PETER J. FARLEY, JR.
AND DONALD HIGGINS,
Petitioners,
v.
BOARD OF TRUSTEES, POLICE
AND FIREMEN'S RETIREMENT
SYSTEM,
Respondent.
Decided February 9, 1984

Initial Decision

SYNOPSIS

Petitioners appealed from a determination of the Board of Trustees of the Police and Firemen's Retirement System denying their applications to enroll in that retirement system.

The administrative law judge assigned to the case found that petitioners, as former policemen, had at one time both been members of PFRS. Petitioners subsequently became members of the Public Employees Retirement System upon their appointment as court attendants. By operation of statute, petitioners then became sheriff's officers and continued their membership in PERS.

The judge rejected petitioners' argument that N.J.S.A 40A:9-117.12 permitted them to transfer their enrollment to PFRS. The judge concluded that the plain meaning of the statute made it clear that any individual 35 years or older who was subsequently appointed as a sheriff's officer should remain a member of the retirement system of which he was a member at the time of appointment.

Accordingly, the administrative law judge ordered that the denial of petitioners transfer application be affirmed.

Joseph P. Donohue, Esq., for petitioner (Whipple, Ross & Hirsh, attorneys)
John J. Franzini, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

MILLER, ALJ:
STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Peter J. Farley, Jr. and Donald Higgins (petitioners) appeal from a determination of the Board of Trustees of the Police and Firemen's Retirement System (Board of Trustees or respondent) denying their applications to enroll in the Police and Firemen's Retirement System (PFRS).

By letter dated May 24, 1983, the Farley matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The Higgins matter was transmitted to the Office of Administrative Law by letter of July 7, 1983. On the date scheduled for hearing in the Farley matter, a motion was made by petitioners' attorney to consolidate both cases on the ground of similarity of factual circumstances and legal issues. The motion, being unopposed, was granted by the undersigned, and the hearing proceeded to its conclusion on December 21, 1983.

The facts in both of these cases are relatively simple and not in dispute. They were established by extensive stipulations made by counsel and placed on the record, by the admission into evidence of numerous documents, and by the testimony of Donald Higgins. The findings of fact which follow are not all-inclusive. They are, however, sufficient to reach a fair and proper disposition of the matter.

FINDINGS OF FACT

Petitioners are both formerly active members of PFRS. They both left their positions as police officers and, as was their right, elected to defer their retirement benefits under that system. Both were later appointed court attendants and became active members of the Public Employees' Retirement System (PERS).

The Civil Service title "court attendant" was changed to "sheriff's officer" by L. 1982, c. 133, N.J.S.A. 40A:9-117.6 et seq. ("The Sheriff's Officer Act"). Pursuant to its provisions, viz, N.J.S.A. 40A:9-117.8, both petitioners were appointed sheriff's officers. Both petitioners were over 35 years of age on the date that the act became effective (September 14, 1982), and they were both active members of PERS at that time. Their current status remains that of active members in PERS.

The Sheriff's Officer Act (the act) provides that sheriff's officers under the age of 35 are eligible to transfer their PERS membership to PFRS, but that those over 35 are to remain in the retirement system
in which they were a member at the time the act took effect. *N.J.S.A.* 40A:9-117.12.

Although petitioners are both over 35 years old, they seek to be reenrolled in PFRS as sheriff's officers. They contend that, under *N.J.S.A.* 43:16A-11.2, their deferred retirement status qualifies them for reenrollment.

Prior to September 14, 1982, several other persons, sheriff's officers over 35 years of age and similarly situated to petitioners, had been allowed to transfer their membership from PERS to PFRS.

**ANALYSIS AND CONCLUSIONS OF LAW**

The issue in this case may be stated as follows: does *L. 1982, c. 133* preclude the transfer of petitioners' membership from PERS to PFRS?

For the reasons to be expressed hereafter, I CONCLUDE that this question should be answered in the affirmative.

