

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1733-21

JOHN CAUCINO,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
TEACHERS' PENSION
AND ANNUITY FUND,

Respondent-Respondent.

APPROVED FOR PUBLICATION

May 1, 2023

APPELLATE DIVISION

Argued March 7, 2023 – Decided May 1, 2023

Before Judges Messano, Rose and Gummer.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury.

Arnold C. Lakind argued the cause for appellant (Szaferman, Lakind, Blumstein & Blader, PC, attorneys; Arnold C. Lakind, of counsel and on the briefs).

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

The opinion of the court was delivered by

MESSANO, C.J.A.D.

From September 1993 until August 2004, petitioner John Caucino was a teacher employed by the Monmouth County Vocational School District (School District) and a contributing member of the Teachers' Pension and Annuity Fund (TPAF). Caucino pled guilty in federal district court to bank fraud in 1995 and was sentenced in 1999. In June 2004, the New Jersey Board of Education (NJBOE) notified Caucino that he was disqualified from employment as a teacher pursuant to N.J.S.A. 18A:6-7.1, which permanently disqualifies teachers and other school employees who have been convicted of certain crimes from employment in all school systems under the supervision of the Department of Education.

Pursuant to N.J.S.A. 18A:66-36 (Section 36), a TPAF member, who has "completed [ten] years of service" and has "separated voluntarily or involuntarily from . . . service[] before reaching service retirement age," is eligible to receive deferred retirement benefits, provided the separation was "not by removal for conduct unbecoming a teacher or other just cause." Caucino applied for deferred retirement benefits, but the TPAF Board of Trustees (Board) denied his application. The Board determined that Caucino's involuntary separation from TPAF service was a "removal for conduct

unbecoming a teacher," rendering him ineligible for deferred retirement benefits.

This appeal requires us to decide a question of first impression. Is a TPAF member permanently disqualified from employment in a school system because of a conviction for a crime enumerated in N.J.S.A. 18A:6-7.1 but unrelated to his employment as a teacher, ineligible for deferred retirement benefits under Section 36?

I.

Prior to his employment with the School District and while he worked for Ocean Bay Mortgage Company, Caucino was criminally charged for his role in a scheme to falsify construction reports and bank loan documents. In 1995, he pled guilty to bank fraud, 18 U.S.C.A § 1344, and in 1999, the federal district court sentenced Caucino to a five-year probationary term and ordered him to pay restitution.

In October 1999—six years after he was hired by the School District—federal authorities advised the NJBOE of Caucino's conviction and sentence. The NJBOE took no action against Caucino's teaching certificate until five years later, when a fingerprint search conducted by NJBOE's Criminal History Review Unit confirmed Caucino's conviction and sentence. The NJBOE notified Caucino in June 2004 that his federal conviction permanently

disqualified him from employment in a school or other educational institution pursuant to N.J.S.A. 18A:6-7.1. The School District terminated his employment in August 2004. Caucino made his last pension contribution on June 30, 2004, when he was forty-three-years old and had accumulated eleven years of TPAF service credit.

Caucino appealed his disqualification and termination, contending the federal offense to which he had pled guilty was not one of the crimes enumerated in N.J.S.A. 18A:6-7.1. The matter was transferred to the Office of Administrative Law (OAL), and an Administrative Law Judge (ALJ) summarily affirmed NJBOE's revocation of Caucino's teaching certificate. The ALJ concluded that the federal conviction was substantially equivalent to theft by deception, a disqualifying crime under N.J.S.A. 18A:6-7.1(c)(2). The Commissioner of Education adopted the ALJ's initial decision, and, on December 8, 2005, the State Board of Examiners revoked Caucino's teaching certificate.

Caucino filed an application for retirement benefits in January 2021. The Board denied his application, finding Caucino "was removed for conduct unbecoming a teacher" and, therefore, was not eligible for deferred retirement benefits pursuant to Section 36. Caucino appealed, seeking reconsideration or, alternatively, an OAL hearing. On January 6, 2022, the Board reaffirmed its

previous decision and denied Caucino's request for a hearing. The Board issued its final agency determination on February 4, 2022, explaining that because Caucino's conviction disqualified him from serving as a teacher, his termination necessarily constituted "removal for conduct unbecoming a teacher," rendering him ineligible to receive deferred retirement benefits.

