



State of New Jersey

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

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

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

August 17, 2021

Sent via e-mail to: [REDACTED]

Michael T. Barrett, Esq.
Bergman & Barrett

[REDACTED]
[REDACTED]
[REDACTED]

RE: Lorraine M. Harwelik
TPAF [REDACTED] (Active Account)
TPAF [REDACTED] (Former Expired Account)

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Barrett:

I am writing in reference to the decision of the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) regarding your appeal of the Board's denial of the request of your client Lorraine Harwelik for continued participation under her expired TPAF [REDACTED] Tier 1 account (Tier 1 Account). The Board has reviewed your written submissions and all relevant documentation regarding Ms. Harwelik's request. However, based upon the facts presented therein, and the statutes governing the TPAF, the Board denied Ms. Harwelik's request for continued participation under TPAF Tier 1 membership.

FINDINGS OF FACT

The record shows that Ms. Harwelik established membership in the TPAF on January 1, 2006 based upon her employment with Classical Academy Charter School (Classical Academy) as a Latin Teacher/Substitute. Ms. Harwelik's pension contributions with this location continued

Michael T. Barrett, Esq.
RE: Lorraine Harwelik
August 17, 2021
Page 2

through June 30, 2008. At that time, Ms. Harwelik was not a vested member as her TPAF account comprised 36 months of service credit.

By letter dated March 8, 2010, the Division of Pensions and Benefits (Division) notified Ms. Harwelik and Classical Academy that her Tier 1 Account was scheduled to expire on September 30, 2010, after two years of inactivity. This notice indicated that when her Tier 1 Account expired Ms. Harwelik would lose the right to all TPAF membership benefits except for the withdrawal of her contributions.

On March 30, 2010, the Division received the Account Expiration Status-Employer Certification, completed by Classical Academy certifying that Ms. Harwelik "resigned".¹ The last known address for Ms. Harwelik was [REDACTED] [REDACTED]. On May 14, 2010, the Account Expiration Notice was mailed to this address.

On March 21, 2014, the Division received Ms. Harwelik's Report of Transfer/Multiple Enrollment Form. On September 29, 2014, Elizabeth Board of Education (BOE) was informed that the report of transfer form could not be processed because Ms. Harwelik had been off payroll for more than two years and therefore should be enrolled in a new TPAF account online through the Employer Pensions and Benefits Information Connection (EPIC). On October 6, 2014, an Enrollment Application was submitted through EPIC by Elizabeth BOE, which was acknowledged by the Division on October 21, 2014. Ms. Harwelik became employed in a TPAF-covered position through her employment with Elizabeth and she was enrolled under a new Tier 5 TPAF membership account [REDACTED] (Tier 5 Account) effective January 1, 2014.

On July 24, 2015, the Division received a letter from Vincent DeRosa, Principal of the Classical Academy Charter School of Clifton. The letter indicated that Ms. Harwelik's contract was not renewed. Specifically, the letter stated "[t]he reason for [Ms. Harwelik's] termination was

¹ The Account Expiration Notice was issued to [REDACTED].

Michael T. Barrett, Esq.
RE: Lorraine Harwelik
August 17, 2021
Page 3

the school management's decision, in assessing its more immediate instructional needs, not to renew Ms. Harwelik's employment contract. Thus, Ms. Harwelik's separation from the Classical Academy in June 2008 was her employer's decision, not her decision."

On July 28, 2015, Donna Wood, Supervising Pension Benefits Specialist, Loan/Withdrawal Section, advised Ms. Harwelik that based on the documentation provided, her employment contract was not renewed for the 2008-2009 school year -- not laid off or abolished from her position. The Division does not grant extensions beyond two years of inactivity for a member who is terminated due to non-renewal of the employment contract. On July 31, 2015, Mr. De Rosa sent a duplicate of the July 24, 2015 letter to Ms. Wood.

By letter dated August 4, 2015, Ms. Wood informed Ms. Harwelik that correspondence from Classical Academy indicated that her contract was not renewed. The Division does not grant extensions beyond two years of inactivity for members whose contracts were not renewed. Therefore, Ms. Harwelik's Tier 1 Account expired on September 30, 2012.

On October 23, 2015, the Division received a referral from the Governor's office regarding Ms. Harwelik's request for a review of the expiration of her Tier 1 Account and enrollment under the new Tier 5 Account. In response, Nikki Munko, Pensions Benefits Specialist 2, Enrollment and Purchase Bureau, advised Ms. Harwelik that after two years of inactivity in the TPAF, her Tier 1 Account expired pursuant to N.J.S.A. 18A:66-7. Under the provisions of N.J.S.A. 18A:66-8, a non-renewal of a teaching contract cannot extend the expiration of membership beyond two years. Ms Harwelik was also advised that if she wished to appeal that determination to the Board, she should direct her appeal to the Board Secretary.

Thereafter, by letter dated December 18, 2020, you requested that Ms. Harwelik be returned to the Tier 1 Account. On January 11, 2021, Ms. Wood informed you that Ms. Harwelik is not entitled to a ten-year extension on her account for the same reasons provided to Ms. Harwelik, as noted above.

Michael T. Barrett, Esq.
RE: Lorraine Harwelik
August 17, 2021
Page 4

On March 24, 2021, you appealed to the Board Secretary disputing the expiration of Ms. Harwelik's TPAF membership, claiming that Ms. Harwelik was laid off by Classical Academy, which qualifies her for the statutory exemption of expiration of membership beyond two years. The Board noted you provided an Account Expiration Status-Employer Certification indicating that Ms. Harwelik was laid off in your Exhibit B. There is no record in Ms. Harwelik's membership files which indicates that she was "laid-off."

At its meeting of May 6, 2021, the Board considered your submissions and the relevant documentation in the record. Thereafter, the Board denied your request to extend Ms. Harwelik's Tier 1 Account. By letter dated June 4, 2021, you appealed the Board's determination and requested a hearing in the Office of Administrative Law. At its meeting of July 1, 2021, the Board determined there are no issues of material fact and directed the Board Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law that will formally outline the Board's decision and become the Board's Final Administrative Determination. These Findings of Fact and Conclusions of Law were presented and approved by the Board at its August 5, 2021 meeting.

CONCLUSIONS OF LAW

The issue before the Board is whether Ms. Harwelik is eligible to extend her Tier 1 Account, which expired on September 30, 2010, two years after Ms. Harwelik's last pension deduction from her employment with Classical Academy on June 30, 2008.

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

Membership of any person shall cease:

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

...

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

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

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

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

The crux of your argument is that you contend Ms. Harwelik was laid off by Classical Academy and for that reason her Tier 1 Account should remain active beyond the two years of inactivity pursuant to N.J.S.A. 18A:66-8.

The Board found that Classical Academy informed Ms. Harwelik, a non-tenured teacher, that her employment contract for the 2008-2009 school year would not be renewed. The non-renewal of a non-tenured teacher's annual contract does not constitute a reduction in number or a discontinuance of service, which both pertain to tenured teachers. Cf. Pascack Valley Reg'l High Sch. Bd. of Educ. v. Pascack Valley Reg'l Support Staff Ass'n, 192 N.J. 489, 497 (2007) ("The practice of offering separate, annual employment contracts to non-tenured school employees is long-standing."); id. at 491 (noting nontenured school employees "have no right to the renewal of their individual contracts"); Bd. of Educ. v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497, 501 (App. Div. 1979) ("the right not to renew the contracts of non-tenured teachers" is "a

Michael T. Barrett, Esq.
RE: Lorraine Harwelik
August 17, 2021
Page 6

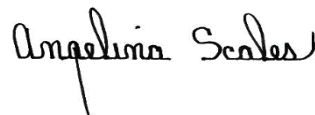
management prerogative"). The Board determined that the circumstances which resulted in non-renewal of Ms. Harwelik's contract with Classical Academy were not a lay-off which would qualify for the statutory exemption of expiration of membership beyond two years. Instead, Ms. Harwelik's annual contract was not renewed and her employment ended on June 30, 2008.

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

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

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

Sincerely,



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

G-4/AS

C: Lorraine Harwelik (sent via email to: [REDACTED])
Jeffrey Padgett, DAG (ET)
Nikki Munko (ET)