

Lauren Sandy, Esq. 02305-2007
The Law Offices of Lauren Sandy, LLC
3600 Route 66, Suite 150
Neptune, New Jersey 07753
201-497-4149
LawOffices@LaurenSandy.us
Attorney for Appellant

	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
	:	
NICHOLAS OLENICK,	:	Docket No.: A-000749-23T4
	:	
Petitioner,	:	On Appeal From
	:	STATE POLICE RETIREMENT
v.	:	SYSTEM
	:	Docket No.: SPRS 8-10-3180
BOARD OF TRUSTEES, STATE	:	
POLICE RETIREMENT	:	
SYSTEM,	:	
	:	
Respondent.	:	
	:	
	:	
	:	

BRIEF ON BEHALF OF APPELLANT

Of Counsel and On the Brief:
Lauren Sandy, Esq.

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PROCEDURAL HISTORY

On or about July 8, 2019, the Bill Ricci Rescue, Recovery, and Cleanup Operations Act (hereinafter referred to as the “Ricci Act”) was signed into law. On or about March 3, 2023, Nicholas Olenick, along with many others, filed his Eligibility Registration Form to register his presence at Ground Zero under the Ricci Act, along with a Request for Amended Benefits Form, Affidavit, and Petition. Pa30. Pa56. Pa58. Pa60. On or about May 2, 2023, the Division of Pensions administratively denied Olenick’s appeal and the matter was transmitted to the State Police Retirement Board. Pa65.

On or about June 13, 2023, the State Police Retirement Board issued an initial decision to deny Olenick’s request to register for the Ricci Act. Pa24. On or about July 18, 2023, Olenick appealed the Board’s initial decision and requested an administrative hearing. Pa16. The Board denied an administrative hearing and issued a Final Agency Decision on September 27, 2023. Pa9. This appeal ensued. Pa1.

STATEMENT OF FACTS

Nicholas Olenick graduated from the 91st Academy Class of the New Jersey State Police. Pa56. Olenick retired from the New Jersey State Police on a Service Retirement on or about February 1, 2004. Pa56. Pa73. While employed by the New Jersey State Police, Olenick worked in the Missing Persons Unit, and was dispatched to Ground Zero to perform a myriad of functions. Olenick was charged with numerous assignments in conjunction with the World Trade Center attacks, including establishing two command posts within the Missing Persons Unit, including the collection of DNA evidence. Pa63.

On or about July 8, 2019, “The Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act” was signed into law (hereinafter referred to as the “Ricci Act”). P.L. 2019, c. 157. Under the Ricci Act, the Board of Trustees was required to promulgate rules and regulations necessary to implement the new law. The Ricci Act states that the Board of Trustees “**shall notify members and retirants** in the retirement system of the enactment of this act, P.L. 2019, c. 157, **within 30 days of enactment.**” N.J.S.A. 53:5A-10(e)(4). (Emphasis added).

The Board was required to notify all members of the State Police Retirement System of the Ricci Act by August 7, 2019, including the

requirement to “register” by filing a form indicating the dates and locations of service within two (2) years. On August 8, 2019, more than 30 days after the Ricci Act’s passage, the Division of Pensions distributed an email to all Certifying Officers “advising them of their responsibilities under the Ricci Act.” Pa11. However, while this is cited in the Final Agency Decision, no actual email dated August 8, 2019, was ever produced, only a Memorandum dated “August 2019.” Pa66. On or about August 9, 2019, more than 30 days after the passage of the Ricci Act, the Division of Pensions contracted Barton and Cooney to mail postcards to retirees. Pa68. No “close date” appears on the document. Pa68.

In support of his request for amended benefits under the Ricci Act, Olenick submitted an affidavit that he did not receive any correspondence or postcard from the State Police Retirement Board or the Division of Pensions with respect to the passage of P.L. 2019, c.157 (Chapter 157), the Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act. Pa56. Olenick was present and involved in the aftermath of the World Trade Center attacks which took place on September 11, 2001. Pa56. Olenick certified that he participated in the rescue, recovery, and/or cleanup at the World Trade Center site between September 11, 2001, and October 11, 2001, or September 11, 2001, and/or September 12, 2001. Pa56.

Olenick submitted the Ricci Act Eligibility Registration Form and Request for Amended Benefits Form with his affidavit. Pa58. Pa60. With his Request for Amended Benefits Form, Olenick supplied medical documentation of his 9/11 illnesses. Pa61. Pa62. He also provided a New Jersey State Police Performance Evaluation noting his commendable services during the aftermath of the September 11, 2001 terrorist attacks on the World Trade Center, his promotion to the rank of Lieutenant, and his exceptional performance. Pa63.

On March 3, 2023, a Petition to the State Police Retirement Board was filed on behalf of Olenick and many others. Pa30. Included with the Petition were other retired Troopers who are requesting registration and amended health benefits in retirement. Pa30. All of those Troopers provided affidavits that they also did not receive notice of the Ricci Bill's passage. Pa30. Pa74-110. Furthermore, other Troopers who are not currently ill, but were only seeking to register for the Ricci Act also filed affidavits that they did not receive notice of the Ricci Act and were included in the Petition. Pa30. Pa111-258. Additionally, other retired Troopers who were not present at the September 11, 2001 attacks and aftermath also submitted affidavits that they did not receive any notice of the Ricci Act in further support of the Petition. Pa259-269.

President of the Former Troopers Association, George Wren, submitted an affidavit that he did not receive any correspondence or postcard from the

Division of Pensions notifying him of the Ricci Act. Pa263. Upon notice by another retired Trooper, Wren underwent a massive polling of the Former Troopers Association to ascertain whether his membership received notice of the Ricci Act. Pa263. Of the fifty-nine (59) FTA members (retired troopers) who responded to the polling, fifty-seven (57) did not receive any notice of the Ricci Act by letter, correspondence, or postcard. Pa263.

Additionally, active Trooper August Licameli provided an affidavit that he also did not receive any notice of the Ricci Act. Pa115. Despite not receiving notice, Licameli attempted to file an Eligibility Registration Form back in September of 2019. Pa117. His Registration Form notes that he was present at Ground Zero/WTC on 9/15/01 for 10 hours. Pa117. In response to his filing, Licameli received correspondence from the Division of Pensions requesting medical information. Pa119. Licameli contacted Pensions on November 18, 2019, and was advised that the Ricci Act “is for those who are currently sick. Not for possible future illnesses.” Pa119. It is unknown at this time how many other Troopers Eligibility Registration Forms may have not been filed or how many Troopers were not registered because the member was not ill at the time the forms were sent.

