

**MASSACHUSETTS**  
Public Employee Retirement Administration Commission  
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MEMORANDUM

TO: All Retirement Boards

FROM: Robert F. Stalnaker, Executive Director

RE: Appeals Court Decision on G.L. c. 32, § 16(2)

DATE: February 10, 1999

The Appeals Court has recently ruled in the case of DuPont v. Commissioners of Essex County that members who were terminated before the Legislature eliminated G.L. c. 32, § 16(2) in 1996 are not eligible for retirement board notice and a hearing pursuant to § 16(2) before their termination becomes effective.

The Commission provided this interpretation in PERAC Memo #23/1997 and this interpretation has now been upheld. Retirement boards may not adhere to the provisions of § 16(2) and may not hold any hearings for any members who were terminated before or after the section was eliminated.

The appellants in DuPont, who met the service requirements of § 16(2) when they were terminated, were employees of a county engineering department and had been laid off in 1988 as part of a budget crisis. The appellants contended that they could not be terminated until a fair summary of the facts upon which their employer was to act was filed with their retirement board and, upon the member's request, a hearing held because they were terminated before the Legislature removed § 16(2). The court ruled that the Legislature intended to abort any lawsuits pending when it removed the section. The court also speculated that the appellant's would have likely lost regardless of the removal of § 16(2) because they had waited six years to request a hearing.

We will notify you of any further appellate activity in regard to this case. We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.