

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3882-13T3

CARRIE B. JOHNSON,

Petitioner-Appellant,

v.

PUBLIC EMPLOYEES RETIREMENT  
SYSTEM,

Respondent-Respondent.

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Submitted April 14, 2015 – Decided June 12, 2015

Before Judges Ostrer and Hayden.

On appeal from the Board of Trustees of the  
Public Employees Retirement System, Docket No.  
2-10-209042.

Stephen R. Bosin, attorney for appellant.

John J. Hoffman, Acting Attorney General,  
attorney for respondent (Melissa H. Raksa,  
Assistant Attorney General, of counsel;  
Danielle P. Schimmel, Deputy Attorney General,  
on the brief).

PER CURIAM

Carrie B. Johnson appeals from the March 20, 2014 final determination of the Board of Trustees (the Board) of the Public Employees' Retirement System (PERS), which adopted the recommendation of the Administrative Law Judge (ALJ), approving

the Board's earlier decision that Johnson forfeited her service and salary from January 1, 2005 through October 7, 2005. After reviewing the record on appeal, we reverse and remand for the Board to thoroughly consider and balance the factors listed N.J.S.A. 43:1-3(c) for determining honorable service and forfeiture.

The facts are not contested here. Johnson was an employee of the Department of Corrections (DOC) and member of PERS from September 1977 through October 2005, when she retired after thirty-four years. At the time of her retirement, Johnson was an assistant commissioner with the DOC. On December 21, 2005, the Board approved her retirement application effective November 1, 2005. Thereafter, the Board learned that on September 19, 2005, the Executive Commission on Ethical Standards (the Ethics Commission) filed a complaint against Johnson, charging her with violating the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-16(b), N.J.S.A. 52:13D-23(e)(3), (7); applicable rules of the Ethics Commission, N.J.A.C. 19:61-1.1 to -7.5; and the DOC's Code of Ethics.

The complaint stated that in January 2005, Johnson, in her official capacity, approved a Restorative Justice Project<sup>1</sup> to

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<sup>1</sup> The Restorative Justice Program helps to teach prison inmates various job skills.

provide silk and live flower arrangements to Delta Sigma Theta sorority, of which Johnson was a member. The complaint further alleged that the project "was not the type of charitable or community service function that has been normally approved" and that it "was an unwarranted privilege to Johnson[.]" The complaint concluded that Johnson violated the DOC's Code of Ethics when she directed an employee to transport and pick up the floral arrangements for the sorority.

While the ethics complaint was pending, the Board considered whether Johnson's service was dishonorable and if so, whether forfeiture was applicable. The Board determined that a partial forfeiture of her service and salary was warranted. Specifically, the Board found that Johnson's service and salary from January 1, 2005 through October 7, 2005 would not be considered in calculating her retirement benefits. The Board made its decision retroactive as Johnson had been receiving retirement benefits for approximately six months. Consequently, Johnson's 2005 pension contributions were to be refunded after "any offset for the overpayment of any retirement benefits."

Johnson appealed the Board's decision, and the matter was transferred to the Office of Administrative Law as a contested

case.<sup>2</sup> On February 25, 2011, the ALJ issued her decision on the ethics complaint after several hearings in 2008 and 2010. The ALJ found that the Ethics Commission "failed to meet its burden of sustaining any of the allegations" and recommended that the ethics complaint be dismissed. On June 21, 2011, the Ethics Commission adopted in part and rejected in part the ALJ's decision. The Ethics Commission found that Johnson's conduct "create[d] the impression or suspicion that she used her official position . . . to initiate a project for the benefit of a private organization of which she was a member[.]" As such, the Ethics Commission determined that there was sufficient evidence to support a finding that Johnson violated N.J.S.A. 52:13D-16(b) and N.J.S.A. 52:13D-23(e)(7).<sup>3</sup>

In response to the Ethics Commission's decision, the Board filed a motion for summary decision, which Johnson opposed. On February 14, 2014, a different ALJ upheld the Board's forfeiture decision. The ALJ determined that Johnson was collaterally estopped from re-litigating whether her actions violated state ethics law. The ALJ observed that "the issue of the existence of

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<sup>2</sup> Johnson's appeal of the Board's decision "was placed on the inactive list . . . awaiting the completion of the Ethics Commission hearing."

<sup>3</sup> Johnson appealed the Ethics Commission's final decision, which this court dismissed on January 30, 2013.

ethical violations is fundamental to the determination by the PERS Board as to any forfeiture" as "[b]oth the ethics and the pension cases stem from the same factual allegations[.]" While noting that the Board's April 25, 2006 forfeiture letter to Johnson reviewed the Uricoli<sup>4</sup> factors, the ALJ's decision did not address each of the factors, but rather focused on factors seven, eight, nine, and ten. The Board adopted the ALJ's recommendation in a letter dated March 20, 2014. This appeal followed.