On March 23, 2023, correspondence was sent to the State Police Retirement Board to clarify the request that the Board consider all of the affected

Troopers in a single collective petition. Pa28. The correspondence also requested that the Board take administrative or judicial notice of all affidavits submitted in all actions with respect to the issue of lack of notice of the Ricci Act for members of the State Police Retirement System. Pa28. To date, over ninety-eight (98) active and retired Troopers have submitted affidavits attesting that they did not receive any notice of the Ricci Act. Pa74-269.

STANDARD OF REVIEW

Pursuant to N.J. Const. art. VI, § 5, para. 4, the New Jersey Supreme Court has adopted R. 2:2-3(a)(2), which contemplates that every proceeding to review the action or inaction of a state administrative agency would be by appeal to the New Jersey Appellate Division. Thus, the rule mandates the exclusive allocation to the Appellate Division of review of both final decisions or actions of any state administrative agency or officer, and the validity of any rule promulgated by such agency or officer. R. 2:2-3(a)(2). Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011).

Under New Jersey Court Rules, appeals may be taken to the Appellate Division "to review final decisions or actions of any state administrative agency or officer[.]" R. 2:2-3(a)(2). Appellate Courts do not render advisory opinions or function in the abstract. N.J. Civil Serv. Ass'n v. State, 88 N.J. 605, 612 (1982). The Appellate Court need not defer to the agency's determination on purely legal issues. "[A]lthough the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002). The Court's function is "to engage in 'a careful and principled consideration of the agency record and findings,'" and not merely rubberstamp the agency's decision. Williams v. Department of Corrections, 330 N.J. Super.

197, 204 (App. Div. 2000) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Final agency actions can be reversed if those actions are 'arbitrary, capricious or unreasonable or [if the action] is not supported by substantial credible evidence in the record as a whole.'" N.J. Soc'y for the Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 384-85 (2008) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)) (alteration in original). The Supreme Court has observed that the Appellate Court can overturn an administrative agency's determinations or findings if there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence. Bartley Healthcare Nursing & Rehab. v. New Jersey Dep't of Health & Senior Servs., 2011 N.J. Super. Unpub. LEXIS 329, 27-28 (App. Div. Feb. 15, 2011) citing In re Virtua-West Jersey Hosp. Voorhees, 194 N.J. 413, 422 (2008).

LEGAL ARGUMENT

POINT I

**THE DECISION OF THE STATE POLICE RETIREMENT BOARD WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE, AND SHOULD BE REVERSED.
(Not Raised Below).**

A decision is arbitrary, capricious, and unreasonable, and therefore subject to reversal, where, as here, the agency erred in reaching its conclusion upon examination of the application of the law to the facts.

The arbitrary, capricious, and unreasonable standard is generally understood to involve inquiry into whether the decision conforms with relevant law, whether there is substantial credible evidence in the record as a whole to support the agency's decision, and whether in applying the relevant law to the facts, the agency clearly erred in reaching its conclusion. In re Carter, 191 N.J. 474, 482-83 (2007) (relying on Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)). Ordinarily for quasi-judicial or rule-making final agency action, there is a substantial body of material comprising the record. In appeals from final agency action outside of such settings, there similarly must be a sufficiently developed record to permit a reviewing court to engage in meaningful review. See In re Issuance of Permit by DEP, 120 N.J. 164, 173 (1990) (relying on State v. Atley, 157 N.J. Super. 157, 163 (App. Div. 1978)) (noting necessity of agency fact-finding to facilitate appellate review). When the challenged agency action arises in a setting where the record is too meager to permit meaningful review, supplementation of the record may be necessary. The Court Rules provide that a reviewing court may remand, on its own motion, for supplementation of the record in order to permit

meaningful review. R. 2:5-5(b). In re State & Sch. Emples. Health Benefits Commissions' Implementation of Yucht, 233 N.J. 267, 280 (2018).

The Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act amended N.J.S.A. 53:5A-10(e) to state, in pertinent part:

(4) The board of trustees shall promulgate rules and regulations necessary to implement the provisions of this subsection and shall notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment.

A member or retiree shall not be eligible for the presumption or recalculation under this subsection unless within two years of the effective date of this act, P.L.2019, c.157, the member or retiree files a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service.

Olenick was denied the ability to register for the Ricci Act and apply for amended benefits because he did not submit his registration form prior to July 8, 2021. However, the Board failed to provide adequate notice of the Ricci Act, and therefore, the decision was arbitrary, capricious, and unreasonable.

In Ensslin v. Board of Trustees, Police and Firemen's Retirement System, 311 N.J Super 333 (App. Div. 1998), Ensslin's denial of ordinary disability was reversed by the Appellate Division. On September 22, 1992, more than four years after Ensslin's last contribution, the Division of Pensions sent him a letter

stating that he had to return to work by November 22, 1992, or his pension account would expire. Ensslin never received the letter.

Ensslin was involved in protracted litigation against his employer to request accommodations for a disability, which he claimed he could still work as a police officer. Upon being denied his LAD claim, Ensslin applied for ordinary disability benefits.

The Board denied Ensslin's application for an ordinary disability retirement on the grounds it was untimely. Under the applicable PFRS statutes, membership ceases after 2 years from the date of the member's last pension contribution. The Board determined Ensslin ineligible because more than 2 years had elapsed since his last contribution and because he was not a member in service at the time of the application. The Appellate Division reversed, holding that the time period should be relaxed:

Unswerving, 'mechanistic' application of statutes of limitations would at times inflict obvious and unnecessary harm upon individual plaintiffs without advancing ... legislative purposes. * * * On numerous occasions we have found 'such particular circumstances as to dictate not the hard approach of literally applying the statute of limitations but the application of the more equitable and countervailing considerations of individual justice.' *** A 'just accommodation' of individual justice and public policy requires that 'in each case the equitable claims of opposing parties must be identified, evaluated and weighed.' Ensslin v. Board of Trustees, Police and

Firemen's Retirement System, 311 N.J Super 333, 337
(citations omitted).

The Court further noted that an “agency has inherent power to waive de minimis violations of objective standards.” Id., citing SMB Assocs v. Department of Env'tl. Prot., 264 N.J. Super 38, 59 (App. Div. 1993), aff'd, 137 N.J. 58 (1994).

The Court reversed the decision of the Board, noting that even though the letter was never received by Ensslin, even if it had been, the notice was improper and late.

In this matter, like Ensslin, the Board failed to provide timely, adequate, or proper notice of the Ricci Act. Also like Ensslin, Olenick never received the notice. The Board did not fulfill its obligation to notify the members of the State Police Retirement System of this legislation “within 30 days” of July 8, 2019, including the requirement that they had to register their presence at the World Trade Center within 2 years of the law's enactment, as was required by law.

