



State of New Jersey

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

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

June 9, 2021

Sent via email to [REDACTED]

Raymond M. Baldino, Esq.
Zazzali, Fagella, Nowak, Kleinbaum & Friedman

[REDACTED]
[REDACTED]

RE: Debra O'Reilly

[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Baldino:

I am writing in reference to the decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) denying the request of your client, Debra O'Reilly, to change her TPAF membership status under account [REDACTED] from Tier 3 to Tier 2.

At its meeting of February 4, 2021, the Board reviewed your written submissions and the relevant documentation accompanying your appeal and finds that the statutes and relevant case law governing TPAF do not permit the Board to grant Ms. O'Reilly's request to change her TPAF membership status under account [REDACTED] from Tier 3 to Tier 2. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its June 3, 2021 meeting.

FINDINGS OF FACT

The record establishes that on December 19, 2008, Ms. O'Reilly's enrollment application for TPAF was received via the Employer Pensions and Benefits Information Connection (EPIC) on-line application, as required due to her new position as a Teacher. Montgomery Township

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Board of Education (BOE) certified that Debra O'Reilly began employment as a Teacher effective November 3, 2008. Therefore, by keeping with the guideline of N.J.S.A. 18A:66-4(b)(3), Ms. O'Reilly was enrolled as a Tier 3 member in the TPAF.

By letter dated February 26, 2019, more than a decade after Ms. O'Reilly's enrollment in Tier 3, you wrote to the Division of Pensions and Benefits (Division) expressing Ms. O'Reilly's concern that she was erroneously classified as a Tier 3 member and that she be appropriately classified as a Tier 2 member, consistent with her enrollment date of November 1, 2008.

On July 25, 2019, Nikki Munko, Supervising Pensions Benefits Specialist, Enrollment Section, wrote to you explaining why Ms. O'Reilly was not entitled to Tier 2 membership. You were given the opportunity to appeal the administrative decision by writing to the Board.

The Board initially reviewed the request at its meeting of January 9, 2020. Following its review, a motion was made and seconded to approve Ms. Reilly's request to change membership status from Tier 3 to Tier 2. However, pursuant to N.J.S.A. 18:66-56, a motion before the Board requires a majority of the entire Board, i.e. four votes. The vote was 2-3 to approve the request.¹ The motion failed to carry and, therefore, no final administrative determination was made.

On November 17, 2020, you submitted correspondence stating that it had come to your attention that the Board received one new Governor's appointee and it was possible that there were enough members on the Board to adjudicate this matter. By letter dated January 15, 2021, you were informed that the Board had not received any new appointees. However, since it had been over a year since the matter was heard and voted on, the matter would be rescheduled for consideration by the Board on February 4, 2021.

At its meeting of February 4, 2021, the Board reviewed whether Ms. O'Reilly was entitled to change her TPAF membership from Tier 3 to Tier 2. The Board denied your request of Tier 2

¹ Trustee Culliton, Trustee Lipoff and Trustee Savicky voted nae.

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membership based on the fact that Ms. O'Reilly was correctly enrolled in a Tier 3 membership in the TPAF rather than in a Tier 2 membership, in accordance with N.J.S.A. 18A:66-4. You were advised of the process to appeal the Board's decision.

By letter dated April 1, 2021, you filed an appeal of the Board's decision. At its meeting of May 6, 2021, the Board considered your appeal and request for a hearing. The Board ultimately found that no genuine issue of material fact was in dispute and therefore directed the Board Secretary to draft detailed findings of fact and conclusion of law for review at its meeting of June 3, 2021.

CONCLUSIONS OF LAW

Amendments to the TPAF statute since 2007 have resulted in five tiers of membership, with varying salary or hours requirements and retirement benefits. The retirement age for Tier 2 is 60; the retirement age for Tier 3 is 62. N.J.S.A. 18A:66-43.

The Board found that this matter is controlled by N.J.S.A. 18A:66-4(b)(3), which states:

After November 1, 2008 and before or on the effective date of P.L.2010, c.1, a person who was not a member of the retirement system on November 1, 2008, or who was a member of the retirement system on that date but not continuously thereafter, and who is in employment, office or position, for which the annual salary or remuneration is certified by the applicable public entity at \$7,500 or more, shall be eligible to become a member of the retirement system.

[Ibid. (emphasis added).]

In accordance with N.J.S.A. 18A:66-4(b)(3), Ms. O'Reilly became eligible to become a member of TPAF on November 3, 2008, when she began to work as a teacher for Montgomery Township BOE. (All hires after November 1, 2008 (i.e. November 2, 2008 and later) who meet TPAF enrollment requirements, including the \$7,500 salary threshold, will be eligible for

membership in Tier 3). It is undisputed that Ms. O'Reilly was not a member of the TPAF on November 1, 2008. Therefore, Ms. O'Reilly did not qualify for Tier 2 and was correctly enrolled as a Tier 3 member. Cf. *Tasca v. Bd. of Trs., Police & Firemen's Ret. Sys.*, 458 N.J. Super. 47, 57-58 (App. Div. 2019) (holding that N.J.S.A. 43:16A-5(3), which governs early retirements in Police and Firemen's Retirement System of New Jersey, "specifically requires that an individual must be a 'member' of PFRS on the pivotal date of January 18, 2000, without reference to the individual's 'enrollment date'").

As noted above, Ms. O'Reilly's hire date was November 3, 2008, subsequent to the date of the enabling legislation, November 1, 2008. It is the hire date which controls the Tier classification, because the hire date qualifies persons for membership, in accordance with N.J.A.C. 17:3-2.1, which states in pertinent part:

- (a) Any person appointed by the State, local board of education, or charter school to a position listed in the definition of "teacher" found at N.J.S.A. 18A:66-2.p or as a regular, full-time employee in a position that meets the following conditions shall be required to become a member of the Fund effective as of the date of their employment.

[ibid. (emphasis added).]

N.J.A.C. 17:3-2.8 addresses the enrollment component:

- (c) An employee in the unclassified service shall be considered as beginning service on the date of the original appointment.
 - 1. For local employers not covered by Civil Service, a regular appointment shall constitute the first day of work after the date the employee originally accepted employment in a regular budgeted position.

2. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose beginning employment date falls between the first through 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose beginning employment date falls between the 17th and the end of the month.

...

- (d) An employee cannot receive credit in the retirement system for the initial pay period or month of employment if that employment began after the seventh day of the pay period or after the 16th day of the month.

[ibid.]

This regulation provides that members are automatically enrolled as of the first day of the month which entitles a member for a full month of service credit. The member's eligibility for a particular Tier is based on the hire date, not the enrollment date. Membership and enrollment are separate concepts. See *Tasca*, 458 N.J. Super. at 57-58 ("Tasca mistakenly conflates her PFRS enrollment date of January 1, 1995, with the date she became a PFRS member on February 1, 2001."). Thus, the Division enrolling Ms. O'Reilly on the first day of the month (because she started working on the third day of the month) has no bearing on her Tier eligibility. Consequently, the Board denied your request to change Ms. O'Reilly's TPAF membership from Tier 3 to Tier 2.

As noted above, the Board has reviewed all relevant documentation and written submissions, and 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 TPAF enabling statutes and regulations and without the need for an administrative hearing. Accordingly, this

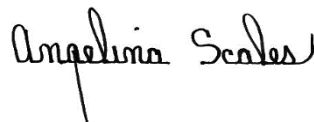
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correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

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-4/AS

c: Debra O'Reilly (sent via email to: [REDACTED])
N. Munko (ET)
DAG Amy Chung (ET)