



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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Lt. Governor

March 21, 2019

SEGRETO & SEGRETO, LLP
John J. Segreto, Esquire

[REDACTED]
[REDACTED]

RE: John J. Buonanno

[REDACTED]

Dear Mr. Segreto:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) regarding the Board's denial of your client, John Buonanno's request for his retirement calculation to include salary earned at multiple locations. At its meeting on August 15, 2018, the Board denied his request and relied upon N.J.S.A. 43:15A-25.2. On September 28, 2018, you appealed the Board's decision.

At its meeting on January 16, 2019, the Board determined that there are no material facts in dispute and found that there is no need for an administrative hearing, 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 PERS Board at its March 20, 2019 meeting.

The PERS Board has reviewed your written submissions and the relevant documentation, and finds that the statutes, regulations and relevant case law governing the PERS do not permit the Board to grant Mr. Buonanno's request for his retirement calculation to include salary earned at multiple locations.

FINDINGS OF FACT

Mr. Buonanno established membership in the PERS on February 1, 1991, based upon his employment with the City of Paterson as a Building Inspector. On or about February 1, 1992, Mr. Buonanno transferred his membership to Fair Lawn Borough after accepting the position of Building Inspector. He remained in this position until February 1, 1995 when he transferred to the Town of Morristown after accepting a position as Assistant Construction Official, Fire and Building Sub-Code. Thereafter, on April 1, 1998, he transferred to Elmwood Park Borough where he held the title Building/Sub-Code/Zoning Inspector. On May 1, 2003, Mr. Buonanno became a multiple member¹ in the PERS as he accepted employment with a second employer, Hawthorne Borough, as a part time Fire Sub-Code Official. On January 1, 2007, he accepted a position with a third public employer, Haledon Borough, as a part time Fire Sub-Code Official and he remained in that position until December 1, 2007.

As of December 31, 2007, pension contributions were no longer remitted to his PERS account based on his position with his third multiple employer, Haledon Borough. As of August 31, 2010, pensions contributions were no longer remitted to his PERS account based on his position with his first employer, Elmwood Park Borough, but his employment did continue with his second employer, Hawthorne Borough.

On May 22, 2010 P.L. 2010, c.1, was passed, which precluded members from using more than one location for pension purposes, unless the member held the position prior to and continuously after the effective date of the statute, May 21, 2010. Previously established “multiple members” could maintain “multiple member” status in existing locations as long as there was no break in service. On the effective date of the statute Mr. Buonanno was only employed with one

¹ A PERS “multiple member” is someone who is employed by more than one PERS-participating employer and enrolled in the PERS through more than one employer — that is, more than one employer reports to the PERS for that employee concurrently.

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PERS employer, Hawthorne Borough and was contributing to the PERS based upon this employer.

In July 2011, Mr. Buonanno accepted a full-time position with the City of Orange Township as a Construction Code Official and the Division advised this employer to begin pension contributions and back deductions on his behalf effective July 1, 2011. At that time, the Division notified Hawthorne Borough, where Mr. Buonanno was still employed, to cease pension contributions as of December 31, 2011, because under Chapter 1, P.L. 2010, pension contributions are to be deducted from the multiple location with the highest salary.

On March 1, 2012, Mr. Buonanno wrote the Division requesting that due to the “unique set of circumstances”² regarding his employment with Elmwood Park Borough that he be permitted to be grandfathered as a multiple member and continue to accrue service and salary credit from both Hawthorne Borough and his new employer, the City of Orange. By letter dated, March 9, 2012, the Assistant Chief of the Enrollment/Purchase Bureau denied this request due to his break in service. Under Chapter 1, P.L. 2010, his “grandfathered” status ended when contributions from Elmwood Park Borough ceased. The records indicate he continued to work for the City of Orange until December 31, 2012. Thereafter, on April 1, 2013, he accepted the position of Construction Code Official with the Borough of Glen Ridge and pension contributions started being remitted from that location.

On October 14, 2015, a Settlement Agreement was reached between Mr. Buonanno and Elmwood Park wherein he was reinstated there from August 1, 2010 through December 31, 2015. Accordingly, the Division had to “reconstruct” Mr. Buonanno’s account as if the termination from Elmwood Park never occurred. The corrections were:

- Mr. Buonanno received service and salary credit for the period of August 1, 2010 through December 31, 2015 at Elmwood Park;

² Mr. Buonanno alleged that he was pushed out of his position by a “Shared Services Agreement and that he was in litigation regarding the termination of his position.

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- “Multiple member” status was restored for the period of August 1, 2010 through December 31, 2015 based on Hawthorne and Elmwood Park;
- The transfer to Orange (July 1, 2011 through December 31, 2012- his entire tenure was invalidated;
- The salary and service earned at Glen Ridge from April 2013 through December 31, 2015 was also invalidated.

As part of the settlement, Mr. Buonanno agreed to resign from Elmwood Park effective December 31, 2015. As of January 1, 2016, Mr. Buonanno was working at Hawthorne and Glen Ridge but only enrolled in PERS through Hawthorne. Since the salary at Glen Ridge was higher than that of Hawthorne, his PERS membership was transferred from Hawthorne to Glen Ridge.