The determination of the State Police Retirement Board acknowledges that it did not comply with the requirement to provide notice to all members and retirants enrolled in the State Police Retirement System within 30 days of the Ricci Act's enactment. The final decision notes that on August 8, 2019, an email was sent to the Certifying Officers advising them of their obligations under the Ricci Act. Pa11. However, no August 8, 2019, email was provided. A Memorandum to the Certifying Officers was provided with no date other than

“August 2019.” Pa66. Even still, this Memorandum was to State Agency Certifying Officers, not to members of the retirement system. If anything, it is proof that the members of the retirement system could not have possibly been notified within the statutory timeframe, as the Certifying Officers were not even notified within 30 days. Furthermore, even if an email was sent to the Certifying Officers on August 8, 2019, it was still outside the timeframe required by the Ricci Act to provide notice to the members of the retirement system. Moreover, Olenick certified that he never received the postcard regarding the Ricci Act. Pa56. It is arbitrary, capricious, and unreasonable that the Board does not have to abide by the statutory timelines applicable to the Board but is unwilling to relax the timeframes applicable to Olenick.

The Board has acknowledged that the third-party vendor was not contacted to mail the postcards until more than 30 days after the enactment of the Ricci Act. The third-party vendor could not mail the notice within 30 days of the enactment of the Ricci Act. Because this notice was not sent in accordance with the requirements specified in the Ricci Act, the Board should have granted Olenick’s request to register outside the timeframe specified in the Act.

The Board failed to consider its power to relax time limits in the interest of justice or in furtherance of a just accommodation. It is within the Board’s

power to relax time limits. The Board's initial denial has failed to consider, evaluate, and weigh Olenick's equitable claims. Most notably, it failed to even mention the approximately one hundred affidavits submitted that support the fact that these postcards were never received by Olenick or other members of the pension system.

Furthermore, the Board's decision inflicts obvious and unnecessary harm upon Olenick and fails to advance the legislative purpose of the Ricci Act. The legislative purpose of the Ricci Act was to provide first responders with the ability to alter their retirement benefits if they have fallen ill as a result of their honorable and heroic service at the largest terrorist attack this country has ever see, not to unnecessarily and arbitrarily deny sick retired troopers accidental disability benefits.

Olenick and ninety-seven (97) other active and retired troopers provided affidavits that they never received notice sent regarding the Ricci Act. Because the Board failed to fulfill its statutory obligation under the Act to provide notice to all the members of the retirement system within 30 days, and further because it appears that the vast majority never got any notice at all, the Board's determination was arbitrary, capricious, and unreasonable. As such, in the interest of justice and in the furtherance of a just accommodation, we respectfully request that Board's determination be reversed and that Olenick's

application to register his presence at Ground Zero and his request for amended benefits be granted.

POINT II

**THE DECISION BELOW WAS NOT SUPPORTED
BY THE SUBSTANTIAL EVIDENCE AND
SHOULD THEREFORE BE REVERSED.
(Not Raised Below).**

The substantial evidence presented does not support the final agency determination made by the State Police Retirement Board. Substantial evidence has been defined alternately as "such evidence as a reasonable mind might accept as adequate to support a conclusion," and "evidence furnishing a reasonable basis for the agency's action." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 192 (App. Div. 2010) (citations omitted).

The Board's determination references a "presumption" that mail properly addressed with proper postage was received by the party it was addressed to. However, Olenick certified in an affidavit provided to the Board that he never received a postcard from the Division, regardless of if it was ever sent. This affidavit should overcome any presumption that the postcard was received.

The Board's decision failed to consider the almost one hundred affidavits of other active and retired troopers who also did not receive a postcard from the Division notifying them of the Ricci Act that were submitted to the Board in support of Olenick's appeal. As such, the finding that it was "undisputed" that the Division sent the postcard to Olenick (and others) is not supported by the facts and evidence presented. Furthermore, any presumption claimed by the

Board has clearly been rebutted by the overwhelming evidence presented in this matter. Considering the evidence presented, the agency's action does not have a reasonable basis.

Additionally, the Board failed to consider the evidence presented demonstrating that Registrations Forms submitted were not accepted by the Division because the Trooper(s) who submitted them were not sick at the time the Registration Form was sent. Licameli attempted to file an Eligibility Registration Form back in September of 2019. Licameli was denied the ability to register because he was told the Ricci Bill "is for those who are currently sick. Not for possible future illnesses." Pa119.

The Board also failed to consider the evidence presented regarding the Former Troopers Association membership polling. George Wren, President of the Former Troopers Association, polled his membership to ascertain whether anyone received notice of the Ricci Act. Of the fifty-nine (59) FTA members (retired troopers) who responded to the polling, fifty-seven (57) did not receive any notice of the Ricci Act. The Board ignored the evidence from this polling when making its determination.

In light of all of the evidence presented on Olenick's behalf, a reasonable mind could only conclude that these postcards were never received. Without proper notice, Olenick should have been permitted to register for the Ricci Act.

Therefore, the determination below should be reversed because it is against the substantial weight of the evidence.

CONCLUSION

The determination below was arbitrary, capricious, and unreasonable, and therefore must be reversed. It is also against the substantial weight of the evidence. For all the foregoing reasons, we respectfully request that the decision below be reversed, and that Olenick be permitted to register his presence at September 11th under the Ricci Act and amend his benefits thereunder.

Respectfully,


Lauren Sandy, Esq.

NICHOLAS OLENICK,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
	:	DOCKET NO. A-749-23T4
Petitioner-Appellant,	:	
	:	<u>Civil Action</u>
v.	:	
	:	ON APPEAL FROM A FINAL
BOARD OF TRUSTEES,	:	AGENCY DECISION OF THE
STATE POLICE RETIREMENT	:	BOARD OF TRUSTEES,
SYSTEM,	:	STATE POLICE RETIREMENT
	:	SYSTEM
Respondent-Respondent.	:	

Brief of Respondent Board of Trustees,
State Police Retirement System
Date Submitted: June 7, 2024

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW
JERSEY
R.J. Hughes Justice Complex
P.O. Box 106
Trenton, New Jersey 08625
Attorney for Respondent Board of
Trustees, State Police Retirement System
(609) 815-2696
Matthew.melton@law.njoag.gov

Melissa H. Raksa
Assistant Attorney General
Of Counsel

Matthew Melton
(ID:276482018)
Deputy Attorney General
On the Brief

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PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Appellant Nicholas Olenick applied for a Special Retirement from the SPRS, which the Board approved on April 29, 2004 with an effective date of February 1, 2004. (Pa73).^{2, 3} On July 8, 2019, the Legislature enacted L. 2019, c. 157 (the “Ricci Act”). The Ricci Act in relevant part permitted active or retired members of the SPRS to file for a recalculation of Ordinary Disability, Service, or Special Retirement Benefits to Accidental Disability Retirement Benefits provided they participated in the rescue, recovery, or cleanup operations at the World Trade Center Site. (Pa10). The Ricci Act also created a presumption that the disability of the member or retiree “occurred during and as a result of the performance of the member’s regular or assigned duties and not the result of the member’s willful negligence unless the contrary can be proved by competent evidence.” (Pa10).

