

New Jersey Commissioner of Education

Final Decision

Haifa Zahroon,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,

Respondent.

Synopsis

Pro se petitioner sought to purchase service credit from the New Jersey Division of Pension and Benefits (Division) for 1995-1997. The respondent Board was unable to locate and provide her payroll records for those years, as they were likely destroyed in a flood of the Board’s administrative offices, and provided alternate documentation which was rejected as inadequate by the Division. Petitioner subsequently filed the within petition. The Board filed a motion to dismiss for failure to state a claim upon which relief may be granted.

The ALJ found, *inter alia*, that: petitioner alleged that the Board was negligent in maintaining her records and failed to notify her that the records had been destroyed, but did not allege any violation of New Jersey’s school laws; the relief sought by the petitioner, *i.e.* retirement benefits, can only be obtained from the Division, not the Board. Accordingly, the ALJ concluded that the petition failed to state a claim upon which relief can be granted and dismissed the petition.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner concurred with the ALJ that the relief sought by petitioner does not fall under the school laws, and -- pursuant to *N.J.S.A. 18A:6-9* – the Commissioner’s jurisdiction is limited to controversies and disputes arising under the school laws. The Commissioner does not have the authority to order the award of retirement benefits to petitioner, as that authority lies solely with the Division. Accordingly, the petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

329-23
OAL Dkt. No. 04190-23
Agency Dkt. No. 32-2/23

New Jersey Commissioner of Education
Final Decision

Haifa Zahroon,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the reply thereto by the Paterson Board of Education (Board), have been reviewed and considered.¹

Petitioner has been employed by the Board since 1995. The first two years of her employment were not included in her years of service for pension purposes due to the nature of her position at that time. Petitioner attempted to purchase service credit from the New Jersey Division of Pension and Benefits (Division) for 1995-1997, but the Board was unable to locate and provide her payroll records for those years, possibly because they had been destroyed in a flood at the Board's administrative offices. The Board attempted to provide alternative documentation, such as Board meeting minutes approving petitioner's employment, a Form W2, and a personnel transaction form. However, the Division found that those records

¹ An email from petitioner dated October 13, 2023, in response to the Board's reply, was not considered because sur-replies are not permitted by the applicable rules.

were insufficient and, in the absence of petitioner's payroll records, denied petitioner's purchase request. This appeal followed.

Following the Board's motion to dismiss, the Administrative Law Judge (ALJ) found that although petitioner alleged that the Board was negligent in maintaining her records and failed to notify her that the records had been destroyed, petitioner had failed to allege any violation of New Jersey's school laws. The ALJ further found that the relief petitioner sought – retirement benefits – could not be obtained from the Board, but only from the Division. Accordingly, the ALJ concluded that the petition failed to state a claim upon which relief can be granted and dismissed the petition.

In her exceptions, petitioner argues that she has provided adequate evidence of her employment and that the Board should provide a letter certifying her employment so that she can purchase her pension service credit. In reply, the Board contends that it has already provided a letter to the Division in support of petitioner's service credit purchase request, and that there is nothing else it can do because any resolution is in the hands of the Division, such that the ALJ properly granted its motion to dismiss.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. Pursuant to *N.J.S.A. 18A:6-9*, the Commissioner's jurisdiction is limited to controversies and disputes arising under the school laws. Petitioner has not alleged any violation of *N.J.S.A. 18A:1-1 et seq.* or *N.J.A.C. 6A:1-1.1 et seq.* Furthermore, the Commissioner does not have the authority to order the award of retirement benefits to petitioner, as that authority lies solely with the Division.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2023
Date of Mailing: November 3, 2023

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 04190-23

AGENCY DKT. NO. 32-2/23

HAIFA ZAHROON,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY

OF PATERSON, PASSAIC COUNTY,

Respondent.