Caucino filed this appeal. Citing the statutory structures of other public employee pension plans and case law developed under them, Caucino essentially argues that because his criminal conviction was unrelated to his conduct as a teacher, the Board improperly denied his application for deferred benefits. He also contends that an earlier version of N.J.S.A.18A:6-7.1 in effect at the time of his federal criminal conviction would not have compelled his disqualification from employment. Lastly, Caucino argues the NJBOE's decision to delay revocation of his teaching certificate until 2004, despite knowing about his criminal conviction since at least 1999, runs afoul of the doctrine requiring administrative agencies to turn "square corners."

The Board asserts that the statutes governing other public pension plans and case law developed under them are irrelevant because the TPAF's statutory framework is significantly different. It also contends that Caucino is estopped from challenging his disqualification from employment in any school system based on differences between the current and prior versions of N.J.S.A. 18A:6-

7.1, and any delay by the NJBOE in notifying the School District cannot be attributed to the Board.

We disagree with the Board's interpretation of Section 36. We therefore reverse its denial of Caucino's application for deferred retirement benefits and remand the matter to the Board for further proceedings consistent with this opinion.

II.

Quasi-judicial agency decisions "are afforded a deferential standard of review and will be reversed only if 'there is a clear showing that [the decision] is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" S.L.W. v. N.J. Div. of Pensions & Benefits, 238 N.J. 385, 393 (2019) (alteration in original) (quoting Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 418 (2018)). "We also recognize that state agencies possess expertise and knowledge in their particular fields." Caminiti v. Bd. of Trs., Police & Firemen's Ret. Sys., 431 N.J. Super. 1, 14 (App. Div. 2013) (citing Hemsey v. Bd. of Trs., Police & Firemen's Ret. Sys., 198 N.J. 215, 223 (2009)).

"However, when an agency's decision is based on the 'agency's interpretation of a statute or its determination of a strictly legal issue,' we are not bound by the agency's interpretation." Saccone v. Bd. of Trs., Police &

Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "Statutory interpretation involves the examination of legal issues and is, therefore, a question of law subject to de novo review." Ibid. (citing McGovern v. Rutgers, 211 N.J. 94, 107–08 (2012)).

In interpreting the meaning of a statute, "our role 'is to discern and effectuate the intent of the Legislature.'" Ibid. (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012)). "[G]enerally, the best indicator of that intent is the statutory language." S.L.W., 238 N.J. at 394 (alteration in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "If the statutory language is clear, our inquiry ends" Id. at 394–95 (citing Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007)).

"However, if a statute's seemingly clear language nonetheless creates ambiguity in its concrete application, extrinsic evidence may help guide the construction of the statute." Saccone, 219 N.J. at 380 (citing In re Kollman, 210 N.J. 557, 568 (2012)). "Extrinsic guides may also be of use 'if a literal reading of the statute would yield an absurd result, particularly one at odds with the overall statutory scheme.'" Id. at 380–81 (quoting Wilson by Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012)).

Additionally, "pension statutes are 'remedial in character' and 'should be liberally construed and administered in favor of the persons intended to be benefited thereby.'" Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 34 (2009) (quoting Geller v. N.J. Dep't of Treasury, 53 N.J. 591, 597–98 (1969)). "However, '[i]n spite of liberal construction, 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) (alteration in original) (quoting Casale v. Pension Comm'n of Emps.' Ret. Sys. of Newark, 78 N.J. Super. 38, 40 (Law Div. 1963)).

Guided by these principles, we turn to the issues presented in this appeal.

III.

The Teachers' Pension and Annuity Fund Law, N.J.S.A. 18A:66-1 to -93 (the TPAF Law), "provides a comprehensive, uniform state-wide plan for the payment of retirement benefits to teachers in New Jersey." Fair Lawn Educ. Ass'n v. Fair Lawn Bd. of Educ., 161 N.J. Super. 67, 73 (App. Div. 1978). "The law is meticulous . . . and establishes the criteria for teacher's entitlement to retirement benefits and the method of calculating those benefits." Ibid.

