WILLIAM COYLE,

Appellant,

v.

BOARD OF TRUSTEES, TEACHERS' PENSION AND ANNUITY FUND,

Respondent.

Submitted February 4, 2015 — Decided March 20, 2015

Before Judges Ashrafi and O'Connor.

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

Robert Schwartz, General Counsel (New Jersey Principals and Supervisors Association), attorneys for appellant (William M. Nossen, on the brief).

John J. Hoffman, Acting Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Danielle P. Schimmel, Deputy Attorney General, on the brief).

PER CURIAM

William Coyle appeals from a July 12, 2013 final decision of the Board of Trustees (Board) of the Teachers' Pension and
Annuity Fund (TPAF). The decision denied Coyle pension credits for retroactive salary increases he received as part of a settlement of a lawsuit he filed against his employer, the Hackettstown Board of Education (the school district). We affirm.

Coyle was a tenured employee of the school district at the time of his February 2006 retirement. From 1997 to 2001, he was the Supervisor of Pupil Personnel Services. In July 2001, he was promoted to Director of Pupil Personnel Services. In May 2004, Coyle took a medical leave of absence from which he never returned to work.

While Director of Pupil Personnel Services, his compensation was set forth in the collective bargaining agreement as follows: for 2001-02, $90,513; for 2002-03, $93,862; and for 2003-04, $97,522.

During his time as Supervisor and as Director, the school district assigned Coyle to perform additional duties that were not specifically listed in the job descriptions for his positions. He was given the task of developing a master high school schedule beginning in 1999-2000. In 2002-03, he began to administer the New Jersey Testing Program in the high school and to preside at all meetings of the Pupil Assistance Committee. In 2003-04 he began to conduct observations of special education
teachers and to supervise the library and the health office. Coyle did not receive additional compensation for performing these duties, and the school district never revised his job descriptions to reflect them. The job descriptions, however, included a provision requiring him to "perform all other reasonable requests of the administration." Coyle went on leave in May 2004 claiming that the burdens of his job duties caused him medical ailments.

On April 5, 2005, while still on leave, Coyle filed a lawsuit against the school district alleging age and disability discrimination in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49. He alleged discrimination in that the school district failed to compensate him for the additional work, created a collective bargaining environment that isolated him from other employees, and induced settlements to benefit other employees at Coyle's expense.

On November 22, 2005, when Coyle was sixty years old, the school district filed an involuntary application with the TPAF for Coyle's disability retirement. The decision to retire Coyle was "based on information presented to the Board that William Coyle has, according to his treating doctors, been unable to work since May 7, 2004, and based on Mr. Coyle's not having
pursued an ordinary disability retirement for which he appears to be qualified."

On May 8, 2007, Coyle and the school district settled the lawsuit for $200,000 to be paid to Coyle. The Settlement, Release and Non-Disclosure Agreement that was executed by the parties designated $78,103 of the settlement amount as retroactive salary payments to Coyle for his last three years active on the job, specifying increases of $25,487 for 2001-02, $26,138 for 2002-03, and $26,478 for 2003-04. These last three years of active employment determine the amount of pension benefits to be awarded to Coyle. See N.J.S.A. 18A:66-2(f)(1) (definition of "final compensation").

The settlement also contained the following provisions:

5. The board will cooperate in and support Mr. Coyle's application for an ordinary disability retirement from the Division of Pensions. The Board will take no action to oppose the application and will take all necessary and reasonable action to assist Mr. Coyle's application. The parties expressly agree that the Board has made no promise or guarantee as to the outcome of Mr. Coyle's application for any disability retirement or a regular service pension. Mr. Coyle assumes the risk of any denial of his application by the Division of Pensions, . . . . The Board of Education will attest to the Division of Pensions the restated salaries for school years 2001-02, 2002-03 and 2003-04 . . . .

. . . .
7. Mr. Coyle agrees that he will not seek to return to work at Hackettstown School District or to take any other action to exercise any tenure rights in that district. At the time of execution of this Agreement, Mr. Coyle will tender an irrevocable letter of resignation . . . to be effective upon the effective date of his retirement. . . .

In February 2008, TPAF approved the application for Coyle's disability retirement effective February 1, 2006. When calculating Coyle's final average salary and retirement benefits, however, the Division of Pensions and Benefits did not include the retroactive salary increases. Coyle objected to that decision, and the matter was eventually presented for review and recommendation by an Administrative Law Judge (ALJ).

The ALJ considered the matter on the papers and issued a written decision on April 9, 2013, that concluded the retroactive increases should be credited for Coyle's pension benefits. By letter dated July 12, 2013, the Board accepted most of the ALJ's findings of fact but rejected the ALJ's decision to credit the retroactive salary increases. This appeal followed.

