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COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE:	ACCOUNT OF	JUDITH A. BATH BONITA H. BOBER PAMELA K. BOOKER SUSAN L. CARNAHAN PATRICIA V. EHALT CARLA D. EILENFELD GREGORY A. FOREMAN DOREEN J. HALL DEBRA K. HENNINGER MARIFRANCES S. KIEBLER ANDREA N. LIZIK SELMA L. SAELLAM THOMAS M. SCHAEFFER CYNTHIA L. SHANER
	DOCKET NO.	2014-12
	CLAIM OF	BATH, ET AL.

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal requesting that the appeal of Judith A. Bath, et al. ("Claimants") be dismissed because there is no issue of material fact and PSERS is entitled to summary judgment as a matter of law. The issue in this appeal is whether certain monies Claimants received in their final year of employment are retirement-covered compensation and, therefore, should be included in the calculation of their final average salaries.

PSERS filed its Motion for Summary Judgment on December 18, 2018, and served a copy by First Class Mail on Claimants as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter dated December 18, 2018, PSERS notified Claimants that they had 30 days to respond

to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimants' responses, therefore, had to be filed on or before January 17, 2019. *See* 1 Pa. Code §§ 31.11, 31.12, and 33.34. Claimants did not respond to PSERS' motion.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. *See Liles v. Balmer*, 567 A.2d 691 (Pa.Super. 1989). The Board's regulations authorize the use of summary judgment. 22 Pa. Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give him the benefit of all reasonable inferences. *See Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa.Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwlth. 1984). "Summary judgment may be entered against a party who does not respond." Pa.R.C.P. 1035.3(d).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying "(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced." Pa.R.C.P. No. 1035.3(a). "An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence." Pa.R.C.P. No. 1035.3(b).

Claimants did not respond to PSERS' motion and, therefore, they have not disputed any of the facts set forth therein. Nor has any Claimant identified any additional facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter. Consequently, the Board

finds that there is no genuine issue as to any material fact. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether the additional money Claimants received in their final year of employment, contingent on retirement, is retirement-covered compensation and, consequently, should be included in the calculation of their final average salaries.

FINDINGS OF FACT

Based on the record, the Board finds the following relevant facts not in dispute:

1. At all relevant times, Claimants were members of PSERS. (PSERS' Memorandum of Facts, ¶ 1).

2. At all relevant times, Claimants were employed by the Kiski Area School District ("District") and were members of the bargaining unit represented by the Kiski Area Education Association ("Association"). (PSERS' Memorandum of Facts, ¶¶ 2, 3).

3. The Association and District were parties to a Collective Bargaining Agreement ("CBA"), effective August 25, 2008 through August 25, 2013, which set forth salary schedules for all employees covered by the agreement. (PSERS' Memorandum of Facts, ¶¶ 4, 5; PSERS-1, Article XI and Appendix A).

4. On July 13, 2011, the District and the Association entered into a Memorandum of Agreement ("MOA") in which the Association agreed to "multi-year salary concessions" in exchange for certain benefits from the District. (PSERS' Memorandum of Facts, ¶¶ 6, 7, 13; PSERS-2, ¶¶ 2, 3).

5. Pursuant to the MOA, bargaining unit members agreed to "amended salary schedules"; providing that they were to be paid according to the CBA's 2010-2011 salary schedule during the 2011-2012 school year, the 2010-2011 salary schedule during the 2012-2013 school year, the 2011-2012 salary schedule during the 2013-2014 school year, and the 2012-2013 salary schedule during the 2014-2015 school year, except that bargaining unit members on the top step of the salary schedule received a

wage increase of $500 per year during the 2011-2012 and 2012-2013 school years. (PSERS' Memorandum of Facts, ¶¶ 8-12; PSERS-2, ¶ 2).