The Board's determination in this instance was premised on Section 36, the TPAF's vesting provision, which, like other public pension plans, allows members to obtain vested pension rights after ten years of service credit. See Berg v. Christie, 436 N.J. Super. 220, 230 (App. Div. 2014), rev'd on other grounds, 225 N.J. 245 (2016) (citing statutory vesting provisions for the TPAF, the Public Employees' Retirement System (PERS), and the Police and Firemen's Retirement Systems (PFRS)).

Should a member of the [TPAF], after having completed [ten] years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for conduct unbecoming a teacher or other just cause under the provisions of N.J.S.[A.] 18A:28-4 to 18A:28-5 and 18A:28-9 to 18A:28-13 inclusive, such person may elect to receive . . .

. . . .

(b) A deferred retirement allowance beginning at age [sixty]

[N.J.S.A. 18A:66-36 (emphasis added).]¹

¹ N.J.S.A. 18A:28-4 requires teachers to hold an appropriate certification to "acquire tenure." N.J.S.A. 18A:28-9 to -13 deal with the effects of a "reduction in force" on tenure and reemployment rights. It is difficult to see the relationship of these statutes to a potential forfeiture of deferred retirement benefits, but we need not determine the Legislature's intent in including these provisions within Section 36 because the Board never cited them in its final determination as a basis to deny Caucino's application.

The Legislature did not define "conduct unbecoming a teacher."

N.J.S.A. 18A:28-5(a), however, uses language identical to Section 36 and specifically provides that tenured "teaching staff members" and certain other certificate-holding tenured school employees "shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by [The Tenure Employees Hearing Law (TEHL), N.J.S.A. 18A:6-10 to -18.1]." (Emphasis added). The TEHL "provides tenured public school teachers with certain procedural and substantive protections from termination." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017).

It is undisputed that the School District never proffered tenure charges against Caucino, and the Board did not cite N.J.S.A. 18A:28-5 in its final determination as a basis to deny Caucino's application for deferred benefits. Caucino has not asserted that the phrase "conduct unbecoming a teacher" is part of a unitary expression, conjoined with N.J.S.A. 18A:28-5 or the other statutes enumerated by the Legislature in Section 36, to define the phrase. Indeed, there is good reason why the Legislature intended the phrase—"conduct unbecoming a teacher"—to stand alone. N.J.S.A. 18A:28-5 applies only to tenured teachers. Nothing in the record indicates that Caucino ever

acquired tenure during his eleven years of service.² Undoubtedly many teaching members of the TPAF may amass ten years of service credit and, like Caucino, never acquire tenure in a school district.

The Legislature nevertheless concluded both tenured and untenured teachers whose separation from the TPAF was occasioned by "conduct unbecoming a teacher" should forfeit their deferred pension rights. Because the same standard applies, we may divine what the Legislature intended to be unbecoming conduct by taking note of unbecoming conduct of tenured teachers disciplined under the TEHL. See, e.g., Ciripompa, 228 N.J. at 7 (the tenured teacher was accused of the "pervasive misuse of his District-issued laptop and iPad, as well as . . . inappropriate behavior toward female colleagues, often in the presence of students"); In re Young, 202 N.J. 50, 66–69 (2010) (the Court affirmed the removal of a tenured teacher based on unbecoming conduct where the teacher engaged in improper sexual contact with a minor student); Matter of Tenure Hearing of Cowan, 224 N.J. Super. 737, 740 (App. Div. 1988) (affirming dismissal of tenured teacher accused of "commit[ing] various acts of verbal and physical abuse of his students"). In

² There are a series of one-year employment contracts in Caucino's appendix which seem to indicate he did not acquire tenure under the provisions of N.J.S.A. 18A:28-5(a).

these instances, the unbecoming conduct was clearly and directly related to the teacher's position.

