

Court, Once Again, Recognizes Pension Credit For Personal Use Of "State/Town Vehicles"

MARCH 2006 - Last year, we reported that a state superior court judge ruled that an employee's personal use of a vehicle, supplied by their employer (state/town vehicle), could be included as part of their regular compensation when calculating their pension. That same judge has now issued an opinion on several other lawsuits, dealing with state/town vehicles, in which he again recognizes the pension credit for their personal use.

"While Judge Patrick Reilly continues to favor including the personal use of these vehicles as compensation, he imposes several detailed requirements that must be satisfied in order to do so," according to Association Counsel Bill Rehrey. "There's no question that the final outcome of this legal battle will affect only a very small number of retirees and not the rank and file in general.

"That being said, it is part of the much broader controversy, within the public retirement community, over what should be considered as compensation beyond salary and wages.

It's for that reason we have continued to closely follow this issue for over four years."

As he had done in his first decision (see May 2005 Voice), Judge Reilly rejected the argument, by local retirement boards involved in the lawsuits, that the personal use of a state/town vehicle could not be compensation. But he did not rule that the boards had to include a value for the vehicle's personal use simply because it was supplied by the city or town.

"Potentially Insurmountable Task"

Instead, the judge first laid out specific criteria that a retirement board must follow, in order to determine whether the personal use "was geared to services performed for the employer [i.e., city or town] and that it was a regular, ordinary and recurrent aspect of the employment." If a retirement board is able to answer that question in the affirmative, then, according to the judge's ruling, the employee must submit additional detailed information as to the value of the personal use.

"What could have far-reaching implications was the judge's finding that retirees should also be allowed to show their personal use of a state/town vehicle was part of their regular compensation," comments Rehrey. "But, these retirees should understand that they may face a potentially insurmountable task in proving their claim and that this legal battle is far from over at this time."

According to Attorney Michael Sacco, who is representing retirement boards in several of the lawsuits decided by Judge Reilly, "I am troubled by Judge Reilly's decision in several respects. First, since it is a remand and cannot be appealed, he has added at least 2 or 3 more years to the timeline of resolving this dispute, as each retirement board must now conduct its own analysis, on a case by case basis, to determine whether the personal use value of an employer-supplied motor vehicle is regular compensation.

"Second, the criteria that Judge Reilly sets forth in his most recent decision was not applied in the Pelonzi [earlier] case, in which he ruled that the personal use value of an employer supplied vehicle is regular compensation, raising the question why this new standard is now to be imposed on anyone seeking this benefit. Finally, for those of us, and particularly those retirement boards, who believe that the personal use value of an employer-supplied motor vehicle is not regular compensation under any circumstances, any retirement board, which follows Judge Reilly's blueprint and concludes that the personal use value of an employer-supplied motor vehicle is regular compensation, its decision may eventually be overturned by the State Appeals Court when a retirement board has the opportunity to challenge a final decision by the Superior Court.

"It really is more of a mess now than when we started the litigation. Certainly our intent was to bring some resolution to the issue, not to further muddy the waters."