



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

TRENTON, NEW JERSEY 08625-0295
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

March 8, 2024

Sent via email to: [REDACTED]

FREIREICH, L.L.C.
Jay J. Freireich, Esq.

[REDACTED]

RE: George Lewis
TPAF# [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Freireich:

At its meeting on February 1, 2024, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your appeal of the Board's determination that George Lewis' July 1, 2020 retirement is non-bona fide. The Board originally adopted the External Audit Unit's (EAU) findings and affirmed their determination that Mr. Lewis' retirement is non-bona fide at its meeting of November 2, 2023. You filed a timely appeal of the Board's decision on December 29, 2023.

After careful consideration, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of March 7, 2024.

FINDINGS OF FACT

The record before the Board establishes that Mr. Lewis was enrolled in the TPAF on November 1, 2000, as the result of his employment with the Plainfield Board of Education (Plainfield) as a Teacher. On or about June 30, 2020, Mr. Lewis filed an application for Service

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retirement benefits, effective July 1, 2020. On July 1, 2020, Plainfield certified that Mr. Lewis resigned from their location, effective June 30, 2020, and that he did not make a pre-arrangement to return to employment with them in any capacity. The Board approved his retirement application at its meeting on September 3, 2020.

On or about September 3, 2020, the Board sent Mr. Lewis a letter advising him that his retirement had been approved and notified him that:

In accordance with law, you have until thirty days after (A) the effective date of your retirement, or (B) the date your retirement was approved by the Board of Trustees, whichever is the later date, to make any changes to your retirement.

The letter also advised Mr. Lewis that:

If you are considering working after retirement, you should be aware of the restrictions imposed by law and regulations governing post-retirement employments. It is your responsibility to inform your prospective employer that you are receiving retirement benefits from a New Jersey public retirement system, and to understand the impact employment will have on those retirement benefits. In some instances, your retirement benefits may be suspended or even cancelled entirely, and if this occurs, you will be responsible for the repayment of any benefits you were not entitled to receive. You may also be required to re-enroll in your former retirement system or a different retirement system, and make pension contributions to that system. Please read Fact Sheet #86 regarding Post-Retirement Employment Restrictions located on the Division of Pensions and Benefits' website:

<http://www.nj.gov/treasury/pensions/documents/factsheets/fact86.Pdf>

Upon reading Fact Sheet #86, if you have any additional questions regarding return to public employment, please contact the Office of Client Services at (609) 292-7524.

On November 29, 2022, the Division of Pensions and Benefits (Division) received a Notification of Employment after Retirement Form (RTE Form) from Plainfield stating that Mr. Lewis was hired by them as a full-time Teacher on September 1, 2022, at an annual salary of \$95,396.00. Subsequent to the receipt of the RTE Form, the Division contacted Plainfield BOE to

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request additional records and information to document Mr. Lewis' earnings. During the course of the Division's review, the EAU became aware that Mr. Lewis had actually returned to employment with Plainfield over two years earlier. According to the records provided by Plainfield, Mr. Lewis was appointed as a part-time Substitute Teacher effective September 1, 2020.

Furthermore, in 2022, Plainfield attempted to secure an exemption for hiring Mr. Lewis as a retired teacher pursuant to P.L. 2021, c. 408 (C. 408) by receiving approval from the New Jersey Department of Education (NJDOE) and then submitting it to the Division in this regard. Plainfield did not obtain this approval until April 4, 2023, which is after his official start date (as a full-time Teacher) of September 1, 2022, months after the EAU began its review of his post-retirement employment. C. 408 went into effect on January 18, 2022, and did not exist at the time of Mr. Lewis' initial return to post-retirement employment in September of 2020 and cannot be applied retrospectively.

The Board notes that neither Mr. Lewis nor Plainfield contacted the Division at any time regarding the above-referenced post-retirement employment to ascertain whether it would have any negative impact on his pension and whether it followed all applicable statutes and regulations.

Accordingly, the Board affirmed the Division's administrative determination of June 8, 2023, and found that Mr. Lewis' July 1, 2020 retirement was not bona fide. Consequently, as a non-bona fide retiree, any retirement benefits he received as of July 1, 2020 to the date he terminated his employment with Plainfield and files for retirement again are due back to the TPAF. In addition, the Board found that he is required to be re-enrolled in the TPAF effective (as a new Tier 5 member) September 1, 2022 and make mandatory pension contributions. When Mr. Lewis began working as full-time Teacher on September 1, 2022, he met the enrollment eligibility requirements provided in N.J.A.C. 17:3-2.1(a) through (c), and was thus required to be enrolled back into the TPAF.