But we need not decide whether a teacher might suffer disciplinary action because of "conduct unbecoming a teacher" if the misconduct were unrelated to the teacher's position at school because Caucino's argument is more nuanced. He contends there is an essential difference between unbecoming conduct by a teacher that may justify disciplinary action or even removal and unbecoming conduct that compels forfeiture of a teacher's deferred pension benefits. Caucino contends the latter "is conditioned on an involuntary removal due to misconduct related to employment." In re Hess, 422 N.J. Super. 27, 37 (App. Div. 2011). We agree.

We begin by noting that "[a]ll public pension statutes in this State carry an implicit condition precedent of honorable service to an award of pension benefits, and forfeiture can be ordered for failure of that condition." Corvelli v. Bd. of Trs., Police & Firemen's Ret. Sys., 130 N.J. 539, 550 (1992) (citing Uricoli v. Bd. of Trs., Police & Firemen's Ret. Sys., 91 N.J. 62, 66 (1982)); see also N.J.S.A. 43:1-3(a). Forfeiture may be ordered "for misconduct occurring during the member's public service which renders the member's service or part thereof dishonorable and to implement any pension forfeiture ordered by a court pursuant to [N.J.S.A. 43:1-3.1]." N.J.S.A. 43:1-3(b) (emphasis added).

N.J.S.A. 43:1-3.1, adopted in 2007, "expresses an unambiguous legislative intent to make the commission of certain offenses the basis for mandatory and absolute pension forfeiture." State v. Anderson, 248 N.J. 53, 73 (2021). Section 3.1 requires the forfeiture of all pension or retirement benefits if the person was convicted of certain crimes involving or touching upon their public employment, and the crime was committed during their membership in the pension plan. See State v. Steele, 420 N.J. Super. 129, 134–35 (App. Div. 2011).

The cases are legion, across different public pension plans, supporting full or partial forfeiture of pension benefits whenever the employee's misconduct involves or touches upon his or her public employment. See e.g., Corvelli, 130 N.J. at 541 (affirming total forfeiture of pension benefits when police chief, a PFRS member, was convicted of "weapons theft and associated misconduct in office spanning two-and-a-half years"); Debell v. Bd. of Trs., Pub. Emps.' Ret. Sys., 357 N.J. Super. 461, 464 (App. Div. 2003) (finding partial pension forfeiture appropriate when registered nurse, a member of PERS, engaged in health insurance fraud, because "there was a nexus between the theft and her nursing duties"); LePrince v. Bd. of Trs., Tchrs.' Pension & Annuity Fund, 267 N.J. Super. 270, 273 (App. Div. 1993) (upholding a partial

forfeiture when school psychologist was convicted of criminal sexual contact with a student).

Our courts have clearly defined the distinction between removal from public service because of unbecoming conduct and potential forfeiture of pension benefits. In Masse v. Board of Trustees, Public Employees' Retirement System, the Court considered whether the Board of Trustees of PERS properly ordered the forfeiture of the appellant's entire public service time because of his off-duty conviction for impairing the morals of a minor. 87 N.J. 252, 253 (1981). The Court explained that "[i]f the range of conduct that disqualifies service [for pension purposes] is judicially broadened to encompass criminal conduct unrelated to that service, an additional penal sanction would be imposed on individuals solely because of their status as public employees." Id. at 263. Of particular note for our purpose was the Court's distinction between loss of employment and loss of pension benefits:

This is not to say that a conviction of a crime involving moral turpitude may not be relevant to the individual's continued employment. However, what is at stake here is not future employment, but rather pension benefits accrued over past years of otherwise creditable service. It is extremely doubtful that the Legislature intended such a drastic penalty when the criminal offense was unconnected with an[d] unrelated to the employment.

[Id. at 259 (citing N.J.S.A. 2C:51-2).]

