

PERAC

Pension News

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Retirees Held Harmless *Laws Passed Addressing Vernava and O'Leary*

By Bill Keefe
Assistant Deputy Director

The Supreme Judicial Court decisions for the Vernava and O'Leary cases this year prompted new legislation to hold retirees harmless.

The SJC took final action in the Vernava case in February. This final decision upheld the appeal of the Worcester Regional, Essex Regional, Franklin Regional, Peabody, and Stoneham Retirement Boards that any supplemental pay taken in conjunction with Workers Compensation is not regular compensation. The SJC also took these boards' position that the decision should apply retroactively, not only prospectively.

Recognizing this decision could impact retirees who played by the rules in place at the time, the Legislature took action. House Speaker Ron Mariano and Ways and Means Chairman Aaron Michlewitz adopted an amendment of Public Service Chairman Ken Gordon to the House FY 23 budget bill to hold retirees and their beneficiaries harmless from the Vernava decision.

The language was not included in the budget bill that emerged from Senate Ways and Means. Senate Public Service Chair Michael Brady filed an amendment to include the House budget Vernava language to the Senate bill, but it was withdrawn.

The holding retirees harmless legislation was a topic of discussion



at the June MACRS conference. Out of that, a number of boards and the Mass. Retirees Association increased their legislative advocacy requesting the language be adopted by the budget Conference Committee.

Thanks to the leadership of Speaker Mariano, Chairman Michlewitz, Senate President Karen Spilka and Senate Ways and Means Chair Michael Rodrigues, the Vernava relief was included as Section 149 of the FY 23 budget bill (continued page 5)

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New Commissioner Appointed

By Bill Keefe
Assistant Deputy Director

Governor Charlie Baker has appointed James J. Guido, a Chelsea Police sergeant, to the Public Employee Retirement Administration Commission (PERAC), filling the statutory commission seat as the representative of a public safety union. Guido participated in his first meeting as a Commissioner on June 8, 2022.

Commissioner Guido has been a member of the Executive Board of the Massachusetts Police Association since 2021. He served for two years as the vice president of the Chelsea Police Patrol Officers Association. He was first appointed to the Chelsea Police Department as a patrol officer in May 2008. He earned a promotion to detective in September 2017 followed by a promotion to sergeant in January 2021. He holds a Bachelor's in criminal justice from Salem State University and a Master of Science in justice administration from Faulkner University.

Commissioner Guido continues a legacy of law enforcement in his family as the son of a former Revere Police Chief and Massachusetts Police Association president.

One of seven PERAC Commissioners, Guido replaces James Machado, a recently retired Fall River police sergeant who served on the Commission with distinction for 20 years under four different governors.

"I join my fellow Commissioners in welcoming Commissioner Guido to PERAC as the public safety union representative of Governor Baker," said



Sgt. James J. Guido
PERAC Commissioner

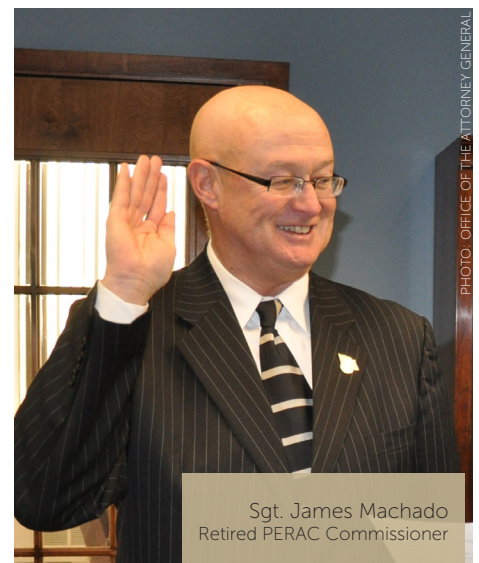
PERAC Chairman Philip Y. Brown. "Jay's nearly 15 years as a police officer, his education, and his experience in union leadership will provide a perspective and a voice that the Commission invites. We all look forward to working with Jay." ■

Jim Machado Retires

By Bill Keefe
Assistant Deputy Director

Upon retiring as a Sergeant after a 43-year career with the Fall River Police Department and a 44-year career in public service, Jim Machado announced at the May 11, 2022, PERAC Commission meeting that he would not be seeking re-appointment to the public safety seat chosen by the governor. Jim made his presence felt as Commissioner for 20 years, appointed by four different governors.