*L. 1982, c. 133* (*N.J.S.A. 40A:9-117.6* to *N.J.S.A. 40A:9-117.13*) abolishes the position of court attendant and includes the duties of court attendant among the duties of sheriff's officer. It also provides that after its effective date (September 14, 1982) any person appointed to perform the duties previously undertaken by court attendants shall be designated a sheriff's officer. Section 7 of the act (*N.J.S.A. 40A:9-117.12*) is a critical one for purposes of this case; it reads as follows:

> Any person who is over 35 years of age on the effective date of this act, and who is subsequently appointed as a sheriff's officer pursuant to this act, shall remain a member of the retirement system of which he is a member on that date. [emphasis supplied]

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1Early in these proceedings petitioners raised the question of estoppel, *i.e.*, whether, by reason of prior communications from the Division of Pensions to petitioners, the Board of Trustees was estopped from denying the transfer of membership. This issue was not pressed and seems to have been abandoned. Accordingly, I will not deal with it except to point out that the doctrine of equitable estoppel is applied against public entities—especially pension funds—only in the most compelling and unusual of circumstances, which do not appear to be present here. *See, e.g., O'Neill v. N.J. Treasury Dept., 178 N.J. Super. 211, 214 (App. Div. 1981); Tubridy v. Consolidated, etc., Comm'n, 84 N.J. Super. 257, 264 (App. Div. 1964).*
This act, although not primarily a pension act, clearly has significant pension ramifications.\(^2\)

The legislative history of the act is neither extensive nor revealing. The Statement to Senate Committee Substitute for Senate Bill No. 1021, subsequently enacted into law as L. 1982, c. 133, gives no specific explanation or reason for the distinction made between those persons 35 years of age and under and those who are over 35. It seems likely, however, that the Legislature made such distinction so as to maintain a consistency with the overall age policy established under PFRS.\(^3\) Cost may also have been a factor.\(^4\) Clearly, when it enacted the act, the Legislature generally intended that court attendants over age 35 should remain in their current pension program, i.e., PERS.

Petitioners were both court attendants over the age of 35 and were both participating members of PERS when the act became effective. Therefore, they fall squarely within the category described in N.J.S.A. 40A:9-117.12 and, under the terms of this section, must remain members of PERS.

Petitioners assert, however, that their request for reenrollment should not be governed by N.J.S.A. 40A:9-117.12, but rather by N.J.S.A. 43:16A-11.2(2). That section is part of the statutory scheme establishing the PFRS. N.J.S.A. 43:16A-1 et seq. Specifically, the section quoted by petitioners provides that:

\[
\text{[a]ny member who, having elected to receive a deferred retirement allowance, again becomes an employee covered by the retirement system while under the age of 55, shall thereupon be reenrolled. [emphasis supplied] N.J.S.A. 43:16A-11.2.}
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This section governs reenrollment of those who have elected to receive a deferred retirement allowance and have again become eligible

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\(^2\)See also, section 8 of the act (N.J.S.A. 48:9-117.13) which, in pertinent part, provides that "any person who is 35 years of age or younger on the effective date of this act, and who is subsequently appointed as a sheriff's officer pursuant to this act shall be permitted to transfer his membership in the Public Employees' Retirement System . . . to the Police and Firemen's Retirement System . . . ." (emphasis supplied)

\(^3\)Full-time policemen and firemen will be enrolled in PFRS provided that they are not over 35 years of age. N.J.S.A. 43:16A-3(1).

\(^4\)Retirement age is lower and retirement benefits higher in PFRS than in PERS.
as members. It does not, nor was it intended to, confer eligibility for PFRS. See, N.J.S.A. 43:16A-3. Instead, it establishes the terms of reenrollment for former members who have once again become eligible.