Haifa Zahroon, petitioner, pro se

Sandra A. Graise, Esq., for respondent (Florio, Perrucci, Steinhardt, Cappelli,
Tipton & Taylor, attorneys)

Record Closed: August 3, 2023

Decided: September 28, 2023

BEFORE **KELLY J. KIRK**, ALJ:

On February 7, 2023, petitioner Haifa Zahroon filed a Pro Se Petition of Appeal (Petition) and attachments with the New Jersey Department of Education (Department) requesting that the Commissioner consider a controversy that had arisen between petitioner and respondent Board of Education of the City of Paterson, Passaic County, New Jersey (Board). The Board filed an answer on May 9, 2023.

On May 12, 2023, the Department transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction to hear and determine controversies and disputes arising under the school laws is conferred under N.J.S.A. 18A:6-9.

On July 5, 2023, the Board filed a motion to dismiss the Petition, consisting of a brief and three exhibits. On July 7, 2023, petitioner filed opposition to the Board's motion, consisting of a letter and nine exhibits. On July 24, 2023, the Board filed a letter brief in reply, and on August 3, 2023, petitioner filed a surreply.

To initiate a contested case for the Commissioner's determination of a "controversy or dispute arising under the school laws," a petitioner must prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. N.J.A.C. 6A:3-1.3(a). The petitioner must name as a party any person or entity indispensable to the hearing of a contested case and failure to do so may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10. N.J.A.C. 6A:3-1.3(b).

A petition must include, inter alia, a statement of the specific allegation(s) and essential facts supporting them that have given rise to a dispute "under the school laws"; the relief petitioner is seeking; and a statement of verification or certification in lieu of affidavit for each petitioner. N.J.A.C. 6A:3-1.4. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen. N.J.A.C. 6A:3-1.4. The respondent(s) must serve an answer upon the petitioner and the answer must state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition. N.J.A.C. 6A:3-1.5(a). However, nothing in N.J.A.C. 6A:3 precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the

time allotted for the filing of an answer. N.J.A.C. 6A:3-1.5(g). Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the administrative law judge if the motion is to be briefed following transmittal to the OAL. N.J.A.C. 6A:3-1.5(g). At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good reason. N.J.A.C. 6A:3-1.10.

The "Statement of Specific Allegations and Essential Supporting Facts" in the Petition states as follows:

I was employed by the Paterson Public Schools Board of Education from December 1995 to November 24, 1997, as a research assistant. I was hired for this role along with over twenty-five other people. This team was created and funded by the Comer Grant and was under the supervision of Dr. Gloria Hagopian. At that time, the district did not pay toward pension or health benefits because we were considered part-time employees although we worked over 40 hours a week. On November 24, 1997, the district created the Division of Assessment, Planning, and Evaluation within the Paterson Public Schools, and Dr. Gloria Hagopian was appointed Director of the department. I was hired under Dr. Hagopian's purview as a full-time research assistant. I worked for the Paterson Board of Education until my retirement date on December 1, 2022. Due to a number of health issues, I decided to retire early which would leave me with 27 years of service to the district. According to Paterson Public Schools, I was to retire with 25 years of service instead of 27 years as my first two years were not properly considered, according to their lack of records. There have been endless attempts on my end, to purchase the 22 months of service from December 1995 to November 1, 1997, so that they may be calculated accordingly into my retirement.

In March 2022, I met with Eileen Shafer, Superintendent of Paterson Public Schools, and informed her about my decision to purchase time to retire early due to my health issues. I also spoke with Luis Rojas, Assistant Superintendent of Human Resources, and Esther Boone, Employee Services Representative, and informed them that I

wanted to purchase 22 months of pension service credit. I was told that the Board of Education does not have any of my previous employment and payroll records for the above-mentioned time frame. Therefore, they were not going to certify my purchase request.

