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	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
	:	
KENNETH WISE	:	Docket No.: A-000760-23T4
	:	
Petitioner,	:	On Appeal From
	:	STATE POLICE RETIREMENT
v.	:	SYSTEM
	:	Docket No.: SPRS 8-10-4992
BOARD OF TRUSTEES, STATE	:	
POLICE RETIREMENT	:	
SYSTEM,	:	
	:	
Respondent.	:	
	:	
	:	
	:	

BRIEF ON BEHALF OF APPELLANT

Of Counsel and On the Brief:
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PROCEDURAL HISTORY

On or about July 8, 2019, the Bill Ricci Rescue, Recovery, and Cleanup Operations Act (hereinafter referred to as the “Ricci Act”) was signed into law. On or about March 3, 2023, Kenneth Wise, along with many others, filed his Eligibility Registration Form to register his presence at Ground Zero under the Ricci Act, along with a Request for Amended Benefits Form, Affidavit, and a Petition. Pa29. On or about May 2, 2023, the Division of Pensions administratively denied Wise’s appeal and the matter was transmitted to the State Police Retirement Board. Pa26.

On or about June 14, 2023, the State Police Retirement Board issued an initial decision to deny Wise’s request to register for the Ricci Act. Pa23. On or about July 18, 2023, Wise appealed the Board’s initial decision and requested an administrative hearing. Pa15. The Board denied an administrative hearing and issued a Final Agency Decision on September 27, 2023. Pa9. This appeal ensued. Pa1.

STATEMENT OF FACTS

Kenneth Wise graduated from the 114th Academy Class of the New Jersey State Police. Pa55. Wise retired from the New Jersey State Police on a Special Retirement on or about December 1, 2019. Pa55. Pa87. While employed by the New Jersey State Police, Wise worked in the Community Policing North Unit and was detached to the Caven Point Command Post in Jersey City. Pa64. Pa68. Wise was detailed to various locations in New York City and New Jersey to assist in the New Jersey State Police response to the September 11, 2001 terrorist attacks. Pa64. Pa68. Wise was “deployed exclusively to sites in and around Ground Zero up to December 1, 2001” on a full-time basis. Pa64.

On or about July 8, 2019, “The Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act” was signed into law (hereinafter referred to as the “Ricci Act”). P.L. 2019, c. 157. Under the Ricci Act, the Board of Trustees was required to promulgate rules and regulations necessary to implement the new law. The Ricci Act states that the Board of Trustees “**shall notify members and retirants** in the retirement system of the enactment of this act, P.L. 2019, c. 157, **within 30 days of enactment.**” N.J.S.A. 53:5A-10(e)(4). (Emphasis added).

The Board was required to notify all members of the State Police Retirement System of the Ricci Act by August 7, 2019, including the

requirement to “register” by filing a form indicating the dates and locations of service within two (2) years. On August 8, 2019, more than 30 days after the Ricci Act’s passage, the Division of Pensions distributed an email to all Certifying Officers “advising them of their responsibilities under the Ricci Act.” Pa11. However, while this is cited in the Final Agency Decision, no actual email dated August 8, 2019, was ever produced, only a Memorandum dated “August 2019.” Pa82. On or about August 16, 2019, more than 30 days after the passage of the Ricci Act, the Division of Pensions contacted the Certifying Officers via electronic mail regarding issues with confirming distribution of the Ricci Act information to members of the retirement system. Pa84. An Employer Confirmation of Distribution Form was filed noting that Debra Prettyman, Certifying Officer for the New Jersey State Police, acknowledged receipt and distribution of the information on the Ricci Act, which is also dated August 16, 2019, more than 30 days after the Ricci Act was passed. Pa85. Additionally, this Form does not specify what manner the information was distributed to active employees of the New Jersey State Police. Pa85.

In support of his request for amended benefits under the Ricci Act, Wise submitted an affidavit that he did not receive any correspondence or postcard from the State Police Retirement Board or the Division of Pensions with respect to the passage of P.L. 2019, c.157 (Chapter 157), the Bill Ricci World Trade

Center Rescue, Recovery, and Cleanup Operations Act. Pa55. Wise was present and involved in the aftermath of the World Trade Center attacks which took place on September 11, 2001. Pa55. Wise certified that he participated in the rescue, recovery, and/or cleanup at the World Trade Center site between September 11, 2001, and October 11, 2001, or September 11, 2001, and/or September 12, 2001. Pa55.

Wise submitted the Ricci Act Eligibility Registration Form and Request for Amended Benefits Form with his affidavit. Pa57. Pa59. With his Request for Amended Benefits Form, Wise supplied a World Trade Center health Program Certification of his 9/11 illness, Registration for the Victims Compensation Fund, and Witness Presence Statements. Pa60. Pa62. Pa63. Pa72. Pa74. Pa78. He also provided two New Jersey State Police Incident/Exposure Reports noting his response to the September 11, 2001 terrorist attacks on the World Trade Center. Pa64. Pa68. Wise also provided a State of New Jersey Employer's First Report of Accidental Injury or Occupational Disease. Pa69.

On March 3, 2023, a Petition to the State Police Retirement Board was filed on behalf of Wise and many others. Pa29. Included with the Petition were other retired Troopers who are requesting registration and amended health benefits in retirement. Pa29. All of those Troopers provided affidavits that they also did not receive notice of the Ricci Bill's passage. Pa29. Pa88-124.

Furthermore, other Troopers who are not currently ill, but were only seeking to register for the Ricci Act also filed affidavits that they did not receive notice of the Ricci Act and were included in the Petition. Pa29. Pa125-272. Additionally, other retired Troopers who were not present at the September 11, 2001 attacks and aftermath also submitted affidavits that they did not receive any notice of the Ricci Act in further support of the Petition. Pa273-283.

President of the Former Troopers Association, George Wren, submitted an affidavit that he did not receive any correspondence or postcard from the Division of Pensions notifying him of the Ricci Act. Pa277. Upon notice by another retired Trooper, Wren underwent a massive polling of the Former Troopers Association to ascertain whether his membership received notice of the Ricci Act. Pa277. Of the fifty-nine (59) FTA members (retired troopers) who responded to the polling, fifty-seven (57) did not receive any notice of the Ricci Act by letter, correspondence, or postcard. Pa277.

