



# City of Cambridge

Agenda # 2

IN CITY COUNCIL

February 3, 1992

ORDERED: That the City Council go on record accepting the provision of Chapter 254 of the Acts of 1990 the same being "AN ACT FURTHER REGULATING SERVICE BEYOND THE AGE OF SEVENTY BY PUBLIC EMPLOYEES IN THE COMMONWEALTH."

In City Council February 3, 1992.  
Adopted by a yea and nay vote:-  
Yeas 8; Nays 0; Absent 1.  
Attest:- Joseph E. Connarton, City Clerk.

A true copy,  
*Joseph E. Connarton*  
ATTEST:-

Joseph E. Connarton  
City Clerk



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Joseph E. Connarton  
City Clerk

# City of Cambridge

MASSACHUSETTS

In City Council \_\_\_\_\_ 199

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr	✓				
Mr. Francis H. Duehay	✓				
Mr. Jonathan S. Myers	✓				
Mrs. Sheila T. Russell	✓				
Mr. Walter J. Sullivan			✓		
Mr. Timothy J. Toomey, Jr.	✓				
Mr. William H. Walsh	✓				
Ms. Alice K. Wolf	✓				
Mayor Kenneth E. Reeves	✓				

8 0 1



# CAMBRIDGE RETIREMENT BOARD

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 349-4114

JOSEPH E. CONNARTON

City Clerk  
Chairman

BARBARA M. ELLIS

Executive Assistant

ARTHUR F. LIBITZ

City Auditor  
Vice Chairman

SHEILA M. TOBIN

Elected Member

To: Robert W. Healy  
City Manager

From: Joseph E. Connarton, Chairman  
Cambridge Retirement Board

Date: January 24, 1992

Re: Acceptance of Chapter 254 of the Acts of 1990  
Creditable Service after Age 70 (Sec. 90G 3/4)

*JEL*

RECEIVED  
91 JAN 24 AM 10:51  
OFFICE OF THE CITY MANAGER

At a regular meeting of the Cambridge Retirement Board held on December 30, 1991, it was unanimously voted to adopt Sec. 90G 3/4, Chapter 32, M.G.L., however, approval of the legislative body is also required.

If the City Council approves adoption, this legislation would be retroactive to January 1, 1988.

At the present time there are thirteen (13) active employees and seven (7) retirees over age 70 who would be affected.

I am attaching a copy of a recent memo received from the Public Employee Retirement Administration and also a copy of the Final Order In EEOC Litigation for your review.

Thank you for your attention to this matter.

## THE COMMONWEALTH OF MASSACHUSETTS



DIVISION OF PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

JOHN W. MCCORMACK BUILDING

JAN 21 9 24 AM '92  
ROOM 1101

ONE ASHBURTON PLACE • BOSTON, MA 02108

JOHN J. MCGLYNN  
COMMISSIONERCITY OF CAMBRIDGE  
RETIREMENT BOARD  
(617) 727-9380JOSEPH I. MARTIN  
FIRST DEPUTY COMMISSIONER  
BARBARA J. PHILLIPS  
COUNSELM E M O R A N D U M

TO: All Retirement Boards

FROM: Commissioner John J. McGlynn *JJM*

RE: Final Order in EEOC Litigation

DATE: January 22, 1992

Attached is a copy of the federal District Court's Supplemental Decision and Final Order in the above-mentioned litigation. The court has found that the provisions of Massachusetts law prohibiting members from continuing to accrue creditable service beyond age 70 violates federal law. Pursuant to the terms of the Order, PERA is required to distribute it to all local retirement boards in the commonwealth. Though the State and Teachers' Retirement Boards are the only boards named in this litigation, the Order has significance for local systems as well and should be reviewed carefully.

Local systems which have adopted the provisions of M.G.L. c. 32, s. 90G 3/4 (permitting members who so elect to continue to accrue creditable service beyond age 70) should particularly examine footnote 7 on page 6 of the Order and the accompanying text which sets out certain guidelines on the manner in which "unpaid post-seventy contributions" may be collected. Systems which have not yet adopted the provisions of s. 90G 3/4 are again reminded that the EEOC may pursue relief along the lines of this Order against them. In order to avoid such potential litigation, adoption of the provisions of s. 90G 3/4 is recommended.