I was employed during the months in question as evidenced by the issuance of IRS W-2 Tax Forms by the Paterson Public School District for the years 1995, 1996, and 1997. These tax forms would not have been issued had I not been employed and paid by Paterson Public Schools. Social Security contributions were deducted from my salary for those years as shown by a signed statement dated March 23, 2022, from the Social Security Administration. Payroll deductions could not have been made had I not been employed and paid by the Paterson Public School District during this period.

Also, statements were collected from co-workers based on their personal knowledge that the duration of my employment supports my claim. I have spent countless hours and numerous attempts to purchase the needed time to retire. The district Director of Employee Services repeatedly stated that there was no record of my employment or my payroll records for the months requested and that I needed to be certified. District Counsel, Boris Zaydel got involved and he was able to locate minutes recorded for a 1996 Board of Education Meeting. In addition, he was able to find a Board Approval document reflecting the approval to hire me and other individuals as research assistants for the Comer Grant under the supervision of Dr. Gloria Hagopian.

Still, even with this latest discovery the Director of Employee Services continued to assert in her reply to the State of New Jersey Pension Division that Paterson Public Schools had no payroll records to support my claim and therefore my request was denied by the New Jersey Division of Pension on October 7, 2022.

According to the district response to the newspaper inquiry, no one knows what happened to my employment records from December 1995 to November 23, 1997, when I was hired as a full-time employee.

Below is the only explanation the district provided

“It is important to note that while there has been a belief that the records Ms. Zahroon, is seeking may have been water-

damaged, we cannot definitively say why the detailed records the state requires of her per-diem, part-time employment are missing,” said the district spokesman Paul Brubaker.

Or is it possible that my records were destroyed, specifically, the federal grant documents because of the multiple federal investigations of wrongdoings by administrators within the Paterson Public Schools?

This situation has been ongoing for a year and there have been endless hours, constant correspondence, and profound dedication on my end to tend to the matter to see it resolved once and for all. It has negatively impacted my health and overall well-being. I have had two back operations within a three-month period between March and June of 2022, and it was the first time in the 27 years that I was on paid long medical leave. I had to use all of my sick and vacation days. It has caused me a substantial amount of stress. I have not been able to recuperate properly as this has taken a toll on me in every sense of the word.

Please see the attached Newspaper article that was published in the North Jersey records on December 9th, 2022, by Joe Malinconico.

The “Relief Request” in the petition states as follows:

The district Communication Director stated in the Newspaper that “that Schools Superintendent Eileen Shafer is committed to contacting the state pension office to try to help Zahroon get “all of the retirement benefits to which she is entitled.”

The relief that I’m looking for is to receive all the retirement benefits to which I’m entitled, as the schools superintendent stated in the Newspaper article.

Petitioner filed an application to purchase service credit with the State of New Jersey Division of Pensions and Benefits (Division). A letter dated March 11, 2022, ostensibly from the Division to Zahroon, states as follows:

This will acknowledge receipt of your Application to Purchase Service Credit through the Member Benefits Online System (MBOS) for **UNCREDITED** service.

Please note that the processing time varies depending on the purchase type selected and the extent of research required for determining your eligibility in accordance with the provisions of New Jersey laws. Since the cost of your request will be based upon your nearest age and highest salary earnings at the time the Division of Pensions and Benefits receives your application, any processing delays will not result in an increased cost to you. If you qualify to purchase pension service, you will receive a Cost Quotation letter and will have 90 days from the date of the letter to authorize the purchase.

Should you wish to view the status of your purchase request, you may do so by logging onto your MBOS account and selecting "Purchase Service Credit" button.

If you require any assistance, please contact the Division of Pensions and Benefits Office of Client Services at (609) 292-7524.

Chapter 78, P.L. 2011 changed how purchases of service credit made after June 28, 2011 affect the cost of post-retirement medical benefits. For additional details, see Fact Sheet #11 at <http://www.nj.gov/treasury/pensions/documents/factsheets/fact11.pdf>

A letter dated March 14, 2022, ostensibly from the Division to the Board, states as follows:

The above referenced member has submitted an Application to Purchase Service Credit for **TEMPORARY/SUBSTITUTE** service from **January 1, 1996 to October 30, 1997**.

