SUSAN STUERMER,
Petitioner,

v.
BOARD OF TRUSTEES, TEACHERS’ PENSION AND ANNUITY FUND,
Respondent.

Decided August 14, 1980

Initial Decision
SYNOPSIS

Petitioner, Susan Stuermann, appealed from a decision of the Board of Trustees of the Teachers’ Pension and Annuity Fund denying her application to purchase prior membership credit and out-of-state service pursuant to N.J.S.A. 18A:66-9 and 18A:66-13. The Board’s position was based on N.J.A.C. 17:3-5.1 which states that only active contributing members of the Fund may apply to purchase pension credits.

The administrative law judge found that in January 1976, while employed as a teacher by the Bergen County Special Services School District, petitioner applied to purchase pension credits for a total of seven and one-half years of former teaching service. By June 1976, the Division of Pensions informed her of her eligibility for back purchases and the cost involved; she was told to make her purchase within 30 days. In the meantime, however, petitioner had been informed by her school district that her services were to be terminated as a teacher at the end of June 1976. The petitioner filed an action with the Commissioner of Education contesting her dismissal.

In 1977, the petitioner contacted the Division of Pensions informing it of her employment status and again asking to buy her pension credits. The Division informed her that since she was not then a contributing member of the system, she could not purchase credit for prior service but could do so if she again became employed.

In 1978, the Commissioner of Education rendered a decision in which he determined that the petitioner’s termination was improper and ordered her restored to her position with mitigated back pay.

Although the petitioner decided not to return to her former position, she did again apply for the purchase of service credits, but her application was denied because she was found not to be a contributing member of the
pension system.

The administrative law judge noted that since pensions for public employees serve a public purpose, the statutes and regulations governing them should be liberally construed to accomplish their purpose. The judge observed that the Board’s position would prevent the petitioner from purchasing enough service credit to allow her to vest her pension. Under the facts of this case, the administrative law judge concluded that the petitioner should be considered to have been an active, contributing member of the system through June 1978, when the Commissioner of Education made his determination that she had been wrongfully terminated and ordered her reinstated. The judge observed that it was neither fair nor reasonable to deprive her of her right to make this purchase simply because she decided not to return to her former position, nor would any harm be done to the pension fund.

Philip Feintuch, Esq., for Petitioner

Prudence H. Bisbee, Deputy Attorney General for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney)

MILLER, ALJ:

Susan Stuermer (petitioner) appeals from a decision of the Board of Trustees of the Teachers’ Pension and Annuity Fund (Board of Trustees) denying her application to purchase prior membership credit and out-of-state service, pursuant to N.J.S.A. 18A:66-9 and N.J.S.A. 18A:66-13, respectively, on the ground that she is not eligible to effect such purchase. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on July 18, 1980. Counsel for petitioner submitted a memorandum of law on August 11, 1980, which is deemed to be the date upon which the record was closed.

Prior to the taking of testimony, the following stipulations were made by and between counsel:

1. Petitioner’s date of birth was February 14, 1940.
2. Petitioner was employed as a school teacher by the Newark Board of Education from September 1, 1961 to January 31, 1966, and was enrolled in the Teachers’ Pension and Annuity Fund (TPAF) under membership No. 161169.
3. Under the aforesaid employment, petitioner received creditable service in TPAF of four years, eleven months.
4. Petitioner terminated her membership in TPAF by withdrawing her contributions which, together with interest, amounted to $919.84.
5. From March 21, 1966 until January 31, 1969, petitioner was employed as a school teacher for the school district of Oak Park, Illinois, for a period of two years and ten months.

6. From February 12, 1969 through June 1973, petitioner was employed as a teacher by the Hackensack Board of Education and was enrolled in TPAF effective February 1, 1969; her membership number under this enrollment was No. 248788.

7. From September 1, 1973 through June 1976, petitioner was employed as a teacher by the Board of Education of the Bergen County Special Services School District.

8. On the basis of the latter two employments, petitioner accumulated a total of seven years, two months of service credit in TPAF.

9. For the school years of 1976-1977, petitioner was employed as a teacher in a school district in the State of New York.

10. On July 18, 1978, the Commissioner of Education of the State of New Jersey rendered a decision restoring petitioner to her employment with the Bergen County Special Services School District retroactive to June 1976, and granted her full salary for that period of time less mitigation for salary earned during that period from other employment.

11. In accordance with the decision of the Commissioner of Education, the Bergen County Special Services School District paid petitioner $5,086 less pension deductions, contributory insurance payments and loan balance payments, the net sum paid to her being approximately $2,000.

12. The pension deductions and the payments for contributory insurance and loan payments which were deducted from petitioner's award of $5,086 were remitted by the Bergen County Special Services School District to TPAF.

