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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5590-15T3

MARIO ALBERTO RECINOS,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
POLICE AND FIREMEN’S
RETIREMENT SYSTEM,

Respondent-Respondent.

Argued May 31, 2018 – Decided July 19, 2018.

Before Judges Haas, Rothstadt, and Gooden Brown.

On appeal from the Board of Trustees of the Police and Firemen’s Retirement System, PFRS No. 3-10-42728.

John Vincent Saykanic argued the cause for appellant.

Danielle P. Schimmel, Deputy Attorney General, argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Danielle P. Schimmel, on the brief).

PER CURIAM

In 2011, Mario Alberto Recinos retired from the Passaic County Sheriff's Department (PCSD) as a Detective Lieutenant, concluding a nearly twenty-nine year career in law enforcement. He received a special service retirement from the Police and Firemen's Retirement System (PFRS). After the required thirty-day break in service, he resumed employment with PCSD, ultimately holding a PFRS-eligible position without re-enrolling in PFRS.

On August 10, 2015, the Division of Pensions and Benefits (Division) cancelled his retirement pursuant to N.J.S.A. 43:16A-15.3, effective December 1, 2011, re-enrolled him as of that date in the PFRS as an active contributing member, and required him to repay all pension payments he received after December 1, 2011, and to pay back pension contributions on the salary he received from eligible employment. Recinos now appeals from the July 12, 2016 final agency decision of the Board of Trustees of the Police and Firemen's Retirement System (Board), affirming the Division's determination. We affirm substantially for the reasons expressed in the Board's comprehensive decision.

As background, a PFRS member cannot receive retirement benefits based on prior service if currently employed in another PFRS-eligible position. If a PFRS retiree accepts new employment in a PFRS-eligible position, his retirement benefits are cancelled until he retires again, and he is reenrolled in the PFRS. In that regard, N.J.S.A. 43:16A-15.3(a) specifically provides:

[I]f a former member of the retirement system who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of reenrollment. . . . Upon subsequent retirement of such member, his former retirement allowance shall be reinstated based on his former membership.

The Board approved Recinos' retirement application from PCSD, notifying him and his employer in a March 14, 2011 letter that "[i]f [he] return[ed] to public employment following [his] retirement, [he] must notify [the Division's] Office of Client Services immediately." Recinos began receiving his monthly retirement allowance of \$8177.64 on July 1, 2011, representing the benefit for June 2011.

On July 25, 2011, Recinos was rehired by PCSD as a “Keyboarding Clerk 1,” at an annual salary of \$41,120, and held the position until November 30, 2011. On December 1, 2011, Recinos was appointed Director of the Bureau of Narcotics at an annual salary of \$77,225. He held that position until February 2, 2014, and on February 3, 2014, Recinos was appointed Undersheriff of PCSD at an annual salary of \$90,000. Recinos never informed the Division of his post-retirement employment.

After receiving an anonymous tip, the Division’s Pensions Fraud & Abuse Unit launched an investigation into Recinos’ post-retirement employment. On August 10, 2015, citing N.J.S.A. 43:16A-15.3, N.J.S.A. 43:16A-3.1,¹ and N.J.S.A. 40A:9-119.2,² Investigator

¹ N.J.S.A. 43:16A-3.1 deems certain positions “with administrative or supervisory duties over policemen” as PFRS-eligible if a PFRS member occupies that position within six months of his or her prior service in a PFRS position.

² N.J.S.A. 40A:9-119.2 provides:

The sheriff of any county may appoint any person who, at the time of his appointment, has: a. served for [ten] years or more as a law enforcement official, three years of which shall have been in a supervisory position that included responsibilities for narcotic investigation or control activities; and b. has been certified by the Police Training Commission [(PTC)] as having completed a police training course at an approved police training school, pursuant to [N.J.S.A. 52:17B-66 to-77.6], as director of the bureau of narcotics, to serve for a term of one year without having to take a civil service examination. The director of the bureau of narcotics shall have full police officer status, as is granted to other sheriff’s officers.

Mark Casey notified Recinos that his PFRS retirement benefits would be suspended and that he was required to re-enroll in PFRS as of December 1, 2011, when he returned to employment as Director of Bureau of Narcotics, and to remain enrolled for the duration of his employment as Undersheriff. Casey's letter also required Recinos to repay the pension benefits he received from December 1, 2011 through August 1, 2015, totaling \$359,816.16, and pay \$30,901.81 in back pension contributions on the salary he received for his post-retirement Passaic County PFRS employment.

Recinos appealed the determination, and, on October 20, 2015, Kristin Bell, another Pensions Fraud & Abuse Unit investigator, sent him a revised determination. The revised determination relied on the same statutory citations, with the exception of N.J.S.A. 43:16A-3.1. Citing N.J.A.C. 17:4-6.8(a)(1),³ Bell reached the same conclusion as the initial determination and required the same repayment of benefits and payment of back pension contributions.

Recinos appealed to the Board, and, on March 16, 2016, the Board issued its decision affirming Casey's and Bell's prior determinations. The Board specified that after he was appointed as Director of Bureau of Narcotics, based on the requirements of N.J.S.A.

³ N.J.A.C. 17:4-6.8(a)(1) provides that "[a] member . . . whose retirement has become effective pursuant to N.J.A.C. 17:4-6.2, is required to re-enroll in the [PFRS] pursuant to N.J.S.A. 43:16A-15.3, regardless of whether the member is over age [thirty-five], if . . . the member returns to the employment in a PFRS covered position."

40A:9-119.2, Recinos was required to re-enroll in PFRS. The Board determined further that the position of Undersheriff was eligible for PFRS membership pursuant to N.J.S.A. 43:16A-15.3. The Board cancelled Recinos' retirement allowance, required his re-enrollment in PFRS as an active contributing member effective December 1, 2011, and ordered him to repay all pension benefits and pay all back pension contributions since December 1, 2011.

On May 4, 2016, Recinos requested that the Board reconsider its decision. In support of his request, he submitted the purported expert report of Charles S. Meyers, a consultant of the Vyanka Group, LLC. In the report, Meyers stated

Recinos' title was changed [from Keyboarding Clerk 1] to the appointed position of Director, Bureau of Narcotics, a position established by [N.J.S.A. 40A:9-119.2] and covered . . . by a New Jersey State administered retirement system other than the PFRS. Recinos was already employed by the agency and his appointment to this new position was not a "re-employment" but rather an advance or promotion of an existing employee within the same employment unit.

Similarly, according to Meyers, on February 3, 2014, "Recinos was advanced/promoted to the position of Undersheriff." Meyers explained that:

The advancement[s]/promotion[s] [were] allowed because Recinos' original re-employment was consistent with the rules in

place at the time of his return to employment, the position[s] [were] covered by a New Jersey State administered retirement system other than the PFRS, and Recinos had separated his original service more than 180 days prior to his appointment.

On July 12, 2016, the Board denied Recinos' request for an administrative hearing in the Office of Administrative Law (OAL) pursuant to N.J.A.C. 17:1-1.5, because there were no disputed questions of fact, and issued its Final Administrative Determination affirming the Division's August 10, 2015 decision. The Board rejected Meyers' report, finding the opinion "unpersuasive" and "entitled to no weight," and finding Meyers "unqualified." The Board noted that based on Recinos' submissions, "Meyers [was] the former Warden of the Passaic County Jail and [a] PFRS retiree," held various positions in the PCSD, and served as County Business Administrator in 2011 and 2012.

According to the Board, in his capacity as County Business Administrator, on December 12, 2011, Meyers had emailed Aurus Malloy of the Civil Service Commission (Commission) requesting a current job description of the Director of Bureau of Narcotics title, and inquiring which of two Director titles listed on the Commission's website, 05891 or 07762, should be used for Recinos. Although Malloy responded that 07762 was an unclassified position for which the Commission did not have a job title, he provided a citation to N.J.S.A. 40A:9-119.2 as well as the text of the statute.

The Board explained that, as a result, Meyers' "purported expert" opinion was "not independent," because Meyers "ha[d] a direct conflict of interest as he [was] a fact witness in this matter since he corresponded with the . . . Commission" on Recinos' behalf. Moreover, the Board pointed out that "Recinos did not contact the Division to inquire about the consequences of accepting either position, and thereby did not rely to his detriment on advice or information from the Division." In specifically addressing Recinos' assertion that he and his employer "[had] been transparent in their actions through contact with the State," the Board explained:

[T]his contact was with the Civil Service Commission. The Board [did] not dispute that Mr. Recinos was hired in accordance with the Civil Service Commission's procedures, nor [did] the Board dispute Mr. Recinos' ability to hold these positions. The issue [was] whether Mr. Recinos [had] to enroll in the PFRS as a result of taking these positions, a question within the authority of the PFRS Board and the Division. At no point did Mr. Recinos or [his employer] contact the Division when Mr. Recinos returned to post-retirement public employment, as required by the March 14, 2011 letter approving Mr. Recinos' retirement.

The Board determined that although the title of Director of Bureau of Narcotics was "not included on the list of PFRS eligible titles" on the Division's website and "is an unclassified position under the rules of Civil Service," the position was, in fact, "eligible for

PFRS enrollment by its[] statutory definition,” which “governs the position.” Specifically, under N.J.S.A. 40A:9-119.2, the position “requires [ten] years or more as a law enforcement official, three years of which are supervisory, [and] PTC training.” Furthermore, “the Legislature determined that the position ‘shall have police officer status,⁴ as is granted to other sheriff’s officers.’”⁵ Moreover, the Director will also have “supervisory duties over sheriff’s officers who themselves are sworn police officers.”

Likewise, the Board determined that “for members in PFRS, the position of Undersheriff is eligible for continued PFRS membership.” In making that

⁴ For purposes of PFRS enrollment, a “policeman” is defined under N.J.S.A. 43:16A-1(2)(a) as

a permanent, full-time employee of a law enforcement unit . . . whose primary duties include the investigation, apprehension or detention of persons suspected or convicted of violating the criminal laws of the State and who . . . is authorized to carry a firearm while engaged in the actual performance of his official duties; . . . has police powers; . . . is required to complete successfully the [applicable] training requirements . . . ; and . . . is subject to the [applicable] physical and mental fitness requirements.

N.J.S.A. 43:16A-3 requires membership in PFRS “as a condition of . . . employment.” Under N.J.S.A. 43:16A-1.2(b) and N.J.A.C. 17:4-2.1, the Board determines whether a title meets the requirements and whether the title is eligible for PFRS enrollment when an employer submits a request for a title review.

