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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3158-15T4

NEW JERSEY EDUCATION ASSOCIATION,

Appellant,

v.

BOARD OF TRUSTEES OF THE TEACHERS'  
PENSION AND ANNUITY FUND,

Respondent.

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Submitted June 26, 2017 – Decided July 13, 2017

Before Judges Fisher and Fasciale.

On appeal from the Administrative Action of the Board of Trustees of the Teachers' Pension and Annuity Fund in adopting N.J.A.C. 17:3-5.5 and N.J.A.C. 17:3-6.1.

Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys for appellant (Jason E. Sokolowski and Richard A. Friedman, of counsel; Mr. Sokolowski, Mr. Friedman, and Kaitlyn E. Dunphy, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Amy Chung, Deputy Attorney General, on the brief).

PER CURIAM

Appellant New Jersey Education Association (NJEA) seeks our review of final agency action taken by respondent Board of Trustees, Teachers' Pension and Annuity Fund (the Board)<sup>1</sup> in adopting, on November 16, 2015, amendments to N.J.A.C. 17:3-5.5, and N.J.A.C. 17:3-6.1.

Before turning to the specifics of this appeal, we first take note of our standard of review, which allows us to consider whether an agency's interpretation of a statutory scheme is permissible in light of the legislative limits and intended goals, In re Adoption of N.J.A.C. 7:26B, 128 N.J. 442, 450 (1992), but with the understanding that courts must start "with a presumption," N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 548 (2012), that properly-adopted regulations "are valid and reasonable," N.J. Soc. for Prevention of Cruelty to Animals v. N.J. Dep't of Agriculture, 196 N.J. 366, 385 (2008). That is, we must "give substantial deference" to an agency's interpretation of "a statute that the agency is charged with enforcing" so long as its interpretation "is not plainly unreasonable." Matturri v. Bd. of Trs., Judicial Ret. Sys., 173 N.J. 368, 381-82 (2002). Or, stated another way, a

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<sup>1</sup> The Board possesses "general responsibility for the proper operation" of the Teacher's Pension and Annuity Fund (TPAF) and for the establishment of "rules and regulations for the administration and transaction" of its business and for the control of the TPAF. N.J.S.A. 18A:66-56(a)(1).

legislative delegation of authority to an agency "is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities," and "courts should readily imply such incidental powers as are necessary to effectuate the legislative intent." N.J. Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 (1978); see also N.J. State League of Municipalities v. Dep't of Cmty. Affairs, 158 N.J. 211, 223 (1999).

I

With these principles in mind, we turn to NJEA's arguments about the amendments to N.J.A.C. 17:3-5.5, and, specifically, this new regulation's manner of dealing with maternity leave. Initially, the following was the proposed amendment to part of N.J.A.C. 17:3-5.5(a)(4):

iii. Maternity leave is considered personal illness. Absent physician certification, three months is the maximum period of purchase for maternity leave. A certification from a physician that a member was disabled due to pregnancy and resulted in a disability for the period in excess of three months is required for maternity leave in excess of three months. The birth of a child constitutes the start of child care leave of absence immediately following maternity[.]

After considering the NJEA's comments about this proposal, the Board adopted a final version that deleted the first sentence

("Maternity leave is considered personal illness") and replaced that one sentence with the following two sentences:

Maternity leave may consist of a personal illness component and a personal reasons component, for childcare. Members who apply to purchase any period of maternity leave as a personal illness, must provide certification from their physician, verifying that the member was disabled during the requested purchase period, due to pregnancy or childbirth.

The revised amendment further altered subsection iii by inserting the following emphasized words in the second sentence of the earlier proposal: "Absent physician certification, three months is the maximum allowable period of purchase for maternity leave for personal reasons." The revised amendment also deleted the remainder of the earlier proposal. In short, the adopted version of subsection iii, in full, is as follows:

Maternity leave may consist of a personal illness component and a personal reasons component, for childcare. Members who apply to purchase any period of maternity leave as a personal illness, must provide certification from their physician, verifying that the member was disabled during the requested purchase period, due to pregnancy or childbirth. Absent physician certification, three months is the maximum allowable period of purchase for maternity leave for personal reasons.

The NJEA challenges this new regulation by arguing it is "phrased in a manner that does not make plain that it does not

abridge the legal rights afforded to TPAF members in N.J.S.A. 18A:66-8."<sup>2</sup> NJEA's stated concern is that, as amended, the regulation "could be read to narrow a statutory right" and, therefore, "should be declared invalid by this court" (emphasis added). The very way NJEA phrases its argument demonstrates its lack of merit. NJEA does not contend that the regulation actually stands in conflict with N.J.S.A. 18A:66-8(b), only that the regulation, in its view, doesn't clearly or plainly avoid a conflict with the statute.

