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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1261-21

CARRIE GRAPSTEIN,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
TEACHERS' PENSION
AND ANNUITY FUND,

Defendant-Respondent.

Submitted April 17, 2023 — Decided April 27, 2023

Before Judges Mawla and Walcott-Henderson.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury, TPAF No. 652805.

Zazzali, Fagella, Nowak, Kleinbaum & Friedman, PC, attorneys for appellant (Raymond M. Baldino, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Jeffrey D. Padgett, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner Carrie Grapstein appeals from a November 22, 2021 final administrative determination by respondent, Board of Trustees, Teachers' Pension and Annuity Fund (TPAF) denying her request for an interagency transfer of retirement credit from the Public Employees' Retirement System (PERS). We reverse.

On November 1, 1999, petitioner was hired as a bookkeeper assistant by the Warren Township Board of Education (BOE). She was automatically enrolled in PERS and made pension contributions until July 2016. She then transitioned into her role as a School Business Administrator with the Green Brook Township BOE (Green Brook). Petitioner made additional pension contributions to her PERS account until she resigned from Green Brook in December 2016. In total, petitioner accrued 206 months of service credit or seventeen years and two months in PERS.

On April 1, 2018, petitioner was hired by the Essex Regional Education Service Commission (ERESC) to a position that offered a TPAF pension plan. She filed a timely application for interfund transfer with Green Brook, now her former employer, and made several requests that they complete their portion of

the transfer form. In a letter to the Division of Pensions and Benefits (Division), petitioner stated:

I requested that my former supervisor . . . file my [interfund] transfer of contributions upon numerous occasions between April 2018 and December 2018. Every request, whether it was by USPS or phone, was disregarded. I suspect that [was] because I resigned from Green Brook under duress. It was an intolerable work environment. Both [supervisory employees] have since been terminated by the Green Brook BOE. [One of the supervisory employees] . . . filed [two] lawsuits against the Green Brook BOE and [the other supervisor], claim[ed] that she was wrongfully terminated and that . . . [the other supervisor] fostered a hostile work environment. I mention that to explain the chaotic and angry work environment I left in Green Brook. There was a retaliatory mentality. There have been several [b]usiness [a]dministrators employed in Green Brook since that time.

On September 4, 2018, the Division sent a letter to petitioner with an option to apply for retirement benefits from PERS. The Division received no response and proceeded to close petitioner's PERS membership account on December 31, 2018 due to inactivity.

On May 20, 2019, the Division received petitioner's completed application for interfund transfer. On May 21, 2019, Green Brook's payroll coordinator executed the required interfund transfer form. Approximately two months later, petitioner was notified of the Division's denial of her application for interfund

transfer because of the closure of her PERS account in December 2018. On December 14, 2020, petitioner appealed the Division's decision. On March 25, 2021, the Division forwarded an administrative denial letter to petitioner and the Board. Thereafter, petitioner appealed from the Division's decision and requested a hearing before the Office of Administrative Law, which was also denied.

On October 7, 2021, the Board considered petitioner's appeal and found no genuine issue of material fact warranting a hearing and again denied her interfund transfer application. On November 22, 2021, the Board memorialized its determination in writing.

On appeal, petitioner argues as follows:

POINT I

THE . . . BOARD ERRED IN FAILING TO CONSIDER ITS DISCRETION TO EXERCISE EQUITABLE POWER.

A. Standard of Review.

B. The Board's Position that it Lacked Authority to Consider [Petitioner]'s Request is Erroneous as a Matter of Law.

1. The [Board] has Administrative Discretion to Relax Deadlines Based on Equitable Factors.

2. The [Board] also has Discretion under the Doctrine of Substantial Compliance.
3. [The Board] also had Discretion to Reopen [Petitioner]'s file and Permit her to Select an Interfund Transfer.

POINT II

THE OVERRIDING EQUITABLE
CONSIDERATIONS REQUIRE GRANTING
[PETITIONER]'S INTERFUND TRANSFER
REQUEST.