6. In exchange for the salary concessions, the District and Association agreed to: (a) a contract extension through August 25, 2015; (b) a retirement package of contributions to a 403(b) plan for retiring employees; (c) a higher final year's salary for retiring employees; (d) established co-premium healthcare payments; (e) established compensation for supplementals; (f) a change in instructional days; (g) a guarantee against furloughs; and (h) reinstatement of previously furloughed employees. (PSERS' Memorandum of Facts, ¶ 13; PSERS-2, ¶ 3).

7. Section 3.c of the MOA between the District and the Association provides, in part, as follows, with respect to any retiree's "final year's salary":

> **Final Year's Salary**. For those bargaining unit members who submit an irrevocable letter of intent to retire in accordance with the timelines established by the existing agreement, the District will pay the difference between their amended salaries for 2011-2012 through 2014-2015 and the salaries for their applicable step on the previously negotiated 2011-2012 and 2012-2013 salary schedules currently outlined in the 2008-2013 [CBA] as part of the future retirees final year's salary.
>
> 1) **Retirements Effective After the 2011-2012 School Year**. If the intent is to retire at the end of the 2011-2012 school year, the District will add to the bargaining unit member's final year's amended salary the difference between their 2011-2012 amended salary and the employee's applicable step and column on the 2011-2012 salary schedule contained in the previously negotiated 2008-2013 Collective Bargaining Agreement.
>
> 2) **Retirements Effective After the 2012-2013 School Year**. If the intent is to retire at the end of the 2012-2013 school year, the District [*sic*] add to the bargaining unit member's final year's amended salary the difference between their 2011-2012 and 2012-2013 amended salaries and the salaries for those years and applicable steps outlined in the previously negotiated 2008-2013 Collective Bargaining Agreement.

(PSERS-2, ¶ 3.c).

8. Between 2012 and 2013, Claimants submitted their irrevocable letters of intent to retire to the District pursuant to the MOA, and retired from the District. (PSERS' Memorandum of Facts, ¶¶ 18, 19, 21, 23; PSERS-3).

9. Claimants Susan Carnahan, Gregory Foreman, and Selma Saellam retired in June 2012 (collectively, the "June 2012 Retirees") and, accordingly, received an increased final year's salary during the 2011-2012 school year, which they would not have received if they had not retired. (PSERS' Memorandum of Facts, ¶¶ 19-20; PSERS-2, ¶ 3.c.1; PSERS-3).

10. Claimants Judith Bath, Bonita Bober, Patricia Ehalt, Carla Eilenfeld, Doreen Hall, Debra Henninger, Marifrances Kiebler, Andrea Lizik, Thomas Schaeffer, and Cynthia Shaner retired in June 2013 (collectively, the "June 2013 Retirees") and, accordingly, received an increased final year's salary during the 2012-2013 school year, which they would not have received if they had not retired. (PSERS' Memorandum of Facts, ¶¶ 21-22; PSERS-2, ¶ 3.c.2; PSERS-3).

11. Claimant Pamela Booker (the "September 2013 Retiree") retired as of September 30, 2013 and, accordingly, received an increased final year's salary during the 2012-2013 school year, which she would not have received if she had not retired. (PSERS' Memorandum of Facts, ¶¶ 23-24; PSERS-2, ¶ 3.c.2; PSERS-3).

12. Claimants received the increased final year's salary because they retired from the District. Employees who did not retire from the District, did not receive the additional compensation agreed upon in Section 3.c of the MOA. (PSERS' Memorandum of Facts, ¶¶ 25-27; PSERS-2, ¶ 3.c).

13. In April 2013, PSERS learned of the increased final year's salary during an exit counseling session with one of the Claimants. (PSERS' Memorandum of Facts, ¶ 28).

14. After communicating with the District, PSERS determined that the increased final year's salary was not retirement-covered compensation under the Public

School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101, et seq. (PSERS' Memorandum of Facts, ¶ 29).

15. At the time PSERS made its determination, the District already had reported the increased final year's salary to PSERS as compensation for the June 2012 Retirees. Accordingly, PSERS adjusted the accounts of the June 2012 Retirees. (PSERS' Memorandum of Facts, ¶¶ 30-31, 34).

