



# State of New Jersey

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October 6, 2017

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MELLK O'NEILL  
Edward A. Cridge, Esq.

[REDACTED]  
[REDACTED]

Sent via email: [REDACTED]

RE: Leon Jones

[REDACTED]  
[REDACTED]

Dear Mr. Cridge:

The Board of Trustees of the Teachers' Pension and Annuity Fund ("Board") has reviewed the Initial Decision ("ID") of the Hon. Laura Sanders, Administrative Law Judge (the "ALJ"), dated June 21, 2017, in the above-captioned matter, together with the joint stipulation of facts, the items submitted into evidence by the parties, the exceptions filed by DAG Nels J. Lauritzen, dated June 30, 2017 and the reply to exceptions filed by Edward A. Cridge, dated July 5, 2017<sup>1</sup>.

At its meeting of September 7, 2017, the Board voted to reject the ALJ's Initial Decision imposing a partial forfeiture of twenty percent. The Board affirmed its original determination to reduce Mr. Jones' monthly retirement allowance by forty percent, as authorized under N.J.A.C. 43:1-3 and N.J.A.C. 17:1-6.1. Findings of Fact and Conclusions of Law as outlined below were presented and approved by the Board at its October 5, 2017 meeting<sup>2</sup>.

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<sup>1</sup> Due to an administrative oversight, the reply to exceptions were not presented to the Board when the Board first considered this matter at its August 3, 2017 meeting. Further, in order for the Board to review the reply to exceptions, an extension of time for issuing a final decision was requested and granted.

<sup>2</sup> The Board requested and was granted an extension of time to present its Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Mr. Jones, a teacher employed by the Trenton City Board of Education ("TBE"), appealed the Board's decision of a partial forfeiture of forty percent due to criminal and administrative charges. The Board determined at its meeting of March 6, 2008, in accordance with N.J.A.C. 17:1-6.1(c)(4), that in light of the egregious nature of the charges Mr. Jones' monthly retirement should be reduced by forty percent. The Board determined this reduction in benefits was reasonably calculated to impose a forfeiture that reflects the nature and extent of his crimes while also recognizing his years of service. For the reasons set forth below, the Board rejected certain factual findings and legal conclusions contained therein.

The Board voted to reject the ALJ's conclusions that a partial forfeiture reduction of only twenty (20) percent be imposed. (Initial Decision at p. 17).

The Board found that the ALJ erred when she concluded that a 40% partial forfeiture of Mr. Jones' monthly retirement allowance was excessive, considering that Mr. Jones' had an ongoing sexual relationship with a minor student.

The Board's partial forfeiture of 40% of Mr. Jones' monthly retirement allowance was in accordance with N.J.S.A. 43:1-3 and N.J.A.C. 17:1-6.1 and was based on the nature of the activity in relation to his duty as a teacher in the community as well as the gravity and continuing nature of the misconduct.

The Board noted that the record reveals Mr. Jones was arrested on three counts of sexual assault of a minor student for which he enrolled in the Pre-Trial Intervention Program ("PTI"). Mr. Jones was also arrested and found guilty of a misdemeanor in Pennsylvania for which he was placed on probation for three years. (J-4, T:116-121).

On February 2, 2007, Mr. Jones was arrested by the Hamilton Township Police Department on three counts of sexual assault, under N.J.S.A. 2C:14-2c(3)(b) involving a minor named D.J.M. ("DJM"), who was a student at Mr. Jones' place of employment. (J-3). The arrest stemmed from over ten incidents of sexual intercourse with DJM. (J-3). During the time of the relationship and prior to his

retirement application submission, Mr. Jones' misconduct included sexual intercourse with minor DJM, long phone calls that occurred daily and lasted an hour to an hour and a half, and uncomfortable situations for the victim, including lying about the relationship, being berated by Mr. Jones' wife, quitting the softball team due to embarrassment, missing classes due to the situation, and negative media attention that Mr. Jones believes contributed to her poor grades at school and diminished social standing among her peers. (T:41-46, 143).

On May 30, 2007, Mr. Jones violated bail restrictions by having contact with DJM in Pennsylvania. (T:123). Indeed, while still being employed by and serving a suspension from the TBE, Mr. Jones was arrested by the Morrisville Police Department in Pennsylvania, where he was charged with: Corruption of Minors, Trespass by Motor Vehicle, and Indecent Exposure, also involving minor DJM. (J-4). Specifically, Mr. Jones drove across state lines to a park during school hours where he engaged in heavy amorous, physical contact with victim, partially undressing her, while he was still on suspension and out on bail. (T:51-57, T:133-142).

On August 2, 2007, Mr. Jones was admitted into the PTI. (J-3). As a condition of being admitted into PTI, Mr. Jones was required to undergo thirty-six months of intended supervision, a psychiatric evaluation with follow-up counseling, relinquish his New Jersey teaching license and agree not to teach or coach children under the age of eighteen. (J-3).