⁵ Under N.J.S.A. 40A:9-117.13, sheriff’s officers are eligible for enrollment in PFRS.

determination, the Board relied on N.J.S.A. 43:16A-3.5, which provides:

Any member of the [PFRS] of New Jersey who has been or shall be elected to the position of sheriff or who has accepted or shall accept appointment to the office or position of undersheriff may, by written notification to the Director of the Division of Pensions and the county treasurer, elect to continue to be a member of the retirement system while serving as sheriff or undersheriff and shall be deemed to have waived any and all benefits to which he would otherwise be entitled by eligibility for membership in the [PFRS]. The county treasurer shall make deductions from the salary of the sheriff or undersheriff and contributions on his behalf to the [PFRS] as is required by law for members of that system.

According to the Board, because

Recinos was appointed Undersheriff of Passaic County without any break in service from his position as Director of Bureau of Narcotics, both positions with the same employer, . . . even if he had declined PFRS participation [in his position as Undersheriff], he was ineligible to collect any pension benefit under IRS rules . . . until he [had] a bona fide retirement from Passaic County pursuant to N.J.A.C. 17:1-17.14 (180 day break in service with no pre-arrangement to return).

The Board acknowledged that “Recinos’ retirement was bona fide according to N.J.A.C. 17:4-6.2,”⁶ “that the required break in service under the regulations in effect at that time [were] observed,”⁷ and that his non-PFRS keyboarding clerk position was “not at issue.”⁸ However, relying on the requirements of N.J.S.A. 43:16A-15.3 and the definition in N.J.S.A. 40A:9-119.2, the Board rejected Recinos’ contention that he “substantially complied with the requirements for accepting post-retirement employment without jeopardizing his retirement” in connection with the Director of Bureau of Narcotics and Undersheriff positions. The Board also rejected Recinos’ argument that his “service as a Sheriff’s Officer [was] substantially different than his pre-retirement job in Corrections”

⁶ N.J.A.C. 17:4-6.2 provides that “[a] member’s retirement allowance shall not become due and payable until [thirty] days after the date the Board approved the application for retirement or one month after the date of the retirement, whichever is later.”

⁷ Recinos’ June 1, 2011 retirement was deemed bona fide because he observed the required thirty-day break in service before he was rehired. N.J.A.C. 17:1-17.14, which extended the thirty-day break in service requirement to 180 days before returning to work with the same employer, was promulgated after these events transpired and became effective March 9, 2012. Moreover, because the keyboarding position was not a PFRS-eligible position, no re-enrollment requirement was triggered as a result of Recinos’ post-retirement employment in that position.

⁸ N.J.S.A. 43:3C-1 prohibits “a former member of any . . . retirement system . . . who has been granted a pension” from enrolling in another retirement system if the former member “becomes employed again in a position which makes him eligible to be a member of” such other retirement system.

and should therefore not be subject to reenrollment in PFRS. The Board explained that

the title of the covered employment is not controlling, and whether a post retirement PFRS position is similar or dissimilar to the prior position is also not controlling. The relevant fact is the position's eligibility for PFRS enrollment whether that position is located in corrections or police work or firefighting, and whether reenrollment is required by the statute. . . . Recinos accepted the position of Director of the Bureau of Narcotics, a law enforcement position that required police training and granted law enforcement powers pursuant to N.J.S.A. 40A:9-119.2. Acceptance of the Undersheriff position is a continuation in PFRS-covered employment, as permitted by N.J.S.A. 43:16A-3.5. He continues in such employment through the present.

This appeal followed.

On appeal, Recinos raises the following points for our consideration:

POINT I

THE APPELLANT MR. RECINOS WAS NOT REQUIRED TO REENROLL IN THE [PFRS] NOR REQUIRED TO PAY BACK RETIREMENT BENEFITS HE HAS RECEIVED (AND TO MAKE PAYMENTS INTO THE PENSION SYSTEM) SINCE THERE IS INSUFFICIENT CREDIBLE EVIDENCE TO CONCLUDE THAT THE DIRECTOR OF THE BUREAU OF NARCOTICS IS A

PFRS POSITION BY THE STATUTORY REQUIREMENTS AND DEFINITION IN N.J.S.A. 40A:9-119.2; NEITHER THE DIRECTOR POSITION (NOR THE UNDERSHERIFF POSITION) EXERCISES "ADMINISTRATIVE OR SUPERVISORY DUTIES OVER POLICEMEN OR FIREMEN;" THE BOARD'S DECISION IS ARBITRARY, CAPRICIOUS, UNREASONABLE, AND INCORRECT; AT THE VERY LEAST, THE MATTER SHOULD BE REMANDED FOR AN EVIDENTIARY HEARING.

POINT II

EQUITY, FUNDAMENTAL FAIRNESS AND DUE PROCESS (ALONG WITH NEW JERSEY STATE SUPREME COURT DECISIONS INCLUDING RUVOLDT V. NOLAN, 63 N.J. 171 (1973) ALONG WITH DECISIONS OF THIS COURT INCLUDING [Knox v. Public Employees' Retirement System, No. A-1444-10T3 (App. Div. Feb. 23, 2012)]) WARRANT A REVERSAL OF THE BOARD'S DECISION AS IT IS ARBITRARY, CAPRICIOUS AND UNREASONABLE; AT THE VERY LEAST, THE MATTER SHOULD BE REMANDED FOR AN EVIDENTIARY HEARING.

POINT III

THE BOARD ERRED IN FINDING AS A FACTOR ITS CONTENTION THAT MR. RECINOS DID NOT CONTACT THE DIVISION.

POINT IV

MR. RECINOS HAS THE REQUISITE BREAKS IN SERVICE WHICH WERE GREATER THAN [THIRTY] AND 180 DAYS AS TO ANY LAW ENFORCEMENT POSITION; THE DECISION OF THE BOARD MUST BE REVERSED.

POINT V

THE ITEM OF FULL POLICE POWERS IS NOT A QUESTION OF PENSIONABILITY AND SHOULD NOT PREVENT MR. RECINOS FROM RECEIVING HIS PENSION WHILE SERVING AS UNDERSHERIFF.

POINT VI

THE DECISION OF THE BOARD MUST BE REVERSED SINCE THE POSITION OF UNDERSHERIFF IS NOT LISTED ON ANY DOCUMENTS ISSUED BY THE PENSION BOARD REGARDING PENSIONABLE POSITIONS.

POINT VII

THE BOARD COMMITTED REVERSIBLE ERROR BY FINDING THAT THE EXPERT REPORT OF MR. MEYERS "IS ENTITLED TO NO WEIGHT"; AT THE VERY LEAST, THERE MUST BE A REMAND AND EVIDENTIARY HEARING CONSIDERING MR. [MEYERS'] REPORT AND CONCLUSIONS.

POINT VIII

THE RETIREMENT PLAN PROVIDED BY THE STATE OF NEW JERSEY TO POLICE OFFICERS AND FIREFIGHTERS WHO ARE VESTED IN THE PLAN CREATES RIGHTS THAT ARE PROTECTED BY THE UNITED STATES AND NEW JERSEY CONSTITUTIONS (THOUGH RAISED BELOW BY MR. RECINOS ... THE BOARD DID NOT ADDRESS THIS ISSUE).

POINT IX

THE POSITIONS OF THE DIRECTOR OF THE BUREAU OF NARCOTICS AND UNDERSHERIFF ARE NOT PFRS-ELIGIBLE POSITIONS BECAUSE THE TITLES DO NOT APPEAR ON THE DIVISION'S WEBSITE AS AN ELIGIBLE TITLE; NOR ARE THEY PERMANENT POSITIONS BUT ARE INSTEAD AT-WILL UNCLASSIFIED POSITIONS UNDER THE RULES OF CIVIL SERVICE WHICH PROHIBIT REENROLLMENT OF MR. RECINOS INTO THE [PFRS].

POINT X

THE EVER-CHANGING ILLEGITIMATE THEORIES PRESENTED BY THE DIVISION AND THE BOARD MADE IT IMPOSSIBLE FOR MR. RECINOS TO DEFEND AND PRESENT HIS CASE IN A PROPER MANNER; AT THE VERY LEAST, THE MATTER MUST BE REMANDED FOR AN

EVIDENTIARY HEARING (NOT RAISED BELOW).

POINT XI

THE BOARD ERRED IN DENYING MR. RECINOS' REQUEST FOR AN EVIDENTIARY ADMINISTRATIVE HEARING PARTICULARLY IN LIGHT OF THE CONFUSION IN THE RECORD SURROUNDING MR. RECINOS' POSITIONS.

“Our review of administrative agency action is limited.” Russo v. Bd. of Trs., Police & Firemen’s Ret. Sys., 206 N.J. 14, 27 (2011). Reviewing courts presume the validity of the “administrative agency’s exercise of its statutorily delegated responsibilities.” Lavezzi v. State, 219 N.J. 163, 171 (2014). For those reasons, “an appellate court ordinarily should not disturb an administrative agency’s determinations or findings unless 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.” In re Application of Virtua-West Jersey Hosp. Vorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). “The burden of demonstrating that the agency’s action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action.” In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

“[T]he test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder

could reasonably so conclude upon the proofs.” Brady v. Bd. of Review, 152 N.J. 197, 210 (1997) (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)). “Where . . . the determination is founded upon sufficient credible evidence seen from the totality of the record and on that record findings have been made and conclusions reached involving agency expertise, the agency decision should be sustained.” Gerba v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 83 N.J. 174, 189 (1980). That said, appellate courts review de novo an agency’s interpretation of a statute or case law. Russo, 206 N.J. at 27.

Here, we are satisfied that the Board properly followed the applicable law and its decision was neither arbitrary, capricious, nor unreasonable, but rather supported by substantial evidence in the record. We affirm substantially for the reasons expressed by the Board in its July 12, 2016 final decision. We have considered Recinos’ contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E).

Affirmed.

