

PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

REGULATION NO. 3

REFUND OF CONTRIBUTIONS

WHEREAS, The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 111.1 of the Municipal Retirement System Ordinance to make all necessary regulations to carry into effect the provisions of the Retirement System Ordinance; and

WHEREAS, The Retirement System is funded by employee contributions from active employees, employer contributions from the City, and investment return on the assets of the System; and

WHEREAS, Both the Retirement System Ordinance (§212) and the Plan 1987 Ordinance (§107) provide collectively that all employees paid out of the Treasury of the City shall pay, by payroll deduction, contributions to the Retirement System; and

WHEREAS, Both the Retirement System Ordinance (§213) and the Plan 1987 Ordinance (§117) provide respectively that members of Plans covered under those Ordinances may, under certain conditions, be refunded their employee contributions; and

WHEREAS, The Board has determined it appropriate to adopt a regulation in order to memorialize the Board's procedure and formalize the Board's past and present interpretations of the provisions relating to the refund of contributions;

NOW THEREFORE, The Board of Pensions and Retirement hereby adopts this Regulation No. 3, relating to the refund of contributions under both the Retirement System Ordinance ("Plan 1956") and the Plan 1987 Ordinance ("Plan 1987").

3.1 Entitlement to Refund. Entitlement to a refund exists under the ordinances only if the employee separates before becoming eligible to receive "any service retirement benefits" (Plan 1956) or "any retirement or disability benefits" (Plan 1987). Accordingly, those phrases are interpreted to create three classes of employees, as follows:

3.1.1 Employees not entitled to any benefit. Employees who separate and are not vested and not of retirement age under their plan may withdraw their contributions if they have not been awarded a disability pension.

3.1.2 Vested employees. Employees who separate and are vested but under normal retirement age ("normal" does not include early retirement) under the applicable section of their

plan relating to service retirement may withdraw their contributions if they have not been awarded a disability pension, but they should be counseled that they would thereby lose their right to a separation service pension upon later reaching retirement age, and their rights upon any re-employment are not assured (see Paragraph 3.5 below).

3.1.3 Employees entitled to a benefit. Employees who separate on or after reaching the normal retirement age under their plan, or who have applied for early retirement or been awarded an ordinary disability retirement, may not withdraw their contributions. See Paragraph 3.3.1 below on disability pensions.

3.2 Option to leave contributions in the System. The Board interprets the language of Section 213.1 of Plan 1956 ("employee . . . shall be repaid . . . contributions") and Section 117.1 of Plan 1987 ("employee will be refunded all contributions") to require the Board to refund the employee's contributions only if requested by the employee. The Board reaffirms its long-standing policy that members who are not yet entitled to retire may choose to leave their contributions in the system upon separation, and thereby preserve their membership in the plan they are in upon separation. This interpretation of the Ordinance is supported by Section 106.1 of the Plan 1987 Ordinance, which refers to employees who "upon separation . . . did not withdraw their contributions"

3.2.1 Exception for Minimum Refunds. The staff of the Board may, upon the separation of any nonvested employee with \$100 or less in accrued contributions, automatically refund the contributions without the necessity of contacting the employee for a decision on disposition of the funds.

3.3 Effect of Refund of Contributions. Upon an employee's receipt of a refund of his or her contributions, the employee's rights in the Municipal Retirement System cease. The employee will not be permitted to reverse his or her decision in any way, including by paying back in the contributions. The employee will not be entitled to apply for any other pension benefit, except as provided in Paragraph 3.3.1 below. Similarly, the rights of any beneficiary or survivor based on that employee's service cease. If the employee is later reinstated to City employment, he or she may be permitted to purchase service for the prior service under certain conditions, depending on the applicable pension legislation at the time of re-employment (see Paragraphs 3.5 and 3.6 below).

3.3.1 Disability Pension Applications. Notwithstanding the above, no separated employee who otherwise meets the requirements for applying for a disability pension (either ordinary disability or service-connected disability), especially the deadline for applying, shall be denied the right to apply for such disability pension, based solely on having withdrawn his or her contributions. If, after having withdrawn contributions, a separated employee is awarded an ordinary disability pension, or a service-connected disability in connection with which he or she opts to select a survivorship option, the employee shall be required to repay the amount of contributions into the Fund. In such a case, The Board shall notify the former employee by registered first class mail that he or she shall have 90 days from the date of that letter to make full payment of the withdrawn contributions, or the former employee loses the right to the benefit.

3.4 Acknowledgements The Board's staff shall design and put into use appropriate forms for employees to sign upon withdrawing contributions, acknowledging the effect of such refund, especially as noted in Paragraph 3.3 above.

3.5 Repurchase of Prior Service. Except as provided in Paragraph 3.6 below, the right of a re-hired employee to purchase service credit for prior City service shall be governed by the applicable provisions of whatever ordinance governs at the time of re-hire, currently Section 107 of Plan 1956 and Section 106 of Plan 1987. Re-hired employees who had withdrawn their contributions may be subject to any intervening changes in legislation.

3.6 Repurchase permitted by court order, Civil Service Commission order, arbitration award, collective bargaining agreement, settlement, or the like. Upon receipt of any court order, Civil Service Commission Order, arbitration award, collective bargaining agreement, settlement, or the like that provides for reinstatement of a separated employee, the Board's staff shall review the document to determine the effect on the employee's pension rights. Where such a document either implicitly or explicitly provides for retroactive pension service credit for a period for which the employee either made no contributions or received a refund of the contributions but is silent on the terms of the employee repaying such contributions, the Board shall bill the employee, by letter sent by certified mail, for the respective contributions. The employee shall be allowed, and the letter shall so state, 90 days from the date of the letter to make full payment of any needed contributions for any past service. Any employee who does not make timely full payment in accordance with this Regulation shall be denied the credit for the associated service, and shall be treated as having a break in service for that period. Notwithstanding any other language in this paragraph 3.6, where any order, award, or agreement provides for back pay to be paid by the City for a period for which the employee is to be "made whole" or accorded full pension rights, the employee will not be billed for the employee pension contributions for that period, if the contributions can be, and are, deducted from any back pay payments.

3.7 Installment Plan. Notwithstanding any other provision of this Regulation, any active employee who is required to make repayment of contributions by a specific date may apply to the Board in advance of the deadline for repayment to be allowed to make repayment on the installment plan, under the terms of the applicable ordinance (Section 108 of Plan 1956 and Section 120 of Plan 1987). The Board shall consider such factors as hardship, the amount of the contributions to be repaid, and the likelihood that the employee will be employed for the term of the installment period. The Board may deny the application (thus requiring full payment within the 90 days), grant the application without restriction, or grant the application but set a maximum installment period and/or a minimum monthly installment payment. In the event any employee is granted the right to make payments of employee contributions on the installment plan and the installment payments are not completed for any reason including failure to complete payments (under Section 108 of Plan 1956 or Section 120 of Plan 1987) upon the separation or death of the employee, the employee (or, in the case of death, the estate) shall be refunded any installment payments paid, and the employee will be credited with none of the service sought to be purchased, and the employee will be treated as having a break in service. Nothing in this

paragraph should be read to divest beneficiaries the right to complete payments upon the employee's death, as provided in Section 108 of Plan 1956 and Section 120 of Plan 1987.

3.8 Issues not addressed. This regulation explicitly does not address the tax consequences of the payment, refund or repayment of contributions, nor does it address attachments of contributions or offsets against contributions.

Approved by the Board January 15, 1998
Effective February 27, 1998