Petitioner maintains that she did file a timely application for interfund transfer, not with the Division directly, but with Green Brook, and that the difficult environment and rotating business administrators meant that her application and subsequent inquiries went unanswered. She maintains that her former employer either dragged its feet or intentionally failed to complete its portion of the transfer form. "She seeks equitable relief from the Board's application of a two-year statutory deadline for interfund transfers. In support, she asserts the statute does not contain such a deadline, and she substantially complied with the requirements. The failure to complete the transfer, in her view, lies with her former employer." She also argues that if this decision stands, she will go from Tier 1 to Tier 5 in membership and lose hundreds of thousands of dollars; nullifying seventeen years of prior public service in PERS.

In denying petitioner's application, the Board relied upon N.J.S.A. 43:15A-7(e), which provides in part, "[m]embership of any person in [PERS] shall cease if [they] shall discontinue [their] service for more than two consecutive years." It found the delay in filing for the transfer rests with petitioner, not her former employer.

Our review of an administrative agency's final decision is limited. In re Carter, 191 N.J. 474, 482 (2007). We afford "a 'strong presumption of reasonableness' to an administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting City of Newark v. Nat. Res. Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980)). Absent arbitrary, unreasonable, or capricious action, or a lack of support in the record, the agency's final decision will be sustained. In re Herrmann, 192 N.J. 19, 27-28 (2007).

In determining whether agency action is arbitrary, capricious, or unreasonable, we must examine:

- (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
- (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Stallworth, 208 N.J. 182, 194 (quoting Carter, 191 N.J. at 482-83).]

We defer to the Board's interpretation of the statutes it is charged with enforcing. Thompson v. Bd. of Trs., Tchrs' Pension & Annuity Fund, 449 N.J. Super. 478, 483 (App. Div. 2017) (quoting Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007)), aff'd o.b., 233 N.J. 232 (2018). "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.'" Ibid. (quoting Piatt v. Bd. of Trs., Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015)).

However, an appellate court is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Richardson, 192 N.J. at 196 (quoting In re Taylor, 158 N.J. 644, 658 (1999)). We "apply de novo review to an agency's interpretation of a statute or case law." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)).

N.J.S.A. 43:15A-7(e) provides: "[m]embership of any person in the retirement system shall cease if [they] shall discontinue [their] service for more

than two consecutive years." N.J.A.C. 17:3-7.1(b)(1) states, "[a] member desiring to transfer service credit and contributions from one State-administered defined benefit retirement system to another must file an '[a]pplication for [i]nterfund [t]ransfer.'" N.J.A.C. 17:3-7.1(b)(5)(ii) provides "[t]he member must apply to transfer this service no more than two years from the date of the last contribution in the PERS" If "[t]he account has expired . . . the member is not eligible to transfer service credit." N.J.A.C. 17:3-7.1(b)(5)(iii).

The Division did not receive petitioner's application for interfund transfer prior to the closure of her PERS account. However, the fund transfer form cannot be filed without a section that must be completed by the employer. Given the Board's view that the facts were undisputed, we accept as true petitioner's representations regarding her efforts to get the Green Brook BOE to complete the form, the dysfunction of the Green Brook BOE's personnel at the time she submitted the form for completion, and petitioner's inability to obtain a signed form.


The Board's determination failed to appreciate the significance of Green Brook's role in failing to timely address petitioner's application. The Board does not contend that petitioner could have completed the interfund transfer documents herself, without the certification of her former employer; nor does

its decision suggest what more petitioner could have done to compel her former employer to complete their portion of the forms. Rather, its opposition rests almost entirely upon the statutory closure of petitioner's PERS account in December 2018, which leaves petitioner at risk of losing those funds; potentially hundreds of thousands of dollars in retirement benefits.

Under the unique facts of this case, we conclude the Board's reasoning was unreasonable. Herrmann, 192 N.J. at 27-28. Considering petitioner's many years of PERS service, the Board's application of the law to the facts of this case do not serve valid legislative policies. Stallworth, 208 N.J. at 194. For these reasons, we reverse and direct entry of judgment in petitioner's favor.

Reversed. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION