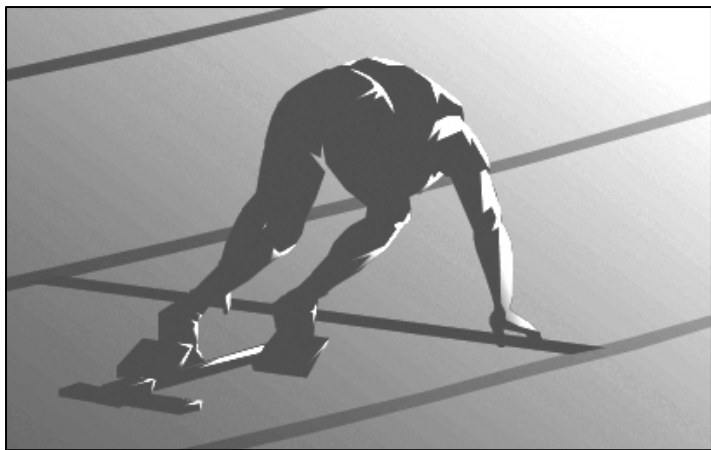


# Public Employee Case Study: John Michael Emmett, Jr. The Race to Eighty Per Cent



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August, 2008



# Mike's unusual struggle

- Coveted DPW work
- Under pressure, became librarian
- Librarian—DPW struggle would ultimately destroy his life and his happiness

# Mike at a glance

- Two marriages, one ending in divorce
- Married fellow public employees
- Five children, including one disabled child
- One step-child
- Seven jobs in the MA public sector
- One out of state job in KY
- Two wars
- Dies four different ways

# Mike's children at a glance

John Jay: born July 3, 1982

Jennie Lee: born September 17, 1984

Danny Joe: born May 31, 1987

Malcolm (stepson): born July 11, 1993

Nora Mae: born February 17, 2002

Robert: born May 14, 2004

# Mike's seasonal and part-time employment

- Section 3(2)(d) provides, in pertinent part, that "In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment, the Board shall have and exercise full jurisdiction to determine such employee's eligibility for membership..."

# Definition of veteran

## *M.G.L. ch.4, s.7, clause 43*

### **Veteran**

- To be a “veteran” under Massachusetts law a person is required to have either:
- 180 days of active duty service and be discharged or released under honorable conditions - OR -
- 90 days of active duty service, one day of which is during “wartime,” and be discharged or released under honorable conditions, except for Vietnam I, which requires 180 days of active duty service.

### **Training duty exception**

- *Active service in the armed forces*, as used in this clause, shall not include active duty for training in the Army or Air National Guard or *active duty for training as a Reservist* in the armed forces of the United States.

# Mike and his MASS money

- August 1, 1973 – joins Magenta, 5% contribution

[Section 22(1)(b)(i)]

# Mike and his MASS money

- April 6, 1981 – withdraws his account from Magenta
  - ?? 20% withheld??
  - No – not in effect until 1992
  - ??All of his interest??
  - YES – limitation not in effect until 1984

# Mike and his MASS money

- January 14, 1985 – joins Greenery, contribution 8%  
[Section 22(1)(b)(iii)]
- Additional contribution 2% of compensation over \$30,000 because membership after January 1, 1979  
[Section 22(1)(b1/2)]

# G.L. c. 32, s. 3 membership

## **Rochelle leaves her money in the system:**

- (1)(a)(ii) *Member Inactive*. —...any member in service whose employment has been terminated and who may be entitled to any present or potential retirement allowance or to a return of his accumulated total deductions...

# Mike and his MASS money

- August 31, 1987 – withdraws his account from Greenery

?? 20% withheld??

No – not in effect until 1992

??All of his interest??