On appeal, Johnson argues that the ALJ failed to address all of the relevant factors set forth under N.J.S.A. 43:1-3. Additionally, Johnson contends that those factors that were considered clearly weighed in her favor, in particular, that she had thirty-four years of service, the ethics violation was not a crime, and it was an isolated incident. Moreover, she maintains that the factors not considered by the ALJ also should have tipped the balance in favor of no forfeiture.

We first consider our standard of review in assessing the Board's decision. The scope of appellate review of an administrative agency's final determination is limited. In re Stallworth, 208 N.J. 182, 194 (2011). Agency decisions are given a strong presumption of reasonableness, and we will not reverse

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<sup>4</sup> Uricoli v. Bd. of Trs., Police & Firemen's Ret. Sys., 91 N.J. 62, 77 (1982).

such a decision unless it was arbitrary, capricious, or unreasonable, or not supported by evidence in the record. Thurber v. City of Burlington, 387 N.J. Super. 279, 301-02 (App. Div. 2006) (internal citations and quotation marks omitted), aff'd, 191 N.J. 487, 502 (2007); see also In re Herrmann, 192 N.J. 19, 27-28 (2007). The court "may not vacate an agency determination because of doubts as to its wisdom or because the record may support more than one result," but is "obliged to give due deference to the view of those charged with the responsibility of implementing legislative programs." In re N.J. Pinelands Comm'n Resolution PC4-00-89, 356 N.J. Super. 363, 372 (App. Div.) (citing Brady v. Bd. of Review, 152 N.J. 197, 210 (1997)), certif. denied, 176 N.J. 281 (2003).

The substantive legal standards applicable to this case are well-established. The receipt of a public pension or retirement benefits is "expressly conditioned upon the rendering of honorable service by a public officer or employee." N.J.S.A. 43:1-3(a). The board of trustees of a state or local pension fund or retirement system is "authorized to order the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service which renders the

member's service or part thereof dishonorable[.]" N.J.S.A. 43:1-3(b).

In evaluating a member's misconduct to determine whether it breaches the condition requiring that the member's service be "honorable" and whether total or partial forfeiture of the member's earned service credit is appropriate, the statute requires the following:

[T]he [Board] shall consider and balance the following factors in view of the goals to be achieved under the pension laws:

- (1) the member's length of service;
- (2) the basis for retirement;
- (3) the extent to which the member's pension has vested;
- (4) the duties of the particular member;
- (5) the member's public employment history and record covered under the retirement system;
- (6) any other public employment or service;
- (7) the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated;
- (8) the relationship between the misconduct and the member's public duties;
- (9) the quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations;

(10) the availability and adequacy of other penal sanctions; and

(11) other personal circumstances relating to the member which bear upon the justness of forfeiture.

[N.J.S.A. 43:1-3(c).]

These eleven statutory factors codify the factors that the Supreme Court previously enumerated for determining whether an employee's service was "honorable" for purposes of receiving pension or retirement benefits. Uricoli, supra, 91 N.J. at 77-78.

If the Board determines that only a partial forfeiture is warranted, the employee's pension or retirement benefits shall be calculated "as if the accrual of pension rights terminated as of the date the misconduct first occurred[.]" N.J.S.A. 43:1-3(d). However, "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," the Board may instead adopt "a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service." Ibid. When a partial forfeiture based upon the time of the misconduct would result in minimal or no reduction in retirement benefits, as compared with "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).

In making the determination to forfeit a member's pension or retirement benefits, the Board must "set forth in detail the reasons for an agency determination" in order to "permit a reviewing court to evaluate a particular outcome to determine whether it is arbitrary or unreasonable and, where applicable, supported or not by the evidence." In re NJPDES Permit No. NJ0025241, 185 N.J. 474, 487 (2006); see also N.J.S.A. 52:14B-10(c) ("In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so."). Failure to do so "impede[s] the judicial function." In re NJPDES, supra, 185 N.J. at 487.

As a general principle of sound administrative practice and judicial review, agencies must articulate in their final decisions, the specific reasons they relied on in reaching their decision. "[N]o matter how great a deference the court is obliged to accord the administrative determination which it is being called upon to review, it has no capacity to review at all unless . . . the agency has stated its reasons grounded in [the] record for its action." State v. Atley, 157 N.J. Super. 157, 163 (App. Div. 1978). The agency is obligated to provide an "expression of [its]

reasoning which . . . led to the conclusion below[.]" Lister v. J.B. Eurell Co., 234 N.J. Super. 64, 73 (App. Div. 1989).

Here, the ALJ's recommendations, adopted by the Board in a short letter without further elaboration, failed to give an adequate explanation of all the factors set forth under N.J.S.A. 43:1-3(c). Indeed, the Board's findings of the factors it did focus on were formulaic and did not sufficiently address them in a detailed and balanced fashion. See Uricoli, supra, 91 N.J. at 77-78. Without the agency providing an adequate explanation of its findings as to each factor and how it weighed the factors to reach its conclusion, we are unable to appropriately perform our function as a reviewing court. Consequently, we are constrained to reverse the final decision and remand the matter to the Board for analysis of all the factors.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION