

Bond Case Briefs

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EMPLOYMENT - NEW HAMPSHIRE

Petition of Carrier

Supreme Court of New Hampshire - December 6, 2013 - A.3d - 2013 WL 6354607

Fire chief, who had retired from his full-time firefighter position and began receiving retirement benefits before he became full-time fire chief for another town, filed petition for writ of certiorari seeking review of ruling of board of trustees of New Hampshire Retirement System (NHRS) that he was overpaid in pension benefits and medical subsidy benefits.

Fire chief worked in Londonderry as a full-time firefighter and later as the town's fire chief. When he worked in Londonderry, he was enrolled in the NHRS. He retired from his Londonderry position in July 2007, and began receiving retirement benefits. In January 2009, he became the full-time fire chief for Hampstead. However, he did not re-enroll in the NHRS. Instead, he received both his NHRS retirement benefits and his Hampstead fire chief salary.

In February 2010, the NHRS notified fire chief that his Hampstead employment was "subject to NHRS mandatory enrollment pursuant to RSA 100-A:1, VIII." The NHRS informed him that he was "required to be restored to active, contributory service immediately" and that his monthly pension benefits would cease as of March 2010 for "as long as [he] ... occup[ied] this full-time position." Fire chief retired from his Hampstead position in May 2010.

The NHRS board determined that, because the chief collected his retirement benefits while still employed full-time by Hampstead, he was overpaid \$70,892.22 in pension benefits and \$9,764.56 in medical subsidy benefits. The board ordered him restored to service and required that those amounts be recouped from his future benefit payments.

The Supreme Court of New Hampshire held that:

- Fire chief was a permanent firefighter who was required to be a member of the NHRS;
- Fact that fire chief had let his fire certification lapse did not affect his status as a permanent firefighter who was required to participate in the NHRS; and
- Absent a transcript, Supreme Court had to assume that evidence supported decision of board of trustees of NHRS rejecting fire chief's request that board waive recoupment of money he was overpaid.

Statute providing that New Hampshire Retirement System (NHRS) membership is optional in case of officials appointed for fixed terms does not apply to permanent police officers and permanent firefighters, and thus, did not apply to fire chief who was a permanent firefighter.