For more background information on this litigation and the provisions of s. 90G 3/4, please refer to PERA Memos #17/1990 (November 1, 1990); #1/1991 (January 7, 1991); #10/1991 (March 26, 1991) and #20/1991 (August 5, 1991, containing revised PERA forms for service over age 70). If, after reviewing this material, you have any questions, please contact this office.

JJM/DS  
0798H

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

RECEIVED  
JUN 16 1992  
FILED

-----X  
EQUAL EMPLOYMENT OPPORTUNITY :  
COMMISSION, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
COMMONWEALTH OF MASSACHUSETTS; :  
MASSACHUSETTS TEACHERS' RETIREMENT :  
BOARD; MASSACHUSETTS DEPARTMENT OF :  
PUBLIC WORKS; MASSACHUSETTS STATE :  
RETIREMENT BOARD; MASSACHUSETTS :  
DEPARTMENT OF MENTAL HEALTH; :  
WALTHAM SCHOOL DEPARTMENT; :  
MASSACHUSETTS PUBLIC EMPLOYEE :  
RETIREMENT ADMINISTRATION; PALMER :  
SCHOOL DEPARTMENT; TRIAL COURT OF :  
THE COMMONWEALTH OF MASSACHUSETTS, :  
PITTSFIELD DISTRICT, :  
 :  
Defendants. :  
-----X

Civil Action No.  
90-10640-H  
(Judge Zobel)

ZOBEL, D.J.

SUPPLEMENTAL DECISION AND FINAL ORDER

On November 1, 1990 this Court signed a Memorandum of Decision in this case ("Bratton") and in Blacklock v. Commonwealth of Massachusetts, et al., 90-10150-2 ("Blacklock"). Having previously consolidated Blacklock and Bratton pursuant to Fed. R. Civ. P. 42(a) for the sole purpose of deciding a single issue common to both, on motion of the parties the Court has separated Bratton and Blacklock. This Supplemental Decision and Final Order affects Bratton only; the Court has previously entered a separate Order in Blacklock.

In my Memorandum of Decision, I held, inter alia, that Section 4(i)(1) of the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), 29 U.S.C. §623(i)(1)<sup>1</sup> (hereinafter "Section 4(j)", 29 U.S.C. §623(j)), supersedes and preempts the third sentence of Massachusetts General Law Chapter 32, §90F.

Under Commonwealth law, upon retirement state and local employees who qualify as "members" pursuant to Mass. Gen. L. ch. 32, §§ 1, 3 (hereinafter "members") become eligible, if they satisfy relevant vesting requirements, for a retirement allowance pursuant to Mass. Gen. L. ch. 32, §5 consisting of an annuity portion and a pension portion (hereinafter "retirement allowance").<sup>2</sup> Under certain circumstances, survivors of deceased members can receive a retirement allowance based on the decedent's retirement allowance. See Mass. Gen. L. ch. 32, §12.

The annuity portion of a member's retirement allowance is funded by "regular deductions" from the member's "regular compensation," as those terms are defined in Mass. Gen. L. ch. 32, §1. See Mass. Gen. L. ch. 32, §22(1), (2).<sup>3</sup>

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<sup>1</sup> Because of a drafting error, Congress originally added this section as a second Section 4(i). Without changing its text, Congress has now redesignated this section as Section 4(j), 29 U.S.C. §623(j).

<sup>2</sup> Mass. Gen. L. ch. 32, §5 refers to this type of retirement allowance as a "superannuation retirement allowance."

<sup>3</sup> The pension portion of a member's retirement allowance is not funded, in whole or part, by the member. See Mass. Gen. L. ch. 32, §§1, 22(3).

In general, a member's annual retirement allowance is calculated by taking (i) the member's average annual rate of regular compensation for a period of three consecutive years of creditable service when such rate was the highest, or on the average annual rate of regular compensation during the period or periods, consecutive or not, constituting his last three years of creditable service, whichever is the greater (hereinafter the "high three"), times (ii) the member's number of years and full months of creditable service, times (iii) a multiplier based on the age and group classification of the member. Mass. Gen. L. ch. 32, §5(2)(a).

