SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1415-21

MAURICE B. HILL, JR.,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,

Respondent-Respondent.

Submitted April 17, 2023 — Decided April 26, 2023

Before Judges Whipple, Mawla, and Walcott-Henderson.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of Treasury, PERS No. xx7379.

Gregory P. McGuckin, Township Attorney, attorney for appellant (Anthony Merlino, Assistant Township Attorney, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney

General, of counsel; Porter Strickler, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner Maurice B. Hill, Jr. appeals from a December 9, 2021 final agency decision by respondent Board of Trustees, Public Employees' Retirement System, denying his request to re-enroll in the Public Employees' Retirement System (PERS). This case requires us to interpret N.J.S.A. 43:15A-7.5, a statute allowing certain elected officials who had previously been barred from being PERS members, pursuant to laws enacted in 2007, to re-enroll in PERS. We hold N.J.S.A. 43:15A-7.5 applies only to elected officials who had fifteen years of continuous service in New Jersey elective public offices, who were elected to new offices prior to the statute's effective date and applied for retroactive[1] enrollment in PERS within a 180-day deadline set forth in the statute. Because Hill met neither requirement, we affirm.

[1] We note that some of the briefing and one of the Board's decisions uses the term "grandfathered" and variants of the word, which has prejudiced etymology. See Webster's Third New International Dictionary 987 (2002) (definition of "grandfather clause"); Benno C. Schmidt, Jr., Principle and Prejudice: The Supreme Court and Race in the Progressive Era, 82 Colum. L. Rev. 835 (1982). Although we recognize there was no intent to use the word in this way, we shun its use and urge the parties to do so as well.

Hill was elected to the Township Council of Toms River and served from January 1, 2004, to December 31, 2019. At the time, elected officials could enroll in PERS. Hill was enrolled effective April 1, 2004.

In 2007, the Legislature enacted several laws to reform PERS. L. 2007, c. 92 (Chapter 92). Among them was N.J.S.A. 43:15C-2(a)(1), which precludes elected officials from enrolling in PERS after its effective date of July 1, 2007. The statute permits elected officials who enrolled before July 1, 2007, to continue participation in PERS as long as they continue to hold the same office. N.J.S.A. 43:15C-2(a)(1). Those elected after July 1, 2007, had to enroll in the Defined Contribution Retirement Plan (DCRP). Ibid.

In 2017, the Legislature enacted amendments to Chapter 92, including N.J.S.A. 43:15A-7.5, which reads as follows:

> a. The Division of Pensions and Benefits [(Division)] . . . shall reenroll in [PERS] . . . any person holding elective public office on . . . [January 16, 2018,] . . . who was a member of the retirement system as of . . . [July 1, 2007,] . . . on the basis of holding an elective public office and who was elected to another elective public office after [July 1, 2007], provided the person has at least [fifteen] years of continuous service in elective public offices of this State . . . .
>
> . . . .
>
> b. An elected public official eligible for enrollment in [PERS] pursuant to subsection a. of this section may

> request, in writing, within 180 days of [January 16, 2018], that the official's enrollment in the system be made retroactive to the date of [their] assumption of another elective office without a break in service . . . .

In 2019, Hill was elected mayor of Toms River, and took office on January 1, 2020. In June 2020, the township's chief financial officer wrote to the Division to enroll Hill in PERS, pursuant to N.J.S.A. 43:15A-7.5. The Division denied the request because Hill had changed elective office. It cited N.J.S.A. 43:15C-2, which required Hill to enroll in the DCRP.

In July 2020, Hill asked township counsel to file for PERS pension benefits on his behalf, since he could not continue his enrollment. The Division advised Hill could not collect his PERS pension until he severed all employment with the township.

Hill appealed and argued he was eligible for re-enrollment in PERS under N.J.S.A. 43:15A-7.5, and alternatively, was eligible to begin collecting his PERS pension. The Board rejected both arguments but did not address Hill's claim he could continue to participate in PERS under N.J.S.A. 43:15A-7.5. Hill appealed from the Board's decision, but the Attorney General requested we remand for the Board to address and interpret N.J.S.A. 43:15A-7.5. We granted the motion.

The Board issued its final decision denying Hill's request. It reasoned the plain language of N.J.S.A. 43:15A-7.5 barred his enrollment in PERS. Although the Chapter 92 reforms

> left only a small carve-out for elected officials, such as . . . Hill, who w[as] enrolled as of July 1, 2007, and continued to hold that same elective public office. . . . N.J.S.A. 43:15A-7.5 amended the statute to allow a temporary 180-day window of time for a very small number of members to re-enroll in PERS based on their new elective public office.