Based on the member's employment records at your location, please complete a Purchase Certification through the Employer Pensions and Benefits Information Connection (EPIC) **under [XX-XXXX-XX]**. After you have logged onto EPIC, select the "Purchase Certification" button and complete the required information.

Should you require any assistance, please contact the Division of Pensions and Benefits Office of Client Services at (609) 292-7524.

A letter dated March 24, 2022, ostensibly from Paterson Public Schools (District) to the Division, states as follows:

Our employee, Haifa Zahroon, is requesting to Purchase Service Credit for the period from 01/01/1996 through 10/30/1997. Please accept this request to purchase service credit for the employment period listed above.

Please note that there are “No Records on File” for this employee. Enclosed is the Employment Verification form.

If you have any questions, please contact the Pension Office at 973-321-0603.

A letter dated March 29, 2022, ostensibly from the Division to Zahroon, states as follows:

This is in reference to your recent request to purchase **TEMPORARY/SUBSTITUTE** pension service credit. A determination has been made that this purchase is not permitted based upon the following eligibility criteria:

We have received a response from **PATERSON BD OF ED** indicating they have no record of your employment from **January 1, 1996 to October 30, 1997**. Based on this information we cannot determine your eligibility and therefore, cannot allow you to purchase this service. If you can provide any evidence to substantiate your employment, please notify your employer to provide our office with supporting documentation which includes your official payroll title, specific dates of employment, salary earnings information, and Social Security coverage. Upon receipt of such documentation, we will reconsider your request to purchase service.

Should you have any questions regarding this matter, please contact the Office of Client Services at (609) 292-7524.

A letter dated May 5, 2022, ostensibly from the Division to Zahroon, states as follows:

This is in response to your appeal of the denial to purchase additional pension service credit with Paterson Board of Education (BOE).

The denial letter issued on March 29, 2022, was based on the Employment Certification submitted by the BOE certifying they have no records on file.

In order for our office to process your purchase request, we require detailed employment history records indicating the exact beginning and ending dates of your employment; salary earnings for each year of employment; your appointment status; official payroll title/s; and/or dates of any leaves of absence; and number of days worked if employed as a substitute teacher.

Our office is in receipt of the Social Security Itemized Statement of Earnings for 1995 to 1998 and W-2 statements from 1996 to 1999 that indicate you were employed with BOE. However, the ISE and W-2 statements do not provide sufficient information to determine purchase eligibility. In addition, our office contacted the BOE to verify your employment. The BOE again confirmed they have no additional records of your employment from January 1, 1996 to June 30, 1997.

In light of the above, we do not have sufficient information to determine purchase eligibility. If you and/or your employer can remit additional data that supports all of the aforementioned payroll information and employment history, please forward the documents to our office for review. Absent any new information, we are unable to process your request.

A letter dated May 17, 2022, ostensibly from Michelle Santaniello, states as follows:

I am writing this letter to attest to working with Haifa Zahroon. We both worked as research assistants for the Paterson Public Schools, starting in 1995. We worked under the Supervision of Dr. Gloria Hagopian.

Ms. Zahroon and I continued to work for Paterson Public Schools, in different capacities, upon the completion of the research project.

If you need any further information, please feel free to contact me at [email].

A letter dated May 18, 2022, ostensibly from Peter Affinito, states as follows:

My name is Peter D. Affinito. I was employed by the Paterson Public Schools from 1986 to 2018. During that time . . . I served as a High School Department Chairperson and District Director of Guidance. In 1995, I met Haifa in the office of . . . Dr. Gloria Hogopian [sic] and from that time until my retirement in 2018, we worked together on a continuous base [sic].

If I can be of further assistance with questions or concerns, please feel free to contact me at [email].

A letter dated May 19, 2022, ostensibly from Lena Halayjian, states as follows:

I am writing this letter to attest to working with Haifa Zahroon. I began working with Ms. Zahroon as a Research Assistant in 1997 for the Paterson Public Schools. Together, we worked under the supervision of Dr. Gloria Hagopian.

Upon the completion of the research project, Ms. Zahroon and I continued to work for Paterson Public Schools in different capacities, including when I moved into the school system as an elementary teacher.

If you need further information, please do not hesitate to contact me at [email].

A May 20, 2022, letter, ostensibly from Barbara Scarfo, states as follows:

Haifa Zahroon started working for Dr. Gloria Hagopian, then the principal of Norman S. Weir, at the Paterson Public Schools as a research assistant at end of 1995 to November 1997. When Dr. Hagopian was promoted to Director of Assessment, Planning, and Evaluation in the district, she hired four of the research assistants to be part of her team at the Central Office building at 133 Ellison Street in Paterson. Haifa Zahroon was one of the four individuals hired in November 1997.

From 1995 to November 1997, Haifa worked more than 40 hours a week and was paid by the Paterson Public Schools with no medical or pension benefits. Her medical and pension benefits started in November 1997 when she was hired as a full-time employee under Dr. Gloria Hagopian.

I, Barbara Scarfo, was one of the supervisors in the department of Assessment, Planning and Evaluation. Haifa Zahroon worked under my supervision until I retired.

A letter dated May 25, 2022, ostensibly from Betty Jean Pelletiere, states as follows:

I met Haifa Zahroon in 1995 when she was hired to work for my principal, Dr. Gloria Hagopian. Dr. Hagopian was working on a federal grant to create students database, by taking all students Records from the schools yellow cards and inputting the data into a computer database. There were more than 20 research data enters working with Dr. Hagopian. Charlotte Sanderson, school #26 secretary and myself worked after school hours to research Payrolls time sheets and help with the research paperwork.

Payroll for workers was done by tabulating their weekly hours, and have them review and sign. Then, Dr. Hagopian would sign. Copies were made before sending the original to payroll at 33 Church Street. Ms. Alicia Walton was in charge of payroll at that time.

Haifa continued to work with Dr. Hagopian and in November of 1997, the District hired her to work full time as Research Assistant in the Department of Testing, Planning and Evaluation with Dr. Hagopian as the Director.

If you have any questions, or need additional information, feel free to contact me at: [email].

A letter dated May 31, 2022, ostensibly from Aubrey Johnson, states as follows:

I met Haifa Zahroon at the Norman S. Weir School in Paterson, New Jersey in 1996 while she was working for Dr. Gloria Hagopian as a research assistant, tracking students' data elements in grades K-12.

At the time, I was a teacher at Schoof #12 and was assigned a special project to develop a school wide plan with student demographic and achievement data over three years. Dr. Gloria Hagopian was the principal of the Norman S. Weir School and she was assisting me in interpreting our school's data.

A few years later, Dr. Hagopian became the district's Director of Assessment, Planning & Evaluation and years later when the position was vacated, I served in the same capacity from 2009–2012. During my tenure as Director of Assessment, Planning & Evaluation, I supervised a team of six individuals and was very familiar with the skill set of Haifa Zahroon, since I recalled working with her in 1966 [sic] under Dr. Hagopian.

I have worked with many outstanding and dedicated employees and Mrs. Zahroon is an example of one of the finest. She performed her job responsibilities in a highly effective manner and worked closely with the school administrators and teachers to create school cultures that were conducive to their academic growth.

If you have any questions, feel free to call me at [number].

An undated letter, ostensibly from Maribel Franco, states as follows:

Please be advised, I have known Ms. Haifa Zahroon, since 1995, she was working for Dr. Gloria Hagopian and I was working with Ms. Brenda Patterson at that time for the Office of Special Programs.