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[SEAL]

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
(609) 292-7524 TDD (609) 292-7718
www.state.jn.us/treasury/pensions

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July 12, 2016

Albert C. Buglione, Esquire
BUGLIONE, HUTTON & DEYOE, LLC
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RE: Mario Alberto Recinos
PFRS # 3-10-42728

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Buglione:

I am writing in reference to the action of the Board of Trustees of the Police and Firemen's Retirement System ("PFRS Board") in affirming the August 10,

2015 determination by the Division of Pensions and Benefits (Division) requiring the cancellation of retirement and reenrollment in the PFRS of Mario Recinos. The PFRS Board initially reviewed the matter at its meeting on December 14, 2015 but postponed the matter at your request. At its meeting on March 14, 2016, the Board again considered Mr. Recinos' appeal and voted¹ to reenroll him in the PFRS based on his appointment as Director of the Bureau of Narcotics, within the Passaic County Sheriff's Department, on November 30, 2011. As a consequence of this decision, Mr. Recinos' retirement allowance is cancelled, he is reenrolled in the PFRS as an active contributing member, is required to repay pension benefits to which he was not entitled, and pay contributions owed as a result of his covered employment. You appealed on behalf of the member. However, at its meeting on June 13, 2016, the Board voted to deny a hearing in the Office of Administrative Law because there are no factual matters at issue, only issues of law, in accordance with N.J.A.C. 17:1-1.5. The PFRS Board has reviewed your written submissions and the documentation accompanying your appeal, considered your statements and those of Mr. Recinos, and finds that the statutes and regulations governing the PFRS require the Board to cancel Mr. Recinos' retirement benefits and reenroll him as an active member of the Fund. Findings of Fact and Conclusions of Law, as outlined below were

¹ (Vote: 5-3; Trustees Barrett, Kaniuk, Bennett – Nae: Trustee Loccke abstained)

presented and approved by the PFRS Board at its July 11, 2016, meeting.

FINDINGS OF FACT

Mario Recinos was hired as a Correction Officer with the County of Passaic on September 4, 1982. He was subsequently enrolled in the PFRS effective February 1, 1983. At the time of retirement, he was serving as County Corrections Lieutenant for Passaic County and had accrued 28 years, 4 months of service credit, and qualified for Special Retirement benefits.

Mr. Recinos applied for Special Retirement benefits by application received on February 14, 2011, requesting a retirement date of June 1, 2011. A Certification of Service and Final Salary – Retirement was completed by Passaic County (County) on his behalf and received by the Division on February 16, 2011. The Board approved his retirement at its meeting on March 14, 2011. By letter dated March 14, 2011, the Division notified Mr. Recinos that his retirement was approved. The letter stated “if you return to public employment following your retirement, you must notify our Office of Client Services immediately (609) 292-7524.” Passaic County also received a copy of this notice. Mr. Recinos began receiving his monthly retirement allowance of \$8,177.64 on July 1, 2011, representing the benefit for June 2011, and received monthly benefits through March 1, 2016 when his pension was stopped pursuant to the Board’s March 14, 2016 decision.

On July 25, 2011, Mr. Recinos was rehired by the County as a Keyboarding Clerk 1, with an annual salary of \$41,120. He held this position through November 30, 2011. The Board notes that his June 1, 2011 retirement was bona fide because he observed a 30-day break in service after his retirement date.² Because the position is not eligible for PFRS enrollment, there is no question of reenrollment based on the Keyboarding position.³

Neither the County nor Mr. Recinos reported Mr. Recinos' return to employment to the Division or the Board at any time, despite the explicit statement to do so in the March 14, 2011 letter approving Mr. Recinos' retirement. The Board was unaware that Mr. Recinos engaged in post-retirement employment until 2015 when the Division was made aware of his employment through an anonymous tip and began an investigation.

On December 1, 2011, Mr. Recinos was appointed as Director of the Bureau of Narcotics under a Leave of Title/Leave of Absence from his permanent title of Keyboard Clerk 1 in CAMPS (County and Municipal Personnel System). Under the rules of Civil Service,

² Mr. Recinos was rehired before N.J.A.C. 17:1-17 was promulgated, which requires a break in service of at least 180 days before returning to work with the same employer in order for a retirement to be deemed bona fide.

³ It is noted that as a retiree from PFRS, he was ineligible for enrollment in any other State-administered retirement system after his retirement date. N.J.S.A. 43:3C-1. The only issue here is whether Mr. Recinos is required to reenroll in PFRS based on other post-retirement-employment.

the Director of Bureau of Narcotics position is an unclassified position although the office holder may hold a recognized title. e.g., Captain or Lieutenant. N.J.S.A. 40A:9-119.2 governs the position and reads:

The sheriff of any county may appoint any person who, at the time of his appointment, has: a. served for 10 years or more as a law enforcement official, three years of which shall have been in a supervisory position that included responsibilities for narcotic investigation or control activities; and b. has been certified by the Police Training Commission as having completed a police training course at an approved police training school, pursuant to PL. 1961, c. 56 (C. 52:1713-66 et seq.), as director of the bureau of narcotics, to serve for a term of one year without having to take a civil service examination. The director of the bureau of narcotics shall have full police officer status, as is granted to other sheriff's officers.

Applied here, the statute requires that the Director of the Bureau of Narcotics must be a law enforcement officer with police training as certified by the Police Training Commission, possessing full police powers, and having served at least 10 years of police duty, three of which must be in a supervisory position. The Director will also have full police officer status and supervisory duties over sheriff's officers who themselves are sworn police officers. The Board notes that this title is not included on the list of PFRS eligible titles available through the Division's website; the titles

of Sheriff's Captain, Sheriff's Chief, Sheriff's Investigator, Sheriff's Lieutenant, Sheriff's Officer, Sheriff's Officer, Bilingual, and Sheriff's Sergeant, which appear to be all other sheriff's officer titles, are included on the list.

Based on emails provided by you and Mr. Recinos in support of his appeal, Charles S. Meyers, MPA, CPM, CJM, Business Administrator, Passaic County Sheriff's Office, emailed Aurus Malloy at the Civil Service Commission on December 12, 2011, requesting to know which of two Director of Bureau of Narcotics titles available on the Civil Service Commission's website, 05891 or 07762, should be used for Mr. Recinos and if a current job description was available. Mr. Malloy responded later that day stating that 07762 is an Unclassified position for which Civil Service does not have a job title, but any "Director" title would "more or less indicate the responsibilities of the Director position." In that same email, Mr. Malloy provided a citation to N.J.S.A. 40A:9-119.2 and the text of the statute, including that the Director "shall have full police officer status. . . ." Neither Mr. Recinos nor Passaic County contacted the Division after these communications and after being provided with a statutory statement that the position has "full police officer status."

The Board Finds that the Director of the Bureau of Narcotics is a position eligible for PFRS enrollment by its' statutory definition; it requires 10 years or more as a law enforcement official, three years of which are supervisory, PTC training, and the Legislature determined that the position "shall have police officer

status, as is granted to other sheriff's officers." N.J.S.A. 40A:9-119.2

The record shows that, on February 3, 2014, Mr. Recinos accepted appointment as Undersheriff for Passaic County with no break in service following his service as Director of the Bureau of Narcotics. The rules of enrollment for Undersheriff are enumerated in N.J.S.A. 43:16A-3.5, which states:

Any member of the Police and Firemen's Retirement System of New Jersey who has been or shall be elected to the position of sheriff or who has accepted or shall accept appointment to the office or position of undersheriff may, by written notification to the Director of the Division of Pensions and the county treasurer, elect to continue to be a member of the retirement system while serving as sheriff or undersheriff and shall be deemed to have waived any and all benefits to which he would otherwise be entitled by eligibility for membership in the Public Employees' Retirement System. The county treasurer shall make deductions from the salary of the sheriff or undersheriff and contributions on his behalf to the Police and Firemen's Retirement System as is required by law for members of that system.

The Board finds that for members in PFRS, the position of Undersheriff is eligible for continued PFRS membership. Mr. Recinos was reemployed in a PFRS position as Director of Bureau of Narcotics, for which he was required to enroll in PFRS on December 1, 2011. Mr. Recinos was subsequently appointed as

Undersheriff of Passaic County which he presently continues to hold. Thus, Mr. Recinos has remained in PFRS eligible positions since December 1, 2011. Accordingly, pursuant to N.J.S.A. 43:16A-15.3, his PFRS retirement is cancelled effective December 1, 2011, the date he accepted appointment to the position of Director of Bureau of Narcotics and he is reenrolled as of that date as an active contributing member. Further, he is required to repay all pension payments he received after December 1, 2011 to which he was not entitled, and must pay contributions on salary he received from eligible employment. Mr. Recinos' appointment as Undersheriff continued his active PFRS enrollment.

By letters of appeal dated September 18, 2015, January 26, 2016, and May 4, 2016, you argue that the expert report authored by Charles Meyers of the Vyanka Group supports Mr. Recinos' appeal. Mr. Meyers opines that Mr. Recinos' retirement in 2011 was bona fide and that his return to employment as keyboarding clerk, Director of Bureau of Narcotics, and Undersheriff, without enrolling in PFRS, is in accordance with established rules and regulations. However, the Board notes that the Mr. Meyers is the former Warden of the Passaic County Jail and PFRS retiree, his biography⁴ on the Vyanka Group's website details all

⁴ The Vyanka Group's website, vyanka.com, identifies Meyers as "Founder and President" and states "he had a successful 28 year career in the Passaic County Sheriff's Office, one of New Jersey's largest full service Sheriff's Offices having held the ranks of Officer, Sergeant, Lieutenant, Captain, Warden/Chief, Undersheriff, and Sheriff. He also served as Director of Business

of the positions he held in the Passaic County Sheriff's Office, and the emails you provided show that Mr. Meyers was serving as County Business Administrator in 2011 and 2012. The Board does not accept this report as an expert opinion and finds it unpersuasive and unqualified. The opinion is not independent, since the purported expert has a direct conflict of interest as he is a fact witness in this matter since he corresponded with the Civil Service Commission about Mr. Recinos being appointed UnderSheriff. Rather, the Board finds that the governing requirements of the statutes and guiding regulations of the Fund were not properly stated by Mr. Recinos. Further, the record shows that Mr. Recinos did not contact the Division to inquire about the consequences of accepting either position, and thereby did not rely to his detriment on advice or information from the Division.⁵

On appeal, you state that Mr. Recinos waited more than 30 days before accepting the Keyboarding position on July 25, 2011, in compliance with N.J.A.C.

Administration and Business Administrator and was responsible for the day to day operations of the Court, Jail, Patrol, and Special Operations Divisions as well as budget control and fiscal accountability, budget analysis, procurement of goods and services, Human Resources/Personnel, internal controls, fiscal control of contracts, facility management, legal affairs and legal case analysis, policy and procedure development and implementation, Information Technology systems, labor negotiations, and statutory and regulatory compliance."

