



State of New Jersey

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

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www.nj.gov/treasury/pensions
December 8, 2022

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

SHAIN SCHAFFER
Raymond J. Stine, Esq.

RE: Gail Krzyzczuk
PERS #: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Schaffer:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying the appeal of your client, Gail Krzyzczuk, of the Division of Pensions and Benefits' (Division) calculation of her pension benefit. At its meeting of August 18, 2021, the Board affirmed the Division's calculation. You filed an appeal of the Board's determination on October 12, 2021. Although your letter appealing the Board's decision was not received at the Board Office within the requisite 45-day time period, you provided documentation which established that the appeal was received at the Division on October 13, 2021, and the Board accepted your appeal as timely.

At its meeting of October 24, 2022,¹ the Board considered your appeal, reaffirmed its original determination and found that no genuine issue of material fact was in dispute, obviating the need for an administrative hearing. The Board therefore directed the undersigned to draft a Final Administrative Determination, which was presented to and approved by the Board at its meeting of December 7, 2022.

¹ Due to a scheduling conflict, this matter was moved from the agenda of the PERS Board's regularly scheduled meeting of October 19, 2022 to the agenda of a special meeting on October 24, 2022. Both meetings were conducted via teleconference.

FINDINGS OF FACT

The record before the Board establishes that Ms. Krzyzczuk was employed by the Borough of Bradley Beach (Borough) as the Chief Financial Officer (CFO) and also as the Tax Collector and Sewer Collector. Ms. Krzyzczuk commenced all three positions on or about October 1, 2016, and held them through December 31, 2019. Immediately preceding these appointments, Ms. Krzyzczuk held the positions of Assistant CFO and Assistant Tax and Sewer Collector.

The correspondence and accompanying ordinances and resolutions establish that the positions of CFO, Tax Collector and Sewer Collector are listed as separate job titles with separate salaries. Additionally, the Borough confirmed that the duties of the Tax Collector and Sewer Collector positions are not permanently assigned to the CFO position, and the Borough confirmed that the positions of Tax Collector and Sewer Collector are currently held by two separate individuals.

Because of the increase in Ms. Krzyzczuk's reported pensionable salary near retirement, the Division's Audit Section reviewed her salary increases and final compensation in accord with N.J.A.C. 17:2-4.1. Toward that end, the Division sought additional information regarding Ms. Krzyzczuk's job duties as CFO, Tax Collector and Sewer Collector. On November 16, 2020, the Division wrote to Ms. Krzyzczuk and advised her that the only salary that would be included in the calculation of her pension benefit would be the CFO salary.

In making its determination, the Division relied on N.J.S.A. 43:15A-25.2, which precluded the use of any additional positions not held as of May 21, 2010 as creditable compensation for pension calculation purposes. A member holding more than one title or position would receive service and salary credit only from the position in which they earned the highest compensation.

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At its meeting of August 18, 2021, the Board affirmed the Division's findings, noting that Ms. Krzyzczuk held three separate positions, all of which she commenced after the enactment of N.J.S.A. 43:15A-25.2. The Division deemed the two lower paying positions as separate additional salaried positions in addition to Ms. Krzyzczuk's highest salaried position as CFO. The Division noted that Tax Collector and Sewer Collector positions may have been eligible if the duties of those positions had been permanently merged into the position of CFO.

Because the documentation provided by the Borough clearly outlines the positions Ms. Krzyzczuk held, and the corresponding salaries assigned to these positions, the Board was able to affirm the Division's determination that the salary for the highest paying position, CFO, shall be the only salary used to calculate her pension benefit.

At its meeting of October 24, 2022, the Board accepted your appeal as timely. However, the Board reaffirmed its previous position, found no genuine issue of material fact in dispute, and directed the undersigned to draft this Final Administrative Determination for its review at its meeting of December 7, 2022.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

PERS statutes define a member's compensation as

...the base or contractual salary, for services as an employee, 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 workday or the regular work year.

PERS regulations limit creditable compensation for pension calculation purposes "to base salary [which] shall not include extra compensation." N.J.A.C. 17:2-4.1(a). The regulation also provides a list of examples that are not considered creditable compensation:

1. Overtime;
2. Pay for extra work, duty or service beyond the normal workday, work year (for 10 month employees) or normal duty assignment;
3. Bonuses;
4. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;
5. Any compensation which the employee or employer has the option of including in base salary;
6. Sell-backs, trade-ins, waivers or voluntary returns of accumulated sick leave, holiday pay, vacation, overtime, compensatory time or any other payment or benefit in return for an increase in base salary. An example of a trade-in is compensation added to base salary or to salary in a new contract that correlates with compensation on an excluded item in an old contract (for example, clothing allowance);
7. Individual retroactive salary adjustments where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
8. Individual adjustments to place a member at the maximum of his or her salary range in the final year of service where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
9. Compensation in the absence of services;
10. Increments or adjustments in recognition of the member's forthcoming retirement;
11. Any form of compensation that is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement who are members of the PERS and who receive the compensation;
12. Retroactive increments or adjustments made at or near the end of a member's service, unless the adjustment was the result of an across-the-board adjustment for all similarly situated personnel; and
13. Any form of compensation which is not included in a member's base salary during some of the member's service and is included in

the member's base salary upon attainment of a specified number of years of service.