We have a limited scope of review of the decision of an administrative agency such as the Board. Gerba v. Bd. of Trs. of the Pub. Emps. Ret. Sys., 83 N.J. 174, 189 (1980). We will not disturb an agency decision "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it

We accept the factual findings of an administrative agency as long as they are supported by sufficient credible evidence, and we may not substitute our judgment for that of the agency. Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992). Though we are not bound by an agency's determination of a purely legal question, we will give "substantial deference" to an agency's reasonable interpretation of statutes that the agency enforces. Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007).

In this appeal, we find persuasive the reasoning and legal discussion contained in the Board's detailed letter-decision of July 12, 2013. Under the statute that governs the TPAF, salary adjustments that are given in anticipation of retirement are not included as part of a member's "compensation" when calculating his pension:

"Compensation" means the contractual salary, for services as a teacher as defined in this article, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary or extracurricular
duties beyond the regular school day or the regular school year.


The corresponding regulations define "base salary," which determines the amount of the pension benefit, and "extra compensation," which is excluded from that determination:

"Base salary" means the annual compensation of a member, in accordance with contracts, ordinances, resolutions, or other established salary policies of the member's employer for all employees in the same position, or all employees covered by the same collective bargaining agreement, which is reported in regular, periodic installments in accordance with the payroll cycle of the employer.

... .

"Extra compensation" means individual salary adjustments, which are granted primarily in anticipation of a member's retirement; additional remuneration for performing temporary duties beyond the regular work day or work year or additional remuneration for performing duties that are not integral to the effective functioning of the regular school curriculum.

[N.J.A.C. 17:3-1A.1.]

Coyle argues that the retroactive salary increases were not "extra compensation" paid in anticipation of his retirement or payment for "temporary duties." The designated settlement payment compensated him for performing permanently assigned job duties that were integral to the effective functioning of the
school and therefore must be included when calculating his pension. We are not persuaded by this argument. The Board had sufficient reason to reject the adjusted salary increases as creditable compensation in calculating Coyle's pension payments.\footnote{Coyle also argues that the regulations defining "base salary" and "extra compensation" exceed the statutory definition of "compensation." Coyle did not make this argument before the Board or the ALJ. See Brock v. Pub. Serv. Elec. & Gas Co., 149 N.J. 378, 391 (1997); Borough of Keyport v. Maropakis, 332 N.J. Super. 210, 216 (App. Div. 2000); Pressler & Verniero, \textit{Current N.J. Court Rules}, comment 2 on R. 2:6-2 (2015) ("Issues not raised below . . . will ordinarily not be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest."). We need not address the argument because our decision does not require application of the quoted regulatory definitions but focuses instead on the statutory definition of "compensation" in N.J.S.A. 18A:66-2(d)(1).}

The Board could reasonably determine that the retroactive increases were granted primarily in anticipation of Coyle's retirement. In support of his claim to the contrary, Coyle relies upon the affidavit of Robert Gratz, then the superintendent of schools in Hackettstown. The affidavit lists the additional job duties assigned to Coyle and the school year that each duty was assigned. It states further: "The retroactive salary adjustments were not granted primarily in anticipation of Mr. Coyle's retirement and were not intended as additional remuneration for performing temporary duties beyond the regular workday and otherwise conform with the statutes and rules governing the retirement system."
Gratz's averment is not sufficient evidence to establish that the retroactive increases were not made primarily in anticipation of Coyle's retirement. Nowhere do Coyle or Gratz explain why the retroactive salary increases began in 2001-02 although Coyle was first assigned additional work in 1999-2000 and then did not receive any additional assignments until 2002-03. Furthermore, there is no explanation of why the assignment of one duty, the developing of the high school's master schedule beginning in 1999-2000, was valued at a retroactive salary increase of $25,487 but the addition of several more duties in the 2002-03 and 2003-04 school years only led to slight increases over the amount of the initial increase. If Coyle was truly being compensated for past additional duties that should have been compensated in the normal course of the school district's salary decisions, the retroactive compensation applied to 2001-02 should be significantly less than that applied to the following two years.

The retroactive increases vaulted Coyle from the school district's lowest paid administrator to its highest paid administrator. During the three pertinent years, none of the other administrators had a base salary greater than $113,132, while Coyle jumped to $124,000 for 2003-04 as a result of the settlement. Gratz provided no explanation of why Coyle merited
the highest administrative salary in the district. Nor does the record otherwise reveal why Coyle should have received almost $11,000 more than the next highest paid administrator.

Rather, the record as a whole leads to a reasonable conclusion that the retroactive increases were purely in the nature of settlement payments to resolve Coyle's lawsuit. They were not true salary increases "in accordance with established salary policies of the member's employer for all employees in the same position." N.J.S.A. 18A:66-2(d)(1). The Board could reasonably conclude that the adjusted salary does not fit within the statutory definition of "compensation." Ibid.