Members who do not meet the Commonwealth's vesting requirement, based on years of creditable service, have their contributions refunded, upon request. See Mass. Gen. L. ch. 32, §11.

Under Commonwealth law, Group 1 members who continued to work after age 70 were not required to contribute to their retirement allowance. See Mass. Gen. L. Ch. 32, §90G(1/2). By local option, an employee could elect to contribute past age 70, and thereby effectively have his or her "high three" increased in the retirement allowance formula. Mass. Gen. L. ch. 32, §90G(1/2).<sup>4</sup>

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<sup>4</sup> Mass. Gen. L. ch. 32, §90G(1/2) provides that it shall take effect for the members of a retirement system by majority vote of the board of such system, subject to the approval of the local legislative body.

The employee's number of years of creditable service would not increase, nor would any other multiplier used in calculating the employee's retirement allowance.

Pursuant to the third sentence of Mass. Gen. L. ch. 32, §90F, "Group 1" members, as defined at Mass. Gen. L. ch. 32, §3(2)(g), ceased to accrue creditable service at age 70. In the November 1, 1990 decision, this Court held that this violated Section 4(j) of the ADEA, 29 U.S.C. §623(j), which prohibits the cessation or reduction of a member's benefit accrual because of age.<sup>5</sup>

I now hold that members with Group 1 classification employed on or after January 1, 1988<sup>6</sup> ("class members") are entitled to have the determination of their eligibility for a retirement allowance based on all years of employment, regardless

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By statute, Massachusetts Teacher's Retirement Board ("MTRB") and Massachusetts State Retirement Board ("State Retirement"), the only two named defendants in this action that are retirement boards, were deemed to have adopted this section.

<sup>5</sup> On October 30, 1990 the Commonwealth enacted Mass. H.4260 ("Chapter 254"), codified at Mass. Gen. L. ch. 32, §90G(3/4), which allows the accrual of creditable service by Group 1 members age 70 or over if adopted by a majority vote of the board of a retirement system subject to the approval of the local legislative body.

By statute, MTRB and State Retirement were deemed to have adopted Mass. Gen. L. ch. 32, §90G(3/4), with an effective date of January 29, 1991. As a result, MTRB and State Retirement presently are required, as a matter of state law, to allow Group 1 members over age 70 to accrue creditable service.

<sup>6</sup> The effective date of Section 4(j).

of age, and regardless of whether those years of service took place prior to January 1, 1988. See Puckett v. United Air Lines, Inc., 705 F.Supp. 422, 423-24 (N.D. Ill. 1989).

More precisely, class members who are presently employed are entitled to creditable service for all years of employment past age 70, and, upon retirement, a retirement allowance based on all years of service, without regard to age.

Class members who are presently retired are entitled to a "retroactive back payment" equivalent to the difference between (A) the sum retirement allowance the class member would have received had he or she received a retirement allowance based on all years of service, without regard to an age-based limit on years of creditable service, and (B) the sum retirement allowance the class member has in fact received since retirement (hereinafter "retroa-

ctive back payment").<sup>7</sup> See Albermarle Paper Co. v. Moody, 422 U.S. 405, 417-20 (1975).

A class member who, pursuant to Commonwealth law, did not make contributions to his or her respective retirement system after age 70, is responsible for paying to the system the amount said class member would have contributed under applicable state law if he or she had continued to contribute (hereinafter "unpaid post-seventy contributions"). If such member is due a retroactive back payment by the retirement system, the system in all such cases may deduct the unpaid post-seventy contributions from the retroactive back payment. If no retroactive back payment is due to the member, or if the unpaid post-seventy contributions exceed the retroactive back payment, then the outstanding amount of post-seventy contributions (after any retroactive back payment has been applied) shall

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<sup>7</sup> Mass. Gen. L. ch. 32, §90G(3/4) allows boards to set whatever requirements they choose for employee contributions owed but not yet made, prior to the member's receiving or becoming eligible to receive a higher retirement allowance. This hypothetically could include requiring the aggrieved member to pay back the entire unpaid post-seventy contributions owed to the system, as a condition precedent to receiving creditable service.

