

Chapter 43
POLICE PENSION FUND

- | | |
|--|---|
| § 43-1. Fund established. | § 43-11. Pension rate. |
| § 43-2. Administration. | § 43-12. Policemen discharged or voluntarily withdrawn from service; vested benefits. |
| § 43-3. Applicability. | § 43-13. Deprivation of right. |
| § 43-4. Members. | § 43-14. Policemen aggrieved by ruling or action. |
| § 43-5. Derivation of funds. | § 43-15. Payments not assignable or attachable. |
| § 43-6. Surety bond. | § 43-16. Provisions subject to change. |
| § 43-7. Records available for inspection. | § 43-17. Written notice on amendments. |
| § 43-8. Rules to effectuate intent and purpose. | § 43-18. Employment credit for military service. |
| § 43-9. Eligibility. | |
| § 43-10. Leave of absence as not affecting status. | |

[HISTORY: Adopted by the Council of the Borough of Berwick 7-21-1972 by Ord. No. 1059. Amendments noted where applicable.]

§ 43-1. Fund established.¹

Under the provisions of the Act of 1956, May 29, P.L. 1804 (1955), as last amended,² and any other statutes now or hereafter pertaining or applicable thereto and any ordinances that may be lawfully enacted for the purposes hereof, there is hereby reestablished a Police Pension Fund.

§ 43-2. Administration. [Amended 3-20-1978 by Ord. No. 1121]

- A. The care, management, investment, administration, distribution and disposal of the fund shall be vested in the members of the Borough of Berwick Council and one designated active member of the borough police force, unless and until Council shall designate a committee therefor, in which event an active member of the borough police force shall be entitled to membership on said committee.
- B. The term of membership of the police officer designated shall be on a calendar-year basis beginning in 1979, with police force membership submitting the names of three nominees for fund administration to Borough Council by no later than the December meeting of Council. During 1978, the police force nominee shall hold membership until December 31, 1978.

¹ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

² Editor's Note: See currently 53 P.S. § 767.

- C. While the fund continues under the administration of Borough Council and one active member of the police force, the officers of the fund shall be as follows: the President of the Council shall be the President of the fund, the Borough Secretary shall be the Secretary of the fund and the Borough Treasurer shall be the Treasurer of the fund.

§ 43-3. Applicability.

The fund shall be applied in accordance with present and future laws and under such regulations, herein or hereafter, as the Council may lawfully prescribe for the benefit of such members of the police force as shall receive honorable discharge therefrom by reason of age or disability, and for the benefit of widows, and if no widow survives or if she survives and subsequently dies or remarries, then of child or children under the age of 18 years, of members of the police force or of members retired on pension. Any allowance made to those who are retired by reason of disability or age shall be in conformity with a uniform scale. For the purpose of this chapter, unless and until changed by statute or ordinance, a "policeman" means a full-time paid policeman or policewoman.

§ 43-4. Members.

All full-time policemen, as defined, shall be members of the Borough of Berwick Police Pension Fund, and such membership shall be compulsory for all such officers and members of the police force. Upon becoming a member of the fund, each officer and member of the police force shall, in writing, authorize the proper borough authorities to deduct 5% from his pay as his contribution into the fund and shall designate a beneficiary or beneficiaries to whom payments shall be made in the event of such member's death while a member of the police force and of the fund, and he shall further stipulate and agree that he shall be bound by the provisions of the law pertaining thereto and of this chapter and of any future ordinances and statutes pertaining thereto.

§ 43-5. Derivation of funds. [Amended 6-22-1984 by Ord. No. 1166]

The funds for said fund shall be derived from the following sources:

- A. So long as the actuarial soundness of the fund has not been impaired, as determined on annual basis, during the period of January to April 30 of each year, pursuant to the requirements of Act 600,³ 3% of the compensation received by each officer and member of the police force shall be deducted from his respective earnings as a member of the Police Department and paid into said fund. Whenever the actuarial investigation required to be performed annually establishes the need for said funds, members of such fund shall pay into the fund, monthly, an amount equal to not less than 5% of their monthly compensation.
- B. Any sum or sums paid to the borough and inuring to the fund from any official or department of the Commonwealth of Pennsylvania under any present or future law pertinent thereto.

