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PHILIP D. MURPHY
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SHEILA Y. OLIVER
Lt. Governor

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
POLICE AND FIREMENS' RETIREMENT SYSTEM
OF NEW JERSEY
(609) 292-7524 TDD (609) 292-7718
www.nj.gov/treasury/pensions

ELIZABETH MAHER MUOIO
State Treasurer

Ed Donnelly
Chairman, PFRSNJ

April 10 2019

Sent via email to: [REDACTED]

GAYLORD POPP
Samuel M. Gaylord, Esq.

RE: William Rogers
[REDACTED]

Dear Mr. Gaylord:

I am writing in reference to the action of the Board of Trustees ("Board") of the Police and Firemen's Retirement System of New Jersey ("PFRSNJ") in denying your request on behalf of your client, William Rogers, to receive additional membership service credit in accordance with the terms of the settlement agreement executed between Mr. Rogers and his former employer, the Borough of Wenonah (Borough). Specifically, the Board denied the request that Mr. Rogers receive additional service credit for the lump sum payment that he received for severance pay.

The Police and Firemen's Retirement System Board¹ initially reviewed your request at its December 10, 2018 meeting and denied this request. By letter dated January 14, 2019, you appealed the Board's decision and requested a hearing in the Office of Administrative Law (OAL) which was denied at the PFRSNJ Board's March 11, 2019 meeting. Findings of Fact and Conclusions of Law, as outlined below were presented and approved by the PFRSNJ Board at its April 8, 2019 meeting.

The PFRSNJ Board has considered your written submissions and the documentation accompanying your appeal and finds that the statutes and regulations governing the PFRSNJ do not permit the Board to

¹ In accordance with P.L. 2018, c. 55, effective February 1, 2019, the Board of Trustees, Police and Firemen's Retirement System, was reconstituted as the Board of Trustees, Police and Firemen's Retirement System of New Jersey.

grant your request to provide Mr. Rogers with additional service credit for the lump sum payment he received under the settlement agreement executed between him and the Borough.

FINDINGS OF FACT

The record indicates that Mr. Rogers enrolled in the PFRS on March 1, 1995 as result of his employment as a Police Officer with the Borough of Wenonah. The Borough entered into a Shared Services agreement with Mantua Township. As a result, the Wenonah Borough police department was dissolved effective May 31, 2018. Thereafter, Mr. Rogers' service as a police chief was no longer needed. At the time that his position was eliminated, Mr. Rogers' PFRS membership account reflected 24 years and 3 months of service credit. Mr. Rogers filed suit against the Borough which ended when the parties entered into a settlement agreement. The Borough agreed to pay Mr. Rogers severance pay for five months, in a lump sum, and agreed to remit PFRS pension contributions to permit Mr. Rogers to obtain 25 years of PFRS service credit. Although the settlement agreement intended to provide for five additional months, it brought Mr. Rogers' PFRS membership total to 24 years and 8 months, which is still four months short of the 25 years required for a Special retirement benefit.

By letter dated June 22, 2018 to the Division of Pensions and Benefits' ("Division") Retirement Bureau, Mark B. Shoemaker, Esquire, Mr. Rogers' attorney at that time, indicated that the Borough Council intended to have Mr. Rogers' account credited with 25 years of service in order for him to be eligible to retire under a Special retirement benefit. Mr. Shoemaker further indicated that he confirmed with the Division of Pensions and Benefits that Mr. Rogers could arrange for the purchase of future credit as long as the legal obligation to do so was set forth in the settlement agreement. As a result, the agreement was created with specific language that they believed would provide Mr. Rogers with 25 years of PFRS service credit.

The Division reviewed the agreement and determined that because the Wenonah Borough Police Department was dissolved effective May 31, 2018, Mr. Rogers was not entitled to pension service credit after that date, even though contributions for membership service were remitted on behalf of Mr. Rogers through June 30, 2018.

On September 25, 2018, Mr. Wade responded to Mr. Shoemaker regarding the settlement agreement between Mr. Rogers and the Borough of Wenonah. At that time, Mr. Wade determined that the Division could not provide Mr. Rogers with additional creditable service for pension purposes under the PFRS, as the agreement violates the provisions of N.J.A.C. 17:4-2.1 and N.J.A.C. 17:4-4.1, which clearly defines the justification to deny the additional income as pensionable compensation. Mr. Wade explained that under the shared services agreement between Wenonah Borough and Mantua Township, Mr. Rogers was not an employee of the Wenonah Borough Police Department after May 31, 2018. It was his employment with Wenonah Borough that made him eligible for participation in the PFRS, and absent eligible employment, there is no base salary on which to withhold pension contributions as of June 1, 2018. Therefore, any contributions remitted on behalf of Mr. Rogers after May 31, 2018 would be rejected. Mr. Wade also provided appeal rights to the PFRS Board.

On November 5, 2018, you filed a letter of representation and appealed Mr. Wade's determination to the PFRS Board. By letter dated November 20, 2018, you were informed that the PFRS Board would consider Mr. Rogers' appeal at its December 10, 2018 meeting.

On December 10, 2018, the PFRS Board considered and denied your appeal. The PFRS Board relied on the definitions of "service", "creditable service", "earnable compensation", and "compensation" found in N.J.S.A. 43:16A-1 and N.J.A.C. 17:4-4.1. The Board explained that because Mr. Rogers' employment terminated on May 31, 2018, he was no longer employed as Police Chief and no additional service credit could accrue after that date. The Board explained that its determination was further supported by In re Puglisi, 186 N.J. 529 (2006) and Jackson v. Board of Trustees, Police and Firemen's Retirement System, 2017 N.J. Super. Unpub. LEXIS 2523 (App. Div. Oct. 6, 2017). You were provided with appeal rights.

By letter dated January 14, 2019, you appealed the PFRS Board's determination. On March 11, 2019, the PFRSNJ Board, considered your appeal and denied your request for a hearing because there are no disputes of material fact. The PFRSNJ Board directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which constitutes the Board's Final Administrative Determination.

CONCLUSIONS OF LAW

The PFRNJ is governed by N.J.S.A. 43:16A-1 which states in pertinent part:

...

(7) "Service" shall mean service as a policeman or fireman paid for by an employer.

(8) "Creditable service" shall mean service rendered for which credit is allowed as provided under section 4 of this act.³

...

(14) "earnable compensation" shall mean the full rate of the salary that would be payable to an employee if he worked the full normal working time for his position...

(26)(a) "Compensation" shall mean the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday.

...

Additionally, N.J.S.A. 43:16A-4(a) states that "[o]nly service as a policeman . . . paid for by an employer, which was rendered by a member since that member's enrollment . . . shall be considered as creditable service."

Further, N.J.A.C. 17:4-4.1² states in pertinent part:

(a) The compensation of a member subject to pension contributions and creditable for retirement and death benefits in the system shall be limited to base salary, and shall not include extra compensation.

1." Base salary" means the annual compensation of a member in accordance with established salary policies of the member's employer for all employees in the same position, or all employees covered by the same collective bargaining agreement, which is paid in regular, periodic installments in accordance with the payroll cycle of the employer.

2. "Extra compensation" means individual salary adjustments which are granted primarily in anticipation of a member's retirement or as additional remuneration for performing temporary duties beyond the regular workday. Forms of compensation that have been identified as extra compensation include, but are not limited to:

...

² The newly constituted Police and Firemen's System of New Jersey relies upon the existing regulations for the Police and Firemen's Retirement System until such time as it promulgates new regulations pursuant to P.L.2018, Chapter 55.

iv. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;

Finally, N.J.A.C. 17:4-2.1 Eligible Position

(a) All employees actively employed in positions meeting the statutory definition “police officer” or “firefighter” found at N.J.S.A. 43:16A-1(2) and (b) shall be members of the PFRS of New Jersey.

There is no dispute that Mr. Rogers’ employment terminated with the dissolution of the Wenonah Borough Police Department effective May 31, 2018.

Because Mr. Rogers could not provide any service as a police officer to Wenonah after this date, the PFRSNJ Board finds that based on the clear and unambiguous statutory and regulatory language, the Board is without authority to allow your request for additional membership service under the settlement agreement. The PFRSNJ Board’s determination is further consistent with In re Puglisi, 186 N.J. 529 (2006) and Jackson v. Board of Trustees, Police and Firemen’s Retirement System, 2017 N.J. Super. Unpub. LEXIS 2523 (App. Div. Oct. 6, 2017). In Puglisi, the court determined that Puglisi was not eligible for pension service credit on a salary increase that was part of settlement agreement, where he stopped working and started terminal leave at the same time as his promotion. 186 N.J. at 534. The increase was in anticipation of retirement. Ibid. In Jackson, the court upheld the Board’s determination that Jackson’s accumulated leave time, for which he received a lump sum payout from his employer, could not be used in the calculation of his PFRS service credit. 2017 N.J. Super. Unpub. LEXIS 2523 at *2, *4. Similarly, as a result of a settlement agreement, Wenonah is attempting to pay Mr. Rogers for service he has not and cannot render, after the dissolution of the Wenonah Borough Police Department, for the purpose of increasing Mr. Rogers’ pension service credit to make him eligible for a special retirement benefit based on 25 years of service., As noted above, the PFRSNJ Board has reviewed all documents relevant to this matter. However, the Board cannot grant your relief. Because this matter does not entail any disputed questions of fact, the PFRSNJ 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 laws and regulations and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Police and Firemen’s Retirement System of New Jersey.

Samuel Gaylord, Esquire
RE: William Rogers
April 10, 2019
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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.

All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625
Phone: (609) 292-4822

Sincerely,



Jacquelyn Bussanich, Interim Secretary
Board of Trustees
Police and Firemen's Retirement System of New Jersey

Jb/G-13

c: William Rogers
DAG Robert Garrison (ET)