



State of New Jersey

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

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Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

April 6, 2020

[Redacted]

Jason E. Sokolowski, Esq.
Zazzali, Fagella, Nowak, Kleinbaum & Friedman

[Redacted]

RE: Kelly A. Buskey

[Redacted]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Sokolowski:

I am writing in reference to the decision of the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) regarding your appeal of the Board's denial of your client Kelly Buskey's request to extend the expiration date of her Tier 2 membership account in the TPAF.

The Board has reviewed your written submissions and the relevant documentation, and finds that the statutes and relevant case law governing the TPAF do not permit the Board to grant your request to extend the expiration date of Ms. Buskey's Tier 2 membership account in the TPAF.

FINDINGS OF FACT

The record shows that Ms. Buskey established membership in the Public Employees' Retirement System (PERS) on September 1, 2008 based upon her employment with South Brunswick Board of Education (BOE). Subsequently, on September 1, 2009, Ms. Buskey became employed as a Teacher with South Brunswick BOE and was enrolled in TPAF under [Redacted]

[Redacted] ("Account #1"). Ms. Buskey opted to interfund a total of twelve (12) months of her PERS

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service and salary into Account #1. Ms. Buskey's pension contributions with this location continued through June 30, 2012. Thereafter, on September 1, 2013, Ms. Buskey transferred to a TPAF-eligible position with Plumsted Township BOE and remained employed as a nontenured teacher until June 30, 2017, when pension contributions to Account #1 stopped. At that time, Ms. Buskey was not a vested member of TPAF as Account #1 was credited with nine (9) years of service credit.

By letter dated March 5, 2019, the Division notified Ms. Buskey and Plumsted Township BOE that Account #1 was scheduled to expire on June 30, 2019, after two years of inactivity, as the last pension contribution was June 30, 2017. This notice indicated that when Account #1 expired she would lose the right to all TPAF membership benefits except for withdrawal of her contributions.

On March 21, 2019, the Division received the portion of the notice, Account Expiration Status-Employer Certification, completed by Plumsted Township BOE indicating that Ms. Buskey's contract was "non-renewed." After two (2) years of inactivity, Account #1 expired effective June 30, 2019.

By fax dated August 27, 2019, the Division received an excerpt of the minutes from the May 10, 2017 Plumsted Township BOE meeting. A review of the excerpt reflects that Ms. Buskey's contract was not renewed, together with the contracts of four other nontenured teachers. On the same date, the Division issued a letter to Shrewsbury Borough BOE stating that the Report of Transfer form submitted for Ms. Buskey could not be processed because Account #1 expired on June 30, 2019 and Shrewsbury Borough BOE should enroll Ms. Buskey as a new TPAF member through the Employer Pensions and Benefits Information Connection (EPIC) on-line system.

On September 1, 2019, Ms. Buskey was enrolled in a new Tier 5 TPAF membership account [REDACTED] through her employment with Shrewsbury Borough BOE.

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On September 3, 2019, Ms. Buskey contacted the Division regarding Account #1. Ms. Buskey was advised to forward any paperwork regarding a reduction in force to the Division.

On September 4, 2019, an outbound email from a Division representative informed Ms. Buskey that the Account Expiration Status Form that Plumsted Township BOE completed indicated "non-renewal". This information would invalidate granting an extension beyond the two years. However, if this was not the case, Plumsted Township BOE should complete the account expiration status form accordingly and resubmit the form to the Division.

On September 11, 2019, Ms. Buskey contacted the Division stating that she would re-send the forms regarding the reduction in force.

On September 12, 2019, an outbound email to Ms. Buskey from a Division representative asked if she was able to obtain the updated paperwork from Robbin Galloway of Plumsted Township BOE.

On September 13, 2019, the Division received the minutes from the Plumsted Township BOE's May 10, 2017 meeting. The minutes indicated that Ms. Buskey was a non-renewal.

On September 20, 2019, Ms. Buskey contacted the Division and was informed by a representative that the extension would not be granted. Ms. Buskey was advised to have Plumsted Township BOE call so the same information could be relayed to them. By letter dated September 20, 2019, Peter Angelini, Pension Benefits Specialist, Loan/Withdrawal Section informed Ms. Buskey that correspondence from Plumsted Township BOE indicated that based on N.J.S.A. 18A:27-4.1, her contract was not renewed. The Division does not grant an extension beyond the two years of inactivity for members whose contracts were not renewed. Therefore, Account #1 expired on June 30, 2019.

On October 7, 2019, Nikki Ponti, Certifying Officer, Shrewsbury Borough BOE via telephone contacted the Division stating that Ms. Buskey contacted her and advised her that she had a previous TPAF account that her new position with Shrewsbury could be transferred into.

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Shrewsbury Borough BOE submitted a Report of Transfer; however, it was returned because Account #1 had already expired. Ms. Ponti was unsure as to how to proceed. Ms. Ponti was informed that Ms. Buskey's former location, Plumsted Township BOE, sent in meeting minutes stating that Ms. Buskey's contract was not renewed, which is not a valid reason for an extension of her expiration date. Therefore, Ms. Buskey must be newly enrolled in the TPAF with Shrewsbury Borough BOE through EPIC and not transferred from Plumsted Township BOE to Shrewsbury Borough BOE.

