



# TOWN OF ANDOVER

## Contributory Retirement System

36 Bartlet Street  
Andover, Massachusetts 01810  
(978) 623-8213 or 8209 FAX (978) 623-8471

Administrator: Elena M. Kothman  
Email: [ekothman@andoverma.gov](mailto:ekothman@andoverma.gov)

Administrative Assistant: Helen Armano  
Email: [harmano@andoverma.gov](mailto:harmano@andoverma.gov)

### **Board members:**

James A. Cuticchia, Chairman  
Elena M. Kothman  
Robert J. O'Sullivan, Esq.  
Rodney P. Smith, Ex-Officio  
Anthony K. Stankiewicz, Esq.

## **MEMORANDUM**

TO: Town of Andover Public Safety Dispatchers  
FROM: Andover Contributory Retirement Board  
DATE: 12/01/2009  
RE: Approval rec'd from PERAC for Dispatchers in Group 2

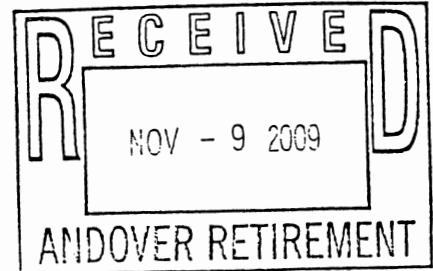
Attached is a copy of the approval notice received from the Public Employees Retirement Administration Commission (PERAC) regarding the group classification for Public Safety Dispatchers as Group 2. The Andover Contributory Retirement Board is very pleased with the resolution of this issue, and were extremely satisfied with the Attorney hired for this case, James H. Quirk, Jr.

Please contact the Retirement Office at the number above if you have any further questions or concerns. Thank you.

/emk

JAMES H. QUIRK, JR., P.C.  
*Attorney and Counsellor at Law*  
Post Office Box 268  
Yarmouthport, Massachusetts 02675-0268  
(508) 771-0084  
Facsimile (508) 771-0118

Office Location:  
750 Attucks Lane  
Hyannis, Massachusetts 02601



James H. Quirk, Sr. (1916-1996)  
James H. Quirk, Jr.  
Anastatia Quirk Ellis

November 6, 2009

Elena M. Kothman, Retirement Administrator  
Town of Andover Contributory Retirement System  
36 Bartlet Street  
Andover, MA 01810

RE TOWN OF ANDOVER CONTRIBUTORY RETIREMENT SYSTEM  
(CLASSIFICATION FOR DISPATCHERS FROM GROUP 1 TO GROUP 2)  
OUR FILE NO. 902/12598

Dear Elena:

In connection with the above-referenced matter, enclosed for your review and information please find a copy of correspondence received from PERAC dated November 3, 2009.

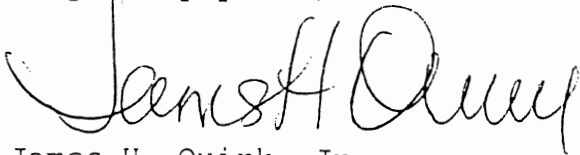
As you can see the rule allowing full-time public safety dispatchers to be classified in Group 2 has been approved. The portion of the rule that relates to how the §3(8)(c) calculation is to be calculated was not approved because PERAC takes the position that under §3(8)(c) the calculation is performed by the actuary and not the local Board.

I have contacted Joe Connarton to review the §3(8)(c) issue in an effort to resolve the method of calculation with the actuary to accomplish a result that solves the case. I am concerned that having to argue the case at DALA could undo the benefit of the Rule, so I will continue to follow up with PERAC.

Elena M. Kothman, Retirement Administrator  
November 6, 2009  
Page Two

After you have had an opportunity to review this correspondence and the enclosure, please do not hesitate to contact me should you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "James H. Quirk, Jr." The signature is written in black ink and is positioned above the typed name.

James H. Quirk, Jr.