The Board concluded the deadline to invoke N.J.S.A. 43:15A-7.5, was 180 days of the effective date of the statute, or July 16, 2018. It rejected Hill's argument he could re-enroll after the July 2018 deadline because "the statute unambiguously applies only to those elected officials eligible for continued enrollment at the time of the enactment." Hill did not qualify because he was elected after the 180-day window.

The Board noted N.J.S.A. 43:15A-7.5(a) was written in the past tense because it refers to an individual who "was" elected to another public office. It interpreted this as "meaning prior to January 16, 2018." Further, "[t]he language requiring a person to have at least [fifteen] years of public service at the time of enactment is in the present tense, meaning that the individual needed to have [fifteen] years of service on January 16, 2018." The Board noted the statute

"nowhere employs the future tense and there is no expression of an intent for the re-enrollment provisions to apply both prospectively and indefinitely." It concluded Hill did not qualify for PERS re-enrollment because he neither had the requisite fifteen years of service nor had he been elected to his new office as of January 16, 2018.

I.

Our scope of review of an agency determination is limited to whether the agency's decision was "arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole." In re Stallworth, 208 N.J. 182, 194 (2011) (alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). This includes a determination of whether the agency has followed the law; substantial evidence supports its findings; and "in applying . . . 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." Ibid. (quoting In re Carter, 191 N.J. 474, 482-83 (2007)). "When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007).

We extend "an enhanced deferential standard[,]" East Bay Drywall, LLC v. Department of Labor and Workforce Development, 251 N.J. 477, 493 (2022) (alteration in original), when an agency is "charged with the expertise and responsibility to administer the [statutory] scheme." Acoli v. N.J. State Parole Bd., 224 N.J. 213, 229 (2016). However, we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 261 (App. Div. 2014) (quoting Mayflower Sec. Co. v. Bureau of Sec. in Div. of Consumer Affs. of Dep't of L. & Pub. Safety, 64 N.J. 85, 93 (1973)). Our review of legal questions is always de novo. L.A. v. Bd. of Educ. of Trenton, Mercer Cty., 221 N.J. 192, 204 (2015).

II.

Hill argues he meets the eligibility criteria under N.J.S.A. 43:15A-7.5(a), and the Board misconstrued the text and the purpose of the statute. He claims the statute was designed to: retroactively apply to those who were already in PERS; eliminate the preclusive effect of a change in elective office; and exclude newly elected officials who were not previously PERS members. Hill asserts the Board incorrectly interpreted N.J.S.A. 43:15A-7.5(b), because the provision only applied to elected officials who were not already PERS members at the

time of the statute's enactment and gave them a deadline to do so; it did not apply to those who had PERS service and then later sought an elected office.

Hill and the Board agree N.J.S.A. 43:15A-7.5(a) applies to individuals holding elective public office on January 16, 2018, who were enrolled in PERS as of July 1, 2007. The disagreement regards whether the statute permits those who were elected to a different office post-January 1, 2007, to re-enroll without limitation, or if the statute closes the door to PERS membership after January 16, 2018. The second difference concerns Hill's view that an individual seeking a PERS re-enrollment have at least fifteen years of continuous service in elective office versus the Board's view that the required fifteen years of service be accrued as of January 16, 2018.

"The overriding goal" of statutory interpretation "is to determine . . . the intent of the Legislature, and to give effect to that intent." State v. Hudson, 209 N.J. 513, 529 (2012). We begin with the understanding "the language of the statute, and the words chosen by the Legislature should be accorded their ordinary and accustomed meaning." Ibid. In assessing the meaning of statutory language, we "give great weight to the difference in verb tenses used by the Legislature . . . ." State ex rel. K.O., 217 N.J. 83, 94 (2014). "Where the plain language of a statute is clear, we enforce the statute as written." Correa v.

Grossi, 458 N.J. Super. 571, 579 (App. Div. 2019) (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

However, "[i]f the language leads to a clearly understood result, the judicial inquiry ends without any need to resort to extrinsic sources." Hudson, 209 N.J. at 529. "[E]xtrinsic aids may not be used to create ambiguity when the plain language of the statute itself answers the interpretative question; however, when the statutory language results in more than one reasonable interpretation, then resort may be had to other construction tools . . . in the analysis." Id. at 529-30 (citing State v. Shelley, 205 N.J. 320, 323-24 (2011)). These may "includ[e] legislative history, committee reports, and contemporaneous construction." DiProspero, 183 N.J. at 492-93 (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)).