⁵ The Division's records show that Mr. Recinos contacted the Division to discuss his retired loan balance, retroactive increases in salary used to calculate his June 1, 2011 retirement, and direct deposit for his retirement benefit. No other contacts are recorded.

17:4-6.2 and N.J.A.C. 17:46.8 (c). Therefore, you argue his retirement from Passaic County is bona fide and he has substantially complied with the requirements for accepting post-retirement employment without jeopardizing his retirement. You argue further that the keyboarding position is only eligible for membership in the Public Employees' Retirement System (PERS) and would not require re-enrollment in the PFRS. The Board agrees that Mr. Recinos' retirement was bona fide according to N.J.A.C. 17:4-6.2, his employment in a non-PFRS position would have been acceptable under the regulations in force at that time. However, the keyboarding position is not at issue here. At issue is the PFRS eligible position he accepted on December 1, 2011. Mr. Recinos was required to reenroll in PFRS on December 1, 2011 when he accepted the position of Director of the Bureau of Narcotics, a position covered by PFRS, pursuant to N.J.S.A. 43:16A15.3.

You contend that relevant fact the sheets published by the Division: #29, *Employment After Retirement*, and #86, *Post Retirement Employment Restrictions*, do not support the Division's determination that Mr. Recinos must reenroll in PFRS. However, the Board notes that Fact Sheet #29 explicitly states,

N.J.S.A. 43:16A-15.3 requires that if you return to employment covered by the PFRS, you must suspend your retirement and reenroll in the PFRS as a condition of employment. All eligibility requirements must be met except the age requirement

[Emphasis in the original]

Meanwhile, Fact Sheet #86 is primarily concerned with the impact of regulations promulgated by the Division in March, 2012 to comply with requirements of the Internal Revenue Service for members who wish to return to employment with the same employer after retirement. Fact Sheet #86, published in August 2015, states.

If you are considering returning to work with your former employer, you must first determine if you have already met the requirements of a “bona fide severance of employment” as defined under N.J.A.C. 17:1-17.14(a)2. “Bona fide severance from employment” means there was a complete termination of the employer/employee relationship for a period of at least 180 days from the date of your retirement.

(Footnote – The IRS does not consider a pre-arranged return to public employment to be a bona fide severance from employment no matter how long the break in service.)

Fact sheet #86 does not address the specific issue of a PFRS retiree who returns to work in a PERS covered position other than to state: “Reenrollment in your former retirement system is generally required if you accept full-time employment in a position covered by that system.” It is clear that N.J.A.C. 17:1-17.14(a)2 did not apply until after Mr. Recinos accepted employment with the County as Director of Narcotics in 2011, and applies when he was appointed Undersheriff in early 2014. Further, any future post-retirement

employment with the County would be subject to the regulation.

In your appeal, you argue that Mr. Recinos' service as a Sheriff's Officer is substantially different than his pre-retirement job in Corrections, and should not be subject to the reenrollment provisions of PFRS statute. However, the Board notes that the title of the covered employment is not controlling, and whether a post retirement PFRS position is similar or dissimilar to the prior position is also not controlling. The relevant fact is the position's eligibility for PFRS enrollment whether that position is located in corrections or police work or firefighting, and whether reenrollment is required by the statute. As noted above, Mr. Recinos accepted the position of Director of the Bureau of Narcotics, a law enforcement position that required police training and granted law enforcement powers pursuant to N.J.S.A. 40A:9-119.2. Acceptance of the Undersheriff position is a continuation in PFRS-covered employment, as permitted by N.J.S.A. 43:16A-3.5. He continues in such employment through the present.

Finally, you argue that the position of Director of the Bureau of Narcotics is not a PFRS-eligible position because the title does not appear on the Division's website as an eligible title, and it is an unclassified position under the rules of Civil Service. The Board notes that the office holder may hold a recognized title, e.g., Captain or Lieutenant, but, despite the fact that the title is not included on the PFRS-eligible position list on the Division's website, N.J.S.A. 40A:9-119.2, which governs

the position, clearly indicates the office holder must meet the requirements for PFRS enrollment: The Director of the Bureau of Narcotics must be a law enforcement officer with police training as certified by the Police Training Commission, possessing full police powers, and has served at least 10 years of police duty, three of which must be in a supervisory position. The Director will also have supervisory duties over sheriff's officers who themselves are sworn police officers. Further, the statute grants the Director full police officer status. The Board determined that this position is eligible for PFRS enrollment, and Mr. Recinos must therefore be reenrolled effective December 1, 2011.

At its meeting of March 14, 2016, the PFRS Board reviewed Mr. Recinos' postretirement employment in light of the Division's August 10, 2015 determination. The Board determined that Mr. Recinos returned to PFRS eligible employment when he was appointed Director of Bureau of Narcotics and voted to require cancellation of his June 1, 2011 retirement and require reenrollment effective December 1, 2011. The Board explained that its decision is in compliance with N.J.S.A. 43:16A-15.3, and when Mr. Recinos again retires, his retirement allowance will be restored (subject to any remaining outstanding repayments). You were advised of the process to appeal the PFRS Board's decision.

By letter to the PFRS Board dated May 4, 2016, you appealed the Board's March 14, 2016, decision, and requested reconsideration. After careful review of the record, the Board denied reconsideration and denied

your request for a hearing at the Office of Administrative Law as a contested case. Your arguments for a hearing focus on Mr. Recinos observing the required break in service between his June 1, 2011 retirement and his return to employment as a Keyboarding Clerk. The Board agrees that the required break in service under the regulations in effect at that time was observed, and there is no factual dispute on this point. Your [sic] also focus on whether the Director of Bureau of Narcotics position supervises police and the fact that Mr. Recinos did not accept that position until more than six months after his retirement. Your argument focuses on whether Mr. Recinos must return to employment under N.J.S.A. 43:16A3.1. Again, the Board's decision is not based on that statute; the Board's decision is based on the requirements of N.J.S.A. 43:16A-15.3 and that the Director of Bureau of Narcotics positions is a PFRS position by the statutory requirements and definition in N.J.S.A. 40A:9-119.2. Finally, you assert that Mr. Recinos and Passaic County have been transparent in their actions through contact with the State. However, this contact was with the Civil Service Commission. The Board does not dispute that Mr. Recinos was hired in accordance with the Civil Service Commission's procedures, nor does the Board dispute Mr. Recinos' ability to hold these positions. The issue is whether Mr. Recinos has to enroll in the PFRS as a result of taking these positions, a question within the authority of the PFRS Board and the Division. At no point did Mr. Recinos or Passaic County contact the Division when Mr. Recinos returned to postretirement public employment, as required by the March 14, 2011 letter

approving Mr. Recinos' retirement. This Final Administrative Determination serves as formal notice that the Board has denied an administrative hearing.

CONCLUSIONS OF LAW

It is accepted that Mr. Recinos' June 1, 2011 retirement was bona fide, in compliance with N.J.A.C. 17:4-6.2, which states:

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or one month after the date of the retirement, whichever is later.

The record shows that the member retired on June 1, 2011 and returned to employment in a non-PERS position on July 25, 2011, more than 30 days after his retirement date, and after his pension was due and payable. His retirement was bona fide.

However, a retired member of PFRS is subject to the cancellation of his retirement and reenrollment in the Fund if, after retirement, he accepts a position that is eligible for enrollment pursuant to N.J.S.A. 43:16A-15.3, which states:

a. Except as provided in subsection b. of this section, if a former member of the retirement system who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance

and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of reenrollment. Such person shall be treated as an active member for determining disability or death benefits while in service. Upon subsequent retirement of such member, his former retirement allowance shall be reinstated based on his former membership. In addition, he shall receive an additional retirement allowance based on his subsequent service as a member computed in accordance with applicable provisions of this chapter; provided, however, that his total retirement allowance upon such subsequent retirement shall not be a greater proportion of his average final compensation or final compensation, whichever is applicable, than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement, but shall not be less than the death benefit that was applicable to his former retirement.

b. The cancellation, reenrollment, and additional retirement allowance provisions of subsection a. of this section shall not apply to a former member of the retirement system who was granted a retirement allowance pursuant

to section 1 of P.L.1999, c.96 (C.43:16A-5.1) prior to the effective date of P.L2011, c.78.

[Emphasis added.]

On December 1, 2011, Mr. Recinos accepted appointment to the position of Director of the Bureau of Narcotics. The requirements for the holder of this position are delineated in N.J.S.A. 40A:9-119.2 which reads:

The sheriff of any county may appoint any person who, at the time of his appointment, has: a. served for 10 years or more as a law enforcement official, three years of which shall have been in a supervisory position that included responsibilities for narcotic investigation or control activities; and b. has been certified by the Police Training Commission as having completed a police training course at an approved police training school, pursuant to PL. 1961, c. 56 (C. 52:17B-66 et seq.), as director of the bureau of narcotics, to serve for a term of one year without having to take a civil service examination. The director of the bureau of narcotics shall have full police officer status, as is granted to other sheriff's officers.

[Emphasis added]

N.J.S.A. 43:16A-3 reads in pertinent part,

After the date of the establishment of this retirement system, any person becoming a full-time policeman or fireman in a county or municipality or fire district located in a township

where, prior to the date this act takes effect, a pension under chapter 16 of Title 43 or article 4 of chapter 10 of Title 43 of the Revised Statutes for policemen or firemen has been established, shall become a member of this retirement system as a condition of his employment

A policeman is defined in N.J.S.A. 43:16A-1(2)a, which states:

- (a) "Policeman" shall mean a permanent, full-time employee of a law enforcement unit as defined in section 2 of P.L.1961, c.56 (C.52:17B-67) or the State, other than an officer or trooper of the Division of State Police whose position is covered by the State Police Retirement System, whose primary duties include the investigation, apprehension or detention of persons suspected or convicted of violating the criminal laws of the State and who:
 - (i) is authorized to carry a firearm while engaged in the actual performance of his official duties;
 - (ii) has police powers;
 - (iii) is required to complete successfully the training requirements prescribed by P.L.1961, c.56 (C.52:17B-66 et seq.) or comparable training requirements as determined by the board of trustees; and
 - (iv) is subject to the physical and mental fitness requirements applicable to the position

of municipal police officer established by an agency authorized to establish these requirements on a Statewide basis, or comparable physical and mental fitness requirements as determined by the board of trustees.