On January 13, 2017, Mr. Buonanno submitted an application for Service retirement requesting an effective date of June 1, 2017. Inactive certification requests were sent to locations where Mr. Buonanno was previously employed but was no longer contributing. On February 17, 2017, Glen Ridge Borough certified that he resigned effective May 31, 2017. Completed inactive certifications were received from Orange City (City of Orange) Elmwood Park Borough, Hawthorne Borough, and Haledon Borough.

On March 27, 2017, a Quotation of Retirement Benefits was mailed to Mr. Buonanno outlining his years of service and monthly payment options at retirement. You subsequently, wrote the Division informing us of your representation of Mr. Buonanno and filed a formal appeal, alleging that the Division’s calculation regarding his service credit and monthly retirement benefit was incorrect.³ At its meeting of April 19, 2017, the PERS Board approved Mr. Buonanno’s application for Service retirement effective June 1, 2017.

³ In your letter of appeal, dated April 13, 2017 you allege the service credit, annual and monthly benefit was incorrect.

CONCLUSIONS OF LAW

After careful review, the Board denied Mr. Buonanno's request to include multiple locations within his retirement benefit calculation. In making its determination, the Board relied on N.J.S.A. 43:15A-25.2(a), which states, in pertinent part:

...after the effective date 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), or in the case of an eligible member of the Legislature, the legislative account established pursuant to section 2 of P.L.1972, c.167 (C.43:15A-136). 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 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 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.

[(Emphasis added)]

The record indicates Mr. Buonanno became a PERS “multiple member”⁴ on May 1, 2003 when he began employment with Hawthorne while also employed by Elmwood Park. On May 22, 2010, Chapter 1 was passed, eliminating the creation of “multiple member” status for members hired on or after that date (Tier 4 members). Tier 1 members such as Mr. Buonanno were no longer eligible to be enrolled in new locations after the effective date. Previously established “multiple members” could maintain “multiple member” status of existing locations as long as there was no break in service. Once a “multiple member” was down to one remitting location, a new higher salary employer could replace the remitting location. At the time of the law’s passage, Mr. Buonanno was a “multiple member” through his employment with Hawthorne and Elmwood Park.

Mr. Buonanno was terminated from Elmwood Park on August 13, 2010, thereby making his PERS membership based on his employment with Hawthorne. On July 1, 2011, Mr. Buonanno began employment with the City of Orange (Orange) while maintaining employment with Hawthorne. Since his salary earned with Orange was higher than his Hawthorne salary, Mr. Buonanno’s PERS membership was transferred to Orange and deductions were cancelled at Hawthorne. On January 1, 2013, Mr. Buonanno’s employment with Orange ended. On April 1, 2013, he began employment with Glen Ridge while maintaining employment with Hawthorne. PERS membership was transferred to Glen Ridge as it provided a higher salary.

On October 14, 2015, a Settlement Agreement was reached between Mr. Buonanno and Elmwood Park wherein he was reinstated there from August 1, 2010 through December 31, 2015. Accordingly, the Division had to “reconstruct” Mr. Buonanno’s account as if the termination from Elmwood Park never occurred.

⁴ A PERS “multiple member” is someone who is employed by more than one PERS-participating employer and enrolled in the PERS through more than one employer — that is, more than one employer reports to the PERS for that employee concurrently.

As part of the settlement, Mr. Buonanno agreed to resign from Elmwood Park effective December 31, 2015. As of January 1, 2016, Mr. Buonanno was working at Hawthorne and Glen Ridge but only enrolled in PERS through Hawthorne. Because the salary at Glen Ridge was higher than that of Hawthorne, his PERS membership was transferred from Hawthorne to Glen Ridge.

In January 2017, Mr. Buonanno submitted an *Application for Retirement Allowance* for a June 1, 2017 Service retirement. (Pension contributions from Glen Ridge were remitted through May 31, 2017.) Mr. Buonanno's argues that, notwithstanding the clear language of the statute cited above, he should be entitled to a retirement benefit based upon salary and service credit from Orange, Glen Ridge, Elmwood Park and Hawthorne. It is undisputed that Orange and Glen Ridge employed Mr. Buonanno after May 21, 2010. Each was considered for compensation purposes when they were the higher paying employer. However, when Mr. Buonanno was successful in his litigation retroactively restoring his employment with Elmwood Park, his retirement account was adjusted to reflect this result and his account reflected continuation of such employment.

Based on his "reconstructed" PERS account, Mr. Buonanno's retirement benefits were correctly calculated using his three highest fiscal years, which were earned as a "multiple member" with Elmwood Park and Hawthorne as follows:

2012-2013	\$95,973.00
2013-2014	\$97,988.00
2014-2015	\$99,851.00

As noted above, the Board has determined that this matter does not entail any disputed questions of fact, and the Board was able to reach its findings of fact and conclusions of law without the need for an administrative hearing. Accordingly, this correspondence shall constitute

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the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right, if you wish, 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

Sincerely,



Mary Ellen Rathbun, Acting Secretary
Board of Trustees
Public Employees' Retirement System

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C: L. Barnett (ET); N. Munko (ET); C. DeAngelo (ET); D. Dinkler (ET)
John Buonanno