13. Petitioner did not return to her employment with the Bergen County Special Services School District or any other school district on or after the decision of the Commissioner of Education.

14. Following a series of letters regarding petitioner's eligibility to purchase service credit in TPAF, on October 11, 1979, the Board of Trustees denied her claim of eligibility to purchase and subsequently notified her of its decision.

15. Petitioner's letter of appeal from the adverse determination of the Board of Trustees was timely.

A number of letters and other documents were admitted into evidence. These, together with the brief testimony of petitioner herself, reveal a factual matrix which is essentially undisputed.
FINDINGS OF FACT

On January 3, 1976, petitioner wrote to the Division of Pensions requesting purchase, through what she called the “extended payment plan”, of a total of seven and one-half years of former teaching service (four and one-half years of previous membership service and three years of prior out-of-state service). On January 22, 1976, John P. Olender, then Supervisor of Purchases of the Division of Pensions, replied by means of a form letter, advising that the cost and terms of purchase would be forthcoming in the near future. By letter, dated March 16, 1976, Olender advised petitioner that she was eligible to purchase four years, seven months of additional (previous membership) service credit at a lump sum cost of $5,286.83 or, alternatively, by 100 monthly extra payroll deductions of $65.18 each. By letter, dated June 10, 1976, Olender informed petitioner that she was eligible to purchase two years, ten months of additional (prior service with the Oak Park, Illinois School District) credit at a lump sum cost of $3,268.22 or, alternatively, by 69 monthly extra payroll deductions of $55.13 each. Both of these last two letters informed petitioner that if she intended to make the purchase, she would have to send her check or authorization for extra payroll deductions “within 30 days” and that, if she failed to do so, a future request might result in increased costs to her.

Meanwhile, however, petitioner had been notified by her employer, the Board of Education of the Special Services School District of Bergen County (hereinafter “Board of Education”) that she would not be re-hired in September 1976, and, in fact, her services as a teacher were terminated by the Board of Education at the end of June. Thereupon, petitioner brought an action before the State Commissioner of Education contesting her dismissal. While this action was pending, she was able to obtain teaching employment in the State of New York.

On May 12, 1977, petitioner wrote to Mr. Olender advising him of her status and declaring that she “would still like to buy back that time so that I will have the 15 years necessary to vest in New Jersey.” When Olender replied on June 3, 1977, he stated that since petitioner was not then a contributing member of TPAF, she could not effect the purchase but that if “you again became employed in New Jersey, you may purchase your former service.”

On July 18, 1978, the Commissioner of Education rendered a decision on petitioner’s action against the Board of Education. This decision upheld petitioner’s claim that her termination by the Board of Education was improper and violated her tenure status. The Board of Education was directed to restore petitioner to her employment with “full salary and all emoluments which she would have earned had she not been improperly
terminated, mitigated by any monies received by her as salary from any substitute employment since the date of her termination.”

On August 23, 1978, petitioner's attorney wrote to TPAF, advising of the decision of the Commissioner of Education and asking for an analysis of her status in TPAF, particularly the number of years petitioner had to her credit at that time. On September 1, 1978, the Secretary to TPAF, Mr. A. Steven LaBrute, replied, stated that petitioner had accumulated seven years, two months of service credit “up to July 1, 1976 and will be credited with the additional months of service involved in her retroactive salary.”

By letter, dated September 2, 1978, petitioner herself wrote to Mr. LaBrute and requested the purchase of “five years, ten months of back service” in order to vest her pension. She further declared that she wished to make the purchase “immediately” and asked “what (she) must pay and how.” A form letter similar to the one sent by Mr. Olender on January 22, 1976, was mailed to petitioner by the Division of Pensions on September 22, 1978.

By form letter, dated December 11, 1978, Mr. Wallace B. Olsen of the Division of Pensions notified petitioner that her request for purchase of service credit was not permitted because “our records indicate that you are not an active contributing member at the present time; purchase terms can be extended only for active contributing members of the Retirement System.” This letter also noted that the Division of Pensions had been told by the Board of Education that petitioner had not returned to employment.

On December 26, 1978, petitioner wrote to Mr. Olson, pointing out that her case was unusual, that past errors could not be attributed to her, that she had been improperly terminated in 1976, and that “I think you should reconsider.” Ultimately, on October 17, 1979, after a lengthy exchange of correspondence and a review of petitioner's file, the Board of Trustees decided to deny her request to purchase former membership and out-of-state service, citing N.J.A.C. 17:3-5.1 as the basis for its determination. This appeal followed.

ANALYSIS AND CONCLUSIONS OF LAW

The position of the Board of Trustees is based upon N.J.A.C. 17:3-5.1 which declares that “only active contributing members of the Fund shall be eligible to make application for the purchase of credit.” The Board of Trustees contends that since May 1977, when petitioner first clearly expressed her intention to effect a purchase, she has never been an active, contributing member. Petitioner, on the other hand, contends that she should be deemed to be an active contributing member by reason of the July
1978 decision of the Commissioner of Education restoring her to her rights of employment and tenure.