¹ Because the procedural history and fact are closely related, these sections are combined for efficiency and the court’s convenience.

² “Pa” refers to appellant’s appendix; “Pb” refers to his brief.

³ A Service Retirement is provided for by N.J.S.A. 53:5A-8 for any member who has established twenty years of service in SPRS and also for troopers who were members of the retirement system as of the effective date of L. 1985, c. 175 regardless of their years of service. A Special Retirement provides enhanced benefits pursuant to N.J.S.A. 53:5A-27 and is available to any SPRS member who has established twenty-five years of creditable service.

On August 7, 2019, the Division of Pensions and Benefits added information about the Ricci Act to its website. (Pa10). The webpage included information for active members, retirees, and employers about qualifying dates, locations, health conditions and impairments, the Eligibility Registration Form, the Request for Amended Benefits Form, a sample postcard to be mailed to retirees, and materials for employers regarding dissemination of information to employees. (Pa10-11).⁴ On August 8, 2019, the Division sent a letter to the Certifying Officers of the SPRS, the Police and Firemen’s Retirement System, and the Public Employees’ Retirement System. (Pa66-67). The subject of the letter was “New Legislation Notice – P.L. 2019, c. 157” and it served to notify active employees of the newly enacted law. (Pa66). All Certifying Officers were advised of their responsibilities to distribute the information and to certify that they had done so. (Pa67). The Division hired Barton and Cooney LLC to mail postcards to all 200,647 SPRS retirees at their home addresses on file with the Division. (Pa68-69). These postcards included notice of the enactment of L. 2019, c. 157, how to file for Accidental Disability Retirement Benefits under the new law, the deadline for filing for such benefits, and the ramifications for missing the deadline. (Pa70). A postcard with this information was sent to

⁴ Also available at: <https://www.nj.gov/treasury/pensions/ricci-ch157.shtml>. (Pa10).

Olenick's home address on August 9, 2019. (Pa14; Pa70).

On June 10, 2021, the Division posted a news item on its website advising members that the statutory eligibility period to register under the Ricci Act was expiring soon and that members must submit the Eligibility Registration Form by July 8, 2021. (Pa11). The website further advised that failure to do so by that date would render the member ineligible to apply at a later date. (Pa11).

On March 3, 2023, the Board received Olenick's Eligibility Registration Form completed on September 26, 2022, a Request for Amended Benefits Form completed on February 16, 2023, as well as a sworn affidavit from Olenick dated September 20, 2022. (Pa11; Pa59; Pa60; Pa56). Olenick's affidavit asserted, in relevant part, that he "did not receive any correspondence or post card." (Pa56). The Board considered Olenick's request at its meeting of May 23, 2023, where it voted to deny his request to register under the amended benefits provisions of the Ricci Act. (Pa24-27). The Board concluded that Olenick was notified as required by the Ricci Act but failed to submit his Eligibility Registration Form by July 8, 2021. (Pa26).

Olenick appealed the Board's decision by letter dated July 18, 2023. (Pa16). Olenick argued that he did not receive the postcard notice from the Division, so the Board should relax the statutory deadline for filing. (Pa19-20).

At its meeting on May 23, 2023, the Board considered Olenick's arguments, found that there were no material issues of fact in dispute, and therefore directed the Board Secretary to draft findings of fact and conclusions of law for its review and approval at its next meeting. (Pa9).

The Board issued its Final Administrative Decision on July 26, 2023. (Pa9). The Board concluded that the Ricci Act, codified in part at N.J.S.A. 53:5A-10(e)(3), allows members to file for the recalculation of Ordinary Disability, Special, or Service Retirement Benefits to Accidental Disability Retirement Benefits if the member is or becomes totally and permanently disabled due to participation in the rescue, recovery, or cleanup operations at the World Trade Center between September 11, and October 11, 2001. (Pa10). The Board also noted the Ricci Act required the Board to provide notice to members and retirees within thirty days of the effective date of the Act, and if members or retirees did not file a written and sworn statement with the retirement system within two years of the effective date of the Act, they would be ineligible for the presumption or recalculation. (Pa10). The Board found it undisputed that the Division had mailed notice of the Ricci Act to Olenick and that Olenick did not submit his Eligibility Registration Form until March 3, 2023, approximately one year and two months past the July 8, 2021 statutory

deadline. (Pa11; Pa13).

The Board also considered the matter under its inherent power to extend the deadline if good cause, reasonable grounds, and reasonable diligence could be demonstrated. (Pa13-14). The Board concluded that the Division had notified all retired members of SPRS of the passage of the Ricci Act on August 9, 2019 in accordance with the Act. (Pa13). Olenick's assertion that he did not remember receiving the postcard notice did not establish good cause nor reasonable grounds to allow him to file over one year and two months past the statutory deadline. (Pa14). Further, the Board concluded that Olenick had not exercised reasonable diligence because of such a protracted delay in filing his Eligibility Registration Form. (Pa14). Therefore, the Board concluded that Olenick was ineligible to register for amended benefits under the Ricci Act. (Pa14).

This appeal followed.

ARGUMENT

POINT I

THE BOARD'S DENIAL OF OLENICK'S APPLICATION MADE OVER ONE YEAR AND TWO MONTHS PAST THE STATUTORY DEADLINE TO FILE FOR AMENDED BENEFITS IS REASONABLE AND SHOULD BE AFFIRMED.

The Board's decision denying Olenick's Eligibility Registration Form under the Ricci Act should be upheld because it is reasonable and supported by the plain language of N.J.S.A. 53:5A-10, and thus is not arbitrary nor capricious. "On judicial review of an administrative agency determination, courts have but a limited role to perform." Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 189 (1980) (citations omitted). An agency's factual determinations are presumptively correct; on review of the facts, a court will not substitute its own judgment where the agency's findings are supported by sufficient credible evidence. Rooth v. Bd. of Trs., Pub. Emps.' Ret. Sys., 472 N.J. Super. 357, 365 (App. Div. 2022). Additionally, this court gives "substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing," Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007). "Such deference has been specifically extended to state agencies that administer pension statutes," because "a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." Piatt v. Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (quoting In re Election Law Enforcement Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)). Indeed, "if the language is plain and its meaning clear, the inquiry ends there . .

.” State v. Malik, 365 N.J. Super. 267, 274 (App. Div. 2003). In reading statutory language, courts will give words their ordinary meaning absent any direction from the Legislature to the contrary. In Re Young, 202 N.J. 50, 63 (2010).

Here, the Board’s determination is reasonable and complies with the governing statute. The unambiguous language of the Ricci Act provides:

A member or retiree shall not be eligible for the presumption or recalculation under this subsection unless within two years of the effective date of this act, P.L.2019, c.157, the member or retiree files a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service.

[L. 2019, c. 157 (codified at N.J.S.A. 53:5A-10(e)(4)).]

Thus, under the plain language of the statute Olenick is ineligible for the presumption or recalculation provided under the Ricci Act because he failed to file by July 8, 2021.

Further, while New Jersey pension statutes are construed liberally because of their remedial character, Geller v. Dep’t of Treasury, 53 N.J. 591, 597-98 (1969), “an employee has only such rights and benefits as are based upon and within the scope of the provisions of the statute.” Francois v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 415 N.J. Super. 335, 349 (App. Div. 2010) (citation omitted).

Here, the statute provides for the benefit if a retiree files for it within two years of the effective date of the Ricci Act, i.e., by July 8, 2021. Olenick did not file for the benefit within the time permitted by the statute, so even under a liberal construction, the statute expressly states he is ineligible for the benefit he now seeks.

Nevertheless, Olenick argues that the limitation period in the statute should not be strictly applied because it “fails to advance the legislative purpose of the Ricci Act.” (Pb14). But this is a misinterpretation that contradicts the Legislature’s actual intent, as explicitly stated in the statute it enacted.

“The Court’s obligation when interpreting a law is to determine and carry out the Legislature’s intent.” Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 540-41 (2012) (citing Allen v. V & A Bros., Inc., 208 N.J. 114, 127 (2011)). “[T]he best indicator of that intent is the statutory language[.]” Richardson, 192 N.J. at 195 (first alteration in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). “A court should ‘ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole.’” D’Ambrosio v. Dep’t of Health & Senior Servs., 403 N.J. Super. 321, 334 (App. Div. 2008) (citing DiProspero, 183 N.J. at 492).

Here, the Legislature clearly intended a limitation period of eligibility for the presumption or recalculation provided under the Ricci Act, as the plain language of the statute sets a two-year deadline ending July 8, 2021, after which a “retiree shall not be eligible” for such benefits. N.J.S.A. 53:5A-10(e)(4). Under Olenick’s argument, any member of SPRS who was unaware of the Ricci Act could apply at any arbitrarily distant point in the future. This would nullify the two-year time limitation created by the Legislature, extend the presumption beyond its intended time frame, and diminish the ability of the Division and the Board to verify applicants’ dates and locations of service as witnesses and memories inevitably continue to become unavailable and fade. Ignoring the plain language of the statute, which imposes a two-year deadline, would not further the legislative purpose of the Ricci Act.

Even if the statutory language were not clear, Olenick’s position would lead to an absurd result which would render the two-year statutory limitation superfluous. In this regard, “[w]hen construing a statute, ‘legislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless.’” State v. Regis, 208 N.J. 439, 449 (2011)(quoting Franklin Tower One, LLC v. N.M., 157 N.J. 602, 613 (1999)).

Accordingly, the Board reasonably denied Olenick’s request to apply for

amended benefits under the Ricci Act because he failed to file his Eligibility Registration Form within the required statutory timeframe.

POINT II

CONSIDERATIONS OF ADEQUATE AND ACTUAL NOTICE DO NOT COMPEL A DIFFERENT RESULT.

Notwithstanding the clarity of the applicable statute, Olenick argues that he should be permitted to file beyond the statutory deadline because the Board did not provide adequate notice of the Ricci Act. (Pb9). This argument fails because the Board provided adequate notice of the law.

The only express notice requirement contained in the Ricci Act provides that the Board must “notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment. N.J.S.A. 53:5A-10(e)(4). On August 7, 2019, the Division of Pensions and Benefits satisfied this notice requirement when it added information about the Ricci Act to its website. (Pa10).

That notice satisfied the Ricci Act, which requires only that the Board notify members of the enactment of the statute. The Legislature is well aware of how to create specific notice requirements and has done so with other statutes. See N.J.S.A. 43:15A-50(a) (“Notification shall be by certified mail to the

spouse's address as provided on the form by the member."); e.g., Hammond v. City of Paterson, 145 N.J. Super. 452, 456 (App. Div. 1976) (holding that the Legislature, in requiring "actual receipt" of notice in the Tort Claims Act when certified mail is not used, "clearly did not mean to leave proof of actual receipt to a presumption."). When "the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded." GE Solid State, Inc. v. Director, Div. of Taxation, 132 N.J. 298, 307-08 (1993); see also State v. Hoffman, 149 N.J. 564, 579 (1997). Nowhere in the Ricci Act is there a requirement that the Board send notice, through a postcard, by certified mail or other means, or otherwise require actual receipt of notice. Thus, in accord with the statutory canon of *expressio unius est exclusio alterius*, the expression of one thing suggests the exclusion of another left unmentioned, this court should reject Olenick's request to create a requirement where the Legislature has chosen not to. The Ricci Act simply required that the Board provide notice within thirty days of its enactment, without specifying in what manner. The Board complied with this requirement when it posted information about the Ricci Act on its website. Olenick identifies no authority suggesting that the Division's use of its website to fulfill this notice requirement was inadequate.

Even though the Division satisfied the only notice requirement under the Ricci Act through the website posting, it went above and beyond to provide additional notice to its members through other means. On August 8, 2019, the Division provided a letter about the Ricci Act to all Certifying Officers and advised them of their responsibility to make the letter available to all members at their respective locations. (Pa11). On August 9, 2019, a postcard with information about the Ricci Act was mailed to Olenick's home address (as well as the home addresses of over 200,000 other retirees). (Pa11; Pa68; Pa70). And, on June 10, 2021, the Division posted a news item on its website advising members and retirees that the statutory eligibility period to register under the Ricci Act was expiring soon and that they must submit the Eligibility Registration Form by July 8, 2021. (Pa11).

Although these additional notification methods were not required under the Ricci Act, Olenick makes much of the fact that the Division's postcard was not mailed to him by August 7, 2021. (Pb12-13). The record demonstrates that the postcard was mailed on August 9, 2021. (Pa68-70). That slight delay in mailing the postcard is immaterial, as postcard notification was not required under the Ricci Act, and information about the Ricci Act was prominently posted on the Division's website and publicly available for two years from the effective date

of the statute.