In March 2010, the legislature enacted L. 2010, c. 1, ultimately codified as N.J.S.A. 43:15A-25.2, which precluded PERS members from earning additional pension and salary credit for multiple positions or titles. The statute reads, in pertinent part:

- 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 Public Employees' Retirement System 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.
- b. Contributions shall be deducted only from the member's compensation for the office, position, or employment designated pursuant to subsection a. of this section and shall be credited to the member's single account established pursuant to section 25 of P.L.1954, c.84 (C.43:15A-25)....The designation by the retirement system of one office, position or employment upon which membership in the retirement system shall be based shall be irrevocable as between or among the offices, positions, or employments held at the time the designation is made as long as the designated position is the one with the higher or highest compensation. A member who leaves a designated office, position, or employment or acquires a different or additional office, position, or employment, may receive a new designation by the retirement system from among the offices, positions, or employments then held. Service in an office, position, or employment other than the one designated shall not be deemed creditable service for the purposes of the retirement system.
- c. The provisions of subsections a. and b. of this section shall not apply to a person who, on the effective date [May 21, 2010] of P.L.2010, c.1, is a member of the retirement system and holds more than one office, position, or employment covered by the

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retirement system with one or more employers, while the member continues to hold without a break in service more than one of those offices, positions, or employments. Any additional office, position, or employment acquired by the member shall not be deemed creditable service for the purposes of the retirement system and no designation for that member shall be made until only one of the offices, positions, or employments held on the effective date remains.

[ibid.]

Thus, PERS members holding multiple titles or positions at the time N.J.S.A. 43:15A-25.2 was enacted may continue to contribute to the fund on the basis of the salary earned at those positions. Based on information provided by the Borough, Ms. Krzyzczuk became employed in the position of CFO, Tax and Sewer Collector in 2016, years after the enactment of Chapter 1. The Board found that because Ms. Krzyzczuk became employed in these three positions after Chapter 1, she is entitled to service and salary credit based only on her highest-paying position.

In your letter of appeal, you assert that the Borough intended to permanently structure and assign the duties of Tax [Collector] and Sewer Collector to the CFO. However, you also concede that this intention was never realized: the two positions were never integrated into the position of CFO, as evidenced by the fact that three separate individuals now hold these three titles. The Board does not dispute that these positions are separate as required by ordinance and/or statute, but this fact reinforces the Board's determination that they are separate positions. It is clear that Ms. Krzyzczuk accepted these new titles after the enactment of Chapter 1, and therefore neither the Tax Collector nor Sewer Collector position may be included in her pension calculation.

You next assert that N.J.S.A. 43:15A-25.2 is inapplicable to Ms. Krzyzczuk because, of the three different positions she held, only the CFO position is pensionable (because in the Borough, the positions are part-time), and the statute only applies to positions "covered by the retirement system." However, these positions are PERS-eligible for Tier-1 PERS members like Ms. Krzyzczuk, under the terms of Chapter 1, if they are the sole or highest-paying position held

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by the member (or if the member held them before the effective date of Chapter 1).² Otherwise, if the Tax Collector and Sewer Collector positions were not pensionable, Ms. Krzyzczuk, would by definition not be eligible for any retirement benefit based on them. If the two positions were not pensionable for Ms. Krzyzczuk, assigning them to her would not have made them so. But for the enactment of Chapter 1, Ms. Krzyzczuk would have been eligible to receive a pension benefit based on the salaries of all three positions precisely because these positions are PERS-eligible for Tier-1 PERS members.

As noted above, the Board has considered your personal statements and written submission as well as all documentation in the record. Because the Board found that 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 Public Employees' Retirement System.

You also 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.

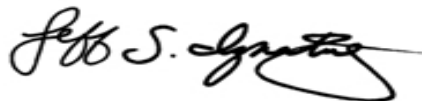
All appeals should be directed to:

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

² Chapter 1 amended the PERS eligibility criteria to require that members not in the PERS prior to its enactment to work 32 or 35 hours per week. This provision would not have applied to Ms. Krzyzczuk as she was enrolled prior to the enactment of Chapter 1. See N.J.S.A. 43:15A-7(d)(4).

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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeff S. Ignatowicz, Secretary
Board of Trustees
Public Employees' Retirement System

G-7/JSI

C: Gail Krzyzczuk (sent via email to: [REDACTED])

Bradley Beach Borough
Michele Whille, Certifying Officer
[REDACTED]