of a Workers' Compensation Claim covering the period of July 1, 2016 through June 15, 2017, and permanent partial disability benefits for 150 weeks, thereafter.

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while she was receiving Workers' Compensation Benefits. Once the last reported contributions to Ms. Kackos Tier 1 membership account were made on June 30, 2016, after her contract was not renewed, her Tier 1 membership account expired on June 30, 2018, in accordance with statute.

As noted above, the Board has reviewed all relevant documentation and written submissions, and because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law without the need for an administrative hearing. Accordingly, this correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right, if you wish, to appeal this final administrative determination 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. All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,



Saretta Dudley, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

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c: N. Munko (ET)