³ Editor's Note: See 53 P.S. § 767.

- C. Any money or property, real, personal or mixed, which the borough may by gift, grant, devise or bequest, receive for the benefit of the fund.
- D. Any and all contributions that may be lawfully made by the borough to the fund.
- E. Receipts from investments of said fund.

§ 43-6. Surety bond.

The assets of the Borough of Berwick Police Pension Fund shall be kept separate and apart from other borough funds and shall be protected by a surety bond to the borough in a sum not less than the amount of money that shall come into the hands of the Treasurer of the fund, in addition to other borough funds. Any part of the Borough of Berwick Police Pension Fund may be invested in the same manner and in the same kinds of securities as sinking funds of the borough may by law be invested.

§ 43-7. Records available for inspection.

The books and records of the fund shall be open for inspection by any interested party, and the accounts shall be audited as Council or committee directs.

§ 43-8. Rules to effectuate intent and purpose.

The Borough Council or the committee may formulate rules or bylaws to implement and effectuate the intent and purpose of the statutes and ordinances relating to police pensions.

§ 43-9. Eligibility.

Every member of the police force of the Borough of Berwick who shall have served a minimum period of total service in the aggregate of 25 years on the Borough of Berwick police force and shall have reached the age of 50 years, after which he may retire from active duty, and such members as are retired, shall be subject to service from time to time as a police reserve in cases of riot, tumult or preservation of the public peace until unfitted for such services, when they may be finally discharged by reason of age or disability. (NOTE: Notwithstanding any provision of this chapter, members of the Borough of Berwick police force prior to October 21, 1965, since a pension plan had previously been established, who have attained or attain the age of 55 years, may retire after a period of total service of 20 years.)

§ 43-10. Leave of absence as not affecting status.

Upon application, in writing, stating a reason deemed good and sufficient to it, except as hereinafter provided, the Borough Council may grant any policeman leave of absence without pay for a period not exceeding six months, unless such period shall be extended by a majority vote of the entire Council, during which time the member shall be considered in relation to the fund as being in active service, and he shall not lose any rights to pension or benefits hereunder, provided that while on leave of absence he regularly makes a contribution to the fund in the

amount that would be deducted from his pay if he were on active duty, and provided further that said leave of absence shall not be granted or used for the purpose of obtaining or engaging in other employment, in which event the leave, if already granted, shall be canceled. The provisions of this section may likewise apply where any member is prevented by injury or illness from performing his regular duties if he remains a member of the police force and of the fund, provided that such leave of absence shall not affect any law, ordinance or action of the Council providing for sick leave or vacations.

§ 43-11. Pension rate. [Amended 8-16-1976 by Ord. No. 1106]

- A. When any member of the Police Department of the Borough of Berwick is eligible to retire on pension, as provided in Pension Ordinance and amendments thereto, elects to retire at or after age 50, or if required to retire at age 65, the Borough Council or Police Pension Committee, in either case, shall order and direct said officer to be paid from said Police Pension Fund a yearly pension, payable in monthly installments, equal to $\frac{1}{2}$ the monthly average salary of such member during the last 36 months of employment. [Amended 5-19-1980 by Ord. No. 1141; 2-17-1997 by Ord. No. 97-1]
- B. Members of the pension fund or their spouses or children, as hereinafter provided, who are receiving retirement benefits, shall, in addition to the benefits provided in Subsection A above, receive an annual cost-of-living increase, payable monthly, with their benefits; provided, however, that:
- (1) An annual cost-of-living increment shall be provided to retired police officers or their spouses or children entitled to benefits, payable monthly with their retirement benefit, which annual increment shall be set at a maximum of 3% cumulative, provided that such annual increment shall not exceed the percentage increase in the federal composite (all items) consumer price index from the year in which the police officer last worked.
 - (2) In no case shall the police pension benefits, including cost-of-living increase, exceed 75% of the police officer's salary for computing retirement benefits.
 - (3) The total cost-of-living increases shall not exceed 30%.
 - (4) No cost-of-living increase shall be granted in any year when the increment would impair actuarial soundness of the pension fund.