Additionally, active Trooper August Licameli provided an affidavit that he also did not receive any notice of the Ricci Act. Pa129. Despite not receiving notice, Licameli attempted to file an Eligibility Registration Form back in September of 2019. Pa131. His Registration Form notes that he was present at Ground Zero/WTC on 9/15/01 for 10 hours. Pa131. In response to his filing, Licameli received correspondence from the Division of Pensions requesting

medical information. Pa133. Licameli contacted Pensions on November 18, 2019, and was advised that the Eligibility Registration Form, “is for those who are currently sick. Not for possible future illnesses.” Pa133. It is unknown at this time how many other Troopers Eligibility Registration Forms may have not been filed or how many Troopers were not registered because the member was not ill at the time the forms were sent.

On March 23, 2023, correspondence was sent to the State Police Retirement Board to clarify the request that the Board consider all of the affected Troopers in a single collective petition. Pa27. The correspondence also requested that the Board take administrative or judicial notice of all affidavits submitted in all actions with respect to the issue of lack of notice of the Ricci Act for members of the State Police Retirement System. Pa27. To date, over ninety-eight (98) active and retired Troopers have submitted affidavits attesting that they did not receive any notice of the Ricci Act. Pa88-283.

STANDARD OF REVIEW

Pursuant to N.J. Const. art. VI, § 5, para. 4, the New Jersey Supreme Court has adopted R. 2:2-3(a)(2), which contemplates that every proceeding to review the action or inaction of a state administrative agency would be by appeal to the New Jersey Appellate Division. Thus, the rule mandates the exclusive allocation to the Appellate Division of review of both final decisions or actions of any state administrative agency or officer, and the validity of any rule promulgated by such agency or officer. R. 2:2-3(a)(2). Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011).

Under New Jersey Court Rules, appeals may be taken to the Appellate Division "to review final decisions or actions of any state administrative agency or officer[.]" R. 2:2-3(a)(2). Appellate Courts do not render advisory opinions or function in the abstract. N.J. Civil Serv. Ass'n v. State, 88 N.J. 605, 612 (1982). The Appellate Court need not defer to the agency's determination on purely legal issues. "[A]lthough the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002). The Court's function is "to engage in 'a careful and principled consideration of the agency record and findings,'" and not merely rubberstamp the agency's decision. Williams v. Department of Corrections, 330 N.J. Super.

197, 204 (App. Div. 2000) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Final agency actions can be reversed if those actions are 'arbitrary, capricious or unreasonable or [if the action] is not supported by substantial credible evidence in the record as a whole.'" N.J. Soc'y for the Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 384-85 (2008) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)) (alteration in original). The Supreme Court has observed that the Appellate Court can overturn an administrative agency's determinations or findings if there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence. Bartley Healthcare Nursing & Rehab. v. New Jersey Dep't of Health & Senior Servs., 2011 N.J. Super. Unpub. LEXIS 329, 27-28 (App. Div. Feb. 15, 2011) citing In re Virtua-West Jersey Hosp. Voorhees, 194 N.J. 413, 422 (2008).

LEGAL ARGUMENT

POINT I

**THE DECISION OF THE STATE POLICE RETIREMENT BOARD WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE, AND SHOULD BE REVERSED.
(Not Raised Below).**

A decision is arbitrary, capricious, and unreasonable, and therefore subject to reversal, where, as here, the agency erred in reaching its conclusion upon examination of the application of the law to the facts.

The arbitrary, capricious, and unreasonable standard is generally understood to involve inquiry into whether the decision conforms with relevant law, whether there is substantial credible evidence in the record as a whole to support the agency's decision, and whether in applying the relevant law to the facts, the agency clearly erred in reaching its conclusion. In re Carter, 191 N.J. 474, 482-83 (2007) (relying on Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)). Ordinarily for quasi-judicial or rule-making final agency action, there is a substantial body of material comprising the record. In appeals from final agency action outside of such settings, there similarly must be a sufficiently developed record to permit a reviewing court to engage in meaningful review. See In re Issuance of Permit by DEP, 120 N.J. 164, 173 (1990) (relying on State v. Atley, 157 N.J. Super. 157, 163 (App. Div. 1978)) (noting necessity of agency fact-finding to facilitate appellate review). When the challenged agency action arises in a setting where the record is too meager to permit meaningful review, supplementation of the record may be necessary. The Court Rules provide that a reviewing court may remand, on its own motion, for supplementation of the record in order to permit

meaningful review. R. 2:5-5(b). In re State & Sch. Emples. Health Benefits Commissions' Implementation of Yucht, 233 N.J. 267, 280 (2018).

The Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act amended N.J.S.A. 53:5A-10(e) to state, in pertinent part:

(4) The board of trustees shall promulgate rules and regulations necessary to implement the provisions of this subsection and shall notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment.

A member or retiree shall not be eligible for the presumption or recalculation under this subsection unless within two years of the effective date of this act, P.L.2019, c.157, the member or retiree files a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service.

Wise was denied the ability to register for the Ricci Act and apply for amended benefits because he did not submit his registration form prior to July 8, 2021. However, the Board failed to provide adequate notice of the Ricci Act, and therefore, the decision was arbitrary, capricious, and unreasonable.

In Ensslin v. Board of Trustees, Police and Firemen's Retirement System, 311 N.J Super 333 (App. Div. 1998), Ensslin's denial of ordinary disability was reversed by the Appellate Division. On September 22, 1992, more than four years after Ensslin's last contribution, the Division of Pensions sent him a letter

stating that he had to return to work by November 22, 1992, or his pension account would expire. Ensslin never received the letter.

Ensslin was involved in protracted litigation against his employer to request accommodations for a disability, which he claimed he could still work as a police officer. Upon being denied his LAD claim, Ensslin applied for ordinary disability benefits.

The Board denied Ensslin's application for an ordinary disability retirement on the grounds it was untimely. Under the applicable PFRS statutes, membership ceases after 2 years from the date of the member's last pension contribution. The Board determined Ensslin ineligible because more than 2 years had elapsed since his last contribution and because he was not a member in service at the time of the application. The Appellate Division reversed, holding that the time period should be relaxed:

Unswerving, 'mechanistic' application of statutes of limitations would at times inflict obvious and unnecessary harm upon individual plaintiffs without advancing ... legislative purposes. * * * On numerous occasions we have found 'such particular circumstances as to dictate not the hard approach of literally applying the statute of limitations but the application of the more equitable and countervailing considerations of individual justice.' *** A 'just accommodation' of individual justice and public policy requires that 'in each case the equitable claims of opposing parties must be identified, evaluated and weighed.' Ensslin v. Board of Trustees, Police and

Firemen's Retirement System, 311 N.J Super 333, 337
(citations omitted).

The Court further noted that an “agency has inherent power to waive de minimis violations of objective standards.” Id., citing SMB Assocs v. Department of Env'tl. Prot., 264 N.J. Super 38, 59 (App. Div. 1993), aff'd, 137 N.J. 58 (1994).

