



PERAC HITS THE ROAD — NORTHAMPTON | HYANNIS | DANVERS

BOARD ADMINISTRATOR TRAINING

A Very **Interesting** Presentation



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A Riddle Wrapped in a Mystery Inside an Enigma

- Definitions
- When Does a Member Pay Interest to a Board?
- When Does a Board Pay Interest to a Member?
- When is a Board Not Required to Pay Interest to a Member?
- When is a Member Not Required to Pay Interest to a Board?
- Other cases of “Interest”
- A special case: Section 105



Definitions

- Four definitions ripped from the pages of Chapter 32:
 - Actuarial Assumed Interest
 - Actuarial Equivalent
 - Buyback Interest
 - Regular Interest

NOTES:



Actuarial Assumed Interest

...interest that would be credited to a member's account in the annuity savings fund of a system or to his account in the special fund for military service credit, as provided in subdivision (6) of section 22, except that for any calendar year beginning after December 31, 1983, "actuarial assumed interest" shall be interest that would have been so credited using a rate equal to a system's actuarial assumed rate of return on investments, as determined from time to time by the commission, rather than regular interest.

G.L. c. 32, Section 1



Actuarial Equivalent

Any benefit of equal value when computed upon the basis of a mortality table to be selected by the actuary and an interest rate determined by the actuary.

G.L. c. 32, Section 1

NOTES:



Buyback Interest

...one-half of actuarial assumed interest



G.L. c. 32, Section 1



Regular Interest

- ...[T]he interest credited to any member's account in the annuity savings fund of any system or to his account in the special fund for military service credit, as provided for in subdivision (6) of section twenty-two. (Section 1)
- The phrase "regular interest" as used in sections one to twenty-eight, inclusive, shall mean the interest credited to any member's account in the Annuity Savings Fund of any system during the period of his membership therein or to his account in the special fund for military service credit during such period. (Section 22(6)(b))

NOTES:



Regular Interest *(Continued)*

- For any calendar year beginning subsequent to December thirty-first, nineteen hundred and eighty-three, "regular interest" shall mean interest credited at a rate established by the commission, in consultation with the commissioner of banks. The rate established by the commission shall be taken to the nearest tenth of one per cent and shall be obtained from the average rates paid on individual savings accounts by a representative sample of financial institutions; provided, that said commission shall sample no less than ten such financial institutions.

G.L. c. 32, Section 22(6)(b)



3 Most Common Scenarios Requiring a Member to Pay Interest to a Board

- 1) Purchasing same system non-membership time from the current board.
- 2) Purchasing different system non-membership time from the current board.
- 3) Redepositing a refund.

NOTES:



Purchasing Same System Non-Membership Time From the Current Board

Someone who is currently working for Board A and wants to purchase prior non-member time with Board A is charged half the actuarial assumed rate of interest, or “buyback” interest.

G.L. c. 32, Section 4(2)(c)



Purchasing Different System Non-Membership Time From the Current Board

Someone who is currently working for Board A and wants to purchase prior non-member time with Board B is charged the full actuarial assumed rate.

G.L. c. 32, Section 3(5)

NOTES:



Redepositing a Refund

Someone who is redepositing a refund gets one year to pay it or to enter into an agreement to pay it using half the actuarial assumed rate, or buyback interest. If more than one year passes they are charged the full actuarially assumed rate.

G.L. c. 32, Section 3(8)(b)



2 Most Common Scenarios Requiring a Board to Pay Interest to a Member

- 1) Refund of accumulated deductions.
 - Member has more than 10 years of service.
 - Member has less than 10 years of service and departs voluntarily.
 - Member has less than 10 years of service and departs involuntarily.
- 2) An error of the Board has affected the amount of a benefit to be paid.

NOTES:



Refund of Accumulated Deductions

- Member has 16 years of service. That refund will be paid with regular interest.
- Member with nine years of service leaves his position voluntarily. The rate of regular interest will be three percent.
- Member with nine years of service is fired. That refund will be paid with the usual regular interest.

G.L. c. 32, Section 11(1)



Mistakes of the Board Affecting the Amount of the Benefit

- *Herrick case*
- “The Actuarial Equivalent” as interpreted in that case
- PERAC Memorandum #32/2013

NOTES:



Herrick v. Essex Regional Ret. Board, **465 Mass. 801 (2013)**

- Herrick sought interest after the Essex Regional Retirement Board was found to have improperly forfeited his pension. SJC instructed that “where, as here, a retirement board makes a legal error in denying retirement benefits that is corrected by a court, the plaintiff is entitled to a rate of interest determined by the board’s actuary “so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid...”



The Actuarial Equivalent

- Section 20(5)(c)(2)
- These interest payments should be included any time a retirement board utilizes Section 20(5) (c)(2) to make a correction so that the “actuarial equivalent of the pension or benefit... shall be paid.”

NOTES:



PERAC Memorandum #32/2013

- Issued in the wake of the *Herrick* decision.
- Once the amount of lump sum payment has been determined, interest on that amount should be calculated and paid to the member as part of the payment.
- Boards should set own interest rates for correction of errors via supplemental regulation process.