16. The District did not report the increased final year's salaries to PSERS for the 2013 retirees. (PSERS' Memorandum of Facts, ¶¶ 30-31, 34).

17. PSERS notified the June 2012 Retirees of the adjustment to their accounts in May 2013. (PSERS' Memorandum of Facts, ¶ 32; PSERS-5, 6, and 7).

18. On June 14, 2013, the June 2012 Retirees appealed to the Executive Staff Review Committee ("ESRC"). (PSERS' Memorandum of Facts, ¶ 33; PSERS-8).

19. On July 26, 2013, the June 2013 Retirees appealed to the ESRC. (PSERS' Memorandum of Facts, ¶ 35; PSERS-9).

20. On September 13, 2013, the September 2013 Retiree appealed to the ESRC. (PSERS' Memorandum of Facts, ¶ 36; PSERS-10).

21. Upon Claimants' request, the ESRC consolidated the appeals. (PSERS' Memorandum of Facts, ¶ 37).

22. By decision dated June 6, 2014, the ESRC denied Claimants' consolidated appeal, finding that the increased final year's salary was a severance payment, and therefore, not retirement-covered compensation under the Retirement Code. (PSERS' Memorandum of Facts, ¶ 39; PSERS-12).

23. On July 3, 2014, Claimants filed an appeal with the Board, asking that the salary increases they received in their final year of employment be included as compensation in the calculation of their final average salaries. (PSERS' Memorandum of Facts, ¶ 40; PSERS-13).

24. Claimants filed a corrected appeal on July 18, 2014. (PSERS' Memorandum of Facts, ¶ 41; PSERS-14).

25. On August 7, 2014, PSERS filed its Answer and New Matter. (PSERS' Memorandum of Facts, ¶ 42; PSERS-15).

26. On August 25, 2014, Claimants filed a Response to New Matter. (PSERS' Memorandum of Facts, ¶ 43; PSERS-16).

27. Upon Claimants' request, their appeal to this Board was held in abeyance pending the Commonwealth Court's decision in *In re Hartline, et al.*, Docket Nos. 2012-14 through 2012-41 (PSERB May 2, 2014), which addressed a similar factual scenario of a union agreeing to a salary freeze for all employees except for those retiring from the district. (PSERS' Memorandum of Facts, ¶ 40; PSERS-11; PSERS-13; PSERS-17).

28. On May 2, 2014, this Board concluded that salary increases the *Hartline* claimants received in exchange for an irrevocable notice of retirement were "prima facie severance payments." To rebut the prima facie case, the Board held that the claimants would need to show that non-retiring employees were paid according to the same salary schedule during the same year at issue. Because the *Hartline* claimants did not rebut the prima facie evidence of a severance payment, this Board determined that the payments in question were severance payments. (PSERS' Memorandum of Facts, ¶ 38; PSERS-11).

29. By unreported opinion dated January 28, 2015, and titled *Hartline, et al. v. Public School Employees' Retirement Board*, 2015 Pa. Commw. Unpub. LEXIS 77 (Pa.Cmwlth. 2015) (unpublished memorandum), the Pennsylvania Commonwealth Court affirmed the Board's decision. (PSERS-17; PSERS' Memorandum of Facts, ¶ 44).

30. On December 18, 2018, PSERS filed a Motion for Summary Judgment.

31. Claimants did not respond to PSERS' motion.

32. This matter is ripe for Board adjudication.

DISCUSSION

PSERS determined that the increased final year's salaries Claimants received are "severance payments" and, therefore, are not "compensation" under the Retirement Code. Claimants appeal, arguing that the increased final year's salaries are "compensation," and should be included in their final average salaries.