The Court reversed the decision of the Board, noting that even though the letter was never received by Ensslin, even if it had been, the notice was improper and late.

In this matter, like Ensslin, the Board failed to provide timely, adequate, or proper notice of the Ricci Act. Also like Ensslin, Wise never received the notice. The Board did not fulfill its obligation to notify the members of the State Police Retirement System of this legislation “within 30 days” of July 8, 2019, including the requirement that they had to register their presence at the World Trade Center within 2 years of the law's enactment, as was required by law.

The determination of the State Police Retirement Board acknowledges that it did not comply with the requirement to provide notice to all members and retirants enrolled in the State Police Retirement System within 30 days of the Ricci Act's enactment. The final decision notes that on August 8, 2019, an email was sent to the Certifying Officers advising them of their obligations under the Ricci Act. Pa11. However, no August 8, 2019, email was provided. A Memorandum to the Certifying Officers was provided with no date other than

“August 2019.” Pa82. Even still, this Memorandum was sent to the Certifying Officers and is not notice to the members of the retirement system. Pa82. If anything, it is proof that the members of the retirement system could not have possibly been notified within the statutory timeframe, as the Certifying Officers were not even notified within 30 days. Furthermore, even if an email was sent to the Certifying Officers on August 8, 2019, that is still outside the timeframe required by the Ricci Act to provide notice to the members of the retirement system. Moreover, Wise certified that he never received any correspondence or postcard notifying him of the Ricci Act. Pa55. Lastly, the Division of Pensions’ email to the Certifying Officers on August 16, 2019, acknowledged issues with submitting proof of the Ricci Act notice to members. Pa84. The Certifying Officer for the New Jersey State Police acknowledged distribution of the Ricci Act notice on August 16, 2019, outside the timeframe required by statute. Pa85. It does not specify how the information was distributed to active members, and the method of alleged distribution remains unknown.¹ It is arbitrary, capricious, and unreasonable that the Board does not have to abide by the statutory timelines applicable to the Board but is unwilling to relax the timeframes applicable to Wise.

¹ Wise was an active member of the New Jersey State Police at the time the Ricci Act was signed into law.

The Board has acknowledged that the third-party vendor was not contacted to mail the postcards until more than 30 days after the enactment of the Ricci Act. The third-party vendor could not mail the notice within 30 days of the enactment of the Ricci Act. Because notice of the Ricci Act was not sent in accordance with the requirements specified by law, the Board should have granted Wise's request to register outside the timeframe specified in the Act.

The Board failed to consider its power to relax time limits in the interest of justice or in furtherance of a just accommodation. It is within the Board's power to relax time limits. The Board's initial denial has failed to consider, evaluate, and weigh Wise's equitable claims. Most notably, it failed to even mention the approximately one hundred affidavits submitted that support the fact that these postcards or other any other correspondence were never received by Wise or other members of the pension system.

Furthermore, the Board's decision inflicts obvious and unnecessary harm upon Wise and fails to advance the legislative purpose of the Ricci Act. The legislative purpose of the Ricci Act was to provide first responders with the ability to alter their retirement benefits if they have fallen ill as a result of their honorable and heroic service at the largest terrorist attack this country has ever see, not to unnecessarily and arbitrarily deny sick retired troopers accidental disability benefits.

Wise and ninety-seven (97) other active and retired troopers provided affidavits that they never received any notice of the Ricci Act. Because the Board failed to fulfill its statutory obligation under the Act to provide notice to all the members of the retirement system within 30 days, and further because it appears that the vast majority never got any notice at all, the Board's determination was arbitrary, capricious, and unreasonable. As such, in the interest of justice and in the furtherance of a just accommodation, we respectfully request that Board's determination be reversed, and that Wise's application to register his presence at Ground Zero and his request for amended benefits be granted.

POINT II

**THE DECISION BELOW WAS NOT SUPPORTED
BY THE SUBSTANTIAL EVIDENCE AND
SHOULD THEREFORE BE REVERSED.
(Not Raised Below).**

The substantial evidence presented does not support the final agency determination made by the State Police Retirement Board. Substantial evidence has been defined alternately as "such evidence as a reasonable mind might accept as adequate to support a conclusion," and "evidence furnishing a reasonable basis for the agency's action." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 192 (App. Div. 2010) (citations omitted).

The Board's determination references that the Division of Pensions notified all Certifying Officers of the Ricci Act on "August 8, 2019." Pa13. There is nothing in the record that establishes this, and it is wholly unsupported by the record evidence. Furthermore, the statutory requirement is to notify the members of the retirement system, not the Certifying Officers. Therefore, this is insufficient notice under the Ricci Act as it is not notice to the members of the retirement system. Additionally, the Certifying Officer confirmed the information was sent to the New Jersey State Police on August 16, 2019. Pa85. Both dates are past the timeframe required by statute. Lastly, it is unknown how the information was disseminated to New Jersey State Troopers. Wise certified in an affidavit provided to the Board that he never received any correspondence

or postcard from the Division, regardless of whether it was ever sent. This affidavit should overcome any presumption that any correspondence was received.

The Board's decision failed to consider the almost one hundred affidavits of other active and retired troopers who also did not receive any correspondence or postcard from the Division notifying them of the Ricci Act that were submitted to the Board in support of Wise's appeal. As such, the finding that it was "undisputed" that the Division notified Wise (and others) of the Ricci Act is not supported by the facts and evidence presented. Furthermore, any presumption claimed by the Board has clearly been rebutted by the overwhelming evidence presented in this matter. Considering the evidence presented, the agency's action does not have a reasonable basis.

Additionally, the Board failed to consider the evidence presented demonstrating that Registrations Forms submitted were not accepted by the Division because the Trooper(s) who submitted them were not sick at the time the Registration Form was sent. Licameli attempted to file an Eligibility Registration Form back in September of 2019. Licameli was denied the ability to register because he was told the Ricci Bill "is for those who are currently sick. Not for possible future illnesses." Pa133.

The Board also failed to consider the evidence presented regarding the Former Troopers Association membership polling. George Wren, President of the Former Troopers Association, polled his membership to ascertain whether anyone received notice of the Ricci Act. Of the fifty-nine (59) FTA members (retired troopers) who responded to the polling, fifty-seven (57) did not receive any notice of the Ricci Act. The Board ignored the evidence from this polling when making its determination.

In light of all of the evidence presented on Wise's behalf, a reasonable mind could only conclude that Wise did not receive any notice of the Ricci Act. Without proper notice, Wise should have been permitted to register for the Ricci Act. Therefore, the determination below should be reversed because it is against the substantial weight of the evidence.