That petitioners are former members, not current members, is clearly established by reference to N.J.S.A. 43:16A-3(3), which provides that "... if more than two years have elapsed from the date of his the member's last contributions to the system, he shall thereupon cease to be a member." It is undisputed that petitioners have not made contributions to the system for more than two years. See also, Duvin v. State, 76 N.J. 203, 206-8 (1978), holding that a person's membership in the system ceases when he becomes a retiree.

Petitioners are not employees "covered by the [PFRS] retirement system" because they do not fall within a class established by the PFRS statute or by the act. Rather, they fall within the class of individuals intended to be excluded from PFRS by N.J.S.A. 40A:9-117.6, i.e., court attendants over 35 years old on the date the act became effective. They cannot use N.J.S.A. 43:16A-11.2 to bootstrap themselves into a retirement system for which the Legislature intended them to be ineligible.

In this regard, neither administrative agencies nor courts can ignore the plain meaning of language employed by the Legislature, even though liberality of construction of remedial legislation is desirable. Singleton v. Consol. Freightways Corp., 64 N.J. 357 (1974); Panzino v. Continental Can Co., 71 N.J. 298, 303 (1976).

Petitioners also argue that both statutes, seemingly in conflict, should be read in pari materia and "harmonized" by reading the 35-year-old age restriction in section 7 of the act "as applying only to those employees who have no pre-existing right to membership in PFRS." Where the language of a statute—here, section 7 of the act—is unambiguous, however, no interpretation—harmonic or otherwise—is permitted other than that called for by its express language. DeHart v. Bambrick, 177 N.J. Super. 541, 549 (App. Div. 1981). If, as is true with section 7, the language of the statute is plain, it must be enforced according to its own terms. See, Renz v. Penn Central Corp., 87 N.J. 437 (1981); State v. Maguire, 84 N.J. 508 (1980).

Assuming, arguendo, that there exists a direct conflict between the provisions of section 7 of the act and section 11.2 of the PFRS Act—since section 7 excludes petitioner from enrollment in PFRS while section 11.2 requires it—it is clear, by application of well-established principles of statutory construction, that section 7 must
prevail. The act was enacted after section 11.2 came into existence.\footnote{Section 11.2 was last amended by L. 1981, c. 177, section 5, effective June 19, 1981.} Where there is a conflict between a later statute and an earlier one relating to the same subject matter, the later provisions will control. Newark v. Dept. of Civil Service, 68 N.J. Super. 416 (App. Div. 1961). Additionally, section 7 is more specific in its application than is section 11.2. Where there is any conflict between a general and a specific statute covering a subject more minutely and definitely, the specific statute will prevail and will be considered an exception to the general statute. Smith v. Tp. of Livingston, 106 N.J. Super. 444 (Ch. Div. 1969), aff'd, 54 N.J. 525 (1969).

For the foregoing reasons, I CONCLUDE that petitioners are precluded from transferring their membership from PERS to PFRS, that they may not reenroll in PFRS, and that the decision of the Board of Trustees denying their applications to transfer and/or to reenroll should be affirmed. It is so ORDERED.

After reviewing this Initial Decision, the Board of Trustees of the Public Employees' Retirement System on March 28, 1984, issued the following Final Decision:

The Board of Trustees, by unanimous vote accepted the recommendations of the administrative law judge and found that the decision of this Board should be affirmed which denied the petitioners transfer and entrance into the Police and Firemen's Retirement System.

The Board, however, modifies their adoption of findings of fact by rejecting Judge Miller's finding, which states that: "prior to September 14, 1982, several other persons, sheriff's officers over 35 years of age and similarly situated to petitioners, had been allowed to transfer their membership from Public Employees Retirement System to Police and Firemen's Retirement System." The Board disagrees. Chapter 156 P.L 1973 applied only to persons who were in an appointed position as sheriff at the time of enactment of such law and thus not similarly situated to the petitioners.

The Board adopts the conclusion of law in the report of the administrative law judge consistent with its original determination and further adopts the recommendations contained in this report, incorporating the same here by reference.