(continued, page 6)



Sgt. James Machado
Retired PERAC Commissioner

In Person Programming Returns!

By Natacha Dunker
Communications Director

The biannual MACRS Conference returned to in-person programming this past June. PERAC Executive Director, John Parsons gave a PERAC update to attendees, and staff presented during the Legal and Legislative panels and Wednesday sessions.

Some of the highlights of the conference included a lively presentation by former Bruin and gold medal winning sled hockey coach Rick Middleton and a keynote address by Attorney General Maura Healey.

PERAC also held an Administrator Roadshow in person this past August in Northampton aimed at training newer board staff on some of the fundamentals. The all-day session included overviews of beneficiaries, calculations, and disability. We will host another Administrator Roadshow on November 15th in Danvers. See our 4th Quarter education memo when it is



John Parsons addresses attendees in Northampton

released for more details.

We also look forward to hosting you next week at the College of the Holy Cross for the return of the Emerging Issues Forum! Online registration will be open until Friday. ■

MACRS Highlights



Melissa Hurley, MACRS Dir. of Special Events with PERAC Commissioner Richard MacKinnon



Ken Hill, PERAC Assistant Deputy Director



Patrick Charles, PERAC Senior Associate General Counsel



Kevin Cairn, Amesbury Retirement Board Executive Director



Felicia McGinniss, PERAC Associate General Counsel



Rick Middleton, MACRS Keynote Speaker and former Boston Bruin

Legislative Update

Formal session came to an end with a flurry of activity

By Bill Keefe
Assistant Deputy Director

With formal sessions for the 2021-22 legislative session ending on July 31, there was a flurry of activity capped by a 23-hour session that started on Sunday morning and ended on Monday morning. Informal sessions will continue through January 3, but all matters must pass unanimously. Here is an update on matters of interest to the public retirement community.

COLA status

A 5% COLA for FY23 for the State and Teachers' systems was approved in Section 154 of the FY23 budget, Chapter 126 of the Acts of 2022.

A local option for an up-to-5% COLA was also included in the budget as Section 134, but it was returned with an amendment by the Governor. The language that reached the Governor said the local COLA could be voted on at any time in FY 23. The Governor added local approval steps, including a Mayor must initiate action in a city by recommending the increased COLA to the City Council and for county and regional systems, 2/3 of the municipalities in the system must vote to approve.

The House did not adopt the Governor's amendment but adopted its own which included the Governor's language and added that a City Manager, in addition to a Mayor, can make the recommendation to the City Council. The bill, H 5124, is

currently with the Senate. It could still be approved during informal sessions.

Veterans' Buyback, SFI flexibility

Senate Public Service Chair Michael Brady filed an amendment to an omnibus veterans' bill to include the language of H 11, *An Act Relative to Veterans' Buyback*. This extends the time allowed for a public employee who is a veteran to purchase military service to within a year following vesting and creates a one-year grace period for others to purchase who missed their initial statutory 180-day window to do so.

The amendment was withdrawn, however, House Ways and Means Chairman Aaron Michlewitz amended the language slightly and reported the bill out as H 5051 on July 28th. The House engrossed the bill and it is now with the Senate Ways and Means Committee. The bill has received support from several groups including the Professional Firefighters of Massachusetts, the



Massachusetts Coalition of Police, several harbor masters, and retirement boards. This bill could be approved through informal sessions.

With the Senate Committee on Rules is H 4839, *An Act Providing for Statement of Financial Interests Flexibility*. The House engrossed this bill which would provide the PERAC Commission discretion in handling the penalty of a permanent ban from service on a Chapter 32 retirement board for members who are non-compliant with filing their SFI on June 2nd. The bill would allow for a waiver application and a discretionary waiver of the penalty by the Commission with the caveat that the SFI gets filed.