CONCLUSION

The determination below was arbitrary, capricious, and unreasonable, and therefore must be reversed. It is also against the substantial weight of the evidence. For all the foregoing reasons, we respectfully request that the decision below be reversed, and that Wise be permitted to register his presence at September 11th under the Ricci Act and amend his benefits thereunder.

Respectfully,


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June 7, 2024

VIA eCOURTS

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Re: Kenneth Wise v. Board of Trustees, State Police Retirement System
Docket No. A-000760-23 T4

On Appeal from a Final Administrative Determination of the Board of Trustees, State Police Retirement System

Letter Brief of Respondent, Board of Trustees, State Police Retirement System on the Merits of the Appeal

Dear Mr. Orlando:

Please accept this letter brief on behalf of the Respondent, the Board of Trustees, State Police Retirement System, on the merits of the appeal.



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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant Kenneth Wise applied for a Special Retirement from the SPRS,
which was approved on November 26, 2019 with an effective date of December
1, 2019. (Pa87).^{2, 3} On July 8, 2019, the Legislature enacted L. 2019, c. 157

¹ Because the procedural history and facts are closely related, they are combined for efficiency and the court’s convenience.

² “Pa” refers to appellant’s appendix; “Pb” refers to his brief.

³ A Service Retirement is provided for by N.J.S.A. 53:5A-8 for any member who has established twenty years of service in SPRS and also for troopers who were

(the “Ricci Act”). The Ricci Act in relevant part permitted active or retired members of the SPRS to file for a recalculation of Ordinary Disability, Service, or Special Retirement Benefits to Accidental Disability Retirement Benefits provided they participated in the rescue, recovery, or cleanup operations at the World Trade Center Site. (Pa10). The Ricci Act also created a presumption that the disability of the member or retiree “occurred during and as a result of the performance of the member’s regular or assigned duties and not the result of the member’s willful negligence unless the contrary can be proved by competent evidence.” (Pa10).

On August 7, 2019, the Division of Pensions and Benefits added information about the Ricci Act to its website. (Pa10). The webpage included information for active members, retirees, and employers about qualifying dates, locations, health conditions and impairments, the Eligibility Registration Form, the Request for Amended Benefits Form, a sample postcard to be mailed to retirees, and materials for employers regarding dissemination of information to employees. (Pa10-11).⁴ On August 8, 2019, the Division sent a letter to the

members of the retirement system as of the effective date of L. 1985, c. 175 regardless of their years of service. A Special Retirement provides enhanced benefits pursuant to N.J.S.A. 53:5A-27 and is available to any SPRS member who has established twenty-five years of creditable service.

⁴ Also available at: <https://www.nj.gov/treasury/pensions/ricci-ch157.shtml>. (Pa10).

Certifying Officers of the SPRS, the Police and Firemen's Retirement System, and the Public Employees' Retirement System. (Pa82). The subject of the letter was "New Legislation Notice – P.L. 2019, c. 157" and it served to notify active employees of the newly enacted law. (Pa82). All Certifying Officers were advised of their responsibilities to distribute the information and to certify that they had done so. (Pa83). On August 16, 2019, Debra Pettyman, then-Certifying Officer for NJSP, acknowledged receipt and distribution of the information pertaining to the Ricci Act. (Pa12; Pa85). The Division hired Barton and Cooney LLC to mail postcards to all 200,647 SPRS retirees at their home addresses on file with the Division. (Pa11). These postcards included notice of the enactment of L. 2019, c. 157, how to file for Accidental Disability retirement benefits under the new law, the deadline for filing for such benefits, and the ramifications for missing the deadline. (Pa11).

On June 10, 2021, the Division posted a news item on its website advising members that the statutory eligibility period to register under the Ricci Act was expiring soon and that members must submit the Eligibility Registration Form by July 8, 2021. (Pa11). The website further advised that failure to do so by that date would render the member ineligible to apply at a later date. (Pa11).

On March 3, 2023, the Board received Wise's Eligibility Registration Form and Request for Amended Benefits Form, both completed on August 29,

2022, as well as a sworn affidavit from Wise dated August 29, 2022. (Pa11; Pa57; Pa59; Pa56). Wise's affidavit asserted, in relevant part, that he "did not receive any correspondence or post card." (Pa55).

The Board considered Wise's request at its meeting of May 23, 2023, where it voted to deny his request to register under the amended benefits provisions of the Ricci Act. (Pa23). The Board concluded that Wise was notified as required by the Ricci Act but failed to submit his Eligibility Registration Form by July 8, 2021. (Pa25).

Wise appealed the Board's decision by letter dated July 18, 2023. (Pa15). Wise argued that he did not receive notice of the Ricci Act, so the Board should relax the statutory deadline for filing. (Pa21-22). At its meeting on July 25, 2023, the Board considered Wise's arguments, found that there were no material issues of fact in dispute, and therefore directed the Board Secretary to draft findings of fact and conclusions of law for its review and approval at its next meeting. (Pa9).

The Board issued its Final Administrative Decision on September 27, 2023. (Pa9). The Board concluded that the Ricci Act, codified in part at N.J.S.A. 53:5A-10(e)(3), allows members to file for the recalculation of Ordinary Disability Retirement Benefits or Service Retirement Benefits to Accidental Disability Retirement Benefits if the member is or becomes totally

and permanently disabled due to participation in the rescue, recovery, or cleanup operations at the World Trade Center between September 11, and October 11, 2001. (Pa10). The Board also noted the Ricci Act required the Board to provide notice to members and retirees within thirty days of the effective date of the Act, and if members or retiree did not file a written and sworn statement with the retirement system within two years of the effective date of the Act, they would be ineligible for the presumption or recalculation. (Pa10). The Board found it undisputed that the Division had provided notice of the Ricci Act to active and retired members of SPRS. (Pa13). Because Wise was an active member of SPRS at the time the Ricci Act was passed, he did not receive a postcard. (Pa11; Pa13). However, the Division notified all Certifying Officers of the Ricci Act on August 8, 2019. (Pa13). The Certifying Officer of NJSP at that time confirmed that information pertaining to the Ricci Act was disseminated to the location's employees. (Pa13). Further, the Division posted all information concerning the Ricci Act, including the eligibility registration form, online. (Pa13). However, Wise did not submit his Eligibility Registration Form until approximately one year and one month past the July 8, 2021 statutory deadline. (Pa11; Pa13).

