

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Continuing Membership of “Non-Full-Time Employees”

DATE: January 19, 2017

Introduction

The Supreme Judicial Court of Massachusetts (“the SJC”) has issued a decision regarding what it terms “non-full-time-employees.” The SJC has decided that once a member is granted initial membership in a retirement system, he or she will retain that membership status so long as he or she remains employed. This means that a member, whose hours or pay are reduced below the initial membership threshold of a particular board, may not have their membership revoked. This has been the long-held position of PERAC and the great majority of retirement boards. For the retirement boards that have adhered to this position, no action will be necessary at this time.

Summary of Case

Retirement Board of Stoneham v. Contributory Retirement Appeal Board & another
SJC-12098 December 22, 2016 (Copy attached to this memorandum)

This case arose as a result of the Stoneham Retirement Board’s position that G.L. c. 32, § 3(2)(d), which grants broad discretion to retirement boards in conferring membership upon “part-time, provisional, temporary, temporary provisional, seasonal or intermittent employees” could be utilized after the initial membership decision had been made to remove employees from membership in the system, despite the fact that they were still employed by the municipality in question. The SJC repudiates this position, finding that a retirement board’s jurisdiction over eligibility means only jurisdiction to set initial eligibility criteria, and does not include the ability to revoke the membership of employees once granted.

The SJC relied heavily on the wording of G.L. c. 32, § 3(1)(a)(i) in rendering its determination. That section of the statute defines “member in service” and also describes the events which will end member in service status as follows:



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...In any event the status of a member in service shall continue as such until his death or until his prior separation from the service becomes effective by reason of his retirement, resignation, failure of re-election or reappointment, removal or discharge from his office or position, or by reason of an authorized leave of absence without pay other than as provided for in this clause...

The SJC noted:

The statutorily enumerated events supporting the termination of a member's status as a member in service do not include a member's subsequent failure to satisfy the eligibility criteria that led to that member's admission...Accordingly, § 3(1)(a)(i) limits the board's authority over the continuing membership of non-full-time employees.

Thus, once a person becomes a member of a system they will continue to remain a member in service until death, retirement, or separation from service as set out above in the statute.

Members who have been removed from membership erroneously

In accord with G.L. c. 32, § 20(5)(c)(2), retirement boards must correct errors when they are discovered. Any retirement board that has removed individuals from membership in the absence of the member's separation from employment will need to re-enroll all such members in the system, deduct retirement contributions from the members' salaries, and calculate the amount of retirement deductions the member should have paid into the system during the period of erroneous exclusion. Such members will then need to repay the amounts they should have paid into the system, and be granted creditable service in accordance with the supplemental regulations of each system. The retirement boards should consider allowing affected individuals to pay these missing contributions under a reasonable installment plan, if it is deemed necessary. Please consult PERAC Memorandum #32/2013, issued on November 20, 2013, regarding interest which may be payable in such circumstances.

The "Under \$5,000 Rule"

Chapter 21 of the Acts of 2009 inserted Section 4(1)(o) into Chapter 32. That section provides in its entirety as follows:

The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

This section of the statute is commonly referred to as the "Under \$5,000 Rule" and prompted PERAC Memorandum # 10/2010, which was distributed on January 21, 2010. Although

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PERAC recommended that retirement boards promulgate supplemental regulations prohibiting those with positions receiving less than \$5,000 per year from initial membership, we also noted that those individuals who were already members of the retirement system could not be removed from membership because of being paid less than \$5,000 per year.

As a result of the continuing member in service status of the individuals who were already a member of the system, PERAC Memorandum # 10/2010 instructed that retirement deductions should continue to be taken from the member's salary, pursuant to G.L. c. 32, § 22(1). Retirement systems that have not been doing this need to begin taking these contributions, and need to assess what a member owes the system for past contributions that were not deducted. A person who is already a member of a system who takes on an additional position for which the salary is under \$5,000 per year will also need to have retirement deductions taken from the second position so long as it is the same system.

Supplemental Regulations

In light of this decision, the retirement boards should examine the criteria currently in place for initial membership into the systems. The boards may also want to re-examine how creditable service is pro-rated for non-full-time employees.

Conclusion

We understand that this decision will cause additional work for retirement boards. However, given that this case was brought to the SJC, and is binding on PERAC and all retirement boards, the directives in this decision must be implemented immediately.

We trust the foregoing will be of some assistance to you. If you have any further questions about this memorandum, please call Deputy General Counsel and Managing Attorney Judith Corrigan at Extension 904.

Attachment