Other budget matters

In Section 182 of Chapter 126 of the Acts of 2022, an additional payment of \$100M to the Pension Liability Fund is directed to be made by September 1, 2022. In Section 183 of the same statute, an additional payment of \$100M to (continued next page)

the State Retiree Benefits Trust Fund is directed to be made in accordance with a schedule to be developed by the Comptroller in consultation with the State Treasurer and the Secretary of Administration and Finance.

The Governor returned with an amendment to Section 28 regarding MACRS providing three nominees for the public safety union seat on PRIM appointed by the Governor. He recommended language that requires the nominees be from the state, teachers' or "a participating system in the PRIT Fund." The House rejected that amendment and adopted its own stating that the nominees be from the state, teachers' "or any other system

that has been vested in the PRIT Fund." It is bill H 5113 and is with the Senate awaiting action.

Open Meeting Law waiver

The Open Meeting Law waiver that allows for remote meetings was extended to March 31, 2023, with the passage of Section 4 of Chapter 107 of the Acts of 2022. PERAC Memo 19/2022 explained that the same provisions that have been in place since the start of the pandemic in March 2020 will remain for now – a physical quorum is not required, the Chair need not be physically present, but adequate, alternative means of public access must be provided.

Hours and earnings waiver law

PERAC Memo 16/2022 provided the details to the retirement community on the Governor signing the hours and earnings waiver into law on June 7 as Chapter 80 of the Acts of 2022.

The law creates a waiver from Section 91 (b) and (c) for calendar year 2022 for superannuation retirees working in the public sector. It would be in effect until December 31, 2022, or "up to 90 days" following the end of the declared Public Health Emergency, whichever occurs first.

PERAC has viewed the "up to 90 days" as being determined by employers. This waiver does not apply to disability retirees. ■

Vernava and O'Leary (continued from page 1)

that Governor Baker signed into law on July 28 as Chapter 126 of the Acts of 2022. PERAC issued Memo 21 of 2022 after the passage of Section 149 to provide an update and guidance.

The O'Leary case also prompted new legislation. After PERAC Assistant Deputy Director Ken Hill argued before the Supreme Judicial Court on April 6 and before the SJC handed down its ruling on August 4, Governor Charlie Baker signed into law Chapter 147 of the Acts of 2022.

This statute creates a new Section 106 of Chapter 32 providing that the retirement allowances of retirees who

had payments in lieu of vacation included in their allowance calculation will be held harmless.

In addition, certain active members participating in such vacation buyback programs as of May 1, 2018, will be permitted to continue to have such payments included in their regular compensation, subject to the requirements of Section 106.

In retirement systems where this practice was not recognized as regular compensation on May 1, 2018, nothing changes. Similarly, for members who were not having deductions taken from payments in lieu of vacation

prior to May 1, 2018, that benefit is not available going forward.

The SJC's decision of August 11 essentially stated that payment in lieu of vacation is never regular compensation and the decision was both retroactive and prospective. The creation of Section 106 overrides the retroactivity component of the decision and allows the benefit going forward only for those who are legacies by the conditions in the statute.

Please refer to PERAC Memo 23 of 2022 for additional details and guidance. ■

Electronic Signatures

Commission approves new regulation

By Patrick Charles, Esq.
Senior Associate General Counsel

In March of 2022, the Commission approved draft regulations, 840 CMR 28.00 *Electronic Signatures, allowing the use of electronic signatures by retirement boards.*

These regulations would allow the retirement boards to vote to adopt supplemental regulations allowing the use of electronic signatures. Boards are not required to allow electronic signatures. The use of “wet signatures” would still be permitted and a member of the system will always retain the right to opt to use a wet signature rather than an electronic signature.

The Commission’s approval of these draft regulations began the

process by which PERAC promulgates a new regulation. The Commission held two remote public hearings on May 16 and May 25 and conducted an informal hearing session at the June MACRS Conference. The Commission also accepted written public comments.