By letter dated October 18, 2019, you filed a letter of representation, explaining that you were retained to represent Ms. Buskey. You assert that Ms. Buskey was laid off from her teaching position at Plumsted Township BOE due to budgetary reasons, not for any performance-related issues, and her position was abolished. Also, since Ms. Buskey had not withdrawn her accumulated contributions within Account #1, her active membership could continue for up to ten (10) years within the TPAF and the date of discontinuance of her service if she returned to active service within that time period.

By letter dated October 30, 2019, Luann Barnett, Chief, Enrollment, Purchase, Adjustment, Loan & Withdrawal Bureau, advised you that after two (2) years of inactivity in the TPAF, Account #1 expired pursuant to N.J.S.A. 18A:66-7. Under the provisions of N.J.S.A. 18A:66-8, a layoff for reasons of economy can extend the expiration of membership beyond two (2) years. However, you did not provide evidence of a layoff notice issued to Ms. Buskey by Plumsted Township BOE. You provided the Account Expiration Status-Employer Certification from Plumsted Township BOE which was postmarked received by the Division of Pensions and Benefits on March 21, 2019. You also provided a copy of an altered Account Expiration Status-Employer Certification indicating the Ms. Buskey was laid off. The words "Budget Cut" were added to this Certification. The Division did not receive this altered Account Expiration Status-

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Employer Certification. You were also advised that if you wish to appeal that determination to the Board, you should direct your appeal to the Board Secretary.

On November 20, 2019, you appealed to the Board Secretary disputing the expiration of Ms. Buskey's TPAF membership, claiming that Ms. Buskey was laid off by Plumsted Township BOE, which qualifies her for the statutory exemption of expiration of membership beyond two (2) years.

At its meeting of January 9, 2020 the Board considered your submissions and relevant documentation in the record. Thereafter, the Board denied your request to extend Account #1. By letter dated February 18, 2020, you appealed the Board's determination and requested a hearing in the Office of Administrative Law. At its meeting of March 5, 2020, the Board determined there are no factual issues to be adduced at a hearing and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law that will formally outline the Board's decision and become the Board's Final Administrative Determination. These Findings of Fact and Conclusions of Law were presented and approved by the Board at its April 2, 2020 meeting.

#### **CONCLUSIONS OF LAW**

The issue before the Board is your request to extend Account #1, which expired on June 30, 2019, two years after Ms. Buskey's last pension deduction from her employment with Plumsted Township BOE on June 30, 2017.

The Board relied upon the provisions of N.J.S.A. 18A:66-7, which states:

Membership of any person shall cease:

(a) If, except as provided in section 18A:66-8, he shall discontinue his service for more than two consecutive years;

...

The pension fund shall send written notice in care of the last employer of a member at least 60 days in advance of the date on

which his inactive membership shall expire as provided in subsection (a) of this section.

In addition, the Board noted that N.J.S.A. 18A:66-8 provides, in pertinent part:

- a. If a teacher:
  - (1) is dismissed by an employer by reason of reduction in number of teachers employed in the school district, institution or department when in the judgment of the employer it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization or other good cause; or becomes unemployed by reason of the creation of a regional school district or a consolidated school district; or has been discontinued from service without personal fault or through leave of absence granted by an employer or permitted by any law of this State; and
  - (2) has not withdrawn the accumulated member's contributions from the retirement system, the teacher's membership may continue, notwithstanding any provisions of this article, if the member returns to service within a period of 10 years from the date of discontinuance from service. ...

The crux of your argument is that you contend Ms. Buskey was laid off by Plumsted Township BOE and for that reason Account #1 should remain active beyond the two (2) years of inactivity pursuant to N.J.S.A. 18A:66-8.

The Board considered the facts of Ms. Buskey's case and determined that pursuant to N.J.S.A. 18A:27-4.1, Plumsted Township BOE informed Ms. Buskey, a nontenured teacher, that her employment contract for the 2017-2018 school year would not be renewed. The nonrenewal of a nontenured teacher's annual contract does not constitute a reduction in number or a discontinuance of service, which both pertain to tenured teachers. Cf. Pascack Valley Reg'l High Sch. Bd. of Educ. v. Pascack Valley Reg'l Support Staff Ass'n, 192 N.J. 489, 497 (2007) ("The practice of offering separate, annual employment contracts to nontenured school employees is long-standing."); see also id. at 491 (noting nontenured school employees "have no right to the renewal of their individual contracts"); Bd. of Educ. v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497,

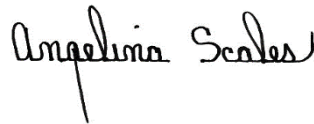
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501 (App. Div. 1979) (“the right not to renew the contracts of nontenured teachers” is “a management prerogative”). The Board determined that the circumstances which resulted in non-renewal of Ms. Buskey’s contract with Plumsted Township BOE were not a lay-off which would qualify for the statutory exemption of expiration of membership beyond two years. Instead, Ms. Buskey’s annual contract was not renewed and her employment ended on June 30, 2017.

You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

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

| Sincerely,



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

G-3/as

C: Amy Chung, DAG (ET)  
L. Barnett (ET)  
Kelly Buskey (ET)