Pursuant to these principles, we conclude the Board's analysis of N.J.S.A. 43:15A-7.5(a), including its verb tenses, leads to a sensible interpretation of the law. The Board's reading of N.J.S.A. 43:15A-7.5(a) that "any person . . . who was elected to another elective public office after [July 1, 2007,]" had until January 16, 2018, to apply for PERS re-enrollment, was a rational interpretation of the statute. (Emphasis added). Applying Hill's logic, the alternative would have been for the Legislature to use the word "is" and for the Board to ignore

the 180-day deadline in N.J.S.A. 43:15A-7.5(b), which would mean that any person elected to another elective office post-July 1, 2007, would be eligible for PERS re-enrollment without a temporal limitation. This would render the January 16, 2018 deadline in N.J.S.A. 43:15A-7.5(b) meaningless.

We reach a similar conclusion regarding the statute's requirement that re-enrollment is available "provided the person has at least [fifteen] years of continuous service in elective public offices of this State." (Emphasis added). Again, the plain language indicates that to re-enroll in PERS a person must already have fifteen years of service. To realize the outcome Hill suggests, the Legislature would have stated "provided that person has or will have at least fifteen years of continuous service," which it clearly did not do. "The Legislature knows how to draft a statute to achieve [a] result when it wishes to do so." Zabilowicz v. Kelsey, 200 N.J. 507, 517 (2009). Further, the use of "has or will have" by the Legislature would render this provision open-ended and the statute ambiguous. We decline to adopt such an interpretation.

Also, Hill's reading of N.J.S.A. 43:15A-7.5(a) conflicts with N.J.S.A. 43:15A-7.5(b), which clearly states those seeking re-enrollment in PERS have 180 days to file a written request to do so. He asserts N.J.S.A. 43:15A-7.5(b) applies only to officials who were elected to another office prior to enactment

of N.J.S.A. 43:15A-7.5. Our role is to "read [statutory provisions] . . . in context with related provisions so as to give sense to the legislation as a whole[.]" DiProspero, 183 N.J. at 492 (internal citation omitted). N.J.S.A. 43:15A-7.5(b) contains no language supporting Hill's understanding. Moreover, this provision references N.J.S.A. 43:15A-7.5(a), which clearly applies to those elected to another office after July 1, 2007, rather than before. The statute is unitary.

Interpreting N.J.S.A. 43:15A-7.5(a) as Hill suggests, eviscerates the legislative bar of elected officials from PERS effective July 1, 2007, and the intended reforms to Chapter 92. The reforms were borne of the need to "[l]imit defined benefit pension plans to full-time career employees and" establish the DCRP "for all new part-time employees, elected officials, and full-time appointed officials."[2]

Hill points us to extrinsic evidence such as a legislative fiscal estimate by the Office of Legislative Services, which stated the enactment of N.J.S.A. 43:15A-7.5 would apply to a small percentage of PERS members and would not

[2] 2006 Special Session Joint Legislative Committee, Public Employee Benefits Reform Final Report 2 (Dec. 1, 2006), https://dspace.njstatelib.org/xmlui/bitstream/handle/10929/25028/p4182006zb.pdf?sequence=1&isAllowed=y.

impact PERS.[3] However, this does not support his reading of the statute because Hill's interpretation would broaden the pool of those eligible for re-enrollment.

Hill also cites news articles containing statements from legislators, which he argues is dispositive of legislative intent. However, as our Supreme Court recently stated: "post-enactment statements by legislators who had been involved earlier in passing a bill about the supposed intent of a codified provision 'are of limited legal value' in construing such a provision." State v. Gomes, 253 N.J. 6, 33-34 (2023) (quoting N.J. Coal. of Health Care Prof'ls, Inc. v. Dep't of Banking & Ins., 323 N.J. Super. 207, 255-56 (App. Div. 1999)).

III.

Finally, we address Hill's argument N.J.S.A. 43:15A-7.5(b) is unconstitutional because the 180-day time limit is "a draconian deadline[, which does not] substantively advance the statute's stated purpose[.]" He argues N.J.S.A. 43:15A-7.5(a) is "self-limiting" without the 180-day deadline because "[t]he last eligible official . . . having been enrolled in PERS no later than June 30, 2007, . . . will reach the [fifteen]-year mark on June 30, 2022." He asserts

[3] Legislative Fiscal Estimate to A. 5322 2 (Jan. 3, 2018), https://pub.njleg.state.nj.us/Bills/2016/A9999/5322_E1.PDF.

we should declare N.J.S.A. 43:15A-7.5(b) unconstitutional, sever it, and leave the remainder of the statute intact.