These arguments are purely academic because the NJEA only concerns itself with one possible narrow reading of the new regulation. Even if we were to entertain these hypothetical concerns about how the regulation might be interpreted, we view N.J.A.C. 17:3-5.5(a)(4) as being in accord with the statute. The particular maternity leave provision that concerns the NJEA – subsection iii – does not, as the Board asserts in its responding brief, "articulate any such narrow reading." As the Board contends, the section in question was "clarified [so] that '[m]aternity leave may consist of' both a personal illness leave and a personal

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<sup>2</sup> In pertinent part, this statute permits a teacher the right to purchase up to three months of service credit for an unpaid leave of absence, N.J.S.A. 18A:66-8(b)(1), and up to two years of service credit for an unpaid leave that is due to personal illness, N.J.S.A. 18A:66-8(b)(2).

reason leave (for childcare). . . . Nothing could be clearer, and no statutory right was narrowed or curtailed." We agree.

## II

NJEA's appeal also concerns a number of facets of the newly-adopted amendment to N.J.A.C. 17:3-6.1, which deals with the process for applying for various types of retirement benefits. NJEA argues that the amendments exceed the Board's authority or limit TPAF members' existing statutory rights in four ways: (1) by failing to include a provision that allows a member to apply for an extension of time; (2) through the inclusion of provisions which, in NJEA's words, "contradict[] the statutory requirements for an accidental disability retirement"; (3) by adding to the statutory requirements an additional requirement that the TPAF member separate from service in order to qualify for a disability pension; and (4) by precluding an application for retirement while a disability application is pending. Keeping in mind the standard of review, which permits our intervention only when the adopted regulation is plainly unreasonable or outside the scope of the Board's delegated authority, we find insufficient merit in NJEA's arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following few comments.

As to the NJEA's first concern, the Board has not taken the position that applications for extensions are barred by amended N.J.A.C. 17:3-6.1(b). Instead, the Board recognizes and embraces its "inherent power," in "the absence of legislative restriction," "to reopen or to modify and to rehear orders previously entered by it." Duvin v. State, 76 N.J. 203, 207 (1978). The failure to incorporate an express right to seek an extension was not unreasonable.

The second alleged cause for concern – that N.J.A.C. 17:3-6.1(f)(1) is perceived by NJEA as adding an element to those which a TPAF member must prove to obtain accidental disability retirement benefits – is belied by the Board's intention, revealed by the amended regulation, to ensure that such benefits are not awarded on the basis of preexisting conditions alone or on the basis of the combination of work effort and preexisting conditions, and to ensure that the alleged traumatic event directly caused the disability upon which the application is based. See 47 N.J.R. 2876(a). Far from unreasonable, the amendment conforms to Richardson v. Bd. of Trs., Police and Firemen's Ret. Sys., 192 N.J. 189 (2007), as NJEA recognizes.

The NJEA's third concern involves N.J.A.C. 17:3-6.1(f)(3),<sup>3</sup> and the NJEA's claim that this regulation "improperly adds a[] requirement for the receipt of a disability pension," i.e., that the applicant must discontinue service due to the disability upon which the application is based. We reject this. When harmonized, N.J.S.A. 18A:66-39 and N.J.S.A. 18A:66-40(a) render a TPAF member ineligible for a disability retirement when that member's employment has been terminated for a non-disability reason; moreover, NJEA has not demonstrated how the existing legislation could render a TPAF member, who terminated employment for a non-disability reason, eligible for a disability retirement. The amended regulation is not inconsistent with legislative directives and constitutes a reasonable approach to such circumstances.

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<sup>3</sup> As amended, this regulation states:

Termination of employment, voluntary or involuntary, that was caused by any reason other than the claimed disability disqualifies a member from disability retirement. A member whose employment ended after his or her employer initiated disciplinary action, or who was the subject of criminal or administrative charges or party to a settlement resulting in resignation or termination, is considered to have separated from service as a result of the employer action, charges, or settlement, and not due to a disability, unless the action, charges, or settlement is shown to be a result of the disability.



Lastly, the NJEA contends that N.J.A.C. 17:3-6.1(g)<sup>4</sup> is inconsistent with the statutory framework because it prevents a TPAF member from applying for retirement benefits while the member has a disability retirement application pending. Far from unreasonable, this regulation provides a common sense approach to those circumstances. A TPAF member is entitled to only one type of retirement; accordingly, it is appropriate for the Board to limit that member to one application at a time. We discern no harm to that limitation, since N.J.A.C. 17:3-6.1(h) permits a TPAF member who has been denied a disability retirement, but also qualifies for a service-based retirement, to apply within thirty days of denial of the former for a service-based retirement if so eligible.<sup>5</sup>

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<sup>4</sup> This regulation states:


A member filing for an accidental or ordinary disability retirement shall not file a separate application for retirement, including one based on any other allegedly-disabling condition, while the original disability application is pending. A separate application can be filed only for a date subsequent to withdrawal of the previous application.

<sup>5</sup> N.J.A.C. 17:3-6.1(h) states:

If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit,

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION

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the applicant will be required to submit a separate application for retirement. If the applicant submits the separate application for retirement within 30 days of the Board's decision, the applicant may retain the retirement date designated on the disability requirement application. If a member is denied an accidental disability retirement, but qualifies for an ordinary disability retirement based on the accidental-disability application, the ordinary disability retirement will be granted, and no additional application will be required.