

MINUTES
HULL CONTRIBUTORY RETIREMENT BOARD MEETING
February 22, 2011

The regular meeting of the Hull Contributory Retirement Board, duly posted to be held in the selectman's meeting room, Town Hall, Hull, MA on the above date was called to order at 9:00 a.m. Present were Marcia Bohinc, Chairperson, Members, Leonard Colten, Gerald Ball, Rocky Tenaglia, and Maurice Murphy, and Retirement Administrator Lauren Durham. Also present were Michael Sacco, Retirement Board Attorney, Robert Bowes, retired from the Hull Fire Department and other members of the Hull Fire Department.

In accordance with the open meeting law, the chair was notified and it was announced that Lauren Durham was making an audio recording of the meeting.

Leonard Colten made a motion to accept the minutes from the January 25, 2011 Board meeting with corrections.

Unanimously voted.

Attorney Michael Sacco is here to discuss regular compensation, the new definition and how it relates to the computation of retirement benefits.

Marcia Bohinc opens the floor to Attorney Sacco and thanks him for attending the meeting.

Attorney Sacco begins with a brief history of regular compensation so that we all have an understanding where we are at. Regular compensation has been virtually the same with minimal additions and subtractions since 1945 up through June 30, 2009, by statute, PERAC and case law. The most significant case is regarding motor vehicle allowances and the court agreed that this is not regular compensation. There have been challenges as to what is included as regular compensation. Longevity, educational incentives and various stipends have historically been included. Clothing allowance has also historically been included, although in the 2010 O'Brien case, clothing never was/ should have been. The legislature corrected that then. There have been a lot of moving parts in terms of regular compensation.

In 2009 the legislature changed the definition of regular compensation. After July 1, 2009, regular compensation is wages, and wages are defined as base pay. The statute also went on to define what is not included in wages, where they itemized exactly what is not base pay, clothing, lodging, travel, insurance premiums, automobile, etc. Subsequent to this, a year and a half later PERAC came out with its regulations in terms of regular compensation. In essence, PERAC says that everything that used to be regular compensation is still regular compensation with the exception of clothing allowance. PERAC says regular compensation is base pay and they also say, and this is where the Hull Fire Fighters contract comes into play, that base pay shall include other things such as longevity, educational incentives, etc. This is where Attorney Sacco disagrees with

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PERAC. In his opinion base pay is something that is determined by the parties to the contract as long as the contract does not specifically include something that was excluded by statute. The employer-employee relationship is what defines base pay. The current contract was in effect when the law changed and therefore anyone that retires under the current contract is eligible for the old definition of regular compensation. Anyone to retire under the next contract (effective for July 1, 2011) must adhere to the new definition of regular compensation.

The issue for the Board is that this contract specifically defines base pay and it says that certain payments should not be included to calculate any benefit. It seems to logically follow with the definition of regular compensation. A strict interpretation would require you to follow what the contract defined as base pay.

Attorney Sacco would have no issue with the benefits specifically noted in Section 10 Article V of the contract, longevity, educational, EMT, etc. if those were rolled into base pay, none of those payments violate what the statute identifies as base pay, they would be appropriately included in the calculation of a retirement. But if the contract stands as it is with section 10 Attorney Sacco's opinion is that those particular payments could not be included in the calculation of the retirement allowance. If you are inclined to include them, make sure that PERAC would agree. In all fairness to both parties everyone should know what will be included in the calculation. They have a right to know what will be included and what will not be included. It has been left up to the municipalities to determine what is included in base pay.

If the contract is in place until 2011 then that means that the old definition of regular compensation remains in effect until June 30, 2011. Any one who retires prior to then has the benefit of retiring under the old definition of regular compensation.

Leonard Colten makes a motion to include longevity into the calculation of the retirement of Robert Bowes.

Marcia Bohinc clarifies that this motion is unnecessary but we can put this in the record. This closes the issue with Mr. Bowes as he is entitled to the old definition of regular compensation.

Maurice Murphy Seconded this motion

No Vote due to Mr. Bowes being entitled to the old definition of regular compensation per statute.

Mr. Bowes is notified that his retirement will be recalculated and he will see this in his March 2011 check.

Robert Breen, a current member of the Hull Fire Department, asks if PERAC and the law allow these types of things to be renegotiated until 2012?

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Attorney Sacco explains that the statute says any contract in effect as of May 1, 2009 can use the old definition of regular compensation for the duration of that contract, but that cannot exceed June 30, 2012. This contract expires June 30, 2011. The new contract effective July 1, 2011 will have to adhere to the new regular compensation definitions. So if you have a similar clause to Section 10 Article V we will be having this discussion again.

Robert Bowes asks if Attorney Sacco had been given any background as to the reason for that article. The intent was to not increase the overtime rate.

Attorney Sacco replies that in terms of the history and the intent, because you have base pay defined, whatever the intent was on the labor relations side, base pay now has its own meaning in retirement law. Now that base pay has more of an impact than just limiting overtime, if it goes into court, it is not up to PERAC, the employer-employee will define base pay.

Phil Leminis asks if the successor agreement has similar language than this current agreement will longevity not be used to calculate a retirement?

Attorney Sacco says no because Section 10 Article V lists all the additional payments that shall not be included for computation of any benefit.

PERAC and the law specifically break out what is not to be considered wages for retirement purposes. So even if you included those wages excluded in statute in a contract to say that those were considered base pay, you could use those wages for your overtime calculation but not your retirement calculation. You cannot include anything that the statute specifically excludes. Attorney Sacco explains anytime the employer and the employee come to an agreement, define what is base pay, his view is, as long as what is included does not violate the statute, then that is what is used to calculate the benefit.