Please feel free to contact me should you have any questions or concerns at [number].

A letter dated July 8, 2022, ostensibly from the Division to Zahroon, states as follows:

This is in response to your request for a reconsideration of the denial to purchase additional pension service credit from January 1, 1996 to October 30, 1997 with Paterson Board of Education (BOE).

Included with your correspondence were W-2 statements from 1995 to 1997, the Social Security Itemized Statement of

Earnings (ISE) for 1995 to 2000, personal statements from various co-workers and two articles pertaining to Paterson Public School.

Although the W-2 statements and the ISE support Ms. Zahroon was employed with the BOE, the W-2 statements and the ISE do not provide sufficient information to determine purchase eligibility. In order for our office to process your purchase request, we require detailed employment history records indicating the exact beginning and ending dates of your employment; salary earnings for each year of employment; your appointment status; official payroll title/s; and/or dates of any leaves of absence: and number of days worked if employed as a substitute teacher.

Based on the above, we do not have sufficient information to determine purchase eligibility. Absent any new information, we are unable to process your request.

If you disagree with my determination and wish to appeal my findings, you may submit a written request with all relevant supporting documentation to:

Jeff Ignatowitz, Board Secretary Public Employee's
Retirement System Division of Pensions and Benefits
PO Box 295
Trenton, NJ 08625-0295

I regret that my determination could not be more favorable. Please understand that my determination must be based upon the rules and regulations governing the pension system.

A letter dated August 23, 2022, ostensibly from the Division to Zahroon, states as follows:

This will acknowledge receipt of your Application to Purchase Service Credit through the Member Benefits Online System (MBOS) for **TEMPORARY/SUBSTITUTE** service.

Please note that the processing time varies depending on the purchase type selected and the extent of research required for determining your eligibility in accordance with the provisions of New Jersey laws. Since the cost of your request will be based upon your nearest age and highest salary earnings at the time the Division of Pensions and

Benefits receives your application, any processing delays will not result in an increased cost to you. If you qualify to purchase pension service, you will receive a Cost Quotation letter and will have 90 days from the date of the letter to authorize the purchase.

Should you wish to view the status of your purchase request, you may do so by logging onto your MBOS account and selecting "Purchase Service Credit" button.

If you require any assistance, please contact the Division of Pensions and Benefits Office of Client Services at (609) 292-7524.

Chapter 78, P.L. 2011 changed how purchases of service credit made after June 28, 2011 affect the cost of post-retirement medical benefits. For additional details, see Fact Sheet #11 at <http://www.nj.gov/treasury/pensions/documents/factsheets/fact11.pdf>

A letter dated September 14, 2022, ostensibly from Paterson Public Schools to the Division, states as follows:

This letter responds to your letter of August 29th to Haifa Zahroon, regarding her pension service credit application. In that letter, you advised that you were unable to determine eligibility because Paterson Public Schools had not provided any records showing that it had employed Ms. Zahroon during the period from August 1, 1997, through November 1, 1997. Attached are the following records documenting Ms. Zahroon's employment during the period.

- BOE meeting minutes, dated 9/6/1996, documenting appointment as a part-time Research Assistant at \$10.00 an hour, not to exceed \$12,000 for the 1996–1997 school year.
- Personnel Transaction Form and Data Sheet, dated 10/16/1997, documenting a change from part-time employment as Research Assistant to full-time, effective 11/24/1997; and
- Form W2, showing \$28,220.35 in gross wages paid by Paterson Public Schools.

Unfortunately, we cannot provide documentation of work hours for the period in question because we believe Ms. Zahroon's payroll records were inadvertently destroyed

and discarded after a flood event at our old administrative offices. Hopefully the attached records will be deemed sufficient to determine Ms. Zahroon's pension credit eligibility in the absence of payroll records.

Please contact me directly if you have any questions or need additional information.

