

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

**WILLIAM WHITE,
Petitioner-Appellee**

v.

**SOMERVILLE RETIREMENT BOARD AND
PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION,
Respondents-Appellants.**

CR-22-0095

DECISION

The Somerville Retirement Board (SRB) appeals from a decision of an administrative magistrate from the Division of Administrative Law Appeals (DALA), reversing SRB’s decision to apply the “anti-spiking” provision of G.L. c. 32 § 5(2)(f) in the calculation of petitioner William White’s retirement allowance. The Public Employee Retirement Administration Commission (PERAC) was impleaded in this matter. This appeal was submitted on the papers. 801.C.M.R. § 1.01(10)(c). The DALA magistrate admitted thirteen exhibits and issued a decision on September 2, 2022. SRB and PERAC timely appealed.

After considering the arguments by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt its Findings of Fact 1 – 6 as our own. Based on our decision in *Willette and Heuston v. Somerville Retirement Bd. and PERAC*, CR-20-282 and CR-20-381 issued today, we affirm. White’s salary increase was established by law and therefore, the anti-spiking provision pursuant to G.L. c. 32, § 5(2)(f) does not apply. The salary increase received by White can be included as regular compensation for the purpose of calculating his retirement allowance.

From 2016-2017, the City of Somerville's Municipal Compensation Advisory Board conducted a large-scale review of compensation for non-union city employees.¹ The Advisory Board collected compensation from various entities comparable to Somerville and issued two reports, both recommending increases to the compensation of certain municipal employees.² The Somerville Board of Aldermen raised the salaries of certain municipal employees in response to the Board's recommendation in Ordinances 2016-09 and 2017-08.³ Ordinance 2016-09 raised petitioner William White's salary in the years 2016 and 2017 by over ten percent.

In *Willette and Heuston*, we concluded that an ordinance is a law based on the plain meaning of the word. A variety of dictionary entries and court cases have expounded upon the plain meaning of the words "law" and "ordinance," with the vast majority indicating that the word "law" includes municipal ordinances.⁴ See "Law," *Black's Law Dictionary*, 11th Ed. 2019; "Ordinance," *Black's Law Dictionary*, 11th Ed. 2019; "Ordinance," *Merriam-Webster Dictionary*, 2023; "Law," *Merriam-Webster Dictionary*, 2023. We explained in *Willette and Heuston* that definitions in Black's Law Dictionary and Merriam-Webster Dictionary defines an ordinance as being a category of law.

We also found support for defining an ordinance as a law in *U.S. Fid. & Guar. Co. V. Guenther*, 281 U.S. 34, 36 (1930), where the Court unanimously held that the phrase "fixed by law" was "free from any ambiguity" and clearly included municipal ordinances. Additionally, in *John P. King Mfg. Co v. City Council of Augusta*, 277 U.S. 100 (1928), the Court ruled it had jurisdiction over a dispute regarding a municipal ordinance under a provision granting it jurisdiction in cases questioning the validity of "a statute of any state."

We also deemed that the Legislature intended that "an increase in salary for a member whose salary amount is specified by law" in § 5(2)(f) includes those specified by an ordinance. The failure of the Legislature to mention ordinance here does not reflect its intent to exclude salary increases provided by ordinances as an exception to the application of the anti-spiking provision. Where the Legislature intended to exclude an ordinance, it did so specifically, and where it intended that federal or state law applies, the Legislature explicitly stated so. The

¹ Finding of Fact #1.

² Findings of Fact #2-4.

³ Findings of Fact #3, #4.

⁴ *Willette and Heuston v. Somerville Ret. Bd. and PERAC*, CR-20-282 & CR-20-381 (Nov. 16, 2023) at *3.

phrase “state or federal law” appears quite frequently in the General Laws. *See, e.g.*, Ch. 167A § 3A; Ch. 112 § 215, Ch. 25C § 8. Had the Legislature intended to exclude ordinances from Section 5(2)(f), they had a well-known mechanism for doing so. The Legislature has also explicitly referenced municipal laws in the General Laws, which suggests a recognition that municipal ordinances are laws. *See, e.g.* G.L. c. 149 § 192 (“violation of any state or municipal law”); G.L. c. 149 § 193(c) (“rights under federal, state, local, or municipal law”).

Furthermore, we found PERAC’s argument that municipalities would pass ordinances for the purpose of inflating retirement unavailing. It would be difficult, if not impossible, to target a raise only to positions where the individual is about to retire in order to “spike” their salary without paying them higher wages for an extended period of time. In order to avoid paying the higher wages forever, the municipality would then have to pass a pay decrease for the position immediately after the old occupant retires. This would be difficult given the scrutiny and oversight where meetings are public and municipalities are subject to the Open Meeting Law and Public Records Law.

Conclusion. For the reasons stated in our decision in *Willette and Heuston*, we conclude that an ordinance is a law. White’s salary increases for the period in question were established by law, and therefore, the anti-spiking provision in G.L. c. 32, § 5(2)(f) does not apply. White’s salary increase is regular compensation for the purposes of calculating his retirement benefits. The DALA decision is affirmed. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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Date: November 16, 2023