JHQ:cam

Enclosure

# PERAC

# COPY

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

DOMENIC J. F. RUSSO, *Chairman* | A. JOSEPH DeNUCCI, *Vice Chairman*

JOSEPH E. CONNARTON, *Executive Director*

MARY ANN BRADLEY | PAUL V. DOANE | JAMES M. MACHADO | DONALD R. MARQUIS | ROBERT B. McCARTHY

November 3, 2009

James H. Quirk, Jr., P.C.  
Post Office Box 268  
Yarmouthport, MA 02675-0268

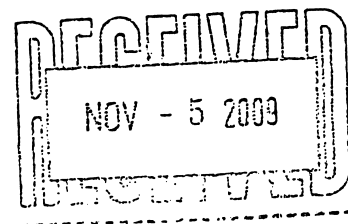
Dear Mr. Quirk:

We have completed our review of the proposed supplementary rule of the Andover Retirement Board regarding Group Classification of dispatchers, submitted by letter dated August 14, 2009. I apologize for the delay in this response. The issue arose because of the Methuen Retirement Board's contention that the Andover Board's classification in Group 2 of a particular public safety dispatcher (and by extension, all public safety dispatchers) was inappropriate. The Methuen Retirement Board contends that by classifying public safety dispatchers in Group 2, the liability assessed to the Methuen Retirement Board pursuant to G.L. c. 32, § 3(8)(c) was incorrect.

Your letter was accompanied by your Hearing Officer's Report dated May 13, 2009 and minutes of the Andover Retirement Board for its May 28, 2009 Board meeting. The proposed regulation reaffirms the Board's longstanding practice and was approved by PERAC's predecessor agency, PERA. The Board did not, however, formalize its practice by way of regulations.

A portion of the proposed supplemental regulation can not be approved for the reasons discussed below.

Pursuant to the authority vested in the Commission under G.L. c. 7, § 50, the Board's supplementary rule is approved as follows:



## SUPPLEMENTAL RULE - GROUP CLASSIFICATION

Full-time employees who serve as full-time public safety dispatchers for the Town of Andover are considered by the Retirement Board to be performing updated duties of Fire and Police Signal Operators, as listed in G.L. c. 32, § 3(2) (g) Group 2, provided that no member who attains age sixty-five (65) while classified in Group 1 may thereafter be classified in Group 2.

This Supplemental Local Rule re-affirms the Andover Retirement Board's prior determination that its public safety dispatchers are classified as members of Group 2 and re-affirms its prior decision and will perform all calculations based upon the timing of the creation of its prior policy.

The following proposed supplemental regulation can not be approved:

When applying Group 2 classification to public safety dispatchers in situations where said employee was a dispatcher in another Retirement System who classified dispatchers in Group 1, the Andover Retirement Board will accept G.L. c. 32, § 3(8) (c) payments related to the dispatcher's service in the other prior Retirement System as calculation on the group classification of that System and will assume the difference in the calculation created by the Group 2 classification.

Further, if a Town of Andover dispatcher transfers to another employer covered by a Massachusetts Public Pension System, and that System classified dispatchers in Group 1, then Andover's G.L. c. 32, § 3(8) (c) calculations will be accomplished using Group 1 classification.

Retirement Boards may enact by-laws and make rules and regulations consistent with the provisions of G.L. c. 32, [see G.L. c. 32, §20(5)(b)]. In G.L. c. 32, § 3(8)(c) the law provides, in pertinent part:

Whenever any retired member or beneficiary receives a pension or survivor's allowance from a system pertaining to one governmental unit in a case where a portion of such pension or survivor's allowance is attributable to service in a second governmental unit to which another

James H. Quirk, Jr., P.C.  
November 3, 2009  
Page Three

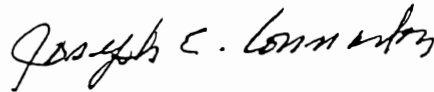
system pertains, the first governmental unit shall be reimbursed in full, in accordance with the provisions of this paragraph, by the second governmental unit for such portion of the pension as shall be computed by the actuary.

The proposed supplemental Board regulation would allow the Andover Retirement Board to assume a function that is specifically mandated to be performed by the Actuary. This portion of the proposed supplemental regulation is not approved.

Pursuant to our authority, this rule, and a list of all retirement boards which have submitted supplementary rules, shall be kept on file within the Public Employee Retirement Administration Commission, posted on the PERAC web site, and shall be available upon request.

If you have further questions or concerns, please contact this office.

Sincerely,



Joseph E. Connarton  
Executive Director

JEC/sfc

p:\legal\opinions\09195 r andover.doc