

Robert Bounds

From: Glenn Thomas <gthomas@llw-law.com>
Sent: Tuesday, November 19, 2019 4:30 PM
To: Robert Bounds
Cc: Jim Linn
Subject: Out of Class Pay

Chief Bounds,

Per our discussion earlier today regarding the firefighter retirement plan, it is my opinion that no plan amendment is necessary to ensure "out of class" pay is not included in "salary" for purposes of calculating benefits. Excluding the pay category is supported by a reasonable interpretation of the plan; which is within the purview of the pension board.

In April, the Plan administrator asked my opinion as to whether I believed "out of class" pay should be included in the definition of salary for purposes of pension calculation. Salary is defined in the Plan's Adoption Agreement as "the fixed remuneration paid a Firefighter." The definition also states, "Remuneration is based on actual services rendered, salary shall be the total cash remuneration received yearly for such services." Overtime, bonuses and lump sum payments for accrued leave are the only items of pay specifically excluded.

Since "out of class" pay is not specifically addressed in the Plan, the question of whether it should be included in the definition of salary is subject to interpretation. My initial opinion was that "out of class" pay *should* be included in salary, based on my reasoning that the pay earned during reassignment to a higher paying position constituted "fixed remuneration" during that period of reassignment. However, based on our recent conversations concerning District practices, I believe the exclusion of "out of class" pay from pensionable salary is supported by the language in the Adoption Agreement.

You have advised me that the firefighter pension board does not believe "out of class" pay should be included in salary for purposes of pension calculation. Moreover, the District has never included "out of class pay" in salary. It is also my understanding that employee pension contributions have not been withheld from "out of class" pay. Based on our additional discussions and the District's established practices, I believe the exclusion of "out of class" pay is supported by a reasonable interpretation of the Adoption Agreement. In addition, given that this interpretation is legally supportable and has been consistently applied since inception, I do not believe a plan amendment is required.

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