§ 43-12. Policemen discharged or voluntarily withdrawn from service; vested benefits. [Amended 6-22-1984 by Ord. No. 1166; 9-8-1992 by Ord. No. 92-6; 2-17-1997 by Ord. No. 97-1]

- A. Member benefits shall be vested after completing 12 years of continuous uninterrupted full-time employment as a member of the Borough of Berwick Police Department. Should a member of the fund, before completing superannuation retirement age and service requirements, cease to be employed as a full-time police officer by the Borough of Berwick for any reason while a member of the fund, said officer shall be entitled to vest his retirement benefits after completing 12 years of continuous uninterrupted full-time employment as a member of the Borough of Berwick Police Department by filing with the

governing body of the Borough of Berwick, within 90 days of the date said officer ceases to be a full-time police officer, a written notice of his intention to vest. Upon reaching the date which would have been superannuation retirement date if the officer had continued employment as full-time police officer, the former officer shall be paid a partial superannuation retirement allowance determined by applying the percentage his years of service bears to the years of service which would have been rendered and completed to work until superannuation retirement date to the gross pension amount to which the officer is entitled on the date of vesting, using, however, the monthly average salary during the appropriate period prior to termination or discharge from employment. Such pension or retirement benefits for any month shall be the sum of the such benefits provided in such police pension fund pursuant to Act 600 or any amendments thereto, to the extent necessary to bring the total benefits in any month up to the officer's partial superannuation retirement allowance outlined above.

- B. Should a police officer be discharged or voluntarily withdraw from service, or otherwise cease to be a member of the police force, except as provided in Subsections C and D below, before completing four consecutive years of full-time employment, said officer shall be entitled to be paid from the fund the full amount of the deductions from his pay, with interest credited at the rate of 4½% compounded annually.
- C. Should a police officer be unable to perform his duties because of a permanent service-connected disability, he shall be placed on the retired list, subject to the above vesting rights. When such disabled person becomes eligible for pension by accumulating years of service and the years of retirement on disability, the officer shall thereupon commence to draw the pension to which the officer would have been entitled had he not been retired because of the disability, which pension shall be based upon salary during the last 36 months of employment at active service.
- D. Should a police officer die in service and in good standing or during his retirement on pension or disability, there shall be paid to the officer's surviving spouse, and if no spouse survives or if spouse survives and subsequently dies or remarries, then to the child or children equally under the age of 18 years, a benefit calculated at the rate of 50% of the pension the member was receiving had he been eligible to retire at the time of his death. Such payments shall continue during the lifetime of the surviving spouse so long as spouse does not remarry or in the case of child or children, until youngest reaches age 18, provided that the maximum number of full monthly payments as computed herein to police officer, spouse and/or child or children shall be limited to 60 months.
- E. Disability.
 - (1) Notwithstanding all other provisions set forth above, and provided further that the police pension fund shall remain actuarially sound, should a policeman be unable to perform his duties and the Borough of Berwick not be able to provide a position for the disabled employee while accommodating the physical limitations of the disabled employee because of his/her service-connected disability and in the further event that the aforementioned officer shall have completed 10 years of continuous service with the Borough of Berwick as a police officer, he shall be entitled to be placed on the retired list subject to the vesting rights in effect for a borough police officer. Furthermore, said officer shall be entitled to a disability pension amounting to 50% of

his salary based upon the last 36 months of employment in active service. Additionally, the aforementioned officer who is permanently disabled shall be entitled to a cost of living increase amounting to 2% of said pension every three years, provided that said cost of living increases by at least that amount during the three-year period based upon the United States city average. It is expressly understood and agreed, however, that notwithstanding any other provisions set forth herein, the maximum amount that any police officer shall be entitled to under the terms and provisions of this section shall amount to 60% of his highest salary during the last 36 months of employment of active service with the Borough of Berwick. Furthermore, it is understood and agreed that there shall be deducted from any payments set forth above any workers' compensation benefits paid to said police officer during the time that he receives disability payments hereunder. The disability check provided by the borough shall be offset by the workers' compensation benefit received by the officer.

