

## Andover could owe “millions” to retired employees

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The town of Andover could potentially be forced to pay millions of dollars to retirees after an Appeals Court judge ruled the town's 2016 decision to increase the amount retired town employees pay for health insurance may have been unlawful.

Harold Lichten, an attorney from Lichten & Liss-Riordan, P.C. who represents the retirees, said the town has three options: sit down and negotiate, try to appeal the decision to the Massachusetts Supreme Judicial Court, or just pay up.

Lichten said he thinks it is unlikely the SJC would take the case because they only take a select number of cases previously decided by the Appeals Court.

The decision, however, is good news for Lichten and the plaintiffs.

"We are very happy with the decision," he said. "Though the case isn't over only in the sense that we still have to decide how much money they owe to all these retirees, and it could be a substantial amount of money. ... We're dealing with retirees on fixed incomes, who went and suffered some pretty big increases."

Town officials huddled Monday night as the Board of Selectmen voted to go into executive session at the end of their regular meeting to discuss the Appeals Court decision and what to do about it.

Selectmen Chairman Alex Vispoli said he couldn't discuss the matter.

"At this point we will be discussing it with our attorneys," he said.

John Foskett, an attorney representing the town, said the case was decided on summary judgment, meaning there was no dispute of the facts of the case, but a dispute of law. A judge

does not have to further hear evidence and testimony to decide between conflicting versions, because both sides agreed the facts of the case "are what they are."

Foskett said the town is currently deciding what to do, and has 20 days from the Appeals Court decision to determine their next steps, if they choose to take any.

He said he "has no idea" how much money the town could owe retirees.

"There's a number of retirees, and they were at different rates of contribution," he said. "I'm sure some have come into the mix over that two year period, and some have probably come out. The thing to keep in mind is it's not just one plaintiff, it's a group of people with varying circumstances."

Lichten thinks the town's decision to hike payments on retirees will cost the town plenty, noting it may be in the "low millions."

He said the town has always been "trying to get out on a technicality" in the wording of the statute. The town argued that because they had been especially hard on retirees, they should get the protection of the statute that was intended to benefit the retirees, an argument Lichten said was "absurd."

"It makes no sense," he said. "It's an absurd argument they were making. ... I don't even think they think that they're right."

A Superior Court judge originally ruled in favor of the town. Lichten said the town got out of the language that said "the first time" because they cut benefits that increased copays and deductibles not once, but twice. He said they found a "quirk" in the wording of the statute and thought it could get them out of it, allowing the second cuts in health benefits to be decided before the first cuts even kicked in.

According to court documents, in 2016, the town of Andover voted to increase the percentage share that retired town employees had to pay for their health insurance, which would ultimately save the town money on other post-employment benefits, or OPEB.

The decision was made in a 3-2 vote by the Board of Selectmen. Board members Alex Vispoli, Mary O'Donoghue, and Bob Landry voted in favor of the motion, while Dan Kowalski and Paul Salafia voted against it.

Three retired town employees challenged the ruling and at first it was upheld.

Town Manager Andrew Flanagan said the decision was made at a time when the town was facing a \$650 million OPEB liability in 30 years. The result of the vote by the board was a funding source that would fully fund the OPEB obligation in approximately 35 years, according to Flanagan. He said the town had established an OPEB funding plan as a result of the position the board took in 2016.

Flanagan said the decision has yielded approximately \$1 million in savings, which was re-directed in the OPEB trust which offsets the town's unfunded OPEB liability. He said an analysis of any costs associated with the decision will need to be done.

"We are reviewing the decision and evaluating the town's options moving forward," he said.

Thomas Hartwell, a member of the Retirement Board, said if the town has to pay, it will only increase its debt.

"The town's debt will be increasing significantly, and the town already has a negative net worth of \$65 million," he said.

Hartwell, who also served on the OPEB committee, said he recommended back in 2016 that retirees pay more to prevent the town from going down the path it was heading in, which would cause a \$652 million unfunded liability in 30 years. He told the Townsman the situation "does not look good" for the town.