



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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July 20, 2018

Sent via email to [REDACTED]

CAMMARATA, NULTY & GARRIGAN, L.L.C.
Thomas J. Cammarata, Esq.

[REDACTED]

RE: Mariano Vega

[REDACTED]

Dear Mr. Cammarata:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At its June 20, 2018 meeting, the Board of Trustees of the Public Employees' Retirement System (PERS) reviewed the April 17, 2018 Initial Decision (I.D.) of Administrative Law Judge (A.L.J.) Julio C. Morejon ¹ in the above-captioned matter, together with the joint stipulation of facts, the items submitted into evidence by the parties, and exceptions dated May 10, 2018² filed by Deputy Attorney General Robert S. Garrison.

Thereafter, the Board voted to adopt the A.L.J.'s factual findings. However, the Board rejected the A.L.J.'s legal reasoning, including his incorrect interpretation of State v. Steele, 420 N.J. Super. 129 (App. Div. 2011), and rejected his conclusion that Mr. Vega should forfeit only the pension benefits he earned as a Jersey City Councilman from July 1997 to September 2010. The Board reaffirmed its original order of total forfeiture of the service and salary credits Mr. Vega had earned as a member of PERS, consistent with the intent of N.J.S.A. 43:1-3.1.

¹ The PERS Board requested and was granted two extensions of time for the Board to issue its final decision.

² DAG Garrison requested and was granted an extension of time to file exceptions.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the PERS Board at its July 18, 2018 meeting. These Findings of Fact and Conclusions of Law constitute the Final Administrative Determination in this matter.

FINDINGS OF FACT

Mr. Vega was enrolled in PERS effective August 1, 1988 as a result of his employment as Chief of Social Services of Hudson County. On July 1, 1997, he became a multiple member of PERS as a result of assuming the additional position of Councilman for the City of Jersey City. His last pension contribution from Hudson County was in August 2009, the month he was suspended from his position as Director of Parks, Engineering and Planning. He was terminated from the Hudson County position on September 15, 2010. Mr. Vega continued his PERS contributions until he resigned from his position with the City of Jersey City on September 13, 2010.

Mr. Vega's termination from Hudson County, and his resignation from Jersey City, resulted from his May 26, 2010 guilty plea to a charge of conspiring to obstruct interstate commerce by extortion under color of official right, in violation of 18 U.S.C. 1951(a). Mr. Vega's plea originated from a series of transactions from March 2009 through July 2009, in which Mr. Vega, in his capacity as City Council President, conspired to, and did; (1) accept corrupt payments from a confidential witness, Solomon Dwek, in exchange for Mr. Vega's promise of official action and influence as City Council President; and (2) make false statements to United States government agents who were investigating these corrupt actions. Mr. Vega admitted not only that he had received \$20,000, but also that, if he had not been arrested, he would have accepted \$30,000 in total. He was sentenced to thirty months in prison, and ordered to disgorge the \$20,000 he had received. Mr. Vega has completed his sentence and disgorged the \$20,000 in corrupt payments.

Mr. Vega was over sixty years old and had 22 years, 2 months of PERS service credit when he applied for Service retirement on October 28, 2014. At its December 16, 2018, meeting, the Board reviewed Mr. Vega's criminal activity in light of N.J.S.A. 43:1-3.1, which requires total forfeiture of benefits earned in the pension fund to which the member belonged as of the date he committed a crime covered by that statute, and which pension fund covered the member's position at the time of the crime. In reviewing Vega's service, the Board considered the "Uricoli" factors³ that apply to pension forfeitures under N.J.S.A. 43:1-3, as follows:

1. The member's length of service;

Mariano Vega has 22 years and 2 months of service credit in PERS;

2. The basis of retirement;

Mariano Vega is eligible to apply for a Service retirement;

3. The extent to which the member's pension has vested;

Mariano Vega was vested and would be eligible to apply for a Service retirement as he had 22 years and 2 months of service credit. Mr. Vega was 61 years of age as of his last pension deduction made on September 30, 2010;

4. The duties of the particular member;

Mariano Vega was employed at the City of Jersey City as a Councilman. Mr. Vega was also employed in the position of Director of Parks, Engineering and Planning at Hudson County;

5. The member's public employment history and record covered under the retirement system;

Mr. Vega was enrolled in the PERS, effective August 1, 1988 as a result of his employment as a Division Chief, at Hudson County. On July 1, 1997, Mr. Vega became a multiple member of PERS as a result of his position of Councilman with the City of Jersey City. Mr. Vega continued his PERS contributions as a multiple member until his resignation from the City of Jersey City on September 13, 2010. His last pension contribution from Hudson County was in August 2009 when he was suspended from his position as a Director of Parks, Engineering and Planning. Mr. Vega continued to hold the title of Director of Parks, Engineering and Planning at Hudson County until his termination on September 15, 2010;

6. Any other public employment;

None noted;

³ Named for Uricoli v. Board. of Trustees, 91 N.J. 62 (1982), which set forth the factors that later were codified in N.J.S.A. 43:1-3.