Even if this court were to find that postcards were a required mode of notice under the Ricci Act, the Board substantially complied by mailing them within thirty-two (instead of thirty) days of the effective date of the statute. To suggest that such a minor delay in sending over 200,000 postcards somehow eliminates the statutory deadline for filing claims would be an absurd result, and one this court should not accept. See Regis, 208 N.J. at 449 (“[w]hen construing a statute, ‘legislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless.’”) (citation omitted).

Olenick further urges this court to permit him to file his untimely Form because he claims he did not actually receive the notice. (Pb12-13). But even if actual notice by postcard were an express requirement of the Ricci Act, his argument is misplaced.

New Jersey courts have consistently “recognized a presumption that mail properly addressed, stamped, and posted was received by the party to whom it was addressed.” SSI Medical Servs. v. HHS, Div. of Medical Assistance & Health Servs., 146 N.J. 614, 621 (1996). Here, the postcard was undisputedly mailed to Olenick’s home address. (Pa14). The Division went so far as to hire a company, Barton and Cooney LLC, to mail postcards to all 200,647 SPRS

retirees at their home addresses on file with the Division. (Pa68). And a postcard was indeed mailed to Olenick's last home address on August 9, 2019. (Pa13; Pa70). Nonetheless, Olenick asserts, without offering any legal authority, that his affidavit declaring that he never received a postcard should overcome the presumption that he received it. (Pb16).

Still, despite the Board's having satisfied the notice requirement under the Ricci Act, it nevertheless considered Olenick's request under its inherent equitable power. (Pa13-Pa14). While a Board is generally bound by its enabling statutes, it has inherent authority to reopen administrative matters upon a showing of good cause, reasonable grounds, and reasonable diligence. Minsavage for Minsavage v. Bd. of Trs., Teachers' Pension & Annuity Fund, 240 N.J. 103, 109 (2019). A member seeking relief by way of the Board's inherent powers also "must demonstrate extreme hardship and a clear equity in his favor." Buono v. Bd. of Trs., Teachers' Pension & Annuity Fund, 188 N.J. Super. 488, 493 (App. Div. 1983).

Contrary to Olenick's assertions, (Pb13-14), the Board considered its inherent power as well as his affidavit and the affidavits of the other troopers that he submitted in support of his contention that he did not receive the postcard. After considering its equitable power and the affidavits presented, the

Board reasonably concluded that “Olenick did not exercise reasonable diligence nor demonstrate reasonable grounds for such a protracted delay in filing the eligibility registration form,” where he filed his form one year and two months past the deadline. (Pa14). Nor did Olenick demonstrate extreme hardship in this matter, as he will continue to receive his Special Retirement benefits with concurrent retiree health benefits coverage. (Pa72-73).

It should also be noted that cases involving the use of the Board’s equitable power for reopening proceedings or relaxing deadlines “were bottomed on the inherent power of an administrative agency, in the absence of legislative restriction, to reopen or to modify and to rehear orders previously entered by it.” Duvin v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 76 N.J. 203, 207 (1978). Here, Olenick seeks to avoid an obvious legislative restriction outlined in the Ricci Act that provides he is ineligible for the presumption or recalculation after July 8, 2021.

Even if Olenick did not receive the postcard or any of the other notice provided by the Division, he cannot evade the two-year limitation period. “As New Jersey courts have long recognized, ‘[i]gnorance of the law furnishes no excuse to a person either for a breach or for an omission of a duty[.]’” Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 367 (2010) (quoting Bowen v. Pursel,

109 N.J. Eq. 67, 73 (E. & A. 1931)). Thus, Olenick purportedly being unaware of the Ricci Act until over three years after its passage cannot serve as the basis to allow him to evade its unambiguous requirements.

Olenicks's reliance on Ensslin v. Board of Trustees, Police and Firemen's Retirement System, 311 N.J. Super. 333 (App. Div. 1998), is misplaced. (Pb11). In Ensslin, a police officer had been terminated from service and the subsequent action he brought against his employer under the Law Against Discrimination was ultimately dismissed. Ensslin, 311 N.J. Super. at 334. After the LAD litigation, Ensslin applied for Ordinary Disability Retirement Benefits but the Board of Trustees, Police and Firemen's Retirement System, determined he was ineligible as he was not a member in service at the time. Ibid. The PFRS Board found that under N.J.S.A. 43:16A-3(3), PFRS membership ceases "if more than 2 years have elapsed from the date of [the member's] last contributions," and under N.J.S.A. 43:16A-6(1) an application must be made "by a member in service" or on his behalf. Id. at 335.

This court reversed the Board, holding "that the two-year standard of N.J.S.A. 43:16A-3(3) is not jurisdictional, especially in the circumstances presented" in the particular matter. Id. at 337-38. In his LAD action, Ensslin's position was that he was not disabled from his employment with a reasonable

accommodation. Id. at 335. To be considered for Ordinary Disability, Ensslin was required to certify he is disabled. Id. at 336. Thus, Ensslin was legally barred by the operation of “the doctrine of judicial estoppel” from filing his application for Ordinary Disability while his LAD action was pending. Ibid. The court noted that it has found “equitable and countervailing considerations” in particular circumstances to allow a plaintiff to assert a claim. Id. at 337 (quoting SMB Assocs. v. Dep’t of Env’t Prot., 264 N.J. Super. 38, 59 (App. Div. 1993) (“[A]n “agency has inherent power to waive *de minimis* violations of objective standards.”)). The court concluded that under the circumstances presented, fairness and equity required Ensslin to be permitted to apply for Ordinary Disability. Id. at 338.

Here there was no such legal impediment to Olenick filing his Eligibility Registration Form nor would he have been sacrificing discrimination claims or other litigation positions by doing so. Olenick simply failed to file his Eligibility Registration Form until one year and two months past the statutory deadline, which is not a *de minimis* violation.

Contrary to Olenick’s argument, the court’s decision in Ensslin did not turn on the timeliness or adequacy of the Division’s notice. (Pb12). Instead, the court found that because the notice from the Division was sent “more than

four years from the date of petitioner’s last contribution,” the Division’s own “day-to-day administration of its affairs” and interpretation of the two-year time limitation as expressed by the four-year notice further supported allowing Ensslin to file. Id. at 338. Here, there was no such letter informing Olenick that he was eligible to file under the Ricci Act past the statutory deadline. Thus, Ensslin does not support Olenick’s proposition that untimely notice allows individuals to file at any time past the statutory deadline. (Pb12).