The EEOC has argued, and this Court agrees, that requiring complete payback as a condition precedent would perpetuate the harm created by Section 90F.

To the extent any issue may arise in the future, I hold that, regardless of whether a system now follows the pension accrual rules set by Section 90G(3/4) or Section 90F, members aggrieved by Section 90F are entitled to have any payback occur consistent with the terms of this decision.

be paid in pro-rated amounts from either the class member's paycheck or monthly retirement allowance, whichever is applicable.<sup>8</sup>

Pro-rated repayment of unpaid post-seventy contributions shall be made over the same period of time the class member did not contribute; however, this period shall not exceed five (5) years from the date of acceptance of a higher retirement allowance. If the period of time the class member did not contribute exceeds five (5) years, the class member shall be responsible for paying the entire sum on a prorated basis over five (5) years from the date of acceptance of a higher retirement allowance.<sup>9</sup> In no event shall the estate of a deceased member be responsible for repaying any unpaid post-seventy contributions owed by the decedent at the time of his or her death.

Survivors of Group 1 members receiving, or now eligible to receive, a survivor's retirement allowance pursuant to Mass. Gen. L. ch. 32, §12, are entitled to have their survivor's

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<sup>8</sup> MTRB has stated that, due to logistical constraints, it is unable to deduct automatically prorated repayments of unpaid post-seventy contributions, other than regular deductions, from an employee's paycheck.

To the extent that MTRB is requesting leave of Court to have members make their pro-rated repayments by sending MTRB a lump-sum check at the time of retirement or by making separate pro-rated payments by check or other means, rather than an automatic deduction, its request is granted.

<sup>9</sup> A class member who wants to repay his or her unpaid post-seventy contribution (less any retroactive back payment) in less time than allowed under this Court's decision may, of course, do so.

allowance calculated with creditable service for all years that the decedent worked past age seventy, subject to the limitations set forth in this decision.

If under this Court's decision a deceased Group 1 member would be entitled to a retroactive back payment or other relief, that member's estate (regardless of whether a person is eligible for a survivor's allowance under Commonwealth law) may receive said amounts by meeting the same requirements as the decedent would have had to meet.

MTRB and State Retirement shall be responsible for identifying, in the manner set forth below, members of the Class subject to their jurisdiction.<sup>10</sup> MTRB and State Retirement assert that they are able to identify all members either: (a) presently employed by a public employer participating in MTRB's or State Retirement's retirement systems; or (b) retired and receiving a retirement allowance. As regards all other persons potentially eligible for benefits under this decision, MTRB and State Retirement shall place advertisements in the form attached in Exhibit A in newspapers identified in Appendix A at places and times

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<sup>10</sup> Under Commonwealth law, the defendant Massachusetts Public Employee Retirement Administration ("PERA") has only limited authority over "local retirement systems," i.e., the 104 systems representing political subdivisions of the Commonwealth, and cannot require them to adopt Chapter 254 or to follow this Court's decision. PERA shall send a copy of this Final Order to all 104 local retirement systems.

identified in Appendix A, soliciting persons eligible for relief under this decision.

MTRB and State Retirement shall inform identified class members, in the manner set forth below, that they may have rights under this decision.

MTRB and State Retirement shall send a notice to identified class members presently receiving a retirement allowance of their present retirement allowance, and how it is calculated. Information provided shall include, but is not limited to, the class member's years of creditable service prior to age 70, and the high three the class member's present retirement allowance is based on. Any other information relevant to the calculation of the member's retirement allowance, as stated in but not limited to Mass. Gen. L. ch. 32, §5(2), should be included.

