



THE COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

Catherine E. Sullivan, Chair
Joseph I. Martin, Esquire
Russell W. Gilfus, Esquire
Elizabeth Susan Dougherty, APRN, RN-C

November 6, 2018

Michael Sacco, Esq.
Law Offices Michael Sacco
PO Box 479
Southampton, MA 01073

✓ Kenneth J. Hill, Esq.
PERAC/Legal
5 Middlesex Ave.
Somerville, MA 02145

Re: Joseph O'Leary v. Lexington RB and CRAB, CR-15-30

Dear Counsel:

Enclosed please find CRAB's Order of Partial Stay.

Very truly yours,

Catherine E. Sullivan
Assistant Attorney General, Chair
(617) 963-2822

Enclosure, CES/db

cc: Edward McGrath, Esq. (DALA/original)
Mr. Joseph O'Leary pro se at CRAB.
Susan F. Horowitz, Esq. Rep. Mr. O'Leary in Superior Court action.
Mark Macchi, Esq., also rep. Mr. O'Leary in Superior Court action.
AAG Kirk Hanson

COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

JOSEPH O'LEARY,

Petitioner-Appellant

v.

LEXINGTON RETIREMENT BOARD AND PUBLIC EMPLOYEE
RETIREMENT ADMINISTRATION COMMISSION,

Respondents-Appellees.

CR-15-30

ORDER OF PARTIAL STAY

On July 23, 2018 the Contributory Retirement Appeal Board (CRAB) issued its Amended Decision in the above-captioned matter, holding that the petitioner Joseph O'Leary was not entitled to include compensation for unused vacation time in his regular compensation for purposes of calculating his retirement benefits. Both the Public Employee Retirement Administration Commission (PERAC) and the petitioner have filed appeals to Superior Court.¹

PERAC has filed an emergency motion with CRAB, seeking to stay enforcement of CRAB's July 23, 2018 decision. The basis for the motion is that,

¹ See *Public Employee Retirement Admin. Comm'n v. Contributory Retirement Appeal Bd., Lexington Retirement Bd., and Joseph O'Leary*, No. 1884CV02661 (Suffolk Super. Ct., filed Aug. 24, 2018); *Joseph O'Leary v. Contributory Retirement Appeal Bd., Lexington Retirement Bd., and Public Employee Retirement Admin. Comm'n*, No. 1884CV02624 (Suffolk Super. Ct., filed Aug. 22, 2018).

unless CRAB's decision is stayed, PERAC will be required to advise retirement systems which may have included pay for unused vacation time in regular compensation to take steps to correct their actions. On the other hand, awaiting the result of the Superior Court's ruling, and that of any appellate court, would allow any needed changes to be made without the possibility of a costly and disruptive later reversal.

The Lexington Retirement Board opposes the issuance of a stay, arguing that there is little chance of success on the merits, that the continued payment of benefits enhanced by unused vacation pay may in some cases be difficult to recoup if the member should die during the appellate process, and that most retirement systems do not currently treat unused vacation pay as regular compensation, so that a stay would create more disruption than it prevents.

We consider the potential for disruptive administrative changes during the pendency of judicial review to be a serious matter. PERAC and the retirement boards rely on clear rules so that they may properly and expeditiously administer the collection of contributions and the payment of benefits in the correct amounts. Thus, to the extent that our decision may require correction of past actions by retirement systems, we agree that such correction may await the completion of judicial review. As to future actions, however, we consider it wiser to require retirement systems to comply with our decision, so as to avoid compounding of errors.

Accordingly, pursuant to our authority under G.L. c. 30A, § 14(3), we issue a partial stay of enforcement of our decision in this matter, pending the completion of judicial review, and subject to any further order by the Superior Court or appellate court, as follows:

1. **Retired Members.** Enforcement of our decision shall be stayed insofar as it would require recalculation of retirement benefits currently being paid to retired members, or refunding of past retirement contributions made by retired members. As to retirees, the status quo may remain in effect pending completion of judicial review.
2. **Active Members.** Enforcement of our decision shall be stayed only insofar as it would require refunding of retirement contributions previously made by active members prior to retirement. No stay shall be in effect as to retirement contributions to be made in the future by active members. Going forward, no retirement contributions shall be collected on unused vacation pay.
3. **Pre-Retirement Inactive Members.** Enforcement of our decision shall be stayed pending the completion of judicial review, insofar as it would require refunding of retirement contributions previously made by members inactive, prior to their retirement.
4. **Future Retirees.** No stay shall be in effect as to the calculation of benefits to be paid to persons retiring in the future. Calculation of benefits to future retirees shall not include unused vacation pay, and any retirement contributions made on unused vacation pay shall be returned at the time of retirement.
5. **Petitioner-Appellant.** No stay shall be in effect as to the Petitioner-Appellant Joseph O'Leary. O'Leary's retirement benefits have been calculated without the inclusion of unused vacation pay, and that calculation shall remain in place pending appeal.
6. **Timing of Stay.** This stay shall be in effect until the completion of judicial review, unless modified by a court of competent jurisdiction.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



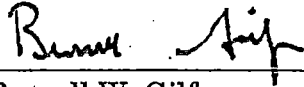
Catherine E. Sullivan
Assistant Attorney General
Chair
Attorney General's Appointee

Russell W. Gilfus
Governor's Appointee

Joseph I. Martin
Public Employee Retirement Administration
Commission Appointee

Date: November 6, 2018

Assistant Attorney General
Chair
Attorney General's Appointee



Russell W. Gilfus
Governor's Appointee

Joseph I. Martin
Public Employee Retirement Administration
Commission Appointee

Date: November 6, 2018

Assistant Attorney General
Chair
Attorney General's Appointee

Russell W. Gilfus
Governor's Appointee

Did Not Participate

Joseph I. Martin
Public Employee Retirement Administration
Commission Appointee

Date: November 6 2018