



State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

February 11, 2019

Caruso Smith Picini
Paul W. Tyshchenko, Esq.

[REDACTED]
[REDACTED]

RE: Ellen Schwartz

[REDACTED]

Dear Mr. Tyshchenko:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision by the Board of Trustees (Board) of the Teachers' Pensions and Annuity Fund (TPAF) regarding the Board's denial of your client, Ellen Schwartz's issue of bona fide retirement. At its August 2, 2018 meeting, the Board determined that Ms. Schwartz's retirement was not bona fide, essentially for the reasons outlined by the Division's May 14, 2018 letter. On September 22, 2018, you requested that the Board reconsider its August 2, 2018 decision, or in the alternative, requested that the matter be transmitted to the Office of Administrative Law (OAL).

At its meeting on January 10, 2019, the Board determined that there are no material facts in dispute, denied your request for a 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 TPAF Board at its February 7, 2019 meeting.

The TPAF Board has reviewed your written submissions and the relevant documentation, and finds that the relevant case law governing the TPAF did not constitute a bona fide severance from Ms. Schwartz's employment subsequent to her retirement date in order to be considered as "retired" from the TPAF.

FINDINGS OF FACT

The Board made the following findings of fact:

Ellen Schwartz was employed by the Elizabeth Board of Education (EBOE) as a dance teacher. On May 31, 2015, Ms. Schwartz filed an application for Service retirement with the TPAF requesting an effective retirement date of July 1, 2015. The Certification of Service and Final Salary provided by the EBOE indicated that Ms. Schwartz's service was terminated on June 30, 2014, due to a reduction in force. On July 2, 2015, Ms. Schwartz's retirement application was approved by the TPAF Board. Ms. Schwartz retired from employment with the EBOE on June 1, 2015, and started receiving pension benefits beginning July 1, 2015.

By letter dated October 1, 2016, Ms. Schwartz notified the Division that she had been rehired by the EBOE as a full time teacher and wished to stop her retirement. Ms. Schwartz also stated that she understood that she must repay the retirement benefits that she already received for September and October 2016. Ms. Schwartz's letter was referred to the External Audit Unit (EAU) for further review.

On October 6, 2016, a member of the EAU contacted Ms. Schwartz by phone to verify her claims and employment status. Ms. Schwartz confirmed that she worked for the EBOE as a substitute through Source4Teachers (S4T) within 180 days of her June 1, 2015 retirement since she held certification. Ms. Schwartz also stated that she was laid off prior to her June 1, 2015 retirement from the EBOE and did not retire immediately since she waited to be rehired. In the interim, Ms. Schwartz began working for the S4T to support herself. Although the Division had not received information regarding Ms. Schwartz's post-retirement employment with the EBOE¹, she was advised by the EAU that based on the information she provided, her retirement may not be considered bona fide in

¹ Division records indicate that neither Ms. Schwartz nor EBOE contacted the Division to ascertain whether her employment with EBOE through S4T within 180 days of her June 1, 2015, retirement would negate her eligibility to receive retirement benefits.

accordance with N.J.A.C. 17:1-17.14 since she may not have satisfied the requirements of bona fide severance of employment for a period of 180-days after her June 1, 2015 retirement.

Thereafter, the Division received confirmation from the EBOE of Ms. Schwartz's full-time employment effective September 1, 2016, in the position of Teacher. Consequently, she was reenrolled in the TPAF under a new Tier 5 account² and her retirement benefits from her former Tier 1 account were suspended by the Division. Also, EBOE did confirm that Ms. Schwartz had worked at their location as a substitute through S4T – a third party employer – within 180 days of her June 1, 2015 retirement.

Conclusions of Law

The issue is whether Ms. Schwartz observed a “bona fide severance from employment” because she returned to the EBOE within 180 days of her retirement in violation of N.J.A.C. 17:1-17.14(a)(2)(iv). New Jersey State-administered retirement systems do not permit the payment of retirement benefits without a bona fide severance from public employment. The regulation regarding retiree reemployment provide:

2. "Bona fide severance from employment" means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. The following does not constitute a complete termination of the employee's relationship with the employer:
 - i. Employment or reemployment in a part-time position;
 - ii. Employment or reemployment in a position that is not covered by the Defined Benefit Plan;
 - iii. A change in title;
 - iv. Employment or reemployment as a contract employee, a leased employee, or an independent contractor; or
 - v. Termination of employment with a pre-arranged agreement for reemployment.

² EBOE is currently remitting her pension contributions to this account.

Paul Tyshchenko, Esq.
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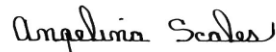
In your appeal dated September 22, 2018, you conclude that Ms. Schwartz did not begin working with the EBOE again as a substitute teacher through S4T until October 6, 2015. You assert that October 6, 2015 is well outside of the 180-day exclusionary period, based on her June 30, 2014 reduction-in-force.

In order for Ms. Schwartz's retirement to be bona fide, it would require that her employment be severed for a minimum period of 180 days subsequent to her June 1, 2015 retirement, not the June 30, 2014 date as you assert in your argument.

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 from 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
Phone: (609) 292-4822

Sincerely,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-9

c: Ellen Schwartz
Fenstermacher/Rana/Chianese/Barnett (ET)
DAG Robert Garrison (ET)
DAG Amy Chung (ET)

Elizabeth Board of Education
Rajeev Malhotra, Certifying Officer
[REDACTED]