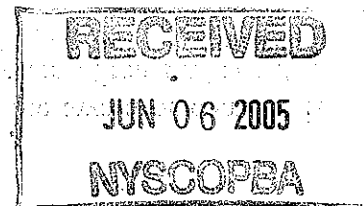


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MEMORANDUM

TO: Gary Dommermuth

FROM: Hinman Straub P.C. *NS*

RE: Recalculation of Retirement Benefits
HS File: General Correspondence

DATE: June 3, 2005

VIA FAX AND MAIL
426-1635

This is in response to your request for information to provide to members ready to retire but concerned about whether they will lose out on any salary increases included in the arbitration award or new contract.

The short answer is that if a member retired as of April 1, 2005 and the award or contract is retroactive to April 1, 2003, the Retirement System will recalculate his or her retirement benefit to include any retroactive pay increases for the period between April 1, 2003 and March 31, 2005. If a member retired as of April 1, 2004, there will be a recalculation to include a retroactive pay increase for the period between April 1, 2003 and March 21, 2004.

The only way a member who retired on April 1, 2005 would not be credited for awarded or negotiated salary increases is if those increases are not retroactive. If, for example, NYSCOPBA were to take the unprecedented step of negotiating a new contract that was not retroactive, but included salary increases or lump sum payments only for the April 1, 2006 to March 31, 2007 fiscal year, there would be no need to recalculate that member's retirement benefit because it would not change. None of the attorneys in the labor and employment section of the firm, some of whom have been practicing public sector labor law for 30 years, have ever seen a collective bargaining agreement negotiated with the State that was not retroactive.

If there is an arbitration award, the statute that controls binding arbitration specifically limits the time period of an award to no more than two years from the termination date of the previous collective bargaining agreement. *Civil Service Law* §209(4)(c)(vi). This means that if an arbitration award is issued for NYSCOPBA in 2006 it can only cover the period from April 1, 2003 through March 31, 2005. Any salary increases included in that award would be credited to the member who retired on April 1, 2005.

Attached is a copy of a page from the Retirement System's *Employer's Guide*, available on the OSC web site, which informs participating employers that they must report any retroactive payments to be paid to members already receiving retirement benefits. This information is sent to the Recalculation Unit in the Retirement System's Benefit Calculation & Disbursement Services Bureau.

Members are also entitled to contact the Retirement System directly. Also attached is a copy of another page from the *Employer's Guide*, which provides telephone numbers to use when contacting the System.

I hope this has been helpful. Please let me know if you have additional questions.

Attachments

Services for Members and Retirees

Individual Consultations & Telephone Inquiry Services

The Retirement System provides individual consultations through our Benefit Information Services Bureau. During the hours of 8:30 a.m. and 4:30 p.m., representatives are available, in person or by phone, at our Albany office. Representatives are available from 9:00 a.m. to noon and 1:00 to 4:00 p.m. at 15 other field sites across the State. Retirement Information representatives may be contacted by personal visit only at our consultation centers on scheduled days throughout the State. The current schedule appears on our website, *The Update* and *The Sentinel*, and on page 11. Note that consultations with a representative are by appointment only at many of our sites. However, you do not need an appointment to drop off forms, pick up information, or have something notarized.

Members are encouraged to bring their retirement estimates **and/or** a copy of their most current Member Annual Statement with them when meeting with one of our Information Representatives.

This service is of particular value when a person wants an explanation of benefits relating to his/her own circumstances and membership status. It is also recommended for members who are nearing retirement and are looking for more specific counsel prior to filing an application for retirement.

The staff of our Call Center will answer questions over the telephone from 7:30 a.m. to 5:00 p.m. every business day. Members calling long-distance can use our toll-free number at 1-866-805-0990. Members calling within the Albany area should dial 474-7736. Members and employers may also e-mail their inquiries through our website at www.osc.state.ny.us, fax us at (518) 402-4433 or write us at:

New York State and Local Retirement System
110 State Street
Albany, NY 12244-0001



Amending Contribution Overpayments to Previous Monthly Reports

Occasionally, you must recoup money for a transaction(s) reported on a monthly report. The proper procedure for correcting an overpayment made on a monthly report is:

- Send the Member & Employer Services Bureau a letter requesting a refund of the member contributions, loans, or arrears. The request must contain each member's registration number, name, the amount of the refund, the money field type (e.g., member contributions, loans, or arrears), and the report date with which the money was associated as well as an explanation for the refund request.
- Submit the Adjustment Report form (RS 2050) and the Adjustment Report Label (RS 2050-A) to correct salary and days worked data for each member for whom a refund is being claimed. Instructions for completing these forms appear on the back of the forms.

Retroactive Payments

Report to us, in writing, any retroactive payments to be paid to members already receiving retirement benefits, disability benefits, or to whom we have paid a death benefit. The letter should include the member's name, registration number, Social Security number, amount of payment, and the time period the retroactive payment covered. This letter should not be attached to your monthly report, but sent to the Recalculation Unit in our Benefit Calculation & Disbursement Services Bureau.

Retroactive Service Credit due to Litigation, Settlements, and Arbitration Awards

Retroactive service credit based on litigation, settlements, or arbitration can be awarded only when such actions result in the payment of retroactive salary. Contact our Legal Services Bureau at (518) 474-1253 if you would like help in drafting legal documents intended to result in granting retroactive service credit.

To make an adjustment to a member's salary or days worked due to litigation, settlement, or any arbitration award, follow the instructions given under "How to Make Adjustments to Salary and Days Worked" on page 107. A copy of the legal document must be attached to the Adjustment Report form (RS 2050). You will be charged for the employer portion of this adjustment in a future annual billing.