Section 8102 of the Public School Employees' Retirement Code ("Retirement Code") provides the following definitions, which are pertinent to the issue on appeal:

> "Final Average Salary." The highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months . . .
>
> "Compensation." Pickup contributions plus any remuneration received as a school employee excluding reimbursements for expenses incidental to employment and excluding any bonus, severance payments, and any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service, payments for unused sick leave or vacation leave, bonuses or other compensation for attending school seminars and conventions, payments under health and welfare plans based on hours of employment or any other payment or emolument which may be provided for in a collective bargaining agreement which may be determined by the Public School Employees' Retirement Board to be for the purpose of enhancing compensation as a factor in the determination of final average salary . . .

24 Pa.C.S. § 8102 (emphasis added). The Retirement Code, therefore, specifically excludes severance payments from retirement-covered compensation. "Severance payments" are defined in the Retirement Code as:

> Any payments for unused vacation or sick leave and any additional compensation contingent upon retirement including payments in excess of the scheduled or customary salaries provided for members within the same governmental entity with the same educational and experience qualifications who are not terminating service.

24 Pa.C.S. § 8102.

Pennsylvania courts have consistently held that there is a presumption that a payment received as part of an agreement to terminate school service by a date certain is a "prima facie severance payment," which presumption can only be rebutted by evidence that the payment was consistent with the scheduled salary scale for personnel with similar educational and experience backgrounds, who are *not terminating service*. *Christiana v. Pub. Sch. Employes' Ret. Bd.*, 669 A.2d 940, 945 (Pa. 1996) (citing *Dowler v. Pub. Sch. Employees' Ret. Bd.*, 620 A.2d 639, 643 (Pa.Cmwlth. 1993)); *Cannonie, et al. v. Pub. Sch. Employees' Ret. Sys.*, 952 A.2d 706 (Pa.Cmwlth. 2008); *Hoerner v. Pub. Sch. Employees' Ret. Bd.,* 684 A.2d 112, 116 (Pa. 1996); *Wyland v. Pub. Sch. Employees' Ret. Bd.,* 669 A.2d 1098, 1103 (Pa.Cmwlth. 1996); *Laurito v. Pub. Sch. Employees' Ret. Bd.*, 606 A.2d 609 (Pa.Cmwlth. 1992); *Hartline v. Pub. Sch. Employees' Ret. Bd.,* 2015 Pa. Commw. Unpub. LEXIS 77 (Pa.Cmwlth. 2015) (unpublished memorandum).

Under the Retirement Code, the Board has a right to question the propriety of any payment. *Finnegan v. Pub. Sch. Employes' Ret. Bd.*, 560 A.2d 848 (Pa.Cmwlth. 1989) (PSERS cannot provide a benefit that would produce a result that is contrary to positive law), *aff'd without op.*, 591 A.2d 1053 (Pa. 1991). The evaluation of the type of payments at issue is part of the obligation imposed on the Board under the Retirement Code and endorsed by the courts. As enunciated by our Supreme Court, "[t]he restrictive definitions of compensation under the Retirement Code and regulations reflect the Legislature's intention to preserve the actuarial integrity of the retirement fund by excluding from the computation of employes' final average salary all payments which may artificially inflate compensation for the purpose of enhancing retirement benefits." *Christiana*, 669 A.2d at 944 (quotation marks omitted). The Board is bound to follow the intent of the General Assembly in administering the provisions of the Retirement Code. 1 Pa.C.S. § 1921(a); *Hughes v. Pub. Sch. Employees' Ret. Bd.*, 662 A.2d 701, 706 (Pa.Cmwlth. 1995). Therefore, while a member is entitled to a liberal administration of the retirement system, the Board is not permitted "to circumvent the express language of the Code, which does not permit inclusion of a severance payment in the computation of final average salary." *Dowler,* 620 A.2d at 644. Following the Retirement Code's mandate, and cognizant of the fact that the retirement benefit is based on the three highest years of compensation, this Board must disallow from the benefit

computation amounts that are severance payments. Whether a payment constitutes a "severance payment" is a question of law. *Id.* at 643.