Accordingly, the statutory requirements for the position of Director of the Bureau of Narcotics clearly meet the requirements for enrollment in the PFRS: police powers, supervisory police powers, full-time employment, certification of training by the Police Training Commission, and full police officer status as is granted to other Sheriff's officers. Mr. Recinos met the physical and mental fitness requirement for membership upon his enrollment on February 1, 1983. His qualifications and appointment to the Director of the Bureau of Narcotics 'Clearly show he was eligible for PFRS enrollment on December 1, 2011.

By accepting appointment to the position, therefore, Mr. Recinos' retirement allowance must be cancelled and he is required to reenroll as an active contributing member effective December 1, 2011 as a condition of employment, pursuant to N.J.S.A. 43:16A-15.3.

Mr. Recinos remained as Director of the Bureau of Narcotics until February 2, 2014. Subsequently, he accepted the position of Undersheriff for Passaic County on February 3, 2014, and continues to serve in that capacity through the present. N.J.S.A. 43:16A-3.5, states:

Any member of the Police and Firemen's Retirement System of New Jersey who has been

or shall be elected to the position of sheriff or who has accepted or shall accept appointment to the office or position of undersheriff may, by written notification to the Director of the Division of Pensions and the county treasurer, elect to continue to be a member of the retirement system while serving as sheriff or undersheriff and shall be deemed to have waived any and all benefits to which he would otherwise be entitled by eligibility for membership in the Public Employees' Retirement System. The county treasurer shall make deductions from the salary of the sheriff or undersheriff and contributions on his behalf to the Police and Firemen's Retirement System as is required by law for members of that system.⁶

In accordance with N.J.S.A. 43:16A-3.5, upon his appointment as Undersheriff, Mr. Recinos was permitted to continue participation in his PFRS account due to the law enforcement power granted and exercised by him under N.J.S.A. 40A:9-119.2. If he were not granted law enforcement powers, he would be required to enroll in the PERS, now the DCRP, for elected and appointed officials pursuant to N.J.S.A. 43:15C-2. Importantly, Mr. Recinos was appointed Undersheriff of Passaic

⁶ With the enactment of P.L. 2007, c. 92, individuals who being employment after July 1, 2007 "pursuant to an appointment by an elected public official or elected governing body, that requires the specific consent or approval of the elected governing body of the political subdivision that is substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State . . . ' become members of the Defined Contributions Retirement Program rather than the Public Employees' Retirement System. N.J.S.A. 43: 15C-2(a)(3)

County without any break in service from his position as Director of Bureau of Narcotics, both positions with the same employer, Passaic County. Therefore, even if he had declined PFRS participation, he was ineligible to collect any pension benefit under IRS rules as set forth in the regulations until he has a bona fide retirement from Passaic County pursuant to N.J.A.C. 17:1-17.14 (180 day break in service with no prearrangement to return). The regulation was effective March 9, 2012, and states:

(a) Definitions. For purposes of this section, the following words and terms shall have the following meanings:

1. "Defined benefit plans" means the following: Public Employees' Retirement System, Teachers' Pension and Annuity Fund, Police and Firemen's Retirement System, State Police Retirement System, Judicial Retirement System, Prison Officers' Pension Fund, and Consolidated Police and Firemen's Pension Fund.

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.

Federal Internal Revenue Service factors shall be used as guidance in determining whether an employment relationship exists. A mandatory retirement shall be treated as a bona fide severance from employment.

(b) Qualified plan status. In accordance with the N.J.S.A. 43:3C-18, the defined benefit plans are established as qualified governmental defined benefit plans in accordance with Internal Revenue Code Sections 401(a) and 414(d), or such other provision of the Federal Internal Revenue Code as applicable, regulations of the United States Department of the Treasury, and other guidance of the Federal Internal Revenue Service.

(c) Requirement for a bona fide severance from employment. In order to maintain qualified plan status, as set forth in (b) above, Federal law requires that a defined benefit plan pay retirement benefits to a member only when there is bona fide severance from employment unless both of the following conditions are met:

1. The member has attained normal retirement age under the defined benefit plan; and
2. A defined benefit plan provides for the distribution without a bona fide severance From employment (also referred to as an “in-service distribution”). As of March 9, 2012, none of the defined benefit plans provide for an in-service distribution. The Federal law requirement does not apply to disability benefits.

(d) In order to demonstrate that there has been a bona fide severance from employment in compliance with federal law, each member and the member’s employer shall certify as part of the application for a retirement benefit that the member has had a bona fide severance from employment with the employer as of a specific date and that there is no pre-arranged agreement for that member to be reemployed by the employer as an employee, a contract employee, a leased employee, or an independent contractor. The certification shall be made under penalties of perjury.

(e) Investigation. In order to comply with Federal law, if an employee who has applied and commenced a retirement benefit is reemployed by the same employer (as used in this subsection, this term shall include the agencies of a single employer) within fewer than 180 days after the specified date of termination, the Division may, but is not required to, do the following:

1. Require the employee and employer to again certify that there was no prearranged agreement for the reemployment; and

2. Investigate the circumstances of the reemployment to determine if there was, in fact a bona fide severance from employment.

(f) If after investigation in (e) above, the Division determines that there was not a bona fide severance from employment, the Division may revoke the retirement of the member and require the repayment of benefits in order to protect the qualified status of the defined benefit plans in accordance with (b) above.

(g) As required by Federal law, the Division shall issue a Form 1099-R with respect to any retired member who receives a taxable distribution from the defined benefit plans. In order to fulfill its obligations under Federal law with respect to the defined benefit plans, the Division must identify those retired members who may be subject to a premature distribution penalty (10 percent of the taxable amount of the benefit) because they have not attained age 59 1/2. In the case of a retired member who returns to employment with the same employer (as defined in (e) above) within the 180-day period specified in (e) above, if the retired member has not attained age 59 1/2 during the time that some or all of distributions were made from the defined benefit plans, the Division shall code the Form 1099-R to indicate that the distribution is an "Early

Distribution” and that no known exception from the penalty applies.

Therefore, because Mr. Recinos had no break between his employment with Passaic County when he moved from Director of Bureau of Narcotics to Undersheriff, on the basis of the applicable statutes and regulations, Mr. Recinos’ retirement must be cancelled until such time as he has a bona fide separation from service with Passaic County and applies to retire again. He became an active PFRS member effective December 1, 2011, therefore he is not entitled to the pension benefits he received after that date. These monies, totaling \$359,816.16 as of August 1, 2015, must be recovered⁷, as well as payment of member contributions from salary received from covered employment totaling \$30,901.81 as of August 1, 2015.

On appeal, you argue that Mr. Recinos’ retirement was bona fide according to N.J.A.C. 17:4-6.2 because he waited more than 30 days from his retirement date before accepting a non-PFRS position with the County. The return to employment in the keyboarding clerk position is not at issue. Mr. Recinos’ June 1, 2011 retirement was bona fide in accordance with N.J.A.C. 17:4-6.2. However, even an individual with a bona fide retirement must re-enroll in PFRS if they return to PFRS-eligible employment in accordance with N.J.S.A. 43:16A-15.3 and N.J.S.A. 43:16A-1(2)a. The Board concludes that the position of Director of the Bureau of

⁷ Mr. Recinos received monthly benefits through March 1, 2016 when his pension was stopped pursuant to the Board’s March 14, 2016 decision.

Narcotic is a PFRS position based on the statutory definition and requirements for the position contained in N.J.S.A. 40A:9-119.2. Therefore, Mr. Recinos must re-enroll pursuant to N.J.S.A. 43:16A-1(2)a, and N.J.S.A. 43:16A-15.3

You also argue that the provisions of N.J.A.C. 17:1-17 do not apply to Mr. Recinos' return to employment as Director of Bureau of Narcotics. The Board agrees that the regulations at N.J.A.C. 17:1-17 were not promulgated at the time Mr. Recinos returned to employment as Director of Bureau of Narcotics. As discussed, above, Mr. Recinos' first retirement was bona fide. However, the regulations at N.J.A.C. 17:1-17.14, requiring compliance with the Internal Revenue Code, specifically a bona fide severance of employment of at least 180 days if returning to work with the same employer, were in effect when Mr. Recinos was appointed Undersheriff. As such, even if he does not elect to remain in PFRS while Undersheriff, his PFRS retirement benefit cannot be reinstated because he has not had a bona fide severance from employment with Passaic County for 180 days.

You also claim on appeal that the expert report and supplemental report of Charles S. Meyers of the Vyanka Group supports Mr. Recinos' position that he complied with all the rules and regulations governing PFRS retirement and returning to employment. As discussed in the Findings of Fact, the Board finds that Mr. Meyers's expert report is entitled to no weight, as it is a report about Meyers's own actions as Business Administrator when Mr. Recinos became Director of

Bureau of Narcotics. As noted above, neither Mr. Recinos nor Passaic County contacted the Division to inquire about post-retirement employment as required by the March 14, 2011, letter approving Mr. Recinos' retirement, nor did they refer to available fact sheets that offered salient information for retirees of the several pension Funds.

While you assert that there was constant contact with "the State" regarding Mr. Recinos' return to employment, the contact you refer to was with the Civil Service Commission. There is no dispute that Mr. Recinos' return to employment as keyboarding clerk, Director of Bureau of Narcotics and Undersheriff complied with Civil Service's procedures. There is no question that Mr. Recinos was eligible to hold these positions. However, the question of PFRS enrollment is not within the Civil Service Commission's purview; it is an issue for the Division and the PFRS Board, and, as discussed above, the PFRS Board determines that the position of Director of Bureau of Narcotics is a PFRS position.

Consequently, the Board determined that Mr. Recinos is required to reenroll in the PFRS as a result of his post-retirement employment beginning December 1, 2011 and contributions on salary collected. His retirement must be cancelled and repayments made on benefits to which he was not entitled because he became an active member again. The Division will calculate the amounts owed and certify payroll deductions to be taken from Mr. Recinos salary. When Mr. Recinos again retires, his original retirement will be reinstated

and an additional benefit will be calculated based on his employment after December 1, 2011. Repayments will continue from his restarted retirement allowance until the full obligation is satisfied.

As noted above, the PERS Board has reviewed your written submissions in accordance with the provisions of N.J.A.C. 17:1-1.5. Because this matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter 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 Police and Firemen's 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.