7. The nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated;

Criminal Charges:

On December 17, 2009, Mr. Vega was served an Indictment Criminal No. 09-933 charging him with:

Count One - 18 U.S.C. 1951(a) - Conspiracy to Obstruct Commerce by Extortion Under Color of Official Right;

Counts Two to Four - 18 U.S.C. 1951(a) and Section 2 – Attempted Obstruction of Commerce by Extortion Under Color of Official Right;

Counts Five to Seven - 18 U.S.C. 666(a)(1)(B) and Section 2 - Acceptance of Corrupt Payments; and

Count Eight - 18 U.S.C. 1001(a)(2) – False Statements

Specifically, from in or about March 2009, to in or about July 2009, in Hudson County, in the District of New Jersey, and elsewhere, Mariano Vega did knowingly and willfully conspire and agree with others to obstruct, delay and affect interstate commerce by extortion under color of official right – that is, by obtaining corrupt cash payments, illegal campaign contributions and other benefits from a confidential witness (“CW”), with CW’s consent, in exchange for Mr. Vega’s and others’ receiving illegal political contributions from CW in order to fund the Vega Campaign Account and to otherwise financially support Mr. Vega. In return, it was promised and agreed that Mr. Vega would use his official position to assist CW in obtaining government approvals for real estate development projects in Jersey City. Mr. Vega and others actively concealed material facts by providing false information and making material omissions, including the use of “straw donors” to unlawfully convert corrupt cash payments received from CW into illegal political contributions benefitting Mr. Vega, and by submitting or causing to be submitted, materially false campaign finance reports.

The Board determined that the federal offense of “conspiracy to obstruct interstate commerce by extortion under color of official right” under 18 U.S.C. 1951(a) is substantially similar to the offense described in Section 5 of P.L. 2003, c. 255 (C.2C:27-10), “acceptance or receipt of unlawful benefit by public servant for official behavior,” which is an enumerated offense under N.J.S.A. 43:1-3.1(b)(11);

Administrative Charges:

On July 24, 2009, Mr. Vega was served an Order of Immediate Suspension without pay from Hudson County based on the criminal allegations, and pending the outcome of the criminal charges;

8. The relationship between the misconduct and the member’s public duties;

The Board determined the relationship to Mr. Vega’s misconduct and his public duties as Councilman was direct;

9. The quality of moral turpitude or the degree of guilt or culpability, including the member’s motives and reasons, personal gain and similar considerations;

The Board determined there was a high degree of guilt and the offense was committed for personal gain;

10. The availability and adequacy of other penal sanctions;

On May 26, 2010, Mr. Vega pled guilty to Count One of the eight count indictment. In accordance with the Plea Agreement, if Mr. Vega entered a guilty plea and was sentenced on this charge, and otherwise fully complied with all of the terms of the Plea Agreement, the US Attorney's Office would not initiate any further criminal charges against Mr. Vega for the period from in or about March 2009 to in or about July 2009.

By Judgment in a Criminal Case, on April 11, 2011, Mr. Vega was committed to 30 months of imprisonment, effective June 6, 2011. Upon release, Mr. Vega was placed on a supervised release for two years with restrictions. Mr. Vega was ordered to pay a \$1,000 fine and was ordered to forfeit \$20,000 in U.S. currency;

On December 3, 2010, Mr. Vega was served a Judgment and Order of Forfeiture, effective, September 14, 2010, ordering him to forfeit public office as both City Council President and as Director of Parks, Engineering and Planning, and barring him from holding any future public office, position or employment.

Mr. Vega resigned from his position as Councilman At Large, City of Jersey City, on September 13, 2010, and was terminated from his Hudson County position on September 16, 2010;

11. Other personal circumstances relating to the member which bear upon the justness of forfeiture.

The Board noted the personal appearance of Mr. Cammarata and his statements to the Board. The Board also referred to the federal charge of which Mr. Vega was convicted and its substantial similarity to an offense under N.J.S.A. 2C:20-10.