The Board also considered the matter under its inherent power to extend the deadline if good cause, reasonable grounds, and reasonable diligence could

be demonstrated. (Pa13-14). The Board concluded that the Division had notified all active members of SPRS of the passage of the Ricci Act in August 2019 in accordance with the Act. (Pa13). Thus, Wise did not establish good cause nor reasonable grounds to allow him to file over one year and one month past the statutory deadline. (Pa13). Further, the Board concluded that Wise did not exercise reasonable diligence because of such a protracted delay in filing his Eligibility Registration Form. (Pa13). Therefore, the Board concluded that Wise was ineligible to register for amended benefits under the Ricci Act. (Pa13).

This appeal followed.

ARGUMENT

POINT I

THE BOARD'S DENIAL OF WISE'S APPLICATION MADE OVER ONE YEAR AND ONE MONTH PAST THE STATUTORY DEADLINE TO FILE FOR AMENDED BENEFITS IS REASONABLE AND SHOULD BE AFFIRMED.

The Board's decision denying Wise's Eligibility Registration Form under the Ricci Act should be affirmed because it is reasonable and supported by the plain language of N.J.S.A. 53:5A-10, and thus not arbitrary nor capricious. "On judicial review of an administrative agency determination, courts have but a

limited role to perform.” Gerba v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 83 N.J. 174, 189 (1980) (citations omitted). An agency’s factual determinations are presumptively correct; on review of the facts, a court will not substitute its own judgment where the agency’s findings are supported by sufficient credible evidence. Rooth v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 472 N.J. Super. 357, 365 (App. Div. 2022). Additionally, this court gives “substantial deference to an agency’s interpretation of a statute that the agency is charged with enforcing,” Richardson v. Bd. of Trs., Police & Firemen’s Ret. Sys., 192 N.J. 189, 196 (2007). “Such deference has been specifically extended to state agencies that administer pension statutes,” because “a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.” Piatt v. Police & Firemen’s Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (quoting In re Election Law Enforcement Comm’n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)). Indeed, “if the language is plain and its meaning clear, the inquiry ends there . . .” State v. Malik, 365 N.J. Super. 267, 274 (App. Div. 2003). In reading statutory language, courts will give words their ordinary meaning absent any direction from the Legislature to the contrary. In Re Young, 202 N.J. 50, 63 (2010).

Here, the Board’s determination is reasonable and complies with the

governing statute. The unambiguous language of the Ricci Act provides:

A member or retiree shall not be eligible for the presumption or recalculation under this subsection unless within two years of the effective date of this act, P.L.2019, c.157, the member or retiree files a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service.

[L. 2019, c. 157 (codified at N.J.S.A. 53:5A-10(e)(4)).]

Thus, under the plain language of the statute Wise is ineligible for the presumption or recalculation provided under the Ricci Act because he failed to file by July 8, 2021.

Further, while New Jersey pension statutes are construed liberally because of their remedial character, Geller v. Dep't of Treasury, 53 N.J. 591, 597-98 (1969), "an employee has only such rights and benefits as are based upon and within the scope of the provisions of the statute." Francois v. Bd. of Trs., Pub. Emps.' Ret. Sys., 415 N.J. Super. 335, 349 (App. Div. 2010) (citation omitted). Here, the statute provides for the benefit if a retiree files for it within two years of the effective date of the Ricci Act, i.e., by July 8, 2021. Wise did not file for the benefit within the time permitted by the statute, so even under a liberal construction, the statute expressly states he is ineligible for the benefit he now seeks.

Nevertheless, Wise argues that the limitation period in the statute should

not be strictly applied because it “fails to advance the legislative purpose of the Ricci Act.” (Pb13). But this is a misinterpretation that contradicts the Legislature’s actual intent, as explicitly stated in the statute it enacted.

“The Court’s obligation when interpreting a law is to determine and carry out the Legislature’s intent.” Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 540-41 (2012) (citing Allen v. V & A Bros., Inc., 208 N.J. 114, 127 (2011)). “[T]he best indicator of that intent is the statutory language[.]” Richardson, 192 N.J. at 195 (first alteration in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). “A court should ‘ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole.’” D’Ambrosio v. Dep’t of Health & Senior Servs., 403 N.J. Super. 321, 334 (App. Div. 2008) (citing DiProspero, 183 N.J. at 492).

Here, the Legislature clearly intended a limitation period of eligibility for the presumption or recalculation provided under the Ricci Act, as the plain language of the statute sets a two-year deadline ending July 8, 2021, after which a “retiree shall not be eligible” for such benefits. N.J.S.A. 53:5A-10(e)(4). Under Wise’s argument, any member of SPRS who was unaware of the Ricci Act could apply at any arbitrarily distant point in the future. This would nullify the two-year time limitation created by the Legislature, extend the presumption

beyond its intended time frame, and diminish the ability of the Division and the Board to verify applicants' dates and locations of service as witnesses and memories inevitably continue to become unavailable and fade. Ignoring the plain language of the statute, which imposes a two-year deadline, would not further the legislative purpose of the Ricci Act.

Even if the statutory language were not clear, Wise's position would lead to an absurd result which would render the two-year statutory limitation superfluous. In this regard, "[w]hen construing a statute, 'legislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless.'" State v. Regis, 208 N.J. 439, 449 (2011)(quoting Franklin Tower One, LLC v. N.M., 157 N.J. 602, 613 (1999)).

Accordingly, the Board reasonably denied Wise's request to apply for amended benefits under the Ricci Act because he failed to file his Eligibility Registration Form within the required statutory timeframe.

POINT II

CONSIDERATIONS OF ADEQUATE AND ACTUAL NOTICE DO NOT COMPEL A DIFFERENT RESULT.

Notwithstanding the clarity of the applicable statute, Wise argues that he should be permitted to file beyond the statutory deadline because the Board did not provide adequate notice of the Ricci Act. (Pb9). This argument fails because

the Board provided adequate notice of the law.

The only express notice requirement contained in the Ricci Act provides that the Board must “notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment.” N.J.S.A. 53:5A-10(e)(4). The Division of Pensions and Benefits satisfied this notice requirement when it added information about the Ricci Act to its website on August 7, 2019, and when it notified all Certifying Officers of the Ricci Act on August 8, 2019 and received confirmation that information pertaining to the Ricci act was disseminated to the location’s employees.⁵ (Pa10; Pa13; Pa85).

That notice satisfied the Ricci Act, which requires only that the Board notify members of the enactment of the statute. The Legislature is well aware of how to create specific notice requirements and has done so with other statutes. See N.J.S.A. 43:15A-50(a) (“Notification shall be by certified mail to the spouse’s address as provided on the form by the member.”); e.g., Hammond v.