The Board also properly applied the relevant case law. The Board looked to our Supreme Court's decision in In re Puglisi, 186 N.J. 529 (2005), as controlling this case. In Puglisi, a police officer settled his discrimination claim against his employer. Id. at 531. The terms of the settlement promoted him to captain, placed him on immediate leave at a higher salary, and mandated that he retire at the end of the leave. Ibid. The Court concluded that the payments made pursuant to the settlement were in anticipation of his retirement and affirmed the denial of pension credit for the settlement proceeds. Id. at 534.
Similarly, Coyle was in the process of being retired on disability at the time of the settlement. He provided no evidence to establish that the retroactive payments were an appropriate amount to compensate him for the additional work assignments he performed several years earlier. Coyle's retroactive increases were merely an "'individual salary adjustment' made 'primarily in anticipation' of his retirement . . ." See ibid. The Board properly excluded them in calculating Coyle's pension benefits.

The Court in Puqlisi explained that the statutory definition of compensation that excludes salary increases at the end of an employee's career "protect[s] the actuarial soundness of the pension fund by prohibiting the use of 'ad hoc salary increases intended to increase retirement allowances without adequate compensation to the [pension] fund' in calculating pensions." Ibid.; see also Bd. of Trs. of Teachers Pension & Annuity Fund of N.J. v. La Tronica, 81 N.J. Super. 461, 470-71 (App. Div. 1963) (describing unusual salary increases or arrangements in the final years of employment as "the local board['s] . . . grand gesture of farewell at little expense" because the local board is not itself responsible for the pension payments that must follow over many years), certif. denied, 41 N.J. 874 (1964).
The concerns expressed in Puglisi and La Tronica are equally applicable to this settlement at the end of Coyle's career. By allocating a substantial portion of the settlement to Coyle's salary, Coyle's pension benefits would be significantly increased, giving the school district and Coyle a more favorable settlement at the expense of the TPAF. An employer and an employee cannot accomplish such a result simply by agreeing to designate a part of the settlement as retroactive salary adjustments.

Coyle attempts to distinguish Puglisi by arguing that his payments were not conditioned on his retirement and that there was no guarantee his disability retirement would be granted when the settlement was reached. This argument ignores the facts of the case. As part of the settlement, Coyle was required to "tender an irrevocable letter of resignation." At the time of the settlement, Coyle was at or near ordinary retirement age, had not worked in three years, and was suffering from medical conditions serious enough to prevent him from working. A theoretical possibility that his application for disability retirement might be denied does not mean that the retroactive payments were ordinary base salary rather than adjustments to salary primarily in anticipation of Coyle's retirement.
Our decision in *In re Snellbaker*, 414 N.J. Super. 26 (App. Div. 2010), does not lead to a decision in favor of Coyle. There, we concluded that retroactive salary received by means of a settlement was creditable compensation when calculating the employee's pension benefit. *Id.* at 41. Snellbaker was the police chief of Atlantic City, and in that position he received no raises between 2002 and 2006 while his subordinate deputy chiefs received annual raises. *Id.* at 29-30. He filed a lawsuit against the city and sought, among other relief, retroactive salary increases for 2002 through 2005 under N.J.S.A. 40A:14-179, which required the police chief to be paid more than the amount paid to the highest ranking subordinate officer. The lawsuit was settled, and the settlement retroactively increased Snellbaker's salary for 2002-05 to bring the city into compliance with the statute. *Id.* at 31. The salary increases were identical to the raises Snellbaker's subordinates had received during the same period. *Id.* at 32. Our decision in *Snellbaker*, unlike *Puglisi*, did not involve an "individual salary adjustment" unconnected to the overall salary structure of the employing agency. *Snellbaker*, supra, 414 N.J. Super. at 40. It involved a settlement intended to comply with a statutory mandate. *Id.* at 40-41.
Both of the grounds that distinguish Snellbaker from Puglisi are present in this case. Coyle's settlement provided an ad hoc individual salary increase that was not based on any statute or the salaries paid to any other employees. Also, there was no similar legal requirement that Coyle receive the retroactive salary. Simply put, as a result of the settlement, Coyle was an individual employee who was treated differently from "established salary policies of the member's employer for all employees in the same position." N.J.S.A. 18A:66-2(d)(1). He received a discretionary retroactive salary increase. These facts are more similar to Puglisi than to Snellbaker.

The allocation of the retroactive salary increases to Coyle's final three years of employment, combined with the fact that his pension benefits will be calculated using the average salary of those three years, leads us to conclude that the increases were not compensation under N.J.S.A. 18A:66-2(d)(1) but were paid primarily in anticipation of his retirement. The Board did not act arbitrarily, capriciously, or unreasonably in denying Coyle's application to include the salary increases in determining his pension benefits, and its decision is fairly supported by the record.

Affirmed.