[Board letter of December 19, 2016, (Hearing Exhibit J-1).]

Although the Board utilized the analytical framework prescribed for forfeitures under N.J.S.A. 43:1-3, it noted, under factor number 7, "The nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated," that Mr. Vega's admitted job-related crime was equivalent to an enumerated offense under N.J.S.A. 43:1-3.1, and it therefore imposed total forfeiture of all service and salary credits earned in PERS as prescribed by that statute. Mr. Vega appealed the forfeiture of the credit he had earned as a County employee, but did not challenge the forfeiture of the Jersey City credits.

The A.L.J. affirmed the forfeiture of Vega's Jersey City credit, but rejected the Board's forfeiture of the credit Vega had earned in his Hudson County position. He reasoned:

If the act is not associated with the duties of the public position for which the pension is earned, that act may not be the basis for the forfeiture of that pension. This is also true in cases where an individual holds two positions and commits an act [in] one official capacity but not in the other; the pension stemming from the unassociated position may not be forfeited.

I.D. at 6.

The A.L.J. rejected the Board's position that the plain words of N.J.S.A. 43:1-3.1 mandate forfeiture of all the credit earned in the pension fund to which Vega belonged when he committed his crime and which covered his position, an interpretation of the statute that the Board argued is reflected in State v. Steele 420 N.J. Super. 129 (App. Div. 2011), a precedential case interpreting that statute. The A.L.J. interpreted Steele as barring the forfeiture of credit earned in an unrelated position, even if that position was covered by the same pension fund. I.D. at 6., 12.

In rejecting the A.L.J.'s conclusions of law, the Board determined that the A.L.J. had misinterpreted Steele. The board reaffirmed its order of total forfeiture of all credit earned by Mr. Vega in PERS. The Board finds that Mr. Vega is entitled only to the return of his pension contributions from both his PERS positions, with interest as provided by law.⁴

CONCLUSIONS OF LAW

The A.L.J. presented the question in this case as whether the Board was justified in imposing a total forfeiture of Mr. Vega's service credit for his employment with Hudson County when the conviction was related solely to the position Mr. Vega held as a Jersey City Councilman. I.D. at 6. He characterized Mr. Vega's misconduct as unrelated to his position with Hudson

⁴ As noted below, Mr. Vega should not withdraw his pension contributions if he wishes to appeal this decision.

County and found that the Hudson County service credit could not be forfeited.⁵ Ibid. For the reasons that follow, the Board rejects the A.L.J.'s finding, based on an incorrect reading of Steele, that unrelated service cannot be forfeited under N.J.S.A. 43:1-3.1. Contrary to the A.L.J.'s reading, Steele does not preclude, but supports, total forfeiture of Mr. Vega's service credit earned in PERS.

Forfeiture under N.J.S.A. 43:1-3, which codified the "Uricoli" balancing for Board considerations of dishonorable conduct, generally is limited to credit earned in positions related to the misconduct. Uricoli, 91 N.J. at 69.⁶ However, Uricoli also cautions that if (as here) a statute expressly requires total forfeiture of a pension benefit, then total forfeiture must be imposed regardless of potentially mitigating circumstances. Id. at 73-75. N.J.S.A. 43:1-3.1 expressly requires total forfeiture of "all of the pension or retirement benefit earned as a member of any State or locally-administered pension fund or retirement system in which [the member] participated at the time of the commission of the offense and which covered the office, position or employment involved in the offense" upon conviction of certain enumerated offenses including, as here, Federal equivalents of enumerated New Jersey offenses. Ibid. The enumerated New Jersey offenses are:

- (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal coercion;
- (2) N.J.S.2C:20-4, theft by deception, if the amount involved exceeds \$10,000;
- (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

⁵ The Board notes that the A.L.J.'s characterization, in the "Legal Discussion" section, of Mr. Vega's Hudson County position as being unrelated to his crime, is not contained in his Findings of Fact, which the Board adopted on June 20, 2018. The Board concedes that the criminal charges against Mr. Vega do not cite his County employment, I.D. at 10, but also notes Mr. Vega's admission that it was his position as Hudson County Director of Park and Engineering that led him to become involved in the local politics of Jersey City, and led to his nomination for the Jersey City council. (T24:23-T24:7).