⁵ Certifying Officers are required to complete training developed by the Division to ensure their compliance with pension fund or retirement system matters. N.J.S.A. 43:3C-15. For example, Certifying Officers are aware that they will be guilty of a fourth degree crime for making a false statement, or falsifying any record or report with respect to the enrollment of persons into the pension or retirement system. Ibid. Specifically for SPRS, the Certifying Officer “act[s] as liaison for all dealings between the Division of State Police and the Retirement System. The Certifying Officer shall also be responsible for all other duties relating to matters concerning the System including providing requested documentation in a timely manner.” N.J.A.C. 17:5-1.4.

City of Paterson, 145 N.J. Super. 452, 456 (App. Div. 1976) (holding that the Legislature, in requiring “actual receipt” of notice in the Tort Claims Act when certified mail is not used, “clearly did not mean to leave proof of actual receipt to a presumption.”). When “the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.” GE Solid State, Inc. v. Director, Div. of Taxation, 132 N.J. 298, 307-08 (1993); see also State v. Hoffman, 149 N.J. 564, 579 (1997). Nowhere in the Ricci Act is there a requirement that the Board send notice, through a postcard, by certified mail or other means, or otherwise require actual receipt of notice. Thus, in accord with the statutory canon of *expressio unius est exclusio alterius*, the expression of one thing suggests the exclusion of another left unmentioned, this court should reject Wise's request to create a requirement where the Legislature has chosen not to. The Ricci Act simply required that the Board provide notice within thirty days of its enactment, without specifying in what manner. The Board complied with this requirement when it posted information about the Ricci Act on its website, notified Certifying Officers about their obligation to disseminate information about the Ricci Act, and received confirmation from the Certifying Officer at the time that the information was disseminated. Wise identifies no authority suggesting that the Division’s methods to fulfill this notice requirement were inadequate.

Wise also suggests that the Division violated the Ricci Act because the Division did not email the Certifying Officers of their obligation to disseminate information about the Ricci Act until August 8, 2019, one day past the 30-day requirement. (Pb13). However, the Board received confirmation from the Certifying Officer on August 16, 2019 that information about the Ricci Act had been disseminated to active employees. (Pa12). Thus, the Board substantially complied by ensuring notice within thirty-nine (instead of thirty) days of the effective date of the statute. To suggest that such a slight delay somehow eliminates the statutory deadline for filing claims would be an absurd result, and one this court should not accept. See Regis, 208 N.J. at 449 (“[w]hen construing a statute, ‘legislative language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless.’”) (citation omitted).

Despite the Board’s having satisfied the notice requirement under the Ricci Act, it nevertheless considered Wise’s request under its inherent equitable power. (Pa13-Pa14). While a Board is generally bound by its enabling statutes, it has inherent authority to reopen administrative matters upon a showing of good cause, reasonable grounds, and reasonable diligence. Minsavage for Minsavage v. Bd. of Trs., Teachers’ Pension & Annuity Fund, 240 N.J. 103, 109 (2019). A member seeking relief by way of the Board’s inherent powers also “must demonstrate extreme hardship and a clear equity in his favor.” Buono v.

Bd. of Trs., Teachers' Pension & Annuity Fund, 188 N.J. Super. 488, 493 (App. Div. 1983).

Contrary to Wise's assertions, (Pb13-14), the Board considered its inherent power as well as his affidavit and the affidavits of the other troopers that he submitted in support of his contention that he was not provided notice. After considering its equitable power and the affidavits presented, the Board reasonably concluded that "Wise did not exercise reasonable diligence nor demonstrate reasonable grounds for such a protracted delay in filing the eligibility registration form," where he filed his form one year and one month past the deadline. (Pa14). Nor did Wise demonstrate extreme hardship in this matter, as he will continue to receive his Special Retirement benefits with concurrent retiree health benefits coverage. (Pa86-87).

It should also be noted that cases involving the use of the Board's equitable power for reopening proceedings or relaxing deadlines "were bottomed on the inherent power of an administrative agency, in the absence of legislative restriction, to reopen or to modify and to rehear orders previously entered by it." Duvin v. Bd. of Trs., Pub. Emps.' Ret. Sys., 76 N.J. 203, 207 (1978). Here, Wise seeks to avoid an obvious legislative restriction outlined in the Ricci Act that provides he is ineligible for the presumption or recalculation after July 8, 2021.

Even if Wise did not receive notice provided by the Division, he cannot evade the two-year limitation period. “As New Jersey courts have long recognized, ‘[i]gnorance of the law furnishes no excuse to a person either for a breach or for an omission of a duty[.]’” Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 367 (2010) (quoting Bowen v. Pursel, 109 N.J. Eq. 67, 73 (E. & A. 1931)). Thus, Wise purportedly being unaware of the Ricci Act until over three years after its passage cannot serve as the basis to allow him to evade its unambiguous requirements.

Wise’s reliance on Ensslin v. Board of Trustees, Police and Firemen’s Retirement System, 311 N.J. Super. 333 (App. Div. 1998), is misplaced. (Pb10). In Ensslin, a police officer had been terminated from service and the subsequent action he brought against his employer under the Law Against Discrimination was ultimately dismissed. Ensslin, 311 N.J. Super. at 334. After the LAD litigation, Ensslin applied for Ordinary Disability Retirement Benefits but the Board of Trustees, Police and Firemen’s Retirement System, determined he was ineligible as he was not a member in service at the time. Ibid. The PFRS Board found that under N.J.S.A. 43:16A-3(3), PFRS membership ceases “if more than 2 years have elapsed from the date of [the member’s] last contributions,” and under N.J.S.A. 43:16A-6(1) an application must be made “by a member in service” or on his behalf. Id. at 335.

This court reversed the Board, holding “that the two-year standard of N.J.S.A. 43:16A-3(3) is not jurisdictional, especially in the circumstances presented” in the particular matter. Id. at 337-38. In his LAD action, Ensslin’s position was that he was not disabled from his employment with a reasonable accommodation. Id. at 335. To be considered for Ordinary Disability, Ensslin was required to certify he is disabled. Id. at 336. Thus, Ensslin was legally barred by the operation of “the doctrine of judicial estoppel” from filing his application for Ordinary Disability while his LAD action was pending. Ibid. The court noted that it has found “equitable and countervailing considerations” in particular circumstances to allow a plaintiff to assert a claim. Id. at 337 (quoting SMB Assocs. v. Dep’t of Env’t Prot., 264 N.J. Super. 38, 59 (App. Div. 1993) (“[A]n “agency has inherent power to waive *de minimis* violations of objective standards.”)). The court concluded that under the circumstances presented, fairness and equity required Ensslin to be permitted to apply for Ordinary Disability. Id. at 338.