On September 17, 2007, Mr. Jones pleaded guilty to Corruption of Minors (18 Pa.C.S. §6301 §§A1) and was placed on thirty-six months of probation. (J-4).

On March 6, 2008, as a result of the charges and plea made by Mr. Jones, the Board voted to approve Mr. Jones for his Early retirement benefits, but, after weighing all factors as required under Uricoli v. PFRS, 91 N.J. 62, 77 (1982), N.J.S.A 43:1-3, and N.J.A.C. 17:1-6.1, the Board determined that it was reasonable to reduce Mr. Jones' monthly allowance by 40% due to the misconduct being "grave [and] continuing" as well as "reflect[ing] a high degree of moral turpitude since teachers are entrusted with safeguarding the well-being of children", pursuant to N.J.S.A. 43:1-3(d) and N.J.A.C. 17:1-6.1(c)(4). (J-8).

On August 6, 2008, Mr. Jones coached boys under the age of 18 in violation of the PTI. (T:26). In and around this time, the victim also moved into and lived in Mr. Jones' apartment for a time in 2008 and 2009 while she was pregnant with Mr. Jones' child. (T:154).

On October 2, 2009, Mr. Jones was arrested and incarcerated for violating his probation due to committing retail theft, violating the no contact order against DJM, and leaving the state. (T:111-116). He was incarcerated from October 2, 2009 through March 14, 2011. (T:113, 117). He was on probation in Pennsylvania. (T:116, 117).

The Board relied upon the decision Corvelli v. Bd. of Trs., Police and Firemen's Ret. Sys., 130 N.J. 539 (1992), where the Court emphasized that forfeiture was not solely limited to a member's convicted misconduct, stating:

Although Uricoli had been convicted of a crime, nowhere does our opinion in his case state that only criminal acts may constitute dishonorable service deserving of forfeiture. The term "honorable service" as used in Uricoli and other opinions is sufficiently generic to encompass a broad range of misconduct bearing on the forfeiture decision, including but not limited to criminal conviction. Item seven of the Uricoli balancing test, by requiring consideration of "the nature of the misconduct or crime," anticipates a situation in which non-criminal misconduct in office may result in forfeiture... [t]hus, the balancing test anticipates a situation in which non-criminal misconduct can factor into a pension-forfeiture decision.

[Corvelli, *supra*, 130 N.J. at 552.]

Thus, the Board is not restricted to considering only Mr. Jones' convictions. The Board is required to evaluate and consider all of his actions while in public service, in order to determine whether his misconduct and criminal activity violated the requirement of honorable public service and warranted a partial forfeiture of his service credit. N.J.S.A. 43:1-3(c).

In this matter, the Board found that the ALJ erred in deciding that the Board's determination to forfeit part of Mr. Jones' pension service credit in the amount of 40% was excessive and failed to take into consideration the egregious nature of Mr. Jones's criminal misconduct. Mr. Jones' misconduct and charges were related to his public duties. This was a serious breach of the public trust, particularly as Mr. Jones was a teacher. In addition to the factors that the Board was required to consider in

determining the level of forfeiture, the timing of the conduct was integral to the Board's determination.

Indeed, N.J.S.A. 43:1-3(d) states that:

[W]henever a board of trustees determines, pursuant to this section, that a partial forfeiture of earned service credit or earned pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.

Thus, the presumption is that the forfeiture of service credit begins as of the day of the misconduct.

The Board found that the evidence presented at the OAL hearing demonstrates a significant violation of laws and a direct breach of the public trust placed in teachers, and was directly related to Mr. Jones' official duties.

In the present case, the Board determined that the balance of the Uricoli factors warranted a partial forfeiture of Mr. Jones' pension in the amount of 40%. The Board weighed all eleven factors and found that Mr. Jones' misconduct was continual in nature, directly related to his public employment, and a gross betrayal of the public trust. The Board carefully considered Mr. Jones' misconduct and its relationship to the performance of his duties as a teacher. The Board took into account Mr. Jones' extracurricular activities and youth coaching during his tenure, but found that such past actions did not excuse his deplorable conduct, holding that the appropriate action was a partial forfeiture of benefits from TPAF.

Mr. Jones' misconduct taints the very essence of the duties of a teacher. Mr. Jones' actions have compromised the trust and integrity that Trenton residents should have for an individual entrusted with the care and development of minors. The misconduct in this case was not a single lapse in judgment, but a repeated breach of Mr. Jones' duty to the victim and the students of Trenton. The facts contained in the record establish the serious gravity of Mr. Jones' misconduct. The record shows a significant nexus between Mr. Jones' misconduct and his official duties as a public official, and illustrates the continual nature of Mr. Jones' misconduct. A partial forfeiture of 40% is not excessive

and is supported by the Court's holding in Corvelli, which held a Police Chief's conviction for weapons theft and his associated misconduct in office spanning two-and-a-half years demonstrated dishonorable service calling for a total forfeiture of his pension. Corvelli, supra, 130 N.J. at 541. In that case, the Court placed considerable weight on the continual nature of petitioner's misconduct in holding that a total forfeiture was warranted. Corvelli, supra, 130 N.J. at 546.