The Board and the Commonwealth Court previously have held that additional salary paid according to a superseded salary schedule, which is contingent on retirement and not paid to non-retiring employees pursuant to a new salary schedule, constitutes a "severance payment" under the Retirement Code. *See In re Hartline, et al.*, Docket Nos. 2012-14 through 2012-41, *aff'd*, 2015 Pa. Commw. Unpub. LEXIS 77; *see also In re Barham, et al.*, Docket No. 2013-06 (PSERB Aug. 9, 2013). In *Hartline*, a school district and union entered into a revised CBA, pursuant to which retiring employees continued on the salary schedule contained in the original CBA, but non-retiring employees' salaries were frozen. *In re Hartline, et al.*, Docket Nos. 2012-14 through 2012-41 at 4. Non-retiring employees were paid based on the frozen salary schedule in the 2011-2012 and 2012-2013 school years. *Id.* at 5. Subsequently, during the 2013-2014 school year, the non-retiring employees moved to a higher salary schedule. *Id.* at 5-7. Accordingly, the CBA created two salary schedules for the 2011-2012 and 2012-2013 school years, i.e., a higher salary schedule for retiring employees and a lower salary schedule for non-retiring employees. *Id.* at 12. Based on these facts, the Board concluded that the salary increases contingent on retirement were "prima facie severance payments." *Id.* at 12. To rebut the prima facie evidence, the Board explained that the retirees would need to show that they were paid according to the same salary schedule as non-retiring employees with the same education and work experience in the district *for the years at issue*. *Id.* The Board rejected the claimants' argument that the salary increases were not severance payments because non-retirees would eventually earn, in a subsequent year, what the retiring employees had already earned. *Id.* at 15.

On appeal, the Commonwealth Court affirmed the Board's decision in *Hartline*. 2015 Pa. Commw. Unpub. LEXIS 77, *23. The Court addressed claimants' arguments that their salaries were customary salaries because they were contained in the original CBA, and that non-retiring employees would eventually receive the same salary increases. *Id.* at *8. The Court upheld the Board's determination that, to rebut the

prima facie evidence that the increased salary represented a severance payment, claimants must show that they were paid on the same salary schedule as non-retiring employees *for the years at issue*. *Id.* at *12. The Court further concluded that once the original CBA was superseded by a new CBA, the original CBA no longer contained the standard salary schedule for all employees. *Id.* at *13. Therefore, the retirees could not show that they were paid according to the standard salary schedule for all employees by referencing a superseded CBA. *Id.*

Similarly, in *Barham*, a school district and union entered into a Memorandum of Understanding ("MOU"), creating a salary freeze for all employees except for those who agreed to retire. Docket No. 2013-06, at 4. All employees who retired received, as a lump sum payment in their last pay of June 2012, the difference between what they would have received under the CBA, and what they actually received under the MOU. *Id.* at 5. PSERS concluded that the lump sum payment was a "severance payment" and not retirement-covered compensation. *Id.* at 5-6. On appeal to the Board, the retirees argued that they were receiving the regular pay under the CBA and, therefore, the payments were not severance payments. *Id.* at 9. The Board held, however, that the retirees received a higher salary because they agreed to retire and, consequently, the higher salary was a prima facie severance payment. *Id.* at 10. The retirees offered no evidence to show that the payments they received were in accord with the standard salary schedule for all employees and, thus, they could not rebut the presumption that the payments were severance payments. *Id.*

As in *Hartline* and *Barham*, the increased final year's salaries that the Claimants received in their last year of employment are prima facie "severance payments." Pursuant to the MOA between the District and the Association, Claimants were paid the difference between what they would have earned under the salary schedule contained in the superseded CBA, and what they would have earned under the "amended" salary schedule in the MOA if they had not retired. (PSERS-2). This additional money was paid contingent on Claimants' irrevocable agreement to retire. (*Id.*) Thus, the MOA essentially created two separate salary schedules for the 2011-2012 and the 2012-2013

school years: (1) a lower salary schedule for non-retiring employees; and (2) a higher salary schedule for retiring employees. (*See id.*)