Nor do the equities weigh in his favor. The Board found on the basis of undisputed facts that notice was sent to Olenick, that information about the Ricci Act was available to him through the Division’s website and publications, and that he had sufficient time to file his Eligibility Registration Form within the statutory period. Thus, contrary to Olenick’s contention, (Pb15), there was ample evidence for the Board to reasonably conclude that he failed to demonstrate good cause, reasonable grounds, and reasonable diligence to warrant consideration of his application well beyond the statutory deadline. (Pa14).

Finally, Olenick’s argument and reference to a different applicant is misplaced. (Pb17). That applicant asserts that he attempted to file his Eligibility Registration Form but was told he was ineligible because he was not currently

sick. (Pb17; Pa120-122). But those facts are not in the record before this court. And that applicant's assertions are irrelevant to Olenick's appeal as they deal with an entirely different set of circumstances not alleged by Olenick, so they should be disregarded.

CONCLUSION

For these reasons, the Board's final administrative determination denying Olenick's request to file his Eligibility Registration Form for amended benefits approximately one year and two months past the statutory deadline of the Ricci Act should be affirmed.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Matthew Melton
Matthew Melton (ID 276482018)
Deputy Attorney General
matthew.melton@law.njoag.gov

Dated: June 7, 2024

THE LAW OFFICES OF
Lauren Sandy

3600 ROUTE 66
SUITE 150
NEPTUNE, NEW JERSEY 07753

PHONE: 201 · 497 · 4149
LAWOFFICES@LAURENSANDY.US
FAX: 732 · 358 · 2559
ATTORNEY ID NJ 02305-2007

June 27, 2024

Joseph H. Orlando, Clerk
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex
25 W. Market Street
PO Box 006
Trenton, New Jersey 08625

**RE: NICHOLAS OLENICK v.
BOARD OF TRUSTEES, STATE POLICE RETIREMENT
SYSTEM
DOCKET NO.: A-000749-23**

**On Appeal from State Police Retirement System
Docket No.: SPRS 8-10-3180**

Dear Justices of the Appellate Division:

This office represents the Appellant, Nicholas Olenick, in the above captioned matter. Please accept this reply letter brief in lieu of a more formal brief on behalf of the Appellant, retired Trooper Nicholas Olenick.

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PROCEDURAL HISTORY

The Appellant, retired Trooper Nicholas Olenick, relies on the Procedural History submitted in his original brief as if set forth herein in its entirety.

STATEMENT OF FACTS

The Appellant, retired Trooper Nicholas Olenick, relies on the Statement of Facts submitted in his original brief as if set forth herein in its entirety.

LEGAL ARGUMENT

POINT I

**THE DECISION BELOW WAS ARBITRARY, CAPRICIOUS, UNREASONABLE, AND NOT SUPPORTED BY THE SUBSTANTIAL WEIGHT OF THE EVIDENCE.
(Not Raised Below).**

The decision of the State Police Retirement Board is against the substantial weight of the evidence, and therefore should be reversed. The decision is also arbitrary, capricious, and unreasonable. For the reasons that follow, this determination should be reversed.

New Jersey pension statutes must be liberally construed, and under a liberal construction, Olenick would be eligible for Ricci Act benefits.

Pensions for public employees serve a public purpose. A primary objective in establishing them is to induce

able persons to enter and remain in public employment, and to render faithful and efficient service while so employed. 3 McQuillin, *Municipal Corporations* (3d Ed. Rev. 1963) § 12.141. They are in the nature of compensation for services previously rendered and act as an inducement to continued and faithful service. Being remedial in character, statutes creating pensions should be liberally construed and administered in favor of the persons intended to be benefited thereby. McQuillin, *supra*, at § 12.143; and see Adams v. City of Modesto, 53 Cal. 2d 833, 3 Cal. Rptr. 561, 566, 350 P.2d 529 (1960); Giuliano v. Bd. of Trustees of Fireman's Pension F., 89 Ill. App. 2d 126, 231 N.E.2d 257, 258 (1967); Flake v. Bennett, 156 N.W.2d 849, 854 (Iowa Sup. Ct. 1968). Geller v. Department of Treasury, 53 N.J. 591, 597-598.

In Geller v. Department of Treasury, 53 N.J. 591, the Court evaluated a “preponderance of the equities” and “all of the circumstances” to achieve a “just result.” Id. at 600.

This Court is not bound by an agency's determination of a purely legal issue. Francois v. Board of Trustees, 415 N.J. Super. 335, 348 *citing* Utley v. Bd. of Review, Dep't of Labor, 194 N.J. 534, 551 (2008); see Krayniak v. Bd. of Trs., Pub. Employees' Ret. Sys., 412 N.J. Super. 232, 237 (App. Div. 2010).

As a form of legislation aimed at remedying a social problem, pension statutes " 'should be liberally construed and administered in favor of the persons intended to be benefited.' " Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 34 (2009) (*quoting* Geller, *supra*, 53 N.J. at 597-598, 597). Such a liberal construction "resolves all reasonable doubts in favor of the applicability of the statute to the particular case." Kochen v. Consol. Police

& Firemen's Pension Fund Comm'n, 71 N.J. Super. 463, 478, (App. Div. 1962). See Duignan v. Bd. of Trs., Pub. Employees' Ret. Sys., 223 N.J. Super. 208, 216 (App. Div. 1988) (same); Hillman v. Bd. Trs., Pub. Employees' Ret. Sys., 109 N.J. Super. 449, 455 (App. Div. 1970) (same). Francois v. Board of Trustees, 415 N.J. Super. 335, 349.

A person that is eligible for certain pension benefits is entitled to a liberal interpretation of the pension statute. The determination below is unreasonable because Olenick would otherwise be eligible for accidental disability benefits under the Ricci Act. Under the liberal construction required of pension statutes, his eligibility for the benefit is not in question. In other words, Olenick suffers from a 9/11 illness and is disabled as a result. He qualifies for accidental disability benefits under the Ricci Act standard.

Olenick was denied the ability to register his presence at the September 11th terrorist attacks and therefore also denied accidental disability benefits based on an unsupported finding that Division mailed a post card notifying him of his requirement to register. This finding is arbitrary, capricious, and against the substantial weight of the evidence.

The Division alleges that the two-year time frame for registration requires strict implementation to “verify applicants’ dates and locations of service as witnesses and memories inevitably continue to become unavailable and fade.”

Rb9.¹ Under the Ricci Act, members who seek to amend benefits thereunder are not required to produce witness verification statements. Additionally, there has been no suggestion that the dates that Olenick was at ground zero (or other similarly situated members) need verification by the Division. Neither is required under the Ricci Act. Furthermore, almost two decades had passed since the September 11th terrorist attacks when the Ricci Act was signed into law. The assertion by Respondent that the two-year registration window was to rectify a fleeting memory is erroneous. Respondent's argument lacks merit.