Based upon the information provided by Plainfield concerning Mr. Lewis' post-retirement employment, the Division found that Mr. Lewis did not separate from employment as required by the provisions of N.J.A.C. 17:3-6.2 and N.J.A.C. 17:1-17.14(a)(2).

The Board considered your appeal of the EAU's determination that Mr. Lewis' July 1, 2020 retirement was non-bona fide at its meeting of November 2, 2023. At the meeting, the Board found that Mr. Lewis did not separate from employment as required by the provisions of N.J.A.C. 17:3-6.2 and N.J.A.C. 17:1-17.14(a)(2). Therefore, the Board affirmed the EAU's determination that Mr. Lewis' retirement was non-bona fide. On or about December 29, 2023, you filed a timely appeal of the Board's decision and requested that the matter be transferred to the Office of Administrative Law as a contested case.

At its meeting on February 1, 2024, the Board considered your appeal, affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing.

CONCLUSIONS OF LAW

The issue before the Board is whether Mr. Lewis properly separated from employment as required by the provisions of N.J.A.C. 17:3-6.2 and N.J.A.C. 17:1-17.14(a)(2).

N.J.A.C. 17:3-6.2 states:

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

N.J.A.C. 17:1-17.14(a)(2) defines a "bona fide severance from employment" as:

2. "Bona fide severance from employment" means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. The following does not constitute a complete termination of the employee's relationship with the employer:

- i. Employment or reemployment in a part-time position;

- ii. Employment or reemployment in a position that is not covered by the Defined Benefit Plan;
- iii. A change in title;
- iv. Employment or reemployment as a contract employee, a leased employee, or an independent contractor; or
- v. Termination of employment with a pre-arranged agreement for reemployment.

Federal Internal Revenue Service factors shall be used as guidance in determining whether an employment relationship exists. A mandatory retirement shall be treated as a bona fide severance from employment

Although Mr. Lewis' retirement date was July 1, 2020, his retirement was not approved by the Board until September 3, 2020. Therefore, his retirement did not become due and payable, or final, until October 3, 2020 as provided in N.J.A.C. 17:3-6.2 and N.J.A.C. 17:1-7.7(b) . N.J.A.C. 17:1-7.7 (b) provides in pertinent part:

(b) Members employed on a 10-month schedule who retire as of July 1st and return to the same, or another 10-month position within the same pension system, prior to October 1st of the same year are not considered to have a bona fide retirement. Ten-month members who retire effective July 1st and return to 10-month employment the following September shall be deemed not to have a valid break-in-service for retirement purposes.

A bona fide severance from employment, as defined by N.J.A.C. 17:1-17.14(a)(2), means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. Clearly, reemployment in a part-time position and as a contract employee with the same employer, does not constitute a complete termination of the employee's relationship with the employer.

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According to the records provided by Plainfield, Mr. Lewis was appointed as a part-time Substitute Teacher¹ effective September 1, 2020, before his retirement became due and payable and before he had a bona fide break in service.

Additionally, the statutory exemption under C. 408 permitted retired teachers or professional staff members who provide services to return to employment to fulfill a “critical need of a school district” during the school years 2021-2022 or 2022-2023, without requiring re-enrollment in the TPAF – contingent upon the member having a bona fide retirement.² Since Mr. Lewis returned to part-time employment in September 2020, for the same employer, he did not terminate his employment relationship with Plainfield for a period of at least 180 days pursuant to N.J.A.C. 17:1-17.14(a)(2), and thus his retirement was non-bona fide.

As noted above, the Board has considered your written submission and all documentation in the record. 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 on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right 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

¹ N.J.S.A. 18A:66-2(p) specifically excludes substitute teachers from enrollment in the TPAF.

² Employees that work a 10-month school year and retire on July 1, or August 1, must count the 180-day severance of employment period from the start of the following normal school year in September. However, no matter how the dates are tallied, Mr. Lewis did not have a 180-day break in service.

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Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Saretta Dudley", enclosed in a rectangular box.

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

G-3/SD
C: K. Brzostowski (ET); S. Fenstermacher (ET)