Marcia Bohinc asks if Attorney Sacco can review exactly what role PERAC will play in this going forward?

Attorney Sacco explains, when PERAC says "NO" no means no. If PERAC does not allow it, you cannot do it. If PERAC says "YES" you have the discrepancy whether or not to follow that opinion. They are an oversight authority. If you are ever in a position where you are going to take a particular stand, you are better to seek a PERAC opinion first. If you want to continue to include all these things (additional pay listed in Sec. 10 art V) you may want to get an opinion from PERAC to find out what they think.

Robert Breen asks if it is possible to have the Board petition PERAC to see if they would agree to accept the conditions of the contract as Attorney Sacco had suggested. He also asks how long does it take for PERAC response?

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Attorney Sacco offers that the Board could ask PERAC for an advisory opinion as to whether or not this type of language would limit the ability of the board to include these things in the calculation of a retirement. In terms of the swiftness of their response, it depends on the question. There are no strict guidelines.

Marcia Bohinc thinks with the amount of discussion Attorney Sacco should draft a letter on behalf of the Board, to ask PERAC their opinion on this language in the contract. When we receive a response from PERAC we will share it with the union members.

The question is after July 1, 2011 what is PERAC going to look at as base pay, what the contract states as base pay or what they say is base pay?

Robert Bowes thanks the Board for their time.

There are a couple of additional questions for Attorney Sacco:

If a member is never notified, upon turning the age 70, of the option to continue or discontinue contributing into the retirement system, can they be asked thereafter. We have a member who turned 70 in 2008 and was never given this option. She would like to stop contributions. Can she elect to stop deductions at this point? Should she be refunded retroactively back to her 70th birthday?

Attorney Sacco reminds us that if we went back retroactively, that member will not be able to use that time/salary toward their retirement. If they do not want to continue to contribute, repay contributions back to their 70th birthday.

Marcia Bohinc asks if she stop now in lieu of 70?

Attorney Sacco explains that you cannot give that person the benefit of the years after they turn 70, so the option would be to continue contributing or refund all deductions after the age of 70.

Lauren Durham asks for clarification of eligibility for call fire fighter service under MGL 32, Section 4(2)(b) and Section 4(2)(b ½).

Attorney Sacco tells us that in order to qualify for creditable Call fire fighter service, they must have been appointed a full time fire fighter with the town to which they worked as a call fire fighter.

The Board thanks Michael for attending the meeting and for all his help today.

Leonard Colten made a motion to accept the minutes from the January 25, 2011 Board meeting with no corrections. Seconded by Maurice Murphy

Unanimously Voted.

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Payments:

Rocky Tenaglia made a motion to accept the Bill warrant for February 2011, seconded by Gerald Ball.

Unanimously Voted.

Gerald Ball made a motion to accept the revised January 2011 bill warrant, Rocky Tenaglia seconded.

Unanimously Voted.

Gerald Ball made a motion to accept the February Retiree Payroll Warrant, seconded by Rocky Tenaglia.

Unanimously Voted.

Gerald Ball made a motion to accept the revised January Retiree Payroll warrant, seconded by Rocky Tenaglia.

Unanimously Voted.

Notice of Injury

Notice of Injury of Raymond Thomas noted. He is out on section 111f.

New Members:

Michelle Gill and Thomas McBride were recognized as new members of the Retirement System. Welcome packets and certificates of membership were sent to them.

Review/Updates:

Lauren will offer the option to Janet Bennett to stop having retirement deductions withheld, pursuant to 840 CMR 11.02 (service after age 70). If Ms. Bennett elects to stop contributing, deductions made after her 70th birthday will be refunded as deductions taken in error.

January 1, 2010 Actuarial Valuation Final Report from Larry Stone.

Policy and Procedure manual of the definition of Regular Compensation. Hold off on further discussion of Regular Compensation until we receive the response from PERAC regarding the language in the Fire Fighters contract.

Updates:

The Year to Date Trail Balance report and cash reconciliation report for December 2010 was reviewed.

Lauren is working on the annual report for PERAC.

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Informational Mail:

The Board reviewed the following informational mail:

- Michael Sacco- Regular Compensation and the Evergreen Clause, Picone v. City of Leominster, et al.
- PERAC Memo #8/2011- Investment Manger List
- PERAC Memo #9/2011- Tobacco Company List
- PERAC Memo #11/2011- Data Verification for PERAC's 2010 Annual Report
- PERAC Memo #12/2011- 2011 Limits under Section 23 of Chapter 131 of the Acts of 2010.
- NCPERS New Clips- January 25, 2011, February 1, 2011, February 8th, 2011, February 15, 2011
- NCPERS 2011 Annual Conference and Exhibition, May 22-26, 2011
- Invitation for Social Security presentation to review:
 - o Roles of Social Security in our society
 - o Benefits and services provided by Social Security
 - o Future of Social Security
 - o Impact of Social Security on different demographic and ethnic groups.
- March 2011 The Voice of the Retired Public Employee

The Board scheduled the next meeting for Tuesday, March 29, 2011 at 9:00a.m. in the Selectman's Meeting Room.

Rocky Temaglia made a motion to adjourn the meeting, Seconded by Gerald Ball.

Meeting adjourned: 10:26 a.m.

Marcia Bohinc, Chairperson

Gerald Ball

Rocky Tenaglia

Leonard Colten

Maurice Murphy