The determination below was arbitrary, capricious, unreasonable and against the substantial weight of the evidence. It should therefore be reversed, and retired Trooper Olenick should be permitted to register his presence at 9/11 and granted accidental disability benefits.

¹ Rb references the Respondent's Brief.

POINT II

ADEQUATE NOTICE OF THE RICCI ACT WAS NOT PROVIDED AND THEREFORE, OLENICK SHOULD BE ENTITLED TO RICCI ACT BENEFITS. (Raised Below. Pa16. Pa30.)

Contrary to Respondent's contention, adequate, timely, proper notice of the Ricci Act was not provided. Respondent claims that posting the Ricci Act on the Division's website is somehow adequate "notice" to all members and retirees enrolled in the State Police Retirement System. Rb10. However, this argument fails for several reasons. The Ricci Act states:

The board of trustees shall promulgate rules and regulations necessary to implement the provisions of this subsection and shall notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment. N.J.S.A. 53:5A-10(e).

Pursuant to the Ricci Act, the Board was required to provide notice to members and retirants in the system.

A website posting is not sufficient notice to retirees or active members of the retirement system. In re State & Sch. Emples. Health Benefits Commissions' Implementation of Yucht, 233 N.J. 267, 270, the Supreme Court reversed and remanded the decision of the Appellate Division. The State Health Benefits Commission and the School Employees Health Benefits Commission were improperly reducing reimbursements for out-of-network behavioral health

services. In the prior case, the Appellate Division found in favor of Yucht's appeal which sought reimbursement at the statutory 80% of reasonable and customary charges for behavioral health services. In re Yucht, 2013 N.J. Super. Unpub. LEXIS 2188. Pra1.

As a result, the Commissions adopted resolutions to provide for reimbursement of the improper rate paid by members retroactive to 2009. Identical to the within appeal, the Division of Pensions and Benefits posted notice on their website with a link to a claim form. In re State and Sch. Empl. Health Benefits Commissions' Implementation of Yucht, 2017 N.J. Super. Unpub. LEXIS 1938. Pra5. Also identical to the within matter, the Division sent a letter to all Certifying Officers with the same exact terms contained in the Certifying Officer Letter's "EMPLOYER RESPONSIBILITIES" section. Id. Pra6. Pa66.

The Appellate Division held that "[a]pplying our highly deferential standard of review, we are satisfied that the record sufficiently supports the Commissions' decision that members were provided with adequate notice and instructions for submitting a request for claims reconsideration prior to the December 31, 2014 deadline." Id. at 8-9. Pra7. The Supreme Court reversed, holding:

2. Whenever an administrative agency acts, be that act mandatory or strictly voluntary, it must do so

reasonably and in a manner calculated to achieve the policies expressed in the agency's organic statute. Therefore, because the Commissions determined to reimburse affected members, **they were necessarily required to do so reasonably and in a non-arbitrary manner.** Here, **that means that the Commissions were required to provide reasonable notice in order that the retroactive benefit would fairly be made known and, thus, made available in a non-arbitrary manner to affected members.** As with most agency action, there is room for debate over what is reasonable. To be reasonable, an agency's choice of action for providing notice does not require adoption of a perfect practice. Here, the intended purpose of the action challenged—the Commissions' attempted notice—was to reach persons who might have been affected by the wrongfully calculated reimbursement rate, to notify those persons of the availability of supplemental reimbursement, and to inform them of the procedures for requesting supplemental reimbursement. (pp. 16-19)

3. The problem in this dispute over the adequacy of notice is that the evidence thus far produced has the capacity to support the claim that the methods of notice—the letter and website link—were not reasonably designed to likely reach the categories of members who may have been affected by the erroneous reimbursement rates. The Unions have advanced some evidence on which there could be based a finding that the notice was not reasonably designed to give notice to the proper universe of individuals affected. Against that presentation, based on the present record, the Court cannot conclude that either the website's ten-word, cryptically described notice and link or the letter to the certifying officers provides sufficient evidence to support deferring to the agency's choice of notice as reasonable. With the thin record available, it is not known what action, if any, certifying officers generally took in response to the

Commissions' letter. Nor does the record disclose what notice, if any, former employees and retirees received of the potential for supplemental reimbursement in light of the Commissions' apparent reliance on the link. Accordingly, the Court orders a remand for the development of a proper record to permit meaningful judicial review. In that remand hearing, both the form and substance of the notice may be examined. (pp. 19-23)

In re State & Sch. Emples. Health Benefits Commissions' Implementation of Yucht, 233 N.J. 267, 270. (Emphasis added).

In the within matter, adding information to a website cannot be construed as notice of the Ricci Act's enactment or the requirements to register within a certain timeframe. The statute required the Board to promulgate rules to provide notice to active and retired members of the State Police Retirement System.

The Certifying Officer Letter is proof that the website posting is not sufficient notice. Pa66. The notice of the Ricci Act to the Certifying Officers advises the Certifying Officers that they must distribute the information to employees pursuant to N.J.A.C. 17:5-1.4. It also required that the Certifying Officers to provide a certification that the information was distributed.

The Respondent claims that the mailing of the postcard to a correct address establishes a *presumption* that the postcard was received. This presumption is rebutted by the fact that Olenick and 98 others certified via affidavits that they did not receive said postcard. Additionally, the claim that

postcards were mailed out to all “200,647 SPRS retirees” is a misstatement of fact. Rb12. New Jersey State Troopers are assigned a badge number upon successful completion of the academy and these badge numbers are never repeated. Currently, the New Jersey State Police badge numbers only reach the 9,000s; meaning that in the entire history of the New Jersey State Police, there are less than 10,000 New Jersey State Troopers, which includes all active or retired members of the State Police Retirement System.

Failure to provide any notice, adequate or actual, is reasonable and equitable grounds for relaxing the deadline for registration under the Ricci Act. Furthermore, the Division admits that it did not notify the members of the retirement system within 30 days of the Ricci Act’s enactment. This further establishes good cause to relax the timeframe.

We respectfully request that the decision below be reversed, and that Olenick be permitted to register his presence at 9/11 and apply for amended benefits under the Ricci Act.

CONCLUSION

For all the foregoing reasons, we respectfully request that the determination below be reversed, and that retired Trooper Olenick be permitted to register for Ricci Act benefits and that he be granted accidental disability benefits thereunder.

Respectfully submitted,



Lauren Sandy, Esq.

cc: Matthew Melton, DAG