⁶ Uricoli cited to two cases relied upon by the A.L.J. in this matter, Masse v. Board of Trustees, Public Employees' Retirement System, 87 N.J. 252 (1981) and Procaccino v. Department of Treasury, 87 N.J. 265 (1981).

- (4)** N.J.S.2C:20-9, theft by failure to make required disposition of property received, if the amount involved exceeds \$10,000;
- (5)** N.J.S.2C:21-10, commercial bribery;
- (6)** Section 3 of P.L.1994, c.121 (C.2C:21-25), money laundering;
- (7)** Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract payment claims;
- (8)** N.J.S.2C:27-2, bribery in official matters;
- (9)** N.J.S.2C:27-3, threats and other improper influence in official and political matters;
- (10)** Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful official business transaction where interest is involved;
- (11)** Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or receipt of unlawful benefit by public servant for official behavior;
- (12)** Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of unlawful benefit to public servant for official behavior;
- (13)** N.J.S.2C:28-1, perjury;
- (14)** N.J.S.2C:28-5, tampering with witnesses;
- (15)** N.J.S.2C:28-7, tampering with public records or information;
- (16)** N.J.S.2C:29-4, compounding;
- (17)** N.J.S.2C:30-2, official misconduct;
- (18)** N.J.S.2C:30-3, speculating or wagering on official action or information; or
- (19)** Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official misconduct.

Here, the Board reviewed an application for retirement benefits by a member who had been convicted under 18 U.S.C. 1951(a) of Conspiracy to Obstruct Commerce by Extortion Under Color of Official Right, a crime that that the Board finds is a Federal equivalent of an enumerated offense under N.J.S.A. 43:1-3.1 (b), specifically C.2C:27-10, "acceptance or receipt of unlawful benefit by public servant for official behavior." Because no order of forfeiture was entered after Mr. Vega's conviction, the Board, in accordance with subsection (e) of N.J.S.A. 43:1-3.1, reviewed his application using the statutory "Uricoli" factors. It noted, under factor number 7, that Mr. Vega's admitted job-related crime was equivalent to an enumerated offense under N.J.S.A 43:1-3.1 and, assigning a very heavy weight to that factor, it imposed total forfeiture of all service and salary

credits Mr. Vega earned in PERS as prescribed by N.J.S.A. 43:1-3.1.⁷ Mr. Vega argued, and the A.L.J. agreed, that the forfeiture should be limited to the credit he earned in Jersey City.

N.J.S.A. 43:1-3.1 was introduced on January 9, 2007 as Senate Bill 14, "AN ACT concerning mandatory forfeiture of retirement benefits and mandatory imprisonment for public officers or employees convicted of certain crimes and amending and supplementing P.L.1995, c.408 (C.43:1-3 et seq.) and Title 2C of the New Jersey Statutes." As noted above, it provides that a member convicted of a covered offense "shall forfeit all" benefits "earned as a member of" the pension system in which he participated at the time of the offense and which covered the position involved in the offense. Ibid., emphasis added. The Board recognizes the Legislature's clear intention to impose a particular and very specific penalty upon conviction of enumerated offenses.

The nature of the penalty that the Legislature chose to impose upon those convicted of enumerated offenses is set forth in State v. Steele, supra, a precedential case in which the Appellate Division considered a forfeiture ordered by a trial court under N.J.S.A. 43:1-3.1 against Michael Steele, a member of the Teachers' Pension and Annuity Fund (TPAF) convicted of two enumerated offenses. 420 N.J. Super. at 131-32. The State appealed the trial court's order limiting the forfeiture to the time Steele had served in the position in which he committed misconduct, and argued that all of the credit that Steele had in his TPAF account should be forfeited. Id. at 134-35.

The court observed:

The court has no discretion to refrain from entering an order of pension forfeiture under the circumstances specified in *N.J.S.A. 43:1-3.1*. The statute applies upon conviction of a person who holds "any public office, position or employment" for a designated crime

⁷ PERS is the pension fund to which Mr. Vega belonged at the time of his offenses and the pension fund that covered the position he held as City Council President. Therefore, all the pension credit Mr. Vega earned in PERS is subject to forfeiture. N.J.S.A. 43:1-3.1(a).

that "involves or touches" his office, position or employment. *N.J.S.A.* 43:1-3.1(a); see *N.J.S.A.* 43:1-3.1(b) (designating the crimes). Where those conditions are met, "[a] court of this State shall enter an order of pension forfeiture," upon a finding of guilt or entry of a guilty plea. *N.J.S.A.* 43:1-3.1(c)(1). The court's discretion is limited to staying, pending a hearing on the merits at sentencing, entry of the pension forfeiture.⁸

[Id. at 134.]