Here there was no such legal impediment to Wise filing his Eligibility Registration Form, nor would he have been sacrificing discrimination claims or other litigation positions by doing so. Wise simply failed to file his Eligibility Registration Form until one year and one month past the statutory deadline, which is not a *de minimis* violation.

Contrary to Wise's argument, the court's decision in Ensslin did not turn on the timeliness or adequacy of the Division's notice. (Pb12). Instead, the court found that because the notice from the Division was sent "more than four years from the date of petitioner's last contribution," the Division's own "day-to-day administration of its affairs" and interpretation of the two-year time limitation as expressed by the four-year notice further supported allowing Ensslin to file. Id. at 338. Here, there was no such letter informing Wise that he was eligible to file under the Ricci Act past the statutory deadline. Thus, Ensslin does not support Wise's proposition that untimely notice allows individuals to file at any time past the statutory deadline. (Pb12).

Nor do the equities weigh in his favor. The Board found on the basis of undisputed facts that Wise was provided notice, that information about the Ricci Act was available to him through the Division's website and publications, and that he had sufficient time to file his Eligibility Registration Form within the statutory period. Thus, contrary to Wise's contention, (Pb14), there was ample evidence for the Board to reasonably conclude that he failed to demonstrate good cause, reasonable grounds, and reasonable diligence to warrant consideration of his application well beyond the statutory deadline. (Pa14).

Finally, Wise's argument about and reference to a different applicant is misplaced. (Pb17). That applicant asserts that he attempted to file his Eligibility

Registration Form but was told he was ineligible because he was not currently sick. (Pb17; Pa129). But those facts are not in the record before this court. And that applicant's assertions are irrelevant to Wise's appeal as they deal with an entirely different set of circumstances not alleged by Wise, so they should be disregarded.

CONCLUSION

For these reasons, the Board's final administrative determination denying Wise's request to file his Eligibility Registration Form for amended benefits approximately one year and one month past the Ricci Act's statutory deadline should be affirmed.

Respectfully submitted,

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June 30, 2024

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**RE: KENNETH WISE v.
BOARD OF TRUSTEES, STATE POLICE RETIREMENT
SYSTEM
DOCKET NO.: A-000760-23**

**On Appeal from State Police Retirement System
Docket No.: SPRS 8-10-4992**

Dear Justices of the Appellate Division:

This office represents the Appellant, Kenneth Wise, in the above captioned matter. Please accept this reply letter brief in lieu of a more formal brief on behalf of the Appellant, retired Trooper Kenneth Wise.

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PROCEDURAL HISTORY

The Appellant, retired Trooper Kenneth Wise, relies on the Procedural History submitted in his original brief as if set forth herein in its entirety.

STATEMENT OF FACTS

The Appellant, retired Trooper Kenneth Wise, relies on the Statement of Facts submitted in his original brief as if set forth herein in its entirety.

LEGAL ARGUMENT

POINT I

**THE DECISION BELOW WAS ARBITRARY, CAPRICIOUS, UNREASONABLE, AND NOT SUPPORTED BY THE SUBSTANTIAL WEIGHT OF THE EVIDENCE.
(Not Raised Below).**

The decision of the State Police Retirement Board is against the substantial weight of the evidence, and therefore should be reversed. The decision is also arbitrary, capricious, and unreasonable. For the reasons that follow, this determination should be reversed.

New Jersey pension statutes must be liberally construed, and under a liberal construction, Wise would be eligible for Ricci Act benefits.

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. 3 McQuillin, *Municipal Corporations* (3d Ed. Rev. 1963) § 12.141. 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. McQuillin, *supra*, at § 12.143; and see Adams v. City of Modesto, 53 Cal. 2d 833, 3 Cal. Rptr. 561, 566, 350 P.2d 529 (1960); Giuliano v. Bd. of Trustees of Fireman's Pension F., 89 Ill. App. 2d 126, 231 N.E.2d 257, 258 (1967); Flake v. Bennett, 156 N.W.2d 849, 854 (Iowa Sup. Ct. 1968). Geller v. Department of Treasury, 53 N.J. 591, 597-598.

In Geller v. Department of Treasury, 53 N.J. 591, the Court evaluated a “preponderance of the equities” and “all of the circumstances” to achieve a “just result.” Id. at 600.

This Court is not bound by an agency's determination of a purely legal issue. Francois v. Board of Trustees, 415 N.J. Super. 335, 348 *citing* Utley v. Bd. of Review, Dep't of Labor, 194 N.J. 534, 551 (2008); see Krayniak v. Bd. of Trs., Pub. Employees' Ret. Sys., 412 N.J. Super. 232, 237 (App. Div. 2010).

As a form of legislation aimed at remedying a social problem, pension statutes " 'should be liberally construed and administered in favor of the persons intended to be benefited.' " Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 34 (2009) (*quoting* Geller, *supra*, 53 N.J. at 597-598, 597). Such a liberal construction "resolves all reasonable doubts in favor of the applicability of the statute to the particular case." Kochen v. Consol. Police

& Firemen's Pension Fund Comm'n, 71 N.J. Super. 463, 478, (App. Div. 1962). See Duignan v. Bd. of Trs., Pub. Employees' Ret. Sys., 223 N.J. Super. 208, 216 (App. Div. 1988) (same); Hillman v. Bd. Trs., Pub. Employees' Ret. Sys., 109 N.J. Super. 449, 455 (App. Div. 1970) (same). Francois v. Board of Trustees, 415 N.J. Super. 335, 349.

A person that is eligible for certain pension benefits is entitled to a liberal interpretation of the pension statute. The determination below is unreasonable because Wise would otherwise be eligible for accidental disability benefits under the Ricci Act. Under the liberal construction required of pension statutes, his eligibility for the benefit is not in question. In other words, Wise suffers from a 9/11 illness and is disabled as a result. He qualifies for accidental disability benefits under the Ricci Act standard.

Wise was denied the ability to register his presence at the September 11th terrorist attacks and therefore also denied accidental disability benefits based on an unsupported finding that Division mailed a post card notifying him of his requirement to register. This finding is arbitrary, capricious, and against the substantial weight of the evidence.

The Division alleges that the two-year time frame for registration requires strict implementation to “verify applicants’ dates and locations of service as witnesses and memories inevitably continue to become unavailable and fade.”

Rb11.¹ Under the Ricci Act, members who seek to amend benefits thereunder are not required to produce witness verification statements. Additionally, there has been no suggestion that the dates that Wise was at ground zero (or other similarly situated members) need verification by the Division. Neither is required under the Ricci Act. Furthermore, almost two decades had passed since the September 11th terrorist attacks when the Ricci Act was signed into law. The assertion by Respondent that the two-year registration window was to rectify a fleeting memory is erroneous. Respondent's argument lacks merit.

