

**COMMONWEALTH OF MASSACHUSETTS**

**HAMPDEN, ss**

**HAMPDEN COUNTY REGIONAL  
RETIREMENT BOARD**

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IN THE MATTER OF: )  
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████████████████████

**FINDINGS AND DECISION**

Appearance for ██████████

James Hykel, Esq  
Pyle Rome Ehrenberg, PC  
2 Liberty Square 10<sup>th</sup> floor  
Boston, MA 02109

Appearance for Chief John Dearborn:  
Longmeadow Fire Chief

Albert Mason, Esq  
Meditrol, Inc.  
145 Springfield Street  
Chicopee, MA 01013

Hearing Officer:

Stephen J. Buoniconti, Esq.  
Law Office of Stephen J. Buoniconti  
273 State Street  
Springfield, MA 01103

Hearing Conducted By:

Hampden County Regional Ret. Bd.  
Richard Theroux, Chairman  
67 Hunt Street, Ste. 116  
Agawam, MA 01001

**PROCEDURAL HISTORY**

██████████ ("██████") ██████████ has been employed as a Town of Longmeadow Firefighter in a full-time capacity since August 3, 1998. On or about February 15, 2018, the Hampden County Regional Board of Retirement ("Board") received an Involuntary Retirement Application and Termination Allowance ("Application") from Longmeadow Fire Chief John

Dearborn ("Chief Dearborn") pursuant to M.G.L. c. 32 §§ 5 and 16 requesting that [REDACTED] be involuntary retired for superannuation. On or about February 23, 2018, the Board received a request from [REDACTED] for a hearing with the Board to contest the Application.

On March 22, 2018 the Board conducted a hearing in this matter in compliance with the time requirements under M.G.L. c. 32 §16. Upon request, neither side offered any other documents for exhibits except for what had previously been submitted to the Board; for Chief Dearborn, the Application, and a copy of *City of Lynn v. Labor relations Commission; International Association of Firefighters, AFL-CIO Local 739*, 43 Mass. App. Ct. 172; for [REDACTED] a letter from Attorney Hykel on behalf of [REDACTED] dated February 21, 2018, a copy of a Complaint to Compel Arbitration and a copy of *In the Matter of David Grey*, a Chicopee Retirement Board matter, dated April 22, 2013. The Hearings Officer at the conclusion of the hearing advised both parties to submit any additional exhibits by the close of the business day on March 23, 2018. The Town of Longmeadow provided a letter dated March 23, 2018 from Human Resource Director Erica Gelinas. Attorney Hykel submitted a letter dated March 23, 2018 with attachments of the same *Grey* decision as referenced above, a copy of *International Association of Firefighters, AFL-CIO Local Union 1903 v. Town of Longmeadow* (Sup. Ct. C.A. No. 18-33, Defendant's Answer and Counterclaim/Cross Complaint to Plaintiff's Complaint to Compel Arbitration.

Chief Dearborn testified at the hearing on behalf of the Application. Attorney Hykel testified on behalf of his client [REDACTED].

#### PARTIES' POSITIONS

The Town of Longmeadow argues that the Involuntary Application and Termination Allowance has been submitted lawfully pursuant to M.G.L. c. 32 §16 and requests that the Board approve

the Application. [REDACTED] contests the hearing and argues that the hearing is unlawful on the merits due to his objection of any call firefighter service time being purchased. In addition, [REDACTED] argues that the Board must recognize the Complaint to Compel Arbitration before the Superior Court and deny the Application. Finally, [REDACTED] requests the Board to deny the application based on the merits.

### FINDINGS

1. As of February 3, 2018, [REDACTED] is 47 years and one month of age.
2. [REDACTED] has been employed as a full-time Longmeadow firefighter since August 3, 1998, and a member of Group 4.
3. [REDACTED] served as a call firefighter from November 6, 1996 to August 2, 1998 for a total of one year and eight months.
4. The call firefighter time is eligible for purchase pursuant to M.G.L. c. 32 Section 4(2)(b).
5. [REDACTED] 19 years and six months service credit as a full-time firefighter.
6. With the purchase of the total call firefighter time, [REDACTED] has 21 years and 2 months of total service credit.
7. The Town of Longmeadow deducted \$125.67 from [REDACTED] February 14, 2018 payroll check to purchase the total call firefighter time.
8. [REDACTED] did not authorize or request the purchase the call firefighter service time when the \$125.67 was deducted from his payroll check.
9. Chief Dearborn submitted an Involuntary Application for Retirement and Termination Allowance on behalf of [REDACTED] on or about February 15, 2018.

10. [REDACTED] counsel submitted correspondence which opposed the call firefighter service time purchase and reiterated that position at the hearing.

### DECISION

The initial question is whether the preliminary requirements of M.G.L. c. 32 §16 have been established for a valid hearing. Put simply, should there have been a hearing in the first place?