NO – member after January 1, 1984, voluntarily left, less than 60 months service - so no interest [Section 11(1)(a)]

# Mike and his MASS money

- January 1, 1990 - joins Periwinkle, 8% contribution  
[Section 22(1)(b)(iii)]
- Additional contribution 2% of compensation over \$30,000 because membership after January 1, 1979  
[Section 22(1)(b1/2)]

# Mike and his MASS money

- July 18, 2003 – terminates Periwinkle library position
- Having learned his lesson, does not withdraw his account

# Mike and his MASS money

- July 12, 2008 – Joins Quabbin contribution remains 8% because his account is transferred from Periwinkle [Section 22(1)(b)(iii)]
- Additional contribution 2% of compensation over \$30,000 because membership after January 1, 1979 [Section 22(1)(b)(1/2)]
- Mike still not happy – he insists he should have been at 5%.

# G.L. c. 32, s. 3 membership

## **Mike takes his money out of the system:**

- (2)(a)(vii) Any person who ... re-enters the active service .. provided, that any such person who fails to pay into the annuity savings fund of the system ... shall be considered as a person first entering the employ of such governmental unit...

# Mike cannot buy out of state time per G.L. c. 32, s. 1.

- “Member”, any employee ... [of a retirement system] ... established under the provisions of sections one to twenty-eight, ... and if the context so requires, any member of any contributory retirement system established under the provisions of any special law.

## **Exceptions**

- See G.L. c. 32, s. 4(1)

# Scenario #9: The late, lamented Section 5(1)(e)

- (e) Where husband and wife are both members of the same or different systems and one of the two members is retired under the provisions of sections one to twenty-eight, inclusive, the other member, upon his or her written application on a prescribed form filed with the board, shall be retired for superannuation irrespective of age as of a date which shall be specified in such application and which shall be subsequent to but not more than four months after the filing of such application.

# Mike is called to active duty.

## **Chapter 137 of the Acts of 2003**

- In a county, city or town which adopts Chapter 137 of the Acts of 2003, the difference between the member's base salary and his or her military salary would be regular compensation for retirement purposes. Retirement deductions must be taken from this portion of the salary.

## **The Uniformed Services Employment and Reemployment Rights Act ("USERRA")**

- The provisions of G.L. c. 32, when read together with USERRA, mandate that the Commonwealth or political subdivision thereof is responsible for the payments that the members would have made into the annuity savings fund of their respective systems had they not been called to military duty.
- The service a member earns while on active military duty should be granted without cost to him or her.

## **G.L. c. 32, § 4(1)(h)**

- The period or periods during which any member who is a veteran as defined in section one was on leave of absence from the governmental unit to which the system of which he is a member pertains, for the purpose of serving in such campaign and until he was discharged or released from such service in the armed forces, shall be allowed as creditable service.

# Mike starts his own business.

## 840 CMR 10.14

- [t]he term “earnings from earned income” as used in G.L. c. 32, s. 91A shall mean ... [p]rofits derived from the operation of a business through some labor, management or supervision of such profits are earned income, regardless of how a retiree categorized such income for income tax or other purposes.
- Supreme Judicial Court upheld PERAC’s definition of earned income codified in 840 CMR 10.14 in Boston Ret. Bd. v. CRAB, 803 N.E.2d 325, 330-331 (Mass. 2004).

# Public records

- Mike and Rochelle's divorce is going on today, August 19, 2008.
- Mike makes his phone call to the retirement board.
- Mike wants to know where Rochelle is living, the amount in her annuity account, and her contribution rate.

# Scenario #1: Superannuation retirement

- Seasonal employment
- Part-time employment
- Veteran's time
- Membership contribution rate
- Refund
- QDRO
- Remarriage
- Option selection

# Scenario #2: Veteran's buyback

- Two years in Vietnam
- Active duty
- Non-training
- DD-214
- Department of Veterans' Services  
(617) 210-5480

# Scenario # 3: April 15, 2010

- John Jay 27 years of age
- Jennie Lee 25 years of age
- Danny Joe 22 years of age
- Malcolm 16 years of age
- Nora Mae 8 years of age
- Robert 5 years of age

