

FIRE FIGHTERS ASSOCIATION



LOCAL No. 36
INTERNATIONAL ASSOCIATION
of FIRE FIGHTERS



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March 19, 2015

Ms. Nani A. Coloretti
Assistant Secretary for Management
U.S. Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Decision to reduce annuities for retired members of the District of Columbia Police Officers, Firefighters and Teachers Retirement Plan

Dear Ms. Coloretti:

As I'm sure you are aware, the United States Treasury has begun to reduce monthly annuities of retired Firefighters. This is an action taken after approximately forty (40) years of misinformation, miscalculations, misinterpretation, etc. on the part of the United States Government, its Treasury Department and the District of Columbia Government and its Fire Department. After this extended period of errors, it took the Government less than thirty (30) days to have an adverse effect on its Firefighters annuities. The Firefighters were not even granted the decency of exhaustion of the appeal process before the annuities were reduced. The majority of those affected have been retired for twenty-five (25) years or more. Imagine their surprise.

Nancy A. Ostrowski, Director, Office of D.C. Pensions U.S. Department of the Treasury ("ODCP") informed me by letter, dated January 14, 2015, that one-hundred thirty-six (136) members of the District of Columbia Retired Firefighters Association (RFA) would receive changes in their annuities effective March 1, 2015. The RFA has made several requests of the Government to supply the names of these individuals so that the organization could supply information and assistance, all requests were denied.

Congress enacted Public Law 93-404 dated September 3, 1974, which under Part 3 – Police and Fireman's Retirement and Disability Act “ (17) the term “average pay” means the highest annual rate resulting from averaging the member's rates of basic salary in effect over any twelve

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consecutive months of Police or Fire service, with each rate weighted by the time it was in effect, except that if the member retires under subsection (g) and if on the date of his retirement under the subsection he has not completed twelve consecutive months of Police or Fire service, such term means his basic salary at the time of his retirement.”

Based on the information that has been made available most, if not all Firefighters, affected by this law which has had an adverse effect had been hired previous to the enactment of this law and were performing their duties. Surely, this can be construed to be a reduction in benefits for someone that had been hired under contract and then a reduction in benefits occurs.

Nancy Ostrowski indicates in her letter that (“ODCP”) and the District of Columbia Retirement Board (“DCRB”) did not become aware of the change from Basic Pay to Average Pay until 2010. In 2011, the Government began using Average Pay as opposed to Basic Pay to perform their retirement calculations.

In October 1990, the Office of the District of Columbia Auditor issued a report “Review of Annuity Payments for Retired District of Columbia Police Officers, Firefighters and Teachers. This report indicates that there were wide spread errors within the way the system was applied. Even after this report and there were others, it took the Government thirty-seven (37) years to make a change. After thirty-seven (37) years of mistakes, the Government gives Firefighters approximately thirty (30) days before their pensions are reduced. Is this justice?

DOCTRINE OF LACHES:

“BASED ON THE MAXIM THAT EQUITY AIDS THE VIGILANT AND NOT THOSE WHO PROCRASTINATE REGARDING THEIR RIGHTS. NEGLECT TO ASSERT A RIGHT OR CLAIM THAT TOGETHER WITH LAPSE OF TIME AND OTHER CIRCUMSTANCES, PREJUDICE AN ADVERSE PARTY. NEGLECTING TO DO WHAT SHOULD OR COULD HAVE BEEN DONE TO ASSERT A CLAIM OR RIGHT FOR AN UNREASONABLE AND UNJUSTIFIED TIME CAUSING A DISADVANTAGE TO ANOTHER.”

In analyzing the data that is available to the RFA, it is evident that the Cost of Living Adjustment (COLA) clause as it effects retirement has had the largest impact on members affected by your audit. Additionally, it is evident that large numbers of Firefighters retired during the months of February and August. Why was this? The COLA was defined in Public Law 96 -122 approved on November 17, 1979, amended Section 518 of Title 4, D.C. Code to provide for a new method of computing cost-of-living increases for retired uniformed members of the Police and Fire Services and their survivor annuitants. The effective date of this amendment was February 15, 1980.

When Firefighters were contemplating retirement; they relied on the information available to them from the Government. The District of Columbia and its Fire Department issued several documents in regards to this issue and Firefighters planned their retirement base on this information. Memorandum No. 12 Series 1980 was issued on February 19, 1980; Memorandum No. 35 Series 1980 was issued on May 6, 1980 and Memorandum No. 92 Series 1989 issued on September 5, 1989. Some of these documents provided examples to employees on how to secure the Look-Back provision. The word "Commencement" appears to be the area of contention in dealing with this issue. Firefighters have always believed that their retirement benefits began on the day that they retired and I believe that the Government is enforcing the notion that retirement benefits always begin on the first day of the month. Firefighters work shift work, many retired at the end of their shift, as opposed to the normal Monday through Friday forty(40) hour work week. The retirement dates would not necessarily be the end of the month. In a literal interpretation of these documents and others, it appears that Firefighters are entitled to the "Look-Back" clause. The Look-Back clause began in 1980 and was discontinued in 1997. Here we are in 2015, 18 years later, it would certainly appear that the Doctrine of laches would apply to this situation as well. Can you provide the documents, other than PL 96-122, that The Department of Treasury utilized to support your decision to deny the Look-back clause to some employees?

Another issue that has been brought to my attention is calculations of sick leave. As mentioned above, Firefighters work a variety of shifts, administrative and Fire Suppression. During the years that the audit has focused the Fire Suppression Division worked three different schedules. This would have an affect when converting earned sick leave hours to years, months and days. Firefighters were working a forty-eight (48) average work week until October 15, 1989. On October 15, 1989, Firefighters began working a forty-five (45) hour average work week and on October 1, 1993 the average weekly tour was reduced to forty-two (42) hours.

These and other errors, systemic and non-systemic, that include sick leave, prior government service, military service, mathematical calculations etc. have had an adverse effect on Firefighters through no fault of their own. These errors reflect poorly on the Government.

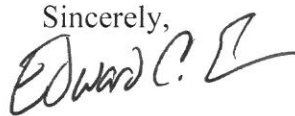
In short, these changes that have resulted in decreased annuities will posit an undue hardship on the retired public servants of the District of Columbia, who are now senior citizens. Their justifiable reliance on the information that was provided to them by the government and their expectation that their retirements would continue to be calculated as it was at the time retirements should preclude these changes being made at this late date. Therefore, we ask that while average pay may be used to calculate annuities for future retirements, no changes or reductions be made for current retirees.

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The District of Columbia Retirement Board voted unanimously to make no changes in the annuities. We ask that you come to the same conclusion.



Joseph L. O'Neil
President
D.C. Retired Fire
Fighters Association

Sincerely,


Edward C. Smith
President

cc: Senator Ben Cardin
Congresswoman Donna Edwards
Congressman Steny Hoyer
Senator Barbara Mikulski
Congressman Chris Van Hollen