

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FREDERICK STIEF,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 00-1935
	)	
DEPARTMENT OF MANAGEMENT SERVICES,	)	
DIVISION OF RETIREMENT,	)	
	)	
Respondent.	)	
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RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 27, 2000, by video teleconference between Tallahassee and Miami, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Donald D. Slesnick, II, Esquire  
Slesnick and Casey  
10680 Northwest 25th Street, Suite 202  
Miami, Florida 33172-2108

For Respondent: Thomas E. Wright, Esquire  
Division of Retirement  
Cedars Executive Center, Building C  
2639 North Monroe Street  
Tallahassee, Florida 32399-1560

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to a refund of interest he paid in 1999 on the employee contribution that became due when

he opted to change his retirement classification from the regular class to the special risk class for the period September 1974, through September 30, 1975.

#### PRELIMINARY STATEMENT

Petitioner was hired as a Police Technician by what is now known as the Miami-Dade Police Department in September 1974. At the time of his hire, Petitioner was enrolled in the Florida Retirement System (FRS) in the regular class. At the times pertinent to this proceeding up to October 1, 1975, the FRS was a contributory system, which required both the employee and the employer to make contributions towards the employee's retirement. Since October 1, 1975, the FRS has been a non-contributory system, which means the employer makes all contributions on behalf of each employee.

On February 17, 1979, the State Retirement Commission entered a Final Order that determined that Petitioner was eligible for the special risk retirement class. Subsequently, the Director of the Division of Retirement determined that Petitioner's special risk class should be effective retroactive to June 1, 1977, the date Petitioner applied for that classification. The date of retroactivity was based on rules then in effect.

In 1998, Petitioner requested that his retirement account be audited as part of his retirement planning. As a result of

that audit, the Division of Retirement determined that because of changes in its rules, Petitioner was now entitled to claim the special risk class retroactive to September 9, 1974, when he was first hired as a police technician. On January 28, 1999, the Division of Retirement mailed Petitioner an estimate, which reflected that Petitioner owed the FRS the sum of \$2,201.69. In response to Petitioner's request for an explanation as to why he owed this sum, the Division of Retirement advised him that he owed the sum of \$503.12 for the previously unpaid employee contribution for the period September 9, 1974, through September 30, 1975, and that, in addition, he owed interest on that unpaid contribution in the amount of \$1,698.57.

Petitioner thereafter paid the employee contribution in the amount of \$503.12 and he also paid, under protest, the claimed interest. Petitioner thereafter challenged Respondent's determination that he owed interest on the unpaid contribution, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

At the final hearing, Petitioner testified on his own behalf and presented the additional testimony of Donald Allen, Deputy Director of the Miami-Dade County Employee Relations Department. Petitioner offered 11 sequentially numbered exhibits, 10 of which were admitted into evidence. Petitioner's Exhibit 4 was rejected.

Respondent presented the testimony of Larry Hunnicutt, Benefits Administrator of Respondent's Bureau of Retirement Calculations, and David Ragsdale, Benefits Administrator of Respondent's Bureau of Enrollment and Contributions. Respondent offered 2 exhibits (marked as Respondent's Exhibits 2 and 3) each of which was accepted into evidence.

No transcript of the proceedings was filed. Each party filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner was employed by the Metropolitan Dade County Police Department (now Miami-Dade Police Department) on September 9, 1974, as a Police Technician. He has held that employment since that date of hire.

2. Petitioner was enrolled in the FRS when he was first employed. His employer reported him as a member of the regular class for retirement purposes.

3. During the period September 9, 1974, and September 30, 1975, the FRS was a contributory system, which required both the employee and the employer to make contributions towards the employee's retirement. Since October 1, 1975, the FRS has been a non-contributory system, which means the employer makes all contributions on behalf of each employee.

4. In addition to the regular class for retirement purposes there are other retirement classes, including the special risk class, which requires higher contributions than the regular class, but provides enhanced benefits.

5. In June 1977, Petitioner applied to Respondent for membership in the special risk class. The Director of the Division of Retirement denied this requested change.

6. Petitioner thereafter requested a hearing before the State Retirement Commission. Following a hearing on December 20, 1978, the State Retirement Commission entered a Final Order on February 17, 1979, that reversed the decision denying Petitioner's eligibility in the special risk class.

