



CASES OF INTEREST

Kenneth J. Hill, Sr. Associate General Counsel | PERAC
Patrick M. Charles, Associate General Counsel | PERAC

SPRING 2016

Notable Recent Cases

NOTABLE RECENT CASES

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| <ul style="list-style-type: none">• Dell'Isola• Fair• Greco• Zolendziewski• Burke• Howard• Jette | <ul style="list-style-type: none">• Sanko• Fritze• Mello• Barranco• LaCroix• Dorsey• Dewey• JT Travers |
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Dell'Isola v. State Bd. of Retirement

- Case No. 14-04084 (Suffolk Superior Court)
- Decision Date: March 16, 2016
- In a nutshell: Corrections Officer's pension could not be forfeited under § 15(4), even though he accepted money and drugs from a prisoner, because his conviction was only for the misdemeanor of possession of cocaine and therefore was not related to his job as a C.O. The State Board has until May 16 to appeal.

Fair v. Middlesex Ret. Bd.

- Case No. CR-15-294 (DALA)
- Decision Date: Dec. 4, 2015
- In a nutshell: CBA permitted town employees to buy back up to 2 weeks of unused vacation days, and to be paid 100% for any unused sick days beyond 150 days. Mr. Fair received payments under both sections of CBA and sought to have those amounts included in his regular compensation for retirement calculation. DALA looked at PERAC Memo #39/2012 and found that neither payment was part of base pay, payments for unused vacation days were not predetermined, and neither payments were for services performed for his employer. **On appeal to CRAB.**

Greco v. Bristol County Ret. Bd., & PERAC

- Case No. CR-14-625 (DALA)
- Decision Date: December 11, 2015
- In a nutshell: Lack of medical evidence made theory that stroke was suffered as a result of an incident occurring 11 days earlier was too speculative for DALA. Also, lack of evidence that stroke was cardiac in origin precluded ADR under the Heart Law.

Zolendziewski v. Holyoke Ret. Bd.

- Case No. 11-724 (CRAB)
- Decision Date: May 18, 2015
- In a nutshell: Widow of police officer who died from injuries caused by an on-duty motor vehicle accident was not entitled to benefits pursuant to § 100, because the officer was driving a personal vehicle at the time of the accident. Section 100 states “...as a result of an accident *involving a police department vehicle...*”

Burke v. Hampshire County Ret. Bd.

- Case No. CR-10-35 (CRAB)
- Decision Date: August 14, 2015
- In a nutshell: CRAB affirmed DALA's denial of a termination allowance, where the member and her employer agreed that she would be paid until a certain date, even when she did not work or have sufficient sick time to cover that period. Collusion in order to create eligibility for a termination allowance cannot be permitted.

Howard v. Norwood Retirement Bd.

- Case No. CR-13-102 (DALA)
- Decision Date: June 26, 2015
- In a nutshell: Fire Chief was not entitled to ADR because the incidents cited as the cause of his psychological disability were not personal injuries and could not form the basis for ADR because they were *bona fide* personnel actions and did not rise to the level of intentional infliction of emotional distress.

Jette v. Norfolk County Ret. Bd.

- Case No. CR-14-720 (DALA)
- Decision Date: December 11, 2015
- In a nutshell: Member was not entitled to buy back prior part-time service because the terms “member” and “membership” in the supplemental regulation should be read together to require prior service in a member unit of the NCRS. Also, she is not eligible to buy back the time under § 3(5) because her prior service was part-time rather than temporary, provisional or substitute.

Sanko v. Worcester Regional Ret. Bd.

- Case no. CR-12-659
- Decision Date: July 10, 2015
- In a nutshell: Members truck broke down requiring a tow truck. Member rode in the truck while it was being towed **without** wearing his seatbelt. Involved in an accident, thrown to floor injuring shoulder. Not eligible for ADR because of “willful misconduct”.
- On appeal to CRAB

Fritze v. Worcester Regional Ret. Bd.

- Case No. CR-13-16
- Decision Date: July 17, 2015
- In a nutshell: Member caused a MVA when his city-owned truck rear ended a school bus. Speeding and not wearing seatbelt. Denied a medical panel because of “willful misconduct”.
- On appeal to CRAB

Mello v. Fall River Ret. Bd.

- Case No. CR-13-315
- Decision Date: August 7, 2015
- In a nutshell: Member was properly denied ADR because he failed to undergo reasonable medical treatment at the time of his initial injury in 2001.
- On appeal to CRAB

Barranco v. Mass. Teachers' Ret. Bd.

- Case No. CR-10-796, CR-11-622
- Decision Date: December 8, 2015
- In a nutshell: Member who retired from an educational collaborative was subject to the Section 91 earnings limitations when he continued to work as the head of a related non-profit which was providing services to the educational collaborative.
- On appeal to CRAB

LaCroix v. Newton Ret. Bd.

- Case No. CR-11-435 and CR-12-207
- Decision Date: December 18, 2015
- In a nutshell: Board refused to convene a medical panel for a Fire Chief under the Heart Law because he had not shown that he was unable to perform the essential duties of his job—FIRE CHIEF- as of the last day he worked. DALA Affirmed

Dorsey v. Milton Ret. Bd.

- Case No. CR-11-705
- Decision Date: September 4, 2015
- In a nutshell: An employee of an entity supervised by the Milton Public Schools is an employee under G.L. c. 32 s. 1 and cannot be denied participation in the Milton Retirement System
- On appeal to CRAB

Dewey v. Mass. Teachers' Ret. Bd.

- Case No. CR-11-596
- Decision Date: January 29, 2016
- In a nutshell: Calling something a “longevity payment” does not automatically qualify the payment as regular compensation. The “longevity payment” in this case was actually a bonus.
- On appeal at CRAB

Travers v. Winchester Ret. Bd.

- Case No. CR-13-647
- Decision Date: March 4, 2016
- In a nutshell: Firefighter was disabled on his last day of work as a result of PTSD even though it was not the reason he resigned.