N.J.S.A. 18A:66-9 provides:

If a teacher who has withdrawn his accumulated deductions from the retirement system as provided in section 18A:66-34 is re-enrolled as a member, he may purchase credit for all of his previous membership service by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to his age at the time of the purchase, to his salary at that time. Such purchase may be made in regular installments, equal to at least one half the full normal contribution to the retirement system, over a maximum period of 10 years. In order to give to such person the same credit for such services as he had at the time of withdrawal, his pension credit shall be restored as it was at the time of his withdrawal upon the completion of one year of membership after his election to make the purchase and the payment of at least one half of the total amount due, . . . (emphasis supplied.)

N.J.S.A. 18:66-13 states:

A member may file a detailed statement of school service and service in a similar capacity in other states rendered by him prior to becoming a member for which he desires credit and on account of which he desires to contribute, and of such other facts as the retirement system may require. He shall have the right to purchase credit for the prior service evidenced therein, up to the nearest number of years and months, but not exceeding 10 years. . . .

He may purchase credit for such service by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to his age at the time of the purchase of his salary at that time. Such purchase may be made in regular installments, equal to at least one half the full normal contribution to the retirement system, over a maximum period of 10 years. (emphasis supplied.)

In neither of these sections is there a requirement that the person seeking to purchase credit be "active," i.e., at that moment actually engaged as a teacher in the State of New Jersey. By adopting N.J.A.C. 17:3-5.1, the Board of Trustees has imposed this requirement.

An administrative agency is a creature of the legislature and can act only within the bounds of the authority delegated to it. Elizabeth Federal Savings and Loan Association v. Howell, 24 N.J. 488, 499 (1957). Furthermore, it has long been held that an administrative regulation or policy which
attempts to add to the statute something which is not there can furnish no sustenance to that statute. *Kingsley v. Hawthorne Fabrics, Inc.*, 41 N.J. 521, 529 (1964). It is also clear that an administrative rule is not necessarily valid because an agency feels it is useful. *Frigliola v. State Board of Education*, 25 N.J. Super. 75, 81 (App. Div. 1953).


> Pensions for public employees serve a public purpose. A primary objective in establishing them is to induce able persons to enter and remain in public employment, and to render faithful and efficient service while so employed. They are in the nature of compensation for services previously rendered and act as an inducement to continued and faithful service. Being remedial in character, statutes creating pensions should be *liberally construed and administered* in favor of the persons intended to be benefited thereby. (emphasis supplied; citations omitted.)

As interpreted by the Board of Trustees in this case, N.J.A.C. 17:3-5.1 cannot be considered “liberal.” Quite to the contrary. It operates to deprive petitioner of the right to purchase service credit and thus prevents her from “vesting” her pension. Under the unusual facts of this case, I believe petitioner should be considered to have been an active, contributing member of the Fund through June 1978.

It is clear that if petitioner had not been wrongfully terminated, she could have - and I believe she would have continued teaching in the Bergen County Special Services School District. Thus, in accordance with her testimony, which I found credible, she would have been able to effectuate the purchase of the service credit which she needed to “vest” her retirement benefits. In my opinion, it is neither fair nor reasonable to deprive her of the right to make this purchase simply because she has apparently now decided not to return to her former job.

Of course, we cannot now go back to 1976 and re-run the events that have occurred. Circumstances have changed. Petitioner no longer needs to buy seven and one-half years of service - she has received credit in the Fund for the years 1976-77 and 1977-78. Also, the cost of purchase quoted in March and June 1976 is no longer applicable - her age and salary have changed.

To use the phrase of the Supreme Court in the case of *Geller, supra*, “under all the circumstances, the basis for a just result” in this case would
be to allow petitioner to purchase the service she needs to "vest" her pension, at a cost to be calculated by the Division of Pensions, based upon her age on June 30, 1978, and the salary she would have earned during the 1977-78 school year if she had continued to be employed by the Board of Education. Petitioner should have the right to pay this amount in a lump sum no later than 30 days after she receives the cost quotation from the Division of Pensions.

This would work no harm to the Fund and, at the same time, would give petitioner the benefit of obtaining a deferred retirement under N.J.S.A. 18A:66-36. It is so ORDERED.

After reviewing this Initial Decision, the Board of Trustees of the Teachers’ Pension and Annuity Fund on September 11, 1980 issued the following Final Decision:

By unanimous decision the Board reversed their original decision and accepted the decision of the administrative law judge to have Susan Stuerman purchase prior membership credit and out-of-state service.