There are no such mitigating factors in the present case to lessen Mr. Jones' culpability. Mr. Jones' misconduct in this matter was also continual in nature and was directly related to his public employment, as he had sex with a student who attended his school on at least ten occasions. Mr. Jones did have long service as a teacher, but these mitigating factors are outweighed by the nature of his misconduct and the severity of harm inflicted by his misconduct upon the victims of this case: the students of Trenton and their collective public trust in the teaching profession. See, In re Seaman, 133 N.J. 67, 102 (N.J. 1993)(holding that despite the respondent's long service on the bench, and exemplary reputation as factors in mitigation of sanction, those factors were outweighed by the recurrent nature of petitioner's misconduct and the harm inflicted on the public's trust in the judiciary).

Pursuant to N.J.A.C. 17:1-6.1(c)(4), "in circumstances where the termination of pension rights as of the date of the misconduct results in no reduction, or a minimal reduction of pension or retirement benefits, or in an excessive forfeiture, as compared to the nature and extent of the misconduct and the years of honorable service, the Board may, in its sole discretion, provide a more equitable relief." N.J.A.C. 17:1-6.1(c). Specifically, the regulation allows the Board in the aforementioned circumstances to reduce the monthly retirement allowance based on a comparison of the nature and extent of the misconduct to the years of honorable service. See, N.J.A.C. 17:1-6.1(c)(4). Thus, a reduction in monthly allowance is allowed in circumstances where a minimal reduction would occur.

In addition, as the ALJ notes, the Appellate Division has previously upheld significant Board reductions in monthly retirement allowances in similar circumstances. See Leprince v. Board of Trustees, Teachers' Pension and Annuity Fund, 267 N.J. Super. 270, 272 (App.Div. 1993) (Reducing

monthly retirement allowance by over 55% from \$1,465.08 to \$655.02); see Corvelli, 130 N.J. 539 (Total forfeiture of pension for retaliatory acts against a subordinate).

In this case, the partial forfeiture of Mr. Jones' service and salary from the date of the offenses, August 2006 through June 2007 would have resulted in a minimal reduction of pension benefits, as compared to the egregious nature and extent of the misconduct. Specifically, the Board found that "this penalty was insufficient when considering the seriousness of his crimes and the fact that he committed the crimes at the end of his employment with the Trenton Board of Education does not negate the seriousness and egregiousness of his misconduct." (J-8).

A reduction using service credit would result in less than a 6% penalty, which is a relatively minimal reduction when compared to the gravity and extent of the misconduct. Mr. Jones' actions included a pattern of inappropriate sexual conduct toward a minor student he had supervisory control over by virtue of his position, arrests in two states, and creating an uncomfortable school environment for the victim, which included missed classes, having to quit the softball team caused as a result of the humiliation of the situation, poor grades, negative media attention and diminished social status amongst her peers. (Initial Decision at p. 8).

Here, the actions by Mr. Jones are similarly a violation of his public duties and the trust expected from a teacher. While Mr. Jones has a substantial length of service, his misconduct is as egregious if not more egregious than the aforementioned cases. Thus, a 40% reduction in monthly retirement allowance is justified pursuant to Leprince, Corvelli and N.J.A.C. 17:1-6.1(c). Therefore, contrary to the ALJ's recommended decision the Board properly considered the evidence and appropriately applied N.J.S.A 43:1-3 and N.J.A.C. 17:1-6.1 resulting in a 40% partial forfeiture of Petitioner's pension.

The ALJ found that the 40% reduction of Mr. Jones' monthly retirement allowance is unjustified because she did not find that Mr. Jones was the victim's teacher or coach. However, the facts show, and the ALJ acknowledges, that Mr. Jones had a sexual relationship with a minor student who he had supervisory control over by mere virtue of being a teacher within the same school the victim attended.

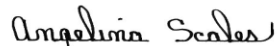
Edward A. Cridge, Esq.  
Re: Sylvester Leon Jones  
October 6, 2017  
Page 8

(Initial Decision at p. 16). The fact that he did not directly teach the victim is of no moment here. The facts also demonstrate that Mr. Jones violated his duty to safeguard children, as his misconduct involved moral turpitude in that he directly caused harm to the victim who was a minor. (J-4, J-5, J-6, J-7). Mr. Jones was a teacher, an adult, and expected to be a role model, while the victim was a minor student and someone who looked up to her teacher.

For the foregoing reasons, the Board rejected ALJ Sanders' conclusion that a partial forfeiture reduction of only twenty percent be imposed. The Board affirmed its original determination to reduce Mr. Jones' monthly retirement by forty percent.

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

Sincerely,



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

G-5

c: C. Law (ET); C. Chianese (ET)  
DAG Nels J. Lauritzen (ET)  
Sylvester Leon Jones  
OAL, Attn: Library (OAL Decisions) (ET)