



New York State Correctional Officers & Police Benevolent Association, Inc.

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Message from President Larry Flanagan re: Retirement Arrears Issue

Upon nearing retirement, a significant number of NYSCOPBA members employed by DOCS are being advised by the Retirement System that they owe the System for mandatory employee contributions that were not deducted from their salaries, as well as interest on those missing contributions. These missing contributions (usually referred to as “arrears”) are monies which should have been withheld from the members’ salaries at some point in their career and transmitted to the Retirement System as the members’ contribution toward their retirement benefits. **NYSCOPBA recognizes that the individual members impacted by this error have done nothing wrong and are in no way to blame for these failed deductions. Therefore, the Union, together with our attorneys, is making every effort to protect the rights of our members.**

The approximately 1,200 employees affected by the failure to deduct retirement contributions essentially fall into one of two categories. The first category involves employees whose salary and service were not timely reported to the Comptroller’s Office by DOCS. As a result, there was a period of time during which these employees were working prior to the Comptroller’s Office having the necessary information on file so that an appropriate deduction could occur.

The second category involves employees whose salary and service although reported, failed to have a contribution deducted. The Comptroller’s Office is still trying to determine the reason for these failed deductions.

NYSCOPBA has been attempting to resolve these issues since we first learned of this problem. When our initial efforts with the State Comptroller's Office failed, we filed a test case on behalf of an affected member. In that case, DOCS failed to deduct mandatory retirement contributions from the member's salary from January 30, 1984 through February 29, 1984. When the member looked into his retirement, he learned that he owed mandatory arrears in the amount of \$34.57. The Retirement System also charged the member interest in the amount of \$53.16.

An Article 78 proceeding was commenced, challenging the Retirement System's determination that the member should be required to pay interest on the mandatory retirement arrears (the *Henry* case). Unfortunately, the Supreme Court dismissed the petition and, on appeal, the Third Department affirmed the Supreme Court's decision. We even went so far as to move for permission to appeal to the Court of Appeals, which was denied. As a result, this is settled law in New York State, and cannot be legally challenged any further.

Our lawyers have also been in contact with Assistant Comptroller Nancy Burton in an effort to determine the number of NYSCOPBA members that have been impacted by the Comptroller's failure to deduct the necessary employee contributions. Although the Comptroller's Office has been able to provide us with an estimated number of employees with correctional service who have been affected (approximately 1,200), Ms. Burton has indicated that the Comptroller cannot provide our attorneys with the names of the individuals impacted, due to concern over the privacy rights of the affected members. According to the Comptroller's Office, these privacy concerns also prevent this information from being directly forwarded to NYSCOPBA's offices.

The Comptroller's Office has indicated, however, that DOCS will be supplied with the individual names of impacted employees. Therefore, NYSCOPBA will continue to pursue this issue with DOCS.

While the litigation was taking its course, we also had our attorneys file Section 74 appeals pursuant to the *Retirement and Social Security Law* whenever we learned that a NYSCOPBA member was notified that he or she owed mandatory retirement arrears and interest. The Retirement System agreed to hold the appeals in abeyance pending the outcome of the litigation. The Retirement System is now pushing to have the Section 74 appeals withdrawn as a result of the *Henry* decision. And because the *Henry* decision is now State law, NYSCOPBA was forced to notify all members who had filed Section 74 appeals that the Union can no longer provide legal counsel for these appeals.

Nevertheless, NYSCOPBA will continue to fight for all the members adversely affected. In fact, our attorneys are currently reviewing the possibility of another legal challenge, this time against DOCS, for its negligence in failing to properly report employees' service and salary and ensure that the necessary deductions were made. If such a case can be brought, we will certainly do so, just as we have pursued all our options since this problem first came to our attention.