When Is Interest Not Paid Out By The System?

- 1) Forfeiture situations.
- 2) More than two years as an inactive member.*
- 3) Mistake does not affect the amount of the benefit.

* No. 2 does not apply to refunds on the death of a member.

NOTES:



1) Forfeiture

- When an annuity account is paid out in a G.L. c. 32, Section 15(4) forfeiture situation, “the rate of regular interest for the purposes of calculating accumulated total deductions shall be zero.”



2) Leaving Your Money In For Over Two Years

- Under G.L. c. 32, Section 22(6)(d), when a person’s service is terminated, “... regular interest shall continue to accrue on any balance in his account, but no regular interest shall be included in the amount of any accumulated total deductions which are to be paid to the member under the provisions of subdivision (1) of section eleven for any period after the expiration of two years from the end of the month immediately preceding the date of his termination of service...”

NOTES:



3) Mistake of the Board Does Not Impact the Amount of the Benefit

- System owes money to a member or beneficiary BUT
- The mistake that prompted the payment will not affect the benefit owed to the member or beneficiary SO
- No interest is payable to the member or beneficiary.



When Is Interest Not Paid By the Member?

- Military buybacks under Section 4(1)(h) have no interest requirement.
- If a mistake prompts a repayment and subject to the restrictions of Section 20(5)(c)(3), a Board *could* waive the imposition of interest.

NOTES:



Waiving the Interest Owed

- “The Needham Bill, ” G.L. c. 32, Section 20(5)(c)(3)
- Board may waive repayment or recovery of money owed only if certain conditions are met.
- Board may waive the interest portion of a payment if the conditions of this subsection are met, but this is purely discretionary and not even subject to CRAB’s review, except perhaps under an abuse of discretion standard.



Cases of “Interest”

- *Tozza (Estate of DeBrito) v. PERAC*, CR-09-94 (2014)
- *Knightly v. State Board of Retirement*, CR-10-15 (2011)
- *McDonough v. Quincy Retirement Board*, CR-13-357 (2016)
- *Hollstein v. CRAB*, 47 Mass. App. Ct. 109 (1999)

NOTES:



Tozza (Estate of DeBrito) v. PERAC

- **Case No.:** CR-09-94
- **Date of Decision:** March 31, 2014
- **In a nutshell:** “...[A] board has, as noted by PERAC, considerable discretion in determining the appropriate rate, provided it is relying on a rate as determined by its actuary. In this case the board has exercised its discretion by electing to rely on PERAC as its actuary.”



Tozza (Estate of DeBrito) v. PERAC (Continued)

- First test of PERAC Memorandum #32/2013.
- Arises in context of a Board advocating PERAC should decide the interest rate, not individual Boards.
- Suggests the default interest rate, when the Board does not act affirmatively, is the one described at G.L. c. 32, Section 22(6)(b).
- No CRAB decision due to agreement on interest to be paid.

NOTES:



Knightly v. State Board of Retirement

- **Case No.:** CR-10-15
- **Date of Decision:** January 14, 2011 (This is a final decision.)
- **In a nutshell:** The two sections of Chapter 32 allowing the buy-back of this prior non-membership service require the payment of interest. The Petitioner does not cite any provision in Chapter 32 for the proposition on which he bases this appeal, i.e. that it is "well settled" that "a member who was erroneously excluded from membership is entitled to purchase this past service rendered, interest free."



McDonough v. Quincy Retirement Board

- **Case No.:** CR-13-357
- **Date of Decision:** November 9, 2016 (This is a final decision.)
- **In a nutshell:** Full-time employee who is a member of a retirement system and who was granted an opportunity to buy back prior part-time service, must pay interest on the amount charged for the buyback, regardless of whether she was wrongfully excluded from membership during her part-time service.

NOTES:



Hollstein & Others v. CRAB & Another **47 Mass. App. Ct. 109 (1999)**

- **In a Nutshell:** Employees were not statutorily or contractually entitled to payment of interest on refund of excessive pension deductions taken in error.
- “Chapter 32 expressly authorizes an interest-bearing remedy only in instances in which the error of the board has affected the ‘benefits’ that retired members and beneficiaries actually receive from the board.”



Section 105 Purchases

- Allows those retired under Sections 5 and 10 to return to active service, paying back “an amount equal to the total amount of any retirement allowance received by the retired member, together with buyback interest.”
- Inserted into the statute July 1, 2004 and originally required the payment of “actuarial assumed interest.”
- Section 9 of Chapter 302 of the Acts of 2008 changed the interest rate to “buyback interest” but this did not affect those already in repayment status.

NOTES:



Section 105 Purchases *(Continued)*

- If a person fails to reach five years of reinstatement service...
- No additional interest will be paid to them. (They will get back what they paid in, and nothing more.)



To Sum Up

- The issue of interest to be paid under Chapter 32 is complicated to say the least.
- Interest is usually required for a service purchase.
- The section of the statute under which the purchase is made, the timing of the purchase, and other factors will determine what interest rate should be utilized.
- Boards must also pay interest to members in some circumstances, but not in others.

NOTES:

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