MTRB and State Retirement shall further inform identified class members who are presently receiving a retirement allowance of the retirement allowance they are now eligible to receive under this decision, and how it is calculated. Information provided shall include, but is not limited to, the class member's years of service without regard to an age-based limit on years of creditable service, and the high three the class member's possible retirement allowance would be based on. Any other information relevant to the calculation of a Group 1 member's

retirement allowance, as stated in but not limited to Mass. Gen. L. ch. 32, §5(2), should be included.<sup>11</sup>

MTRB and State Retirement shall send a notice, in the form of Exhibit B attached, to identified class members who are presently employed by public employers participating in MTRB's or State Retirement's retirement systems but who are not presently making post-seventy contributions ("non-contributing employed members") that informs them of this decision and further informs them that, at the time of their retirement, they will have a right under this decision and under state law to have their retirement allowances calculated without regard to an age-based limit on years of creditable service, consistent with the terms of this decision. MTRB and State Retirement shall send said notice to non-contributing employed members at their place of work. MTRB and State Retirement shall further send a copy of said notice, in the form attached as Exhibit B, to Department Heads and School Superintendents, respectively, along with a request that it be distributed to any class member who is presently employed by them and who is not presently making post-seventy contributions.

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<sup>11</sup> MTRB and State Retirement need not send notices to members who were up-to-date in their regular contributions and who, because of Mass. Gen. L. ch. 32, §90G(3/4), already have had their monthly retirement allowances adjusted and received retroactive back payments due them.

MTRB and State Retirement shall notify all non-contributing employed members, at the time of their retirement, of the member's years of creditable service prior to age 70, and the high three the member's retirement allowance would be based on without consideration of post-seventy service. Any other information relevant to the calculation of the member's retirement allowance, as stated in but not limited to Mass. Gen. L. ch. 32, §5(2), should be included.

MTRB and State Retirement shall further inform all non-contributing employed members, at the time of their retirement, of their number of years of service without regard to an age-based limit on years of creditable service, and the high three the member's retirement allowance would be based on with those years taken into account. Any other information relevant to the calculation of a Group 1 employee's retirement allowance, as stated in but not limited to Mass. Gen. L. ch. 32, §5(2), should be included.<sup>12</sup>

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<sup>12</sup> MTRB and State Retirement need not supply this information to members who, at retirement, are up-to-date in their regular contributions and who, because of Mass. Gen. L. ch. 32, §90G(3/4), will have their monthly retirement allowances calculated without regard to an age-based limit on years of creditable service at that time.

MTRB and State Retirement remain obligated to comply with any applicable provisions of Massachusetts law regarding information to be provided to members at the time of their retirement.

MTRB and State Retirement shall send a notice to class members who are neither non-contributing employed members nor presently receiving a retirement allowance, but are identified by their timely response to the newspaper advertisements set forth in Exhibit A and Appendix A, of the class member's years of creditable service prior to age 70, to the extent they can be ascertained after reasonable effort. Any other reasonably ascertainable information relevant to the calculation of the member's retirement allowance, as stated in but not limited to Mass. Gen. L. ch. 32, §5(2), should be included.

MTRB and State Retirement shall further inform identified class members who are neither non-contributing employed members nor presently receiving a retirement allowance, but are identified by their timely response to the newspaper advertisements set forth in Exhibit A and Appendix A, of any retirement allowance that they are now eligible to receive, and how it is calculated. Information provided shall include, but is not limited to, the class member's years of service without regard to an age-based limit on years of creditable service, and the high three the class member's possible retirement allowance would be based on, to the extent they can be ascertained after reasonable effort. Any other reasonably ascertainable information relevant to the calculation of a Group 1 member's retirement allowance, as stated in but not limited to Mass. Gen. L. ch. 32, §5(2), should be included.

With respect to all notices, MTRB and State Retirement shall inform class members that, to receive a retirement allowance based on all years of service, without regard to an age-based limit on years of creditable service, they must pay back any unpaid post-seventy contributions consistent with the terms of this decision.

Following receipt by an identified class member of any of the previously described individual notices, such identified member shall have the option of accepting or rejecting the additional years of creditable service and a retirement allowance, based on all years of service, without regard to an age-based limit on years of service. MTRB and State Retirement shall give each class member sixty (60) days to decide. MTRB and State Retirement shall provide the information about the member's retirement allowance either simultaneously or prior to the running of the sixty (60) day period.