7. Pursuant to rules in effect when the State Retirement Commission entered its ruling, the Director of the Division of Retirement determined in 1979 that Petitioner was entitled to the special risk class retroactive to June 1, 1977. 1/

8. In 1982, the Division of Retirement changed its rules to permit employees to claim special risk membership retroactive to the date of employment in any position that qualified for special risk class. 2/

9. As part of his retirement planning Petitioner asked the Division of Retirement in 1998 to audit his retirement account to provide an estimate as to his retirement benefits. In response to that request, the Division of Retirement reviewed

Petitioner's retirement status. On January 26, 1999, the Division of Retirement determined that because of changes in its rules, Petitioner was now entitled to claim membership in the special risk class retroactive to September 9, 1974.

10. On January 28, 1999, the Division of Retirement mailed an estimate of his retirement benefits and options to Petitioner. One of the options contained an estimate that assumed Petitioner would elect to claim membership in the special risk class retroactive to his date of hire. The estimate for that option reflected that Petitioner would owe the FRS the sum of \$2,201.69 if he claimed special risk class retroactive to September 9, 1974. In response to Petitioner's request for an explanation as to why he would owe that sum, the Division of Retirement advised him on May 18, 1999, that he would owe the sum of \$503.12 for the previously unpaid employee contribution for the period September 9, 1974, through September 30, 1975, and that, in addition, he would owe interest on that unpaid contribution in the amount of \$1,698.57. 3/

11. Petitioner thereafter paid the employee contribution in the amount of \$503.12 and he also paid, under protest, the interest that is at issue in this proceeding. 4/

12. Petitioner was not aware until 1999 that he could claim membership in the special risk class for the period at issue in this proceeding.

### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

14. Chapter 121, Florida Statutes, pertains to the Florida Retirement System. Section 121.081, Florida Statutes, provides certain conditions under which past service or prior service may be claimed and credited for retirement purposes. Included as a condition of receiving credit, are the requirements that the appropriate contribution for the past service be paid and, in addition, that interest be paid on that contribution. The payment of interest is important to maintain the actuarial integrity of the FRS. Pursuant to the provisions of Section 121.081, Florida Statutes, the Division of Retirement has adopted Rule 60S-3.0035, Florida Administrative Code, pertaining to the interest rate on payments for creditable service which provides as follows:

The interest rate which shall be charged the member on payments due the Division for the purchase of creditable service shall, unless otherwise specified, be compounded annually each June 30 from the appropriate date as provided in these rules, at 4% through June 30, 1975, and at 6.5% from July 1, 1975 through the date of payment.

15. Respondent has established in this proceeding that interest was appropriately assessed on Petitioner's contribution

for his upgraded retirement classification for the period September 9, 1974, to September 30, 1975.

16. Petitioner's argument that it is fundamentally unfair to charge interest on the contribution dating back to 1974-75 because he did not know he was eligible to claim membership in the special class retroactive to his date of hire until 1999 is rejected. Petitioner was not required to upgrade his retirement status for the period in question - he elected to do so.

Petitioner's situation is no different than any other employee who opts to purchase prior service for a period that the FRS was a contributory system. As provided by rule and statute, such an employee is required to pay the contribution plus interest.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner enter a final order dismissing this proceeding.



DONE AND ENTERED this 31st day of October, 2000, in  
Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of October, 2000.

#### ENDNOTES

<sup>1/</sup> The determination that Petitioner was entitled to special risk class is not at issue in this proceeding. That determination was based on Rule 22B1-1.04(7)(b)1, Florida Administrative Code, which provided as follows:

Upon approval of the certification for special risk class membership, membership in the special risk class shall be retroactive to the first day of employment or the first day of the pay period following a change in employers or positions, if the certification was received by the Division of Retirement within 90 days following the employment or change. If the certification is not received within a 90 day period, special risk membership, if approved, shall be effective the first day of the pay period following the day certification was received by the Division of Retirement.

<sup>2/</sup> Effective October 13, 1982, Rule 22B-1.05, Florida Administrative Code, allowed members to claim special risk membership retroactive to the date of employment in the special risk position.

<sup>3/</sup> Petitioner did not owe for any contribution between October 1, 1975, and May 31, 1979, because the FRS was a non-contributory system during that period. Miami-Dade County has paid the contribution plus interest for that period of time. That payment is not at issue in this proceeding.

<sup>4/</sup> In addition to the contribution required of Petitioner for this period, Miami-Dade County paid its share of the contribution for the period in question, plus interest.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.