Following the close of the public comment period, the Commission voted to send the regulations to the Legislature for its comment and review as required by the Commission’s

enabling statute. The regulations were assigned to the Joint Committee on Public Service. The legislature had until September 2, 2022, to comment and return the regulations to the Commission. Having received no comments, the Commission is expected to vote at its September meeting to finalize the regulations and authorize the filing of the final regulations with the Secretary of State. When the regulations are published by the Secretary and become effective, we will issue a memorandum to all the retirement boards. ■

Jim Machado Retires (continued from page 2)

Jim began his career in public service as a substitute teacher before joining the Fall River Police in the late 1970s. He served as a member of the PRIM board. He served as an Executive Board member and continues today as the Legislative Director for the Massachusetts Police Association. In addition to his public service, Jim had extensive investment and financial experience. He was actively involved in the retirement system before PERAC. And there was no bigger champion of PERAC than Jim. He saw the need for uniformity, an independent arbiter, and a trusted part-

ner and resource. His presence and his leadership have much to do with PERAC’s present-day position and its positive collaborative working relationships with the 104 retirement systems.

Jim was a staunch advocate for members. At the same time, he was fair, equitable and reasonable. He played a significant role in developing investment policies, ensuring assets were protected and enhanced to provide the promised retirement security for hard-working public employees.

Through it all, Jim did this with a tremendous sense of decency, humility

and humor.

“His passion, intelligence, empathy, and sense of fairness deeply resonated with me and with all who know him,” said PERAC Chair Philip Y. Brown. “He always stood up for, and never forgot about, the little guy. Thank you for your service and guidance Jim, and even more so, your friendship.”

“Jim Machado has been a stalwart as a PERAC Commissioner, a leader, smart, reasonable and compassionate,” said Executive Director John Parsons. “We are all better off for Jim’s friendship and service.” ■

New & Noteworthy

100% Filed 2021 SFI's

For the second straight year, all active board members and inactive members who served in 2021 filed their Statement of Financial Interests (SFI).

After active members filed their 2020 forms electronically via PROSPER their 2021 forms were pre-populated, making filing easier and faster!

Thank you to all for your cooperation and efforts with this endeavor!

Recently released Memos:

- #14: Supreme Judicial Court Decision in Vernava**
- #15: Tobacco Company List**
- #16: Calendar Year 2022 Waiver of Section 91 Limits**
Restrictions on hours and earning for superannuation retirees are waived for calendar year 2022
- #17: Mandatory Retirement Board Member Training**
- #18: Expiration of Open Meeting Law Waiver**
Advisory on status of pending bills
- #19: Extension of Open Meeting Law Waiver**
Waiver extended until March 31, 2023
- #20: Reinstatement to Service under G.L. c. 32 s. 105**
Update to form for FY 23
- #21: Vernava II - Important Update**
Updates for anyone retired prior to July 1, 2022 affected by the Vernava decision
- #22: Cost of Living Increase for Supplemental Dependent Allowance**
5% COLA affects amount of this allowance

2022 EMERGING ISSUES FORUM

Thursday, September 15, 9:00 a.m.
Hogan Conference Center, College of the Holy Cross

Have you registered for the Forum yet?
See our website for the agenda and registration information

Upcoming Meetings

September 14, 11:00 a.m.
Commission Meeting

October 12, 11:00 a.m.
Commission Meeting

November 9, 11:00 a.m.
Commission Meeting

December 7, 11:00 a.m.
Commission Meeting

Meetings are open to the public. See our website for information on joining in person or remotely.

PERAC

2022 Education Schedule

upcoming courses

Credits
board members
must earn

18
per term

3
Minimum
per term year

9
Maximum
per term year

September 15	PERAC FORUM	Emerging Issues Forum
September 22	Webinar (Ethics)	Conflict of Interest
October 2-5	MACRS	Fall Conference
October 8-11	Conference	NCTR 100th Conference
October 22-26	Conference	NPEA Annual Conference
November 15	Save the date for our next administrator training in Danvers!	
	Visit our website for registration links	

Go to mass.gov/perac-education for
additional educational resources

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