

MEMORANDUM #22, 2013

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission

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Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: *MacAloney v. Worcester Regional Ret. System and Public Employee Ret. Admin. Comm'n*, CR-11-19 (CRAB 2013)

DATE: August 16, 2013

SUMMARY OF LEGAL PROCEEDINGS

On June 21, 2013, the Contributory Retirement Appeal Board (“CRAB”), issued a decision on call firefighters which has an effect on the implementation of G.L. c. 32, § 4(2)(b) by retirement boards as of the date of the decision. For purposes of this memorandum, please note that reserve or permanent-intermittent police officers or reserve, permanent-intermittent firefighters are impacted in the same fashion as call firefighters.

Brenton MacAloney (“MacAloney”) sought review of a decision of the Worcester Regional Retirement System (“WRRS”) that he was entitled to eight years of call firefighter service based on its supplemental regulation, which allowed four months of call firefighter service if the member earned \$225 in a calendar year and subsequently became a permanent member of the fire department. The Public Employee Retirement Administration Commission (“PERAC”) opined on the matter at the request of the Petitioner and concluded that he was entitled to nine years and eight months of call firefighter service based on the contributions he made in accordance with G.L. c. 32, § 4(1)(a) and G.L. c. 32, § 4(2)(b).

The Division of Administrative Law Appeals (“DALA”) found any call firefighter’s service is strictly limited to 5 years pursuant to G.L. c. 32, § 4(2)(b) and that WRRS’ supplementary regulation was invalid as it was not in keeping with the five-year limitation in G.L. c. 32, § 4(2)(b). All parties appealed the decision to CRAB.

CRAB vacated the DALA decision and held that the 1964 amendments to G.L. c. 32, § 4(2)(b) did not preempt the WRRS’ local rules when applied to a call firefighter who has creditable service beyond the initial five-year limitation to full-time service as provided by that section of the statute. CRAB also found that the full-time service for the initial five years provided by G.L. c. 32, § 4(2)(b) is not limited to departments subject to civil service laws. Finally, CRAB concluded that MacAloney’s receipt of prior, non-membership service credit

under G.L. c. 32, § 4(2) and under local retirement board rules is subject to the provisions of G. L. c. 32, §§ 3(2)(c), 3(3), 3(5), and 4(2)(c), which require make-up payments. No parties have appealed the decision of CRAB to Superior Court and the time to appeal has ended. Accordingly, this decision is final and binding on the parties involved.

APPLICATION TO RETIREMENT BOARDS

Retirement boards should take the following actions regarding the application of G.L. c. 32, § 4(2)(b) based on the decision rendered by CRAB.

First, it is important to understand that while G.L. c. 32, § 4(2)(b) provides up to five years of full-time creditable service to call firefighters and intermittent police officers who meet the requirements therein, this section of the statute operates independently of other sections of G.L. c. 32 regarding credit for other non-membership service. For example, if a person has service as a call firefighter that extends beyond the first five years, period where full-time creditable service is granted by G.L. c. 32, § 4(2)(b), such person is entitled to pro-rated creditable service for any time worked in that capacity beyond the five years, subject to the supplementary regulations of the retirement board. Therefore, retirement boards must provide creditable service for any qualifying time served by a member, subject to their supplemental regulations.

Second, the CRAB decision is not limited to retirement boards who are in civil service communities. All call firefighters or other qualifying individuals in any municipalities who qualify for full-time creditable service pursuant to G.L. c. 32, § 4(2)(b), are entitled to such service. No requirement exists that the call firefighter must have served in a civil service community. Additionally, the call firefighter need not ever actually serve in such capacity as a call firefighter. The only requirement is that the call firefighter subsequently be appointed as a permanent member of that municipality's fire department and was on a respective list or roster making the call firefighter eligible and available for such duties.

Finally, CRAB has ruled that all call firefighter service granted under G.L. c. 32, § 4(2)(b) requires make-up payments pursuant to G. L. c. 32, §§ 3(2)(c), 3(3), 3(5), and 4(2)(c). This part of the decision is the only deviation from the stance PERAC has had on call firefighters in the past. Both PERAC and WRRS opined that they believed G.L. c. 32, § 4(2)(b) provided for five years of full-time creditable service without payment by the member, as any provisions for payments were not specifically enumerated in that section of the statute. CRAB disagreed with this analysis and concluded that repayment must be made for purchases under G.L. c. 32, § 4(2)(b). PERAC understands that many retirement boards have not taken payments pursuant to G.L. c. 32, § 4(2)(b) based on PERAC's guidance. However, PERAC is now bound by the decision made by CRAB. PERAC strongly encourages all retirement boards to follow CRAB's ruling to avoid any possible exposure in future lawsuits. Payments for qualifying service pursuant to G.L. c. 32, § 4(2)(b) should be taken from active members as of the date of the CRAB decision, June 21, 2013. Retirees cannot remit funds to the retirement system as retired members, thus, there is no need to make this decision retroactively apply to all those persons affected by it.

PERAC understands that G.L. c. 32, § 4(2)(b) has been a difficult section of the statute for retirement boards and municipalities to implement consistently. While this CRAB decision may not be agreeable to all retirement boards or individuals affected, it does provide clarity and guidance on the issue. Retirement boards should implement G.L. c. 32, § 4(2)(b) in line with the decision issued by CRAB.