"The Legislature shall not pass any private, special or local laws . . . [c]reating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees." N.J. Const. art. IV, § 7, ¶ 9(5). "[A]ll statutes are entitled to a presumption of validity that is overcome only by a showing that the statute is 'clearly repugnant to the Constitution.'" N.J. L. Enf't Supervisors Ass'n v. State, 414 N.J. Super. 111, 118 (App. Div. 2010) (quoting Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 222 (1985)). "The Legislature has a broad range of discretion in determining classifications and distinctions, which will be presumed to rest upon a rational basis if there is any conceivable set of facts which can support them." Id. at 118-19.

"[T]he test of whether a law constitutes special legislation is essentially the same as that which determines whether it affords equal protection of the laws." Brown v. State, 356 N.J. Super. 71, 84 (App. Div. 2002) (alteration in original) (quoting Phillips v. Curiale, 128 N.J. 608, 627 (1992)). "Determination of whether a statute constitutes special legislation focuses upon what the enactment excludes and the appropriateness of that exclusion viewed in light of the statute's legislative purpose." N.J. State Bar Ass'n v. State, 387 N.J. Super.

24, 51 (App. Div. 2006) (citing Camden City Bd. of Educ. v. McGreevey, 369 N.J. Super. 592, 604 (App. Div. 2004)). Legislation is special "when, by force of an inherent limitation, it arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate." Town of Secaucus v. Hudson Cnty. Bd. of Tax'n, 133 N.J. 482, 494 (1993) (quoting Town of Morristown v. Woman's Club, 124 N.J. 605, 622 (1991)).

N.J.S.A. 43:15A-7.5 differentiates between officials who have changed elective office before and after January 16, 2018. In all other respects, the two classes created by the statute are the same; they are officials who were enrolled in PERS as of July 1, 2007, who served at least fifteen years in elective public office, and later assumed a different elective public office.

Although we lack a legislative history to discern the purpose of the January 16, 2018 dividing line imposed by N.J.S.A. 43:15A-7.5(b), the principles which animate legislative enactments and agency interpretation of statutes regarding pension benefits are instructive. As a general proposition, pension "eligibility is not to be liberally permitted." Smith v. State, Dept. of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007). "[A]pplicable guidelines must be carefully interpreted so as not to 'obscure or override considerations of . . . a potential adverse impact on the

financial integrity of the [f]und.'" Ibid. (second and third alteration in original) (quoting Chaleff v. Tchrs.' Pension & Annuity Fund Trs., 188 N.J. Super. 194, 197 (App. Div.), certif. denied, 94 N.J. 573 (1983)); see also Burgos v. State, 222 N.J. 175, 182 (2015) (noting the pension system's "alarming current unfunded accrued liability"). "The PERS Board owes a fiduciary duty to its members to protect the financial integrity of the fund." Francois v. Bd. of Trs., Pub. Emps.' Ret. Sys., 415 N.J. Super. 335, 357 (App. Div. 2010) (citing Mount v. Trs. of Pub. Emps.' Ret. Sys., 133 N.J. Super. 72, 86 (App. Div. 1975)). The Chapter 92 reforms were enacted for similar purposes.

In Brown, the plaintiffs argued an amendment, which "enhanced retirement benefits for certain [Police & Fireman's Retirement System] members who retired on or after April 1, 1991[,]" constituted special legislation because it omitted members who retired on accidental disability before that date. 356 N.J. Super. at 76. We upheld the amendment, concluding it "satisfie[d] a valid purpose—to provide an increased benefit to . . . members while at the same time . . . protect[ed] the fiscal integrity of the system." Id. at 85. The April date was a "dividing line to conserve the fiscal resources of the . . . fund" and was therefore not unreasonable. Ibid. Further, "no group similarly situated to those covered by the statute ha[d] been excluded." Id. at 86. All members "who

retired as a result of their accidental disabilities prior to April 1, 1991, are treated the same, regardless of the nature of their disabilities." Id. at 86.

Here, pursuant to the Board's interpretation of the statute, officials elected to new positions, who have the requisite fifteen years of service, were all eligible to re-enroll in PERS. Hill and those similarly situated[4] were not arbitrarily excluded because they did not qualify for re-enrollment in the first instance. The distinction here does "not exclude a class of persons upon whom it would otherwise operate." Ibid. Therefore, as applied, the classification created by N.J.S.A. 43:15A-7.5 rests upon a "rational or reasonable basis relevant to the purpose and object of the act." Vreeland v. Byrne, 72 N.J. 292, 301 (1977).

We do not reach Hill's severance argument because we have upheld N.J.S.A. 43:15A-7.5's statutory framework. To the extent we have not addressed other arguments raised on the appeal, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

[4] Although Hill asserts the additional number of elected officials that would qualify under his reading of the statute is negligible, he provides no objective support for the proposition.