Sincerely,

/s/ Hank Schwedes
Hank Schwedes, Secretary
Board of Trustees
Police and Firemen's Retirement
System

a46

HS/G-10

C: Amy Chung, SDAG (ET)
Danielle Schimmel (DAG) (ET)
Cheryl Chianese, Retirement Bureau (ET)

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SUPREME COURT OF NEW JERSEY
C-485 September Term 2018
081684

Mario Alberto Recinos,

Petitioner,

Board of Trustees, Police and
Firemen's Retirement System,

Respondent.

ORDER

A petition for certification of the judgment in A-005590-15 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 14th day of January, 2019.

/s/ Heather J. Baker

CLERK OF THE
SUPREME COURT

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[SEAL]

STATE OF NEW JERSEY

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS

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CHRIS CHRISTIE
Govenor

FORD M. SCUDDER
Acting State Treasurer

KIM GUADANO
Lt. Govenor

FLORENCE J. SHEPPARD
Acting Director

June 14, 2016,

Albert C. Buglione, Esquire
401 Hamburg Turnpike
Suite 206
PO Box 2449
Wayne, NJ 07474-2449

RE: Mario Recinos
PFRS # 3-10-42728

Dear Mr. Buglione:

Please be advised the Board of Trustees of the Police and Firemen's Retirement System at its meeting of June 13, 2016 reviewed your letter dated, May 19, 2016 on behalf of your client, Mario Recinos, and denied your request for an administrative hearing, since

there are no questions of fact in dispute merely questions of law.

Therefore, the Board has directed the Secretary, in conjunction with the Attorney General's Office, to draft a detailed Finding of Facts and Conclusions of Law that will formally outline the Board's decision and become the Board's final administrative determination. Since the Board has denied your request for a hearing and will issue its Finding of Facts and Conclusions of Law. The Board will review and adopt these findings and conclusions and send a copy of the final decision to you. Upon receipt of this final administrative determination, you will have the right to appeal the Board's decision; hence, the 45 days to appeal this decision will not begin until the Board adopts the final administrative determination.

If you should have any questions, please contact our office at (609) 984-4297.

Sincerely,

/s/ Hank Schwedes
Hank Schwedes, Secretary
Board of Trustees
Police and Firemen's Retirement
System

sp/H-13
C: Mario Recinos

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[SEAL]

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FORD M. SCUDDER
Acting State Treasurer

FLORENCE J. SHEPPARD
Acting Director

March 16, 2016

[CORRECTED]

Albert C. Buglione, Esquire
BUGLIONE, HUTTON & DEYOE, LLC
401 Hamburg Turnpike, Suite 206
PO Box 2449
Wayne, NJ 07474-2449

RE: Mario Alberto Recinos
PFRS # 3-10-42728

Dear Mr. Buglione:

At its meeting of March 14, 2016, the Board of Trustees of the Police and Firemen's Retirement System (PFRS) reviewed your personal statements and

submissions dated September 18, 2015 and January 26, 2016, both with attachments, on behalf of your client, Mario Recinos. You are appealing the Division of Pensions and Benefit's (Division) August 10, 2015, determination that Mr. Recinos' post retirement employment requires reenrolment in the PFRS pursuant N.J.S.A. 43:16A-15.3. (The matter had been scheduled but postponed at your request at the December 14, 2015 meeting.)

The record shows that Mr. Recinos retired effective June 1, 2011 from his Detective Lieutenant position with the Passaic County Sheriff's Department (County) with 28 years, 4 months of service credit. He has received a monthly retirement benefit of \$8,177.64 since July 1, 2011. On July 25, 2011, he was hired by the County as a Keyboarding Clerk 1, with a salary of \$41,120. He held this position through November 30, 2011. The Board notes that his June 1, 2011 retirement was bona fide because he observed a 30-day break in service after his retirement date.¹ Because it is not eligible for PFRS enrollment, there is no question of reenrollment based on the Keyboarding position.²

On December 1, 2011, after a leave of absence from his keyboarding position, Mr. Recinos was appointed as

¹ Mr. Recinos was rehired before N.J.A.C. 17:1-17 was promulgated.

² It is noted that as a retiree from PFRS, he was and remains ineligible for enrollment in any other State-administered retirement system beyond his retirement date. The only issue here is whether Mr. Recinos is required to reenroll in PFRS based on post-retirement employment.

Director of the Bureau of Narcotics. Under the rules of Civil Service, this is an unclassified position, although the office holder may hold a recognized title, e.g., Captain or Lieutenant. N.J.S.A. 40A:9-119.2 governs the position and reads:

The sheriff of any county may appoint any person who, at the time of his appointment, has: a. served for 10 years or more as a law enforcement official, three years of which shall have been in a supervisory position that included responsibilities for narcotic investigation or control activities; and. b. has been certified by the Police Training Commission as having completed a police training course at an approved police training school, pursuant to PL. 1961, c. 56 (C. 52:17B-66 et seq.), as director of the bureau of narcotics, to serve for a term of one year without having to take a civil service examination. The director of the bureau of narcotics shall have full police officer status, as is granted to other sheriff's officers.

The Director of the Bureau of Narcotics must be a law enforcement officer with police training as certified by the Police Training Commission, possessing full police powers, and has served at least 10 years of police duty, three of which must be in a supervisory position. The Director will also has [sic] supervisory duties over sheriff's officers who themselves are sworn police officers.

The Board determines that the Director of the Bureau of Narcotics is a position eligible for PFRS enrollment.

On February 3, 2012, Mr. Recinos was appointed as Undersheriff. The Board notes there was no break in service following the position of Director of Narcotics. The rules of enrollment for Undersheriff are enumerated in N.J.S.A. 43:16A-3.5, which states:

Any member of the Police and Firemen's Retirement System of New Jersey who has been or shall be elected to the position of sheriff or who has accepted or shall accept appointment to the office or position of undersheriff may, by written notification to the Director of the Division of Pensions and the county treasurer, elect to continue to be a member of the retirement system while serving as sheriff or undersheriff and shall be deemed to have waived any and all benefits to which he would otherwise be entitled by eligibility for membership in the Public Employees' Retirement System. The county treasurer shall make deductions from the salary of the sheriff or undersheriff and contributions on his behalf to the Police and Firemen's Retirement System as is required by law for members of that system.

The Board notes that the position of Undersheriff is eligible for PFRS membership. It is also noted that Mr. Recinos continues to serve as Undersheriff of Passaic County.

On appeal, you argue that Mr. Recinos relied on the assurances of Charles Meyers, a PFRS retiree, County Business Administrator in 2011 and 2012, and former Warden of the County Jail, that accepting the positions of Director of Narcotics and Undersheriff

would not jeopardize his PFRS retirement benefits. The Board notes, however, it is not bound by advice offered by an employer. Further, the record shows that Mr. Recinos never contacted the Division to inquire about the consequences of accepting either position.³

You contend that relevant fact sheets – #29, *Employment After Retirement*, and #86, *Post Retirement Employment Restrictions*, published by the Division are incorrect and do not support the Division’s determination that Mr. Recinos must reenroll in PFRS. However, the Board notes that Fact Sheet #29 explicitly states,

N.J.S.A. 43:16A-153 requires that if you return to employment covered by the PFRS, you must suspend your retirement and reenroll in the PFRS as a condition of employment. All eligibility requirements must be met except the age requirement . . .

[Emphasis in the original]

Meanwhile, Fact Sheet #86 is primarily concerned with the impact of regulations promulgated by the Division in March, 2012 to comply with requirements of the Internal Revenue Service for members who wish to return to employment with the same employer after retirement. Fact Sheet #86, published in August 2015, states,

³ The Division’s records show that Mr. Recinos contacted the Division to discuss his retired loan balance, retroactive increases in salary used to calculate his June 1, 2011 retirement, and direct deposit for his retirement benefit. No other contacts are recorded.

If you are considering returning to work with your former employer, you must first determine if you have already met the requirements of a “bona fide severance of employment” as defined under N.J.A.C. 17:1-17.14(a)2. “Bona fide severance from employment” means there was a complete termination of the employer/employee relationship for a period of at least 180 days from the date of your retirement.

(Footnote – The IRS does not consider a pre-arranged return to public employment to be a bona fide severance from employment no matter how long the break in service.)

The fact sheet does not address the specific issue of a PFRS retiree who returns to work in a PFRS covered position other than to state: “Reenrollment in your former retirement system is generally required if you accept full-time employment in a position covered by that system.” While it is clear that the IRS-related regulation did not apply until after Mr. Recinos accepted employment with the County as Director of Narcotics and Undersheriff in 2011 and early 2012, any future post-retirement employment with the County would be subject to the regulation.

In your appeal, you argue that Mr. Recinos’ service as a Sheriff’s Officer is substantially different to his pre-retirement job in Corrections, and should not be subject to the reenrollment provisions of PFRS statute. However, the Board notes that the type of covered employment is immaterial. If a position is eligible for

PFRS enrollment, whether in corrections or police work or firefighting, enrollment is mandatory. Mr. Recinos, as noted above, accepted the Director of Narcotics position which required full police training and powers, pursuant to N.J.S.A. 40A:9119.2. Acceptance of the Undersheriff position is a continuation in covered employment, as permitted by N.J.S.A. 43:16A-3.5. He continues in such employment through the present.

On the basis of the forgoing, the Board voted⁴ to cancel Mr. Recinos' retirement and reenroll him effective December 1, 2011. As a consequence, his retirement allowance is cancelled immediately and he will be required to reenroll in the PFRS as an active contributing member. Mr. Recinos is required to repay all pension payments he has received to which he is not entitled and is required to pay contributions on salary he has received from his date of reenrollment, December 1, 2011. The Division's Retirement and Enrollment Bureaus will calculate the exact amounts owed and inform Mr. Recinos of the results. He will also receive additional pension credit based on his service from December 1, 2011 once payment of contributions for this service is received by the Division. The Board's decision is in compliance with N.J.S.A. 43:16A-15.3, which states:

- a. Except as provided in subsection b. of this section, if a former member of the retirement system who has been granted a retirement

⁴ 4-3 (Trustees Bennett, Kaniuk, And Barrett nae; Trustee Loccke properly recused)

allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of reenrollment. Such person shall be treated as an active member for determining disability or death benefits while in service. Upon subsequent retirement of such member, his former retirement allowance shall be reinstated based on his former membership. In addition, he shall receive an additional retirement allowance based on his subsequent service as a member computed in accordance with applicable provisions of this chapter; provided, however, that his total retirement allowance upon such subsequent retirement shall not be a greater proportion of his average final compensation or final compensation, whichever is applicable, than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement, but shall not be less than the death benefit that was applicable to his former retirement.

b. The cancellation, reenrollment, and additional retirement allowance provisions of

subsection a. of this section shall not apply to a former member of the retirement system who was granted a retirement allowance pursuant to section 1 of P.L.1999, c.96 (C.43:16A-5.1) prior to the effective date of P.L.2011, c.78.

When Mr. Recinos decides to apply again for retirement, he must submit an *Application for Retirement Allowance* before becoming eligible to receive retirement benefits in accordance with N.J.A.C. 17:4-6.1. An application must be received at the Division for a prospective retirement date. He must cease all PFRS-covered employment in order to become eligible for a retirement allowance. Again, it is noted that the requirements of N.J.A.C. 17:1-17.14 will apply to Mr. Recinos should he choose to seek employment with the County after he retires again.

The Division will calculate the amount of contributions owed on salary he has received. Contributions will continue through a future date of termination and will sustain additional service and salary credit for the calculation of additional retirement benefits. Contributions owed must be paid prior to the commencement of retirement. Once a retirement is processed, the Bureau of Retirements will impose a repayment schedule over 5 years for all pension Mr. Recinos has been overpaid. Again, the Division will calculate the amounts owed as of his retirement date.

However, Mr. Recinos may request a longer repayment schedule of up to 10 years to satisfy the overpayment if he provides proofs of his need. Such proofs

include his most recent year's tax returns, a statement of income and expenses that show that an extended repayment plan is needed, and any other documents that he believes would be helpful. Please submit this information to my attention in the Board Office within 30 days of this letter.

If Mr. Recinos chooses to remain in employment, repayments will be certified by the Division as payroll deductions. If he retires again before the total obligation is repaid, any outstanding balance will be assessed as a receivable from a future retirement allowance.

In accordance with N.J.A.C. 17:1-5.5(b), any outstanding balance that may remain due to the Fund at the time of death will be deducted from any PFRS group life insurance benefit, and then from proceeds from any pension benefit, such as a last check benefit.

By copy of this letter, I am requesting that the Acting Director, Fraud and Abuse Unit, the Chief of Enrollments and Purchase Bureau, and the Chief of the Retirement Bureau, implement the Board's decision. Any questions in regard to the repayment should be referred to the Retirement Bureau at: Division of Pensions and Benefits, PO box 295, Trenton, NJ 08625. Mail sent overnight should be sent to 50 West State Street, 1st Floor.

Mr. Recinos is advised to carefully review all publications provided to retirees, as they are the means to keep members informed of issues that affect their benefits. Particularly, future newsletters to retirees will

update members on any changes to earnings limits and matters affecting reemployment after retirement. Retirees needing guidance on returning to employment should visit the Division's website at www.state.nj.us/treasury/pensions and refer to the fact sheets on employment after retirement. Retirees needing additional clarification should contact the Division to determine the impact a return to employment would have on their retirement benefits.

If you disagree with the determination of the Board, an appeal may be filed by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for the disagreement with the Board's determination and shall include any relevant documentation supporting the claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A.52:14B-1 and the Uniform Administrative Procedure Rule, N.J.A.C. 1:1-1 et seq. Administrative hearings shall be conducted by The Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.1.

If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination which shall include detailed findings of

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fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division. If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law.

Sincerely,

/s/ Hank Schwedes
Hank Schwedes, Secretary
Board of Trustees
Police and Firemen's Retirement
System

F-3

C: S. Grant (ET); M. Casey (ET); C. Chianese (ET);
B. Brozena (ET); L. Barnett (ET)

Mario Recinos

Passaic County (ET)
Jacqueline Gonzalez, Certifying Officer
jacquelineg@passaiccountynj.org

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[SEAL]

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
(609) 292-7524 TRS 711 (609) 292-6683
www.state.jn.us/treasury/pensions

CHRIS CHRISTIE
Govenor

KIM GUADANO
Lt. Govenor

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Location:
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Trenton, New Jersey

ROBERT A. ROMANO
Acting State Treasurer

FLORENCE J. SHEPPARD
Acting Director

October 20, 2015

REVISED

Albert C. Buglione, Esquire
Buglione, Hutton & DeYoe, LLC
PO Box 2449
Wayne, NJ 07474-2449

RE: Mario Alberto Recinos
PFRS Retirement # 3-10-42728/
Membership # 3-47454

Dear Mr. Buglione:

This correspondence is in reference to your client's
retirement account in the Police and Firemen's

Retirement System (PFRS). The Division has conducted a post-retirement review of his PFRS membership.

As you know, Mr. Recinos retired as a Detective Lieutenant at the Passaic County Sheriff's Department (PCSD) effective June 1, 2011. You had twenty eight (28) years and four (4) months pension service credit at that time.

Shortly thereafter, on July 25, 2011, he was hired by Passaic County as a Keyboarding Clerk 1. The annual salary was \$41,120.00. You held the Keyboarding Clerk position for approximately 4 months until November 30, 2011.

One day later, December 1, 2011, he was appointed the position of Director of Bureau of Narcotics for Passaic County. Your starting salary was \$77,225.00. He held this position until February 2, 2014, and his ending salary was \$82,354.00.

On February 3, 2014, he was appointed Undersheriff for Passaic County, and your starting salary was \$90,000.00. At present you remain employed as an Undersheriff, and your annual salary is presently \$91,800.00.

N.J.S.A. 43:16A-15.3 and N.J.A.C. 17:4-6.8(a)1 require that when PFRS retiree returns to PFRS-eligible employment, their retirement must be suspended and they must reenroll in the PFRS as a condition of employment.

The statute states (in part):

a. Except as provided in subsection b. of this section, if a former member of the retirement system who has been granted a retirement allowance for any cause other than disability becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of reenrollment. Such person shall be treated as an active member for determining disability or death benefits while in service. Upon subsequent retirement of such member, his former retirement allowance shall be reinstated based on his former membership. In addition, he shall receive an additional retirement allowance based on his subsequent service as a member computed in accordance with applicable provisions of this chapter; provided, however, that his total retirement allowance upon such subsequent retirement shall not be a greater proportion of his average final compensation or final compensation, whichever is applicable, than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement,

but shall not be less than the death benefit that was applicable to his former retirement.

The administrative code states. (in part):

(a) A member, who is pending retirement or whose retirement has become effective pursuant to N.J.A.C. 17:4-6.2, is required to re-enroll in the Police and Firemen's Retirement System pursuant to N.J.S.A. 43:16A-15.3, regardless of whether the member is over age 35, if:

1. The member returns to the employment in a PFRS covered position;

The positions of Director of Bureau of Narcotics and Undersheriff have clear administrative and supervisory responsibilities over the subordinate officers at the Passaic County Sheriff's Department. Since the position of Undersheriff directly followed Mr. Recino's position of Director of Bureau of Narcotics, he is required to continue your second PFRS membership in this position.

There are several notable duties listed in the Job Description that require the Director Bureau of Narcotics and Undersheriff to directly oversee the sheriff's officers.

The following are the Job Descriptions as provided by the Passaic County Sheriff's Department.

"DIRECTOR OF BUREAU OF NARCOTICS"

"Responsibilities of overseeing the Division of Investigations of various crime, but more specifically narcotics, prostitution, gambling and

illegal firearms possession and/or distribution, and if necessary, testify in court concerning their investigations. These Detectives may need to work in an undercover capacity, conduct interview and interrogations, conduct surveillances, cultivate informants, communicate with federal, state and local agencies, and conduct searches of homes or other locations.”

“40A:9-119.2. Director of bureau of narcotics;”

“The sheriff of any county may appoint any person who, at the time of his appointment, has: a. served for 10 years or more as a law enforcement official, three years of which shall have been in a supervisory position that included responsibilities for narcotic investigation or control activities; and b. has been certified by the Police Training Commission as having completed a police training course at an approved police training school, pursuant to P. L. 1961, c. 56 (C. 52:17B-66 et seq.), as director of the bureau of narcotics, to serve for a term of one year without having to take a civil service examination. The director of the bureau of narcotics shall have full police officer status, as is granted to other sheriff’s officers.”

“UNDERSHERIFF”.

“Definition: Under direction, plans, organizes, directs, and commands the operation of major division(s) of the Sheriff’s Department; and performs related work as required.”

“DISTINGUISHING CHARACTERISTICS: This is an at-will, assistant department head class. The incumbent is exempt from Civil Service and serves at the pleasure of the department head. This is the chief administrative class in the Sheriff’s Department, and is responsible for directing the operations of all the major divisions of the department, including patrol, corrections, and administration. The Undersheriff. also assumes command of the department in absence of the Sheriff.”

“EXAMPLES OF DUTIES:”

1. Directs operational and administrative activities in the Sherriff’s Department; supervises patrol operations; corrections and administrative divisions of the department.
2. Develops, implements, interprets, and enforces policies and procedures related to law enforcement services in” Passaic County: “reviews and makes recommendations related to legislation which would impact the activities of the department; prepares reports concerning management problems and other administrative functions.
3. Plans for utilization of resources and assists in the preparation, administration and-man-agement of the department budget.
4. Coordinates activities with other law enforcement agencies and officers and with federal, state and local law enforcement and correc-tions agencies in maintaining law and order; develops emergency response plans.

5. Plans and directs development and implementation of programs related to law enforcement activities, including the prevention and investigation of crimes, protection of life and property, care and custody of prisoners, communications and related activities.
6. Supervises and evaluates staff.
7. Represents the Sheriff at public and civic meetings; acts for the Sheriff in the Sheriff's absence; represents the Sheriff's Department to the public, community agencies, and other law enforcement agencies.
8. Speaks before groups and boards.

Given the aforementioned facts and statute, it is clear that Mr. Recinos should have re-enrolled in the PFRS based on your position as Director of Bureau of Narcotics. A Re-enrollment form should have been completed to make his membership active with the Passaic County Sheriff's Department. With his PFRS membership becoming-active on December 1, 2011, his June 1, 2011, PFRS retirement will be suspended as of the January 1, 2012 check, the payment for the month of December, and Mr. Recinos will be enrolled into a new PFRS account.