The determination below was arbitrary, capricious, unreasonable and against the substantial weight of the evidence. It should therefore be reversed, and retired Trooper Wise should be permitted to register his presence at 9/11 and granted accidental disability benefits.

¹ Rb references the Respondent's Brief.

POINT II

ADEQUATE NOTICE OF THE RICCI ACT WAS NOT PROVIDED AND THEREFORE, WISE SHOULD BE ENTITLED TO RICCI ACT BENEFITS. (Raised Below. Pa15. Pa29.)

Contrary to Respondent's contention, adequate, timely, proper notice of the Ricci Act was not provided. Respondent claims that posting the Ricci Act on the Division's website is somehow adequate "notice" to all members and retirees enrolled in the State Police Retirement System. Rb12. However, this argument fails for several reasons. The Ricci Act states:

The board of trustees shall promulgate rules and regulations necessary to implement the provisions of this subsection and shall notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment. N.J.S.A. 53:5A-10(e).

Pursuant to the Ricci Act, the Board was required to provide notice to members and retirants in the system.

A website posting is not sufficient notice to retirees or active members of the retirement system. In re State & Sch. Emples. Health Benefits Commissions' Implementation of Yucht, 233 N.J. 267, 270, the Supreme Court reversed and remanded the decision of the Appellate Division. The State Health Benefits Commission and the School Employees Health Benefits Commission were improperly reducing reimbursements for out-of-network behavioral health

services. In the prior case, the Appellate Division found in favor of Yucht's appeal which sought reimbursement at the statutory 80% of reasonable and customary charges for behavioral health services. In re Yucht, 2013 N.J. Super. Unpub. LEXIS 2188. Pra1.

As a result, the Commissions adopted resolutions to provide for reimbursement of the improper rate paid by members retroactive to 2009. Identical to the within appeal, the Division of Pensions and Benefits posted notice on their website with a link to a claim form. In re State and Sch. Empl. Health Benefits Commissions' Implementation of Yucht, 2017 N.J. Super. Unpub. LEXIS 1938. Pra5. Also identical to the within matter, the Division sent a letter to all Certifying Officers with the same exact terms contained in the Certifying Officer Letter's "EMPLOYER RESPONSIBILITIES" section. Id. Pra6. Pa82.

The Appellate Division held that "[a]pplying our highly deferential standard of review, we are satisfied that the record sufficiently supports the Commissions' decision that members were provided with adequate notice and instructions for submitting a request for claims reconsideration prior to the December 31, 2014 deadline." Id. at 8-9. Pra7. The Supreme Court reversed, holding:

2. Whenever an administrative agency acts, be that act mandatory or strictly voluntary, it must do so

reasonably and in a manner calculated to achieve the policies expressed in the agency's organic statute. Therefore, because the Commissions determined to reimburse affected members, **they were necessarily required to do so reasonably and in a non-arbitrary manner.** Here, **that means that the Commissions were required to provide reasonable notice in order that the retroactive benefit would fairly be made known and, thus, made available in a non-arbitrary manner to affected members.** As with most agency action, there is room for debate over what is reasonable. To be reasonable, an agency's choice of action for providing notice does not require adoption of a perfect practice. Here, the intended purpose of the action challenged—the Commissions' attempted notice—was to reach persons who might have been affected by the wrongfully calculated reimbursement rate, to notify those persons of the availability of supplemental reimbursement, and to inform them of the procedures for requesting supplemental reimbursement. (pp. 16-19)

3. The problem in this dispute over the adequacy of notice is that the evidence thus far produced has the capacity to support the claim that the methods of notice—the letter and website link—were not reasonably designed to likely reach the categories of members who may have been affected by the erroneous reimbursement rates. The Unions have advanced some evidence on which there could be based a finding that the notice was not reasonably designed to give notice to the proper universe of individuals affected. Against that presentation, based on the present record, the Court cannot conclude that either the website's ten-word, cryptically described notice and link or the letter to the certifying officers provides sufficient evidence to support deferring to the agency's choice of notice as reasonable. With the thin record available, it is not known what action, if any, certifying officers generally took in response to the

Commissions' letter. Nor does the record disclose what notice, if any, former employees and retirees received of the potential for supplemental reimbursement in light of the Commissions' apparent reliance on the link. Accordingly, the Court orders a remand for the development of a proper record to permit meaningful judicial review. In that remand hearing, both the form and substance of the notice may be examined. (pp. 19-23)

In re State & Sch. Emples. Health Benefits Commissions' Implementation of Yucht, 233 N.J. 267, 270. (Emphasis added).

In the within matter, adding information to a website cannot be construed as notice of the Ricci Act's enactment or the requirements to register within a certain timeframe. The statute required the Board to promulgate rules to provide notice to active and retired members of the State Police Retirement System.

The Certifying Officer Letter is proof that the website posting is not sufficient notice. Pa82. The notice of the Ricci Act to the Certifying Officers advises the Certifying Officers that they must distribute the information to employees pursuant to N.J.A.C. 17:5-1.4. It also required that the Certifying Officers to provide a certification that the information was distributed.

Wise, unlike the other similarly situated retirees, was an active employee of the Division of State Police at the time the Ricci Act was passed. Wise did not retire until December 1, 2019. The only document provided with respect to notice of the Ricci Act with respect to active employees is an Employer

Confirmation of Distribution Form. Pa85. This form was executed by Debra Prettyman, Certifying Officer for the New Jersey State Police on August 16, 2019, more than 30 days after the Ricci Act was passed. Pa85. It does not specify what manner the information was distributed to active employees of the New Jersey State Police, or when the information was distributed. Pa85. No supporting documentation to establish notice to active New Jersey State Troopers was provided.

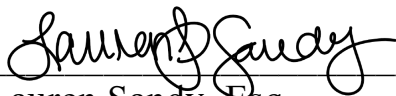
Failure to provide any notice, adequate or actual, is reasonable and equitable grounds for relaxing the deadline for registration under the Ricci Act. Furthermore, the Division admits that it did not notify the members of the retirement system within 30 days of the Ricci Act's enactment. This further establishes good cause to relax the timeframe.

We respectfully request that the decision below be reversed, and that Wise be permitted to register his presence at 9/11 and apply for amended benefits under the Ricci Act.

CONCLUSION

For all the foregoing reasons, we respectfully request that the determination below be reversed, and that retired Trooper Wise be permitted to register for Ricci Act benefits and that he be granted accidental disability benefits thereunder.

Respectfully submitted,



Lauren Sandy, Esq.

cc: Matthew Melton, DAG