Eligible members shall notify their respective retirement systems in writing of their acceptance or rejection of the additional years of creditable service. Letters shall be postmarked by the 60th day following receipt of information from the systems. If a class member does not reply, he or she is deemed to have rejected the years of creditable service, provided that MTRB and State Retirement provide EEOC with copies of the notification letter.

PERA, State Retirement, and MTRB shall complete the requirements of this decision, as applicable to each defendant, by August 31, 1992.

By August 15, 1992, State Retirement and MTRB shall inform the EEOC with reasonable approximations of: the number of persons in the affected class; the lump-sum amount of money class members as a whole became eligible to receive in back pension payments; and the average change in retirement allowances class members as a whole became eligible to receive.

By August 15, 1992, State Retirement and MTRB shall inform the EEOC with reasonable approximations of: the number of persons who accepted higher retirement allowances, higher survivor's allowances, and/or other relief under this decision; the amount of money class members or other persons actually received in back pension payments; and the average change in members' retirement allowances under this decision.

Hereinafter Defendants are enjoined from ceasing or reducing the rate of their member' pension benefit accrual, because of age.

January 14, 1992  
DATE

Shawn Zohel  
DISTRICT JUDGE

Appendix A

Commencing three weeks following the entry of this Supplemental Decision and Final Order, Defendants Massachusetts Teacher's Retirement Board ("MTRB") and Massachusetts State Retirement Board ("State Retirement") shall place an advertisement in the form attached as Exhibit B in the following newspapers on the following days of the week:

<u>Newspapers</u>	<u>Days</u>
Boston Globe	Tuesday, Thursday, Sunday
Boston Herald	Wednesday, Friday, Sunday
Worcester Telegram	Wednesday, Friday, Sunday
Springfield Union News	Tuesday, Wednesday, Saturday
New Bedford Standard Times	Wednesday, Saturday, Sunday

Defendants MTRB and State Retirement shall run the advertisement in each paper on the indicated days for a period of at least three (3) consecutive weeks.

entitled to an increased retirement allowance or other relief.

Prior to a recent lawsuit brought by the United States Equal Employment Opportunity Commission (the "Commission") and a recent enactment of the Commonwealth of Massachusetts State Legislature, members of the Massachusetts Teachers' Retirement System or the Massachusetts State Retirement System age 70 or over could not accrue creditable service, and therefore had their benefit accrual reduced or terminated, because of their age.

Following the Court's decision and the recent state statute, members of the Massachusetts Teachers' Retirement System or the Massachusetts State Retirement System age 70 or over classified in Group 1 who were employed on or after January 1, 1988 are entitled to credit for all employment past age 70 and to have their retirement allowance recalculated to include employment past age 70 in all respects.

The Commission, the Massachusetts Teachers' Retirement Board, and the Massachusetts State Retirement Board are seeking to identify all persons who may be entitled to relief under the Court's decision. Presently employed members of either system who continued to make retirement contributions after age 70, and retired members receiving a retirement allowance who continued to make retirement contributions after age 70, either have had or (at the time of their retirement) will have their retirement allowances

automatically adjusted, and therefore need not take any action with respect to this notice.

Any other person who meets any of the above-stated descriptions should contact in writing either:

Massachusetts State Retirement Board  
One Ashburton Place, Room 1219  
Boston, MA 02108

or

Massachusetts Teachers' Retirement Board  
One Ashburton Place, Room 919  
Boston, MA 02108

by a letter postmarked no later than [sixty days from date of advertisement] to be included in the class eligible for relief. Failure to do so by this day may result in your being excluded from the class eligible for relief under the terms of the Court's decision.

Exhibit B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----X  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

COMMONWEALTH OF MASSACHUSETTS;  
MASSACHUSETTS TEACHERS' RETIREMENT  
BOARD; MASSACHUSETTS DEPARTMENT OF  
PUBLIC WORKS; MASSACHUSETTS STATE  
RETIREMENT BOARD; MASSACHUSETTS  
DEPARTMENT OF MENTAL HEALTH;  
WALTHAM SCHOOL DEPARTMENT;  
MASSACHUSETTS PUBLIC EMPLOYEE  
RETIREMENT ADMINISTRATION; PALMER  
SCHOOL DEPARTMENT; TRIAL COURT OF  
THE COMMONWEALTH OF MASSACHUSETTS,  
PITTSFIELD DISTRICT,

Defendants.  
-----X

Civil Action No.