- (2) When such disabled person becomes eligible for pension as set forth above by accumulating years of service and the years of retirement on disability, the officer shall thereupon commence to draw the pension to which officer would have been entitled had he not been retired because of the disability, which pension shall be based upon salary during the last 36 months of employment in active service with the Borough of Berwick.

§ 43-13. Deprivation of right.

No person participating in such fund and becoming entitled to receive a benefit therefrom shall be deprived of his or her right to an equal or proportionate share therein upon the basis upon which he or she first became entitled thereto.

§ 43-14. Policemen aggrieved by ruling or action.

Any policeman aggrieved by any ruling or action of Council or of the committee regarding the fund and his relation thereto shall have the right to a hearing before Council, to be held within 10 days of his written request therefor, at which he may attend in person and be represented by counsel and further require the attendance of any witnesses on his behalf by subpoena, to be issued by the Borough Council on his written request. Minutes and records shall be kept of testimony and facts produced, and Council may thereupon make such order or ruling in the matter as may seem just and lawful.

§ 43-15. Payments not assignable or attachable.

No payments under this chapter may be assigned or attached in any manner or for any purpose, reason or cause or under any circumstances.

§ 43-16. Provisions subject to change.

The provisions of this chapter, insofar as they are the same as statutory provisions, shall be subject to change or repeal in order to comply with any future statutory provisions, and the

provisions of this chapter may be amended or repealed if statutory authority is granted therefor or statutory restrictions or mandates are eliminated and discretion is vested in the borough authorities.

§ 43-17. Written notice on amendments.

Five days' written notice shall be given to the members of the fund before final action is taken to amend this chapter or any amendment thereof.

§ 43-18. Employment credit for military service.

- A. Any member of the police force of the Borough of Berwick who has been a regularly appointed employee of the Borough of Berwick for a period of at least six months, and who thereafter shall enter into military service of the United States, shall have credited to his/her employment record for pension or retirement benefits, all of the time spent by him/her in such military service if such person returns or has heretofore returned to his/her employment with the Borough of Berwick within six months after his/her separation from the service.
- B. If any individual serves in the military service who is or was not employed by the Borough of Berwick prior to such military service, and then becomes a member of the police force of the Borough of Berwick, the said individual shall receive full service credit for each year of military service or any fraction thereof, not to exceed three years. In such event, the amount due for the purchase of credit for military service other than intervening military service shall be computed by applying the average normal cost rate for the Borough Police Pension Plan as certified by the Public Employee Retirement Study Commission, but not to exceed 10%, to the member's average annual rate of compensation over the first three years of municipal service and multiplying the result by the number of years and fractional part of a year of creditable non-intervening military service being purchased, together with interest at the rate of 4 $\frac{3}{4}$ % compounded annually from the date of initial entry into municipal service to the date of payment.
- C. Notwithstanding any provisions set forth above, no member of the police force of the Borough of Berwick shall receive credit for military service as set forth above if he/she is entitled to receive, is eligible to receive now or in the future or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency, except that members eligible to receive or receiving military retirement pay earned by a combination of active duty and non-active duty with a Reserve or National Guard component of the Armed Services, which retirement is payable only upon attainment of a specified age and period of service under 10 U.S.C. Chapter 67 (relating to retired pay for non-regular service), shall still be able to receive credit as set forth in Subsections A and B.
- D. Payments referred to herein shall not be a charge on any other fund of the Borough of Berwick save the Police Pension Fund herein provided for.
- E. Any member of the Berwick Borough Police Department desiring to purchase his or her military time in accordance with the terms and provisions of this section shall complete

said purchase within six months of the date of the passage of this section in the event that they are a member of the Berwick Borough Police Force at the time of the passage of this section. Thereafter any police officers hired after the passage of this section shall complete purchase of their military time in accordance with the terms and provisions of this section within six months after being employed by the Borough of Berwick. Any individuals employed by the Borough of Berwick as police officers who do not purchase their military time in accordance with the provisions of this subsection shall be deemed to have waived and given up forever their right to purchase said military time.