Claimants argue that the additional pay they received did not constitute a "severance payment" because the District's non-retiring employees would eventually, in a subsequent year, receive the same increases. Claimants also assert that the increase in salary was a payment made to them because they were not at risk of potential job loss, e.g., a furlough, and therefore, they did not benefit from the MOA's guarantee against furloughs. They also reference the fact that the MOA contains a separate retirement package for retiring employees, claiming that this proves their increased final year's salaries were not severance payments. The salaries of non-retiring employees in future years, however, the reasons the District and Association agreed to the increased final year's salary for retiring employees, and other retirement incentives contained in the MOA, are immaterial. To rebut the presumption of a prima facie severance payment, the law is well settled that Claimants must prove that they were paid the same salary *during the 2011-2012 and 2012-2013 school years* as the District's non-retiring employees who had the same experience and education as Claimants. *In re Hartline, et al.*, Docket Nos. 2012-14 through 2012-41, at 12, *aff'd*, 2015 Pa. Commw. Unpub. LEXIS 77, at *12. Claimants have not done so.

Alternatively, Claimants argue that their increased final year's salary is not a "severance payment" because they were being paid according to the "standard salary schedule" set forth in the superseded CBA. (PSERS-14, Appendix B, p. 9). The Commonwealth Court addressed and rejected this precise argument in *Hartline, et al.* when it determined that a reference to a salary schedule in an original CBA does not overcome a presumption of a prima facie severance payment when the same has been superseded and replaced, which is the undisputed situation here. 2015 Pa. Commw. Unpub. LEXIS 77, at *12-13. Indeed, "[m]erely because Claimants received what they would have received had the School District and the Association not entered the MOU does not convert the monies to compensation for determining final average salary because such payments would not have been payable if Claimants had chosen to continue to work." *Barham, et al.*, Docket No. 2013-06, at 10.

Citing to *Beardsley v. State Employees' Retirement Board,* Claimants also assert that their increased final year's salaries are retirement-covered compensation because the salaries were not "bonuses," which are expressly excluded from the Retirement Code's definition of "compensation." (PSERS-14, Appendix B, p. 4 (citing *Beardsley v. State Employees' Ret. Bd.*, 691 A.2d 1016 (Pa.Cmwlth. 1997))). *Beardsley*, however, exclusively addresses the standard for determining when a payment is a creditable incentive payment versus a non-creditable bonus. PSERS did not find that the payments at issue here were excluded from Claimant's final average salary on the basis that they were bonuses. Rather, PSERS found that the payments were severance payments. The *Beardsley* case does not address severance payments, and it is thus inapposite.

Because Claimants' increased final year's salaries were paid contingent on their irrevocable agreement to retire, the payments are prima facie severance payments. Claimants failed to establish that they were paid according to the same salary schedule as non-retiring employees *during the 2011-2012 and 2012-2013 school years* and, accordingly, their appeal must fail.

CONCLUSION

For the above-stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimants' increased final year's salaries were severance payments under the Retirement Code. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimants' Appeal and Request for Administrative Hearing is DENIED.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF JUDITH A. BATH
BONITA H. BOBER
PAMELA K. BOOKER
SUSAN L. CARNAHAN
PATRICIA V. EHALT
CARLA D. EILENFELD
GREGORY A. FOREMAN
DOREEN J. HALL
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ANDREA N. LIZIK
SELMA L. SAELLAM
THOMAS M. SCHAEFFER
CYNTHIA L. SHANER

DOCKET NO. 2014-12
CLAIM OF BATH, ET AL.

ORDER

AND NOW, upon consideration of Claimants' Request for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimants' Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6, as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimants' requests to include as retirement-covered compensation the increases in salary that they received pursuant to the Memorandum of Agreement dated July 13, 2011, because the increases constitute severance payments under the Public School Employees' Retirement Code.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: March 8, 2019

By: Melva S. Vogler
Melva S. Vogler, Chairman