90-10640-H (Zobel)

NOTICE OF ELIGIBILITY FOR  
AN INCREASED RETIREMENT  
ALLOWANCE TO CERTAIN  
MEMBERS OF THE  
MASSACHUSETTS TEACHERS'  
RETIREMENT SYSTEM AND THE  
MASSACHUSETTS STATE  
RETIREMENT SYSTEM

TO: CERTAIN GROUP 1 MEMBERS OF THE MASSACHUSETTS  
TEACHERS' RETIREMENT SYSTEM AND THE MASSACHUSETTS  
STATE RETIREMENT SYSTEM WHO ARE PRESENTLY EMPLOYED  
BUT WHO ARE NOT PRESENTLY MAKING RETIREMENT  
CONTRIBUTIONS

Prior to a recent lawsuit brought by the United States  
Equal Employment Opportunity Commission (the "Commission") and a  
recent enactment of the Commonwealth of Massachusetts State  
Legislature, members of the Massachusetts Teachers' Retirement  
System or the Massachusetts State Retirement System age 70 or over  
could not accrue creditable service, and therefore had their  
benefit accrual reduced or terminated, because of their age.

Following the Court's decision and the recent state

statute, members of the Massachusetts Teachers' Retirement System or the Massachusetts State Retirement System age 70 or over classified in Group 1 who were employed on or after January 1, 1988 are entitled to credit for all employment past age 70 and to have their retirement allowance recalculated to include employment past age 70 in all respects.

Under the Court's decision, all Group 1 members who are still employed by a public employer participating in the Massachusetts Teachers' Retirement System or the Massachusetts State Retirement System but who did not make regular deductions after age 70 will, at the time of their retirement, have their retirement allowances calculated two ways. First, when such a member retires, the Massachusetts Teachers' Retirement Board and the Massachusetts State Retirement Board shall inform the member of the member's years of creditable service prior to age 70, the "high three" the member's retirement allowance would be based on without consideration of post-seventy service, and the member's resulting monthly retirement allowance.

Second, when such a member retires, the Massachusetts Teachers' Retirement Board and the Massachusetts State Retirement Board shall further inform the member, at the time of the member's retirement, of his or her number of years of service without regard to an age-based limit on years of creditable service, the "high three" the member's retirement allowance would be based on with

those years taken into account, and the member's resulting monthly retirement allowance with all years of service taken into consideration.

If upon retirement a presently employed Group 1 member who is not up-to-date in his or her regular deductions accepts a retirement allowance based on all years of service, without regard to an age-based limit on years of service, said member will be responsible for repaying the unpaid post-seventy contributions on a pro-rated basis, for a period not to exceed five years.

If a member who has accepted a higher retirement allowance dies before contributing the unpaid post-seventy contributions in their entirety, the Commonwealth cannot recover the amount of unpaid post-seventy contributions owed from the decedent's estate.

Presently employed Group 1 members of either system who continued to make retirement contributions after age 70 will have their retirement allowances automatically adjusted without regard to an age-based limit on years of service.



2.

CITY OF CAMBRIDGE  
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EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

RICHARD C. ROSSI  
Deputy City Manager

February 3, 1992

To The Honorable, The City Council:

I am hereby transmitting communication received from Joseph E. Connarton, City Clerk, relative to the Acceptance of Chapter 254 of the Acts of 1990 Creditable Service after Age 70 (Section 90G 3/4), for your consideration.

Very truly yours,

Robert W. Healy  
City Manager

RWH/mev  
attachments

Consent Agenda # 2

5-106

Acceptance of Chapter 254 of the  
Acts of 1990 "Creditable Service  
After Age 70".

In City Council,

February 3, 1992

*Order adopted*  
*8-0-1.*