Noting that, "There is no question that defendant's guilty plea to violating *N.J.S.A.* 2C:30-2 and *N.J.S.A.* 2C:30-7 triggered mandatory pension forfeiture pursuant to this section," ibid., the Appellate Division found that the forfeiture only of time Steele had served from the time he committed his crimes was inadequate under the plain terms of the statute:

The State argues that the judge erred in concluding that the statute permitted him to order forfeiture from the date of the offense going forward. We agree. The statute plainly and unambiguously requires forfeiture of "*all of the pension or retirement benefit earned as a member of . . . [the] pension fund . . . in which [defendant] participated at the time of the commission of the offense and which covered the office, position or employment involved in the offense.*" (emphasis added). It does not give the judge discretion to limit the commencement of the forfeiture period to the date of the first criminal act alleged in the indictment. In so restricting this forfeiture, the judge effectively rewrote the statute and defeated the intent plainly expressed therein — denial of all pension benefits earned as a member of the pension fund that covered the office or employment involved in the crimes he admitted.

[Id. at 134-135 (emphasis by the court in Steele.)

Thus, the Steele court clarified that the period of forfeiture is equal to the period in which pension credit was earned as a member of a particular pension fund, which, in Steele's case, was the TPAF. The forfeiture "plainly and unambiguously" applies to all the credit earned in a system, and is not tethered to a period of wrongdoing or a particular position.

⁸ In a federal matter like Vega's, an order of forfeiture is issued upon application by a prosecutor or the Attorney General. *N.J.S.A.* 43:1-3.1 (c)(2). The record does not indicate a reason that such an order was not issued in this case. In the absence of an order, the Board may order forfeiture under *N.J.S.A.* 43:1-3.1(e).

Steele received some relief from the State's demand of total forfeiture of the credits in his TPAF account not, as the A.L.J. inferred, on the basis of his serving in different unrelated positions, but because some of the credit in his TPAF account had been transferred into TPAF after being earned in PERS. Id. at 135. Acknowledging that a total forfeiture of all pension credit "might better further the Legislature's deterrent goal," ibid., the court rejected the State's position because, "that is not what the statute says." Ibid.

The statute simply does not reach the benefit defendant earned as a member of PERS and elected to transfer to TPAF pursuant to N.J.S.A. 18A:66-15.1. The Legislature drew the line at benefits earned as a member of the system that covered the office or employment abused. Had the Legislature intended the broader reach suggested by the State, it could have achieved that goal by eliminating the qualifying and restrictive language and simply mandated forfeiture of all of the pension or retirement benefit earned as a member of any State or locally-administered pension fund or retirement system.

Although the statutory language is sufficiently clear to require us to apply it as written, there is good reason to avoid stretching the statutory language to include benefits earned as a member of a different fund or system and transferred upon the employee's request.

[Id. at 135-136 (emphasis added).]

Steele thus makes clear that under N.J.S.A. 43:1-3,1, all benefits earned in the pension system which was related to the misconduct must be completely forfeited. Here, that account is Mr. Vega's PERS account, which encompasses his service in Hudson County as well as in Jersey City. The PERS Board's emphasis on the terms of N.J.S.A. 43:1-3.1 (a) in its "Uricoli" review was an appropriate implementation of the clear intent of the Legislature which, as the Steele court found, clearly set forth the penalty to be paid for acts of corruption such as those to which Mr. Vega admitted.

CAMMARATA, NULTY & GARRIGAN, L.L.C.
Thomas J. Cammarata, Esq.
Re: Mariano Vega
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July 20, 2018

For the foregoing reasons, the Board adopts the A.L.J.'s findings of fact and rejects the legal conclusion that Mr. Vega should forfeit only the pension benefits earned as Jersey City Councilman from July 1997 to September 2010. The Board reaffirmed its original decision, ordering a total forfeiture of benefits earned as a member of the PERS, consistent with the legislative intent embodied in the total-forfeiture statute, N.J.S.A. 43:1-3.1.

You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Sincerely,



Mary Ellen Rathbun, Secretary
Board of Trustees
Public Employees' Retirement System

G-2/MER

C: D. Dinkler (ET);
DAG Robert Garrison (ET); DAG Amy Chung (ET)
Mariano Vega |