## Scenario #3: Workers' Comp offset

- Workers' Comp for snow plow injuries - \$550 per week
- ADR pension and dependent's allowance for snow plow injuries - \$575 per week
- Receives full Workers' Comp
- Receives \$25 per week pension
- Receives full annuity

# Scenario #4: February 2009

- John Jay 26 years of age
- Jennie Lee 24 years of age
- Danny Joe 21 years of age
- Malcolm 15 years of age
- Nora Mae 7 years of age
- Robert 4 years of age

## Scenario #4: Mike dies from cause from which he retired.

- Section 9 provides, in pertinent part, that certain payments and allowances be made to the beneficiary or beneficiaries of a member in service if the Board finds that the member “died as the natural and proximate result of a personal injury sustained or a hazard undergone as a result of, and while in the performance of his duties at some definite place and at some definite time...without serious and willful misconduct on his part...”
- Section 9 applies if member was previously retired.

# Scenario #5

- Kyra entitled to a death benefit only if Mike's death was "the natural and proximate result of the injury or hazard on account of which such member was retired."
- Mike died of "blunt force trauma."
- Does Kyra have any hope of getting a death benefit?

# Scenario #6: November 12, 2008

- John Jay 26 years of age
- Jennie Lee 24 years of age
- Danny Joe 21 years of age
- Malcolm 15 years of age
- Nora Mae 6 years of age
- Robert 4 years of age

## Scenario #6: Mike dies in the performance of his duties.

- Section 9 provides, in pertinent part, that certain payments and allowances be made to the beneficiary or beneficiaries of a member in service if the Board finds that the member “died as the natural and proximate result of a personal injury sustained or a hazard undergone as a result of, and while in the performance of his duties at some definite place and at some definite time...without serious and willful misconduct on his part...”

# Scenario # 7: Mike's 12(2)(d) Option selection

- Filled out a "Return of Accumulated Deductions" form, nominating Kyra as beneficiary.
- Did not fill out an Option 12(2)(d) selection form.
- Accident happens about three weeks into Mike's tenure at the Quabbin DPW.
- Can Kyra make the election?

## Scenario #7: Yet another 12(2)(d)?

- Mike is killed in an off duty motorcycle accident on May 22, 1995.
- He and Kyra were married on April 16, 1995.
- When he became a member of Periwinkle on January 5, 1990, he nominated Jennie Lee as his 12(2)(d) beneficiary. What happens now?

## Scenario #7: One last (not really) 12(2)(d)?

- Rochelle is killed in a car accident on the Mountain Parkway in December 1984.
- She was a member inactive of the Magenta Retirement System, having left her money in.
- She never filled out an Option 12(2)(d) form.
- She named her mother as the beneficiary for her Section 11 form.

# Scenario #8: Mike wants his money.

- How much of the interest will he get?  
Creditable service
- What will the IRS get?  
20% immediately  
Perhaps 10% excise tax
- What else could Mike do?  
Think it over  
Roll it over  
Leave it in Quabbin

# Scenario #10: Rochelle is very ill.

- She's 65, not a veteran. Why ORD?  
(a/k/a Judith's pet peeve)
- ORD v. SUPER  
Same allowance  
91A reporting
- Can Rochelle outsmart Mike?  
Work forever  
Retire - Option C – name Jennie Lee  
Get married, stay married one year  
and don't quit work

# Mike steals money from the DPW.

- Mike volunteers to help out at the DPW office. People are surprised, but not suspicious, just because Mike is known to hate “indoor” work. Eventually, Mike gains access to the DPW checkbook, and writes a couple of healthy checks to himself, forging the signatures of both the department head and his supervisor. All told, Mike makes off with \$34,000.
- Should Mike forfeit his pension?

# Multiple choice quiz (pick all that apply)

- Mike should forfeit his pension if he is convicted of:
  - a. Stealing money from the DPW
  - b. Stealing DPW property and selling it on eBay.
  - c. Requiring residents to pay him so he will plow their street.
  - d. Assaulting a co-worker on the job.
  - e. All of the above.