It is regrettable that the employer, Passaic County Sheriff's Department, did not properly identify his Director of Bureau of Narcotics and Undersheriff positions as PFRS-eligible. Unfortunately the Division does not have the authority to waive overpayments due from your return to employment. We are required to

stop his pension benefit checks. As a retiree who returned to employment, Mr. Recinos will be required to reimburse the PFRS for all the pension benefit checks issued to you after December 1, 2011.

Mr. Recinos has received pension benefits totaling \$359,816.16 for the period after December 1, 2011 through August 1, 2015. In addition to the pension benefit repayment due, your client will also be billed for the \$30,901.81 in back pension contributions due for your Passaic County PFRS employment. As a result of Mr. Recinos's return to employment, his retirement account will be in a suspended status and he will be re-enrolled in a Tier-3 PFRS account. Since Mr. Recinos is over age 55, he will be eligible to retire from your second PFRS account the first of the month after he separates employment (he must file your application for retirement prior to your date of retirement; no retroactive filing is permitted). If Mr. Recinos retires effective December 1, 2015 he will have accrued 48 months of service credit, or 4 years of service. His retirement benefit from his second retirement account would be equal to 2% of his final compensation for each year of service, or 8%. The final compensation in a tier 3PFRS account is the average of your highest three fiscal years salary.

It is important to note that if Mr. Recinos passes away during his second active PFRS membership, no benefits from the previous membership or retirement are payable. This means that survivor benefits from your suspended retirement will not be paid to your beneficiaries. The benefits from your active PFRS membership will be payable to your beneficiaries.

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If you or Mr. Recinos wish to provide an additional response regarding your appeal your statements and/or supporting documentation must be submitted to Hank Schwedes, PFRS Board Secretary, at the above mailing address. You have the right to make a personal appearance before the Board and will be given further instructions relative to this option. Should you have any questions regarding this matter please contact Susan Grant, Acting Director, Pension Fraud and Abuse Unit at-609-984-4810.

Please be advised that this letter is a revision, it supersedes all previous correspondence.

Sincerely,

/s/ Kristin Bell
Kristin Bell, Investigator
Pension Fraud and Abuse Unit

Cc: PFRS Board Secretary
Passaic County
Mario Alberto Recinos

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[SEAL]

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
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ROBERT A. ROMANO
Acting State Treasurer

FLORENCE J. SHEPPARD
Acting Director

August 10, 2015

Mario Alberto Recinos
22 Rumana Road
Wayne, New Jersey 07470

RE: PFRS Retirement # 3-10-42728/
Membership #3-47454

Dear Mr. Recinos:

This correspondence is in reference to your retirement account in the Police and Firemen's Retirement System (PFRS). The Division has conducted a post-retirement review of your PFRS membership.

As you know, you were retired as a Detective Lieutenant at the Passaic County Sheriff's Department (PCSD) effective June 1, 2011. You had twenty eight (28) years and four (4) months pension service credit at that time.

Shortly thereafter, on July 25, 2011, you were hired by Passaic County as a Keyboarding Clerk 1. The annual salary was \$41,120.00. You held the Keyboarding Clerk position for approximately 4 months until November 30, 2011.

One day later, December 1, 2011, you were appointed the position of the Director of Bureau of Narcotics for Passaic County. Your starting salary was \$77,225.00. You held this position until February 2, 2014, and your ending salary was \$82,354.00.

On February 3, 2014, you were appointed Undersheriff for Passaic County, and your starting salary was \$90,000.00. At present you remain employed as an Undersheriff, and your annual salary is presently \$91,800.00.

N.J.S.A. 43:16A-15.3 requires that when PFRS retiree returns to PFRS-eligible employment, their retirement must be suspended and they must reenroll in the PFRS as a condition of employment. N. J. S. A. 43:16A-3.1 is the operative statute that defines service for appointed positions for PFRS members who take a position such as you have with Passaic County.

The statute states:

1. *Service with a law enforcement unit or fire-fighting unit to which the provisions of P. L. 1944, c.255 (C43:16A-1 et seq.) apply in an appointive capacity with administrative or supervisory duties over policemen or firemen or any combination thereof by any person who not more than six months prior to such service served as a member of that or any other law enforcement unit or firefighting unit, as the term "member" is defined in section 1 of P. L. 1944, c.225 (C:43:16-14), shall be deemed to be a service member under and for all the purposes of the provisions of the act of which the act is a supplement. L1965, c.186 s. 1; amended 1992, c. 73, s. 1; 2000, c. 166.*

The positions of Director of Bureau of Narcotics and Undersheriff have clear administrative and supervisory responsibilities over the subordinate officers at the Passaic County Sheriff's Department. Since the position of Undersheriff directly followed your position of Director of Bureau of Narcotics, you are required to continue your second PFRS membership in this position.

There are several notable duties listed in the Job Description that require the Director Bureau of Narcotics and Undersheriff to directly oversee the sheriff's officers.

The following are the Job Descriptions as provided by the Passaic County Sheriff's Department.

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“Responsibilities of overseeing the Division of Investigations of various crime, but more specifically narcotics. prostitution, gambling and illegal firearms possession and/or distribution, and if necessary, testify in court concerning their investigations. These Detectives may need to work in an undercover capacity, conduct interview and interrogations, conduct surveillances, cultivate informants, communicate with federal, state and local agencies, and conduct searches of homes or other locations.”

“40A:9-119.2. Director of bureau of narcotics;”

“The sheriff of any county may appoint any person who, at the time of his appointment, has: a. served for 10 years or more as a law enforcement official, three years of which shall have been in a supervisory position that included responsibilities for narcotic investigation or control activities; and b. has been certified by the Police Training Commission as having completed a police training course at an approved police training school, pursuant to P. L. 1961, c. 56 (C. 52:17B-66 et seq.), as director of the bureau of narcotics, to serve for a term of one year without having to take a civil service examination. The director of the bureau of narcotics shall have full police officer status, as is granted to other sheriff’s officers.”

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“**Definition:** Under direction, plans, organizes, directs, and commands the operation of major division(s) of the

Sheriff's Department; and performs related work as required."

"DISTINGUISHING CHARACTERISTICS: This is an at-will assistant department head class. The incumbent is exempt from Civil Service and serves at the pleasure of the department head. This is the chief administrative class in the Sheriff's Department, and is responsible for directing the operations of all the major divisions of the department, including patrol, corrections, and administration. The Undersheriff also assumes command of the department in absence of the Sheriff."

"EXAMPLES OF DUTIES:"

1. Directs operational and administrative activities in the Sherriff's [sic] Department: supervises patrol operations, corrections and administrative divisions of the department.
2. Develops, implements, interprets, and enforces policies and procedures related to law enforcement services in" Passaic County: "[sic]reviews and makes recommendations related to legislation which would impact the activities of the department; prepares reports concerning management problems and other administrative functions.
3. Plans for utilization of resources and assists in the preparation, administration and management of the department budget.
4. Coordinates activities with other law enforcement agencies and officers and with federal,

state and local law enforcement and corrections agencies in maintaining law and order; develops emergency response plans.

5. Plans and directs development and implementation of programs related to law enforcement activities, including the prevention and investigation of crimes, protection of life and property, care and custody of prisoners, communications and related activities.
6. Supervises and evaluates staff.
7. Represents the Sheriff at public and civic meetings; acts for the Sheriff in the Sheriff's absence; represents the Sheriff's Department to the public, community agencies, and other law enforcement agencies.
8. Speaks before groups and boards.

Given the aforementioned facts and statute it is clear that you should have re-enrolled in the PFRS based on your position as Director of Bureau of Narcotics: A Re-enrollment form should have been completed to make your membership active with the Passaic County Sheriff's Department. With your PFRS membership becoming active on December 1, 2011, your June 1, 2011, PFRS retirement will be suspended as of the January 1, 2012 check, the payment for the month of December, and you will be enrolled into a new PFRS account.

It is regrettable that the employer, Passaic County Sheriff's Department, did not properly identify your Director of Bureau of Narcotics and Undersheriff positions as PERS-eligible. Unfortunately the Division

does not have the authority to waive overpayments due from your return to employment. We are required to stop your pension benefit checks. As a retiree who returned to employment, you will be required to reimburse the PFRS for all the pension benefit checks issued to you after December 1, 2011.

You have received pension benefits totaling \$359,816.16 for the period after December 1, 2011 through August 1, 2015. In addition to the pension benefit repayment due, you will also be billed for the \$30,901.81 in back pension contributions due for your Passaic County PERS employment. As a result of your return to employment, your retirement account will be in a suspended status and you will be re-enrolled in a Tier-3 PERS account. Since you are over age 55, you will be eligible to retire from your second PFRS account the first of the month after you separate employment (you must file your application for retirement prior to your date of retirement; no retro-active filing is permitted). If you retire effective December 1, 2015 you will have accrued 48 months of service credit, or 4 years of service. Your retirement benefit from your second retirement account would be equal to 2% of your final compensation for each year of service, or 8%. Your final compensation in a tier 3 account is the average of your highest three fiscal years salary.

It is important to note that if you pass away during your second active PFRS membership, no benefits from the previous membership or retirement are payable. This means that survivor benefits from your

suspended retirement will not be paid to your beneficiaries. The benefits from your active PFRS membership will be payable to your beneficiaries.

If you do not agree with our determination, you do have the right to appeal to the PFRS Board of Trustees. However, you should be aware that the Board's review of this matter must be consistent with the specific legal standards of the statutes and regulations of the retirement system. If you wish to appeal to the Board of Trustees, send a written statement outlining, in detail, the reason for your disagreement with the Division's determination within 45 days of this notification. Your request to appeal should include any and all supporting documentation and must be submitted to Hank Schwedes, PFRS Board Secretary, at the above mailing address. You have the right to make a personal appearance before the Board and will be given further instructions relative to this option..

If you do not respond within 45 days of this notification; the division will suspend your retirement benefits and bill you for the recovery of benefits as well as active membership pension contributions. The Division can offer a repayment schedule of 48 months. Any repayment arranged beyond this must be approved by the PFRS Board of Trustees. Should you have any questions regarding this matter please contact Susan Grant, Acting Director, Pension Fraud and Abuse Unit at 609-984-4810.

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Sincerely,

/s/ M Casey

Mark Casey, Investigator
Pensions Fraud and Abuse Unit

Cc: Enrollments
Retirements
PFRS Board Secretary
Passaic County
