



# 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](http://www.nj.gov/treasury/pensions)

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lt. Governor*

June 20, 2024

Sent via email to: [REDACTED]

Law Offices of Daniel J. Zirrieth, LLC  
Daniel J. Zirrieth, Esq.

[REDACTED]

RE: Robert O'Brien  
[REDACTED] (Tier 5)  
[REDACTED] (Tier 2)

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Zirrieth:

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) denying the request of your client, Robert O'Brien, to reinstate his original PERS Tier 2 membership account. The Board originally denied Mr. O'Brien's request at its meeting of December 6, 2023. By letter dated February 12, 2024, you filed a timely appeal of the Board's decision.

At its meeting on May 15, 2024, the Board considered your appeal. After careful review, the Board found no genuine issue of material fact in dispute and denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its June 16, 2024, meeting.

### **FINDINGS OF FACT**

The Board made the following factual findings.

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The record before the Board establishes that Mr. O'Brien was enrolled in the PERS on January 1, 2008, in a Tier 2 membership account as a result of his employment with Edison Township (Edison). His last contribution to this account was September 30, 2011 at which point he had accrued 3 years and 9 months of service credit. On July 12, 2013, an expiration notice was sent to Mr. O'Brien and Edison advising that Mr. O'Brien's PERS membership account would expire after two years without pension contributions. The notice advised Mr. O'Brien of his options but also cautioned him that “[W]ithdrawal terminates all rights and privileges to your account or retirement benefits.” (emphasis supplied.)

On March 3, 2015, Mr. O'Brien submitted an *Application for Withdrawal* and closed out his PERS Tier 2 membership account. On June 4, 2015, the Division of Pensions and Benefits (Division) sent Mr. O'Brien a breakdown of the monies he was entitled to receive as a result of his withdrawal. The letter advised Mr. O'Brien that “[A]s a result of withdrawing your contributions from the system you have terminated any benefits to which you might have been entitled.”

On May 15, 2015, Berkeley Township (Berkeley) submitted an *Enrollment Application* on Mr. O'Brien's behalf for the position of Building Sub-Code Official and he was enrolled in a new PERS Tier 5 membership account. Although Mr. O'Brien commenced employment with Berkeley on August 5, 2013, he was hired as a “seasonal” employee and thus not eligible for PERS enrollment on his date of hire. See N.J.A.C. 17:2-2.3(a)(5). Berkeley later advised the Division that Mr. O'Brien received his permanent appointment on February 5, 2014. Thus, Mr. O'Brien's PERS Tier 5 membership account reflects a February 1, 2014, enrollment date. Mr. O'Brien accrued 8 years and 6 months of service credit under his PERS Tier 5 membership account. On November 30, 2022, Mr. O'Brien applied for Service retirement benefits effective December 1, 2022, which the Board approved at its meeting of January 18, 2023.

By letter dated November 28, 2022, on Mr. O'Brien's behalf, you requested the reinstatement of Mr. O'Brien's service credit accrued through his employment at Edison and that

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he should have PERS Tier 2 membership status. The Division denied the request and you appealed the matter to the Board.

At the meeting of December 6, 2023, you asserted that Mr. O'Brien should be permitted to reverse his withdrawal and the Division should be directed to reinstate his original PERS Tier 2 membership account because he was not a "seasonal" employee in August 2013. Mr. O'Brien further asserts that if he were properly hired as a regular full-time employee, his PERS Tier 2 membership account would not have expired, as he would have found PERS-eligible employment within two years of his last pension contribution. N.J.S.A. 43:15A-7(e).

Mr. O'Brien alleges that he was told he would be hired as a "seasonal" employee prior to his start date and accepted employment based on that understanding, but that he worked full-time and continuously for Berkeley throughout his employment. While the Board has no basis to dispute those assertions, it also noted that Mr. O'Brien was made aware, on several occasions, that withdrawing his PERS Tier 2 membership account terminated all of his rights associated with that account. His ability to challenge his classification did not survive his voluntary termination of his account, particularly after many years had lapsed.

Mr. O'Brien also alleges that he was advised by Division staff that he needed to withdraw his PERS Tier 2 membership account. Division records reflect that Mr. O'Brien contacted the Division's Office of Client Services on February 2, 2015, regarding the purchase of his former service from his expired account. He was provided with a quotation of \$26,291.33 to purchase his Edison service from his PERS Tier 2 membership account, as well as a quote for \$11,070.38 to purchase 19 months of uncredited temporary service with Edison prior to his permanent appointment. However, pursuant to PERS rules, he would have been required to purchase his former service as his prior account had expired. N.J.S.A. 43:15A-7(e). Thus, in order to purchase the expired service credit he would, in fact, have needed to withdraw the expired account that

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held the associated contributions. Based on the foregoing, the Board denied Mr. O'Brien's request to reinstate his PERS Tier 2 membership account.

By letter dated February 12, 2024, you filed a timely appeal of the Board's decision. The matter was placed on the on the agenda of the Board's May 15, 2024 meeting. At said meeting, the Board considered your submission and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. The Board directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its June 16, 2024 meeting.

### **CONCLUSIONS OF LAW**

The Board made the following conclusions of law.

The Board first relied upon the provisions of N.J.S.A. 43:15A-7(e), which provides:

Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

N.J.S.A. 43:15A-41 also provides, in pertinent part:

A member who withdraws from service or ceases to be an employee for any cause other than death or retirement shall, upon the filing of an application therefor, receive all of his accumulated deductions standing to the credit of his individual account in the annuity savings fund, plus regular interest, less any outstanding loan..., He shall cease to be a member two years from the date he discontinued service as an eligible employee, or, if prior thereto, upon payment to him of his accumulated deductions.

[(emphasis supplied.)]

Thus, a PERS member shall cease to be a member upon payment to him of his accumulated deductions. As noted above, Mr. O'Brien's last pension contribution to this account was September 30, 2011. The July 12, 2013, expiration notice was sent to Mr. O'Brien and Edison advising that Mr. O'Brien's PERS membership account would expire after two years without pension contributions. The notice advised Mr. O'Brien of his options but also cautioned him that

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**“[W]ithdrawal terminates all rights and privileges to your account or retirement benefits.”**

(emphasis supplied.)

Mr. O'Brien was also provided with a quotation regarding purchasing his former PERS service credit, but opted not to do so. On March 3, 2015, Mr. O'Brien submitted an *Application for Withdrawal* and closed out his PERS Tier 2 membership account. On June 4, 2015, the Division sent Mr. O'Brien a breakdown of the monies he was entitled to receive as a result of his withdrawal. The letter advised Mr. O'Brien that “[A]s a result of withdrawing your contributions from the system you have terminated any benefits to which you might have been entitled.”

Although Mr. O'Brien could have challenged his seasonal appointment, he chose not to do so, and instead withdrew his pension contributions. However, once he withdrew his monies from the PERS, he ceased to be a PERS member and lost all rights and privileges afforded to PERS members, including challenging his appointment years after his withdrawal.

As noted above, the Board has considered your personal statements, written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

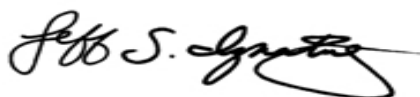
You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

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All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large loop at the end.

Jeff S. Ignatowitz, Secretary  
Board of Trustees  
Public Employees' Retirement System

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c: N. Munko (ET); L. Quinn (ET); A. Haugen (ET)

Robert O'Brien

