



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

December 9, 2020

Sent via email to [REDACTED]

John B. Comegno II, Esq.
Comegno Law Group, P.C.

[REDACTED]
[REDACTED]

RE: Jason Kornegay
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Comegno:

I am writing in reference to the decision of the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) regarding the appeal of your client, Jason Kornegay, challenging the Board's decision of February 6, 2020, in which it found that the additional position salary increment of \$5,000 for Mr. Kornegay's concurrent position of Director of Special Services is considered extra compensation which is not creditable for pension purposes. At its meeting of October 1, 2020, the Board considered your appeal of that decision as outlined in your April 7, 2020 letter and determined that there are no material facts in dispute and directed the Board Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the Board at its meeting of December 3, 2020.

The Board has reviewed your written submissions and the documentation accompanying your appeal and finds that the statutes and regulations governing the TPAF do not permit the Board to credit Mr. Kornegay's additional position salary increment of \$5,000 for holding the position of Director of Special Services concurrently with his position of Superintendent.

FINDINGS OF FACT

The record before the Board establishes that the last *Report of Transfer/Multiple Enrollment Form* reflects that Mr. Kornegay transferred to Lebanon Township Board of Education (Lebanon) as a Child Study Team Supervisor on October 1, 2010.

On March 1, 2019, Lebanon and the Hampton Board of Education (Hampton) entered into a *Shared Superintendent Agreement for Superintendent of Schools* effective March 1, 2019 and expiring June 30, 2023. This agreement was for the position of Shared Superintendent only. *Id.* ¶¶ 2-3. On March 12, 2019, Lebanon, Hampton, and Mr. Kornegay entered into a *Contract of Employment* effective March 1, 2019 and expiring June 30, 2023. Article I: EMPLOYMENT of the *Contract of Employment* provided for Mr. Kornegay's employment as the Lebanon/Hampton Superintendent only. However, Article III: DUTIES, provided, "The Superintendent shall also perform the duties of Director of Special Services for the Boards." Article III further provided, "The Superintendent shall provide services to the Borough of Hampton School District for thirty six percent (36%) of his time each week. The remaining sixty four percent (64%) of the Superintendent's time shall be devoted to the services to be performed in the Lebanon Township School District." Article IV: SALARY AND BENEFITS provided, "The Boards shall pay the Superintendent an annual base salary of One Hundred Fifty Two Thousand Seven Hundred Ninety Four Dollars (\$152,794), which includes [sic] Five Thousand Dollars (\$5,000) for the Director of Special Services salary increment and an additional District salary increment of Fifteen Thousand Dollars (\$15,000) for the additional duties he performs pursuant to the Shared Services Agreement between [Lebanon] and [Hampton] for a total salary of One Hundred Seventy One Thousand One Hundred Fifty Dollars (\$171,150)."¹

In an email dated November 13, 2019, Edward Wade, Manager of the Deferred Compensation and Defined Benefit Plans Reporting Bureau in the Division of Pensions and Benefits (Division), notified Lebanon that the additional position salary increment constituted extra compensation, which

¹ The Board notes that the total of \$152,794, \$5,000 and \$15,000 is \$172,794.

is non-pensionable under N.J.A.C. 17:3-4.1(a). Lebanon was issued a refund of \$5,000 that corresponded to the increment.

By letter dated December 16, 2019, you requested that the Board: a. reverse the Division's determination and specifically determine that Mr. Kornegay's current total "Base Salary" compensation of \$171,150, plus any earned bonuses, is creditable compensation for pension purposes; b. Direct the Division, and any other relevant entity, to recognize such creditable compensation during the entire period of Mr. Kornegay's current employment agreement, specifically the period beginning July 1, 2019 through resolution of the instant appeal; and c. Such other and further relief as is just and warranted.

On January 14, 2020, you were notified that the Board would consider your appeal at its meeting on February 6, 2020. At that meeting, the Board reaffirmed the Division's decision that the additional position salary increment Mr. Kornegay received for performance of duties as Director of Special Services is not pensionable salary. On April 21, 2020, the Division received your appeal letter of April 7, 2020 wherein you specifically requested that, in the event the Board does not reverse its determination, the Board issue a Final Administrative Determination in this matter, and waived any hearing before the Office of Administrative Law. At its meeting of October 1, 2020, the Board directed the Board Secretary to issue a Final Administrative Determination. This Final Administrative Determination serves as a formal notice of the Board's denial.