Similarly, in Procaccino v. Board of Trustees, Public Employees' Retirement System, decided the same day as Masse, the plaintiff was convicted of misconduct related to the misappropriation of funds he had collected "during his off-hours as a constable." 87 N.J. 265, 267 (1981). The PERS Board denied the plaintiff's application for early retirement benefits, which he earned during thirty-two years of satisfactory service as a title examiner with the Department of Transportation, concluding "the 'conviction constitute[d] dishonorable service as a matter of law' and . . . therefore plaintiff was not eligible for a pension." Ibid. The Court reversed our affirmance of the PERS Board's decision because the plaintiff's "alleged offense was unrelated to his employment . . . in the [DOT and] did not taint his work as a title examiner." Id. at 268.

In Hess, we addressed the same issue presented here but in the context of the vesting provision in the PERS pension plan, which provides the following in language nearly identical to Section 36:

Should a member of [PERS], after having completed [ten] years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive:

. . . .

(b) A deferred retirement allowance

[N.J.S.A. 43:15A-38 (emphasis added).]³

Hess had been a member of the PERS for more than ten years when she was involved in a serious late-night accident while driving her personal car. She had a blood alcohol content of .167% and pled guilty to two counts of third-degree assault by auto. Hess, 422 N.J. Super. at 30. Her public employer successfully filed disciplinary charges seeking Hess's removal from her position, and the State obtained an order compelling forfeiture of Hess's public employment pursuant to N.J.S.A. 2C:51-2(a)(1).⁴ Id. at 31–32. Hess applied for deferred retirement benefits, but the PERS Board of Trustees denied her application, "reason[ing] that . . . Hess's employment was terminated for cause, and . . . the statute provided for deferred retirement benefits only for an employee who had completed ten years of service and who was separated from service 'not by removal for cause on charges of misconduct or delinquency.'" Id. at 32. Hess appealed.

³ The vesting provision of the PFRS uses identical language. See N.J.S.A. 43:16A-11.2 (requiring that a member have ten years of service credit and not be removed "for cause on charges of misconduct or delinquency").

⁴ N.J.S.A. 2C:51-2(a)(1) requires any "person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof" to forfeit that position, office, or employment upon conviction of "an offense involving dishonesty or . . . crime of the third degree or above."

We framed the precise issue as whether under the deferred retirement provision, N.J.S.A. 43:15A-38, "any disqualifying misconduct must in some way involve the employee's official duties in order to qualify for forfeiture of any vested rights under the statute." Id. at 35. In reversing the PERS Board, we held that "forfeiture of deferred retirement benefits . . . is conditioned on an involuntary removal due to misconduct related to employment." Id. at 37.

The Board argues that the vesting provisions of the PERS and PFRS, requiring forfeiture of deferred pension benefits if a member's separation from the pension system was based upon a "removal for cause on charges of misconduct or delinquency," are different from Section 36, where the removal—"for conduct unbecoming a teacher or other just cause"—does not require the lodging of formal disciplinary "charges" against the teacher.

We gather the Board contends this slight difference in the Legislature's chosen language actually was intended to permit a forfeiture of TPAF deferred retirement benefits, as opposed to deferred retirement benefits under the PERS and PFRS, not only if the offending conduct was unrelated to Caucino's teaching position, but also if the criminal conduct occurred before Caucino was even a member of TPAF. We cannot envision that the Legislature intended such an absurd result. Saccone, 219 N.J. at 380–81. Moreover, as the Court recently explained, "A charge of unbecoming conduct requires only

evidence of inappropriate conduct by teaching professionals. It focuses on the morale, efficiency, and public perception of an entity, and how those concerns are harmed by allowing teachers to behave inappropriately while holding public employment." Ciripompa, 228 N.J. at 14 (emphasis added).

As in Hess, Caucino's criminal conduct, which took place well before he started teaching, was unrelated to his conduct as a teacher. The Board committed legal error when it determined that Caucino's bank fraud conviction, or its corollary result—the revocation of his teaching certification—was a separation from membership in the TPAF that was a "removal for conduct unbecoming a teacher." Accordingly, we reverse the Board's final determination and remand for the Board to approve Caucino's application for deferred retirement benefits if it otherwise meets the requirements of Section 36. Given our determination, we need not address the other points raised by Caucino.

Reversed and remanded. We do not retain jurisdiction.

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



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