Pursuant M.G.L. c. 32 §16(1)(a):

“Any head of a department who is of the opinion that any member employed therein should be retired for superannuation, ordinary disability or accidental disability, in accordance with the provisions of section five, six, or seven, as the case may be, may file with the board on a prescribed form a written application for such retirement.”

A Group 4 member who has not attained the age of 55 may request a hearing when he has completed 20 or more years of creditable service. M.G.L. c. 32 §16(1)(b)(ii). Being under 55 years of age, [REDACTED] must have 20 years of service time for standing to request a hearing. [REDACTED] only has 19 years and 6 months of service time as a full-time firefighter, 6 months short of 20 years. The Town of Longmeadow, without notice or permission by [REDACTED] deducted monies from [REDACTED] payroll check to “buy back” [REDACTED] service time as a call firefighter. That purchase gave [REDACTED] 21 years and 2 months of total service credit. Immediately thereafter, Chief Dearborn filed the Involuntary Application and Terminal Allowance. The service credit on the Application is 21 years and two months and a document in the Application references the purchase of the call firefighter time.

Pursuant to M.G.L. c. 32 §4(2)(c), the Board may allow credit for any previous part-time employment while he was not eligible for membership for which service credit was given upon attaining membership:

“provided... he pays into the annuity savings fund of the system in one sum, or in installments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to that which would have been withheld as regular deductions from his regular compensation had he been eligible for membership and been a member of such system during such previous period, together with buyback interest.”

The requirement that the member pay in to the system to be eligible for service credit is clearly established. Whether an employer can make a payment on behalf of a member or whether a member is required to make a payment from themselves personally or by means of another person is immaterial to this matter. The language of M.G.L. c. 32 §4(2)(c) clearly requires that the member voluntarily make such a payment. The Town of Longmeadow did not seek [REDACTED] permission nor was it granted. [REDACTED] Counsel opposed the payment prior to the hearing and at the hearing.

The payment for the call firefighter service time is invalid pursuant to M.G.L. c. 32 §4(2)(c). The Executive Director shall take action in coordination with the Town of Longmeadow to annul the deductions taken from [REDACTED] payroll check.

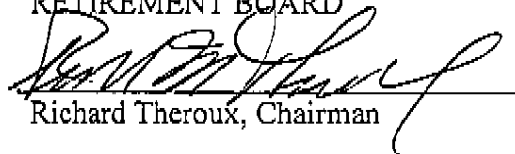
[REDACTED] has 19 years and six months service credit as a fulltime firefighter. And being less than 55 years of age at both the time of the Application and the hearing, [REDACTED] does not meet the essential requirements to request a hearing. The hearing itself was invalid, as petitioned by [REDACTED] and the Application cannot be reviewed at an invalid forum. Moreover, the Application is inaccurate

based on the miscalculation of [REDACTED] creditable service time. For the above stated reasons, the Application is denied.

The Board sees no reason to reach a decision as to [REDACTED] position that his claims pursuant M.G.L. c. 150E §8 usurps the Board's authority to render a decision under M.G.L. c. 32 based on the conclusion that the hearing was invalid.

Irrespective of whether a member has a right to request a hearing before the Board or not, the Board's fiduciary obligation is to review all the facts and circumstances contained within an application and balance the rights of the employer and employee. An involuntary retirement application based on superannuation or disability, void of medical documentation that the employee is incapable of performing the essential duties of the position and void of misconduct by the employee, or void of moral turpitude by the employee, is not the vehicle to replace an employer's obligation to handle budgetary or personnel issues that arise between employers and employees.

HAMPDEN COUNTY REGIONAL  
RETIREMENT BOARD



Richard Theroux, Chairman

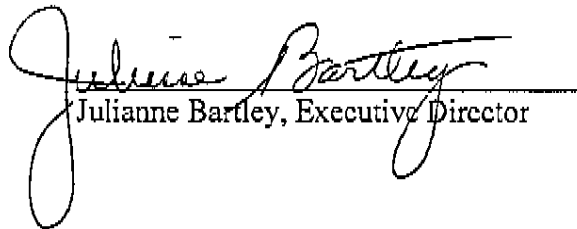
Dated: March 29, 2018

**CERTIFICATION**

In my capacity as Executive Director of the Hampden County Regional Retirement Board, I hereby certify that the above decision is true and accurate.

I further certify that I have caused to be delivered a copy of this Decision to James Hykel, Esquire of Pyle Rome Ehrenberg PC, 2 Liberty Square, Fourth Floor, Boston MA 02109 and to Albert Mason, Esq. Meditrol, Inc. 145 Springfield Street, Chicopee, MA 01013 via certified mail, with return receipt requested and regular mail.

Signed under the pains and penalties of perjury this 29<sup>th</sup> day of March, 2018.

  
Julianne Bartley, Executive Director