CONCLUSIONS OF LAW

After careful consideration, the Board's determination was based upon the governing statute on creditable pension compensation, N.J.S.A. 18A:66-2(d)(1), which states:

"Compensation" means the contractual salary, for services as a teacher as defined in this article, 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 or extracurricular duties beyond the regular school day or the regular school year.

In addition, the Board relied on N.J.A.C. 17:3-4.1, which provides:

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

1. Forms of compensation that have been identified as extra compensation include, but are not limited to:

ii. Pay for extra work, duty or service beyond the normal work day, work year for the position, or normal duty assignment;

...

v. Any compensation which the employee or employer has the option of including in base salary;

xix. Compensation paid for additional services performed during a normal duty assignment, which are not included in base salary.

...

(b) The Board may question the compensation of any member or retiree to determine its creditability, where there is evidence that compensation reported as base salary may include extra compensation.

(c) Extra compensation shall not be considered creditable for benefits and all employee contributions made thereon shall be returned without interest.

The Board ruled that the salary increment Lebanon and Hampton paid Mr. Kornegay for performing additional shared duties for Lebanon and Hampton, beyond the typical duties of Superintendent, respectively, was not creditable compensation because the Board deemed these contractual services to be "extra work" not included in his "base salary."

As a result of this exclusion, the Board determined that Mr. Kornegay's additional position salary increment of \$5,000 he receives as Director of Special Services for Lebanon and Hampton is not creditable for pension purposes under the terms of N.J.S.A. 18A:66-2(d)(1) and N.J.A.C. 17:3-4.1.

Further, N.J.S.A. 18A:66-19.1 provides:

a. Notwithstanding the provisions of any law to the contrary, after the effective date [May 21, 2010] of P.L.2010, c.1, a person who is or becomes a member of the Teachers' Pension and Annuity Fund and becomes employed in more than one office, position, or employment covered by the retirement system or commences service in a covered office, position, or employment with more than one employer shall be eligible for membership in the retirement system based upon only one of the offices, positions, or employments held concurrently. In the case of a person who holds more than one office, position, or employment covered by the retirement system, the retirement system shall designate the position providing the higher or highest compensation for the person with such concurrent positions as the basis for eligibility for membership and the compensation base for contributions and pension calculations.

...

[(emphasis added).]

Mr. Kornegay began his dual role as Superintendent and Director of Special Services in March 2019. As a result of pension reform, P.L. 2010, c. 1, eliminated any "multiple" status effective May 21, 2010. Therefore, any new concurrently held positions after May 21, 2010 do not qualify for pension purposes. Mr. Kornegay is performing the duties of two distinct and separate positions (as noted above) during the course of his regular work day. He is only eligible for pension credit for the title (position) that pays the highest salary, or in his case, Superintendent. Therefore, the additional position salary increment he receives for additional duties that he is assigned to perform as the Director of Special Services is not pensionable.

In rendering its decision the Board noted and followed Nastus v. Board of Trustees, Teachers' Pension & Annuity Fund, 2019 N.J. Super. Unpub. LEXIS 1608 (App. Div. July 12, 2019), which held that a superintendent's additional salary under a shared-services agreement between multiple school districts was creditable compensation under N.J.S.A. 18A:66-2(d)(1). Mr. Kornegay is Superintendent of Lebanon and Hampton. His base salary and additional district salary increment are creditable. However, he also serves as the Director of Special Services for Lebanon and Hampton, which is an

John B. Comegno II, Esq.
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additional concurrent position to that of Superintendent. Therefore, his additional position salary increment is not governed by Nastus and appropriately excluded from his pension calculation under N.J.S.A. 18A:66-19.1 and N.J.S.A. 18A:66-2(d)(1).

As noted above, the Board has considered your written submissions 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 in this matter on the basis of TPAF's enabling statutes and regulations without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pensions 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,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-1/as

c: DAG Amy Chung (ET)
M. Kusmierczyk (ET)
Jason Kornegay