Specifically, the September 25, 1996, Board meeting minutes reflect the following:

97-A108 Approval to employ the following list of Research Assistants for gathering and analyzing data for Comer Programs and Student Database Project at \$10.00 an hour, not to exceed \$12,000 for the 1996–1997 school year: . . . Haifa Zahroon

A letter dated October 7, 2022, ostensibly from the Division to Zahroon, states as follows:

This is in reference to your appeal of the denial to purchase additional pension service credit from January 1, 1996 to October 30, 1997 with Paterson Board of Education (BOE).

Our office is in receipt of the BOE's Board Minutes dated September 25, 1996. According to the Board Minutes you were approved as a Research Assistant at \$10.00 per hour for the 1996–1997 school [sic].

While the Board Minutes, ISE, and W-2's support your employment with the BOE, they do not support whether your employment was continuous without interruption leading to permanent employment.

In accordance with N.J.S.A. 43:1SA-11:

“Any person employed temporarily by an employer whose temporary employment resulted, without interruption, in permanent employment may purchase credit for that temporary service.”

Therefore, we are still unable to determine purchase eligibility. Please be advised, there will be no further review of your purchase request unless you or your employer are

able to provide payroll information for the period covering January 1, 1996 to October 30, 1997.

Although a motion to dismiss is not specifically referenced in the UAPR, a respondent is not precluded from filing a motion to dismiss in lieu of an answer to a petition. N.J.A.C. 6A:3-1.5(g). Further, per N.J.A.C. 1:1-1.3(a), in the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible. In this regard, Rule 4:6-2 states, in part: Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, and (f) failure to join a party without whom the action cannot proceed.

In its motion to dismiss, the Board argues that the District is not the real party in interest and “is not responsible for petitioner’s alleged claims as a matter of law,” and that the petition must be dismissed for failure to state a claim upon which relief can be granted. In her opposition, Zahroon asserts, inter alia, negligence and wrongful acts on the part of the District and that the District violated its “duty of care” in maintaining and preserving her employment records and violated a “notice requirement” to notify her of the destruction or loss of her employment records.

Considering the Petition and its attachments, there is little question that petitioner has expended considerable time and effort in obtaining documentation of her employment from approximately twenty-five years ago—including Board minutes, tax documents, and letters from numerous former coworkers—in order to satisfy the Division’s requirements to purchase service credit. However, Zahroon has failed to cite to N.J.S.A. 18A (Education) or to N.J.A.C. 6A (Education) in support of her Petition or in support of the assertions in her opposition relative to a duty of care, notice requirements, negligence, or wrongful conduct.

Based upon the references in the letters from the Division, it appears that petitioner was enrolled in the Public Employees' Retirement System. N.J.S.A. 43:15A-7 establishes the Public Employees' Retirement System of New Jersey in the Division of Pensions and Benefits of the Department of the Treasury. The general responsibility for the proper operation of the Public Employees' Retirement System is vested in the board of trustees, and, as specified, the committees established pursuant to N.J.S.A. 43:15A-17(b). N.J.S.A. 43:15A-17(a)(1). Pursuant to N.J.S.A. 43:15A-11—a Title 43 "Pensions and Retirement and Unemployment Compensation" statute and not a Title 18A "Education" statute—"any person employed temporarily by an employer whose temporary employment resulted, without interruption, in permanent employment may purchase credit for that temporary service."

Thus, even accepting, arguendo, the allegations in the Petition, I **CONCLUDE** that the Petition has advanced no cause of action under "school laws" against the Board because the relief petitioner seeks—specifically, "all of the retirement benefits to which [she is] entitled"—cannot be obtained from the Board. Rather, such relief may only be obtained from the Division. Accordingly, I further **CONCLUDE** that the Petition should be dismissed for failure to state a claim upon which relief can be granted.

ORDER

It is hereby **ORDERED** that the Petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



September 28, 2023

DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:
db
