

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

WILLIAM MAUGER,

Petitioner

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,

Respondent

CR-04-1053

DECISION

Petitioner William Mauger appeals from a decision of the Division of Administrative Law Appeals (DALA) affirming the decision of respondent Massachusetts Teachers' Retirement System (MTRS) denying his request to purchase a full year of creditable service for the school year he was on an educational leave of absence and was paid approximately one-third his annual salary. A DALA magistrate heard the matter on November 15, 2007, and admitted thirteen exhibits. The DALA decision is dated December 31, 2007.

The DALA decision is incorporated by reference and DALA's Findings of Fact 1-15 are adopted as our own. For the reasons stated below, we vacate the decision and remand the case for further proceedings consistent with this opinion.

MTRS, in its response to Mauger's objections, argues that "the ultimate issue" in this case is one of fact, not law. That issue, according to MTRS, is whether substantial evidence supports the DALA magistrate's finding that it did not mislead Mauger regarding how much creditable service he would receive for his leave of absence because Mauger failed to inform the MTRS representatives with whom he spoke that he was not "full-time."

The difficulty we have with MTRS's argument is that the magistrate made no such finding. As MTRS's own submission to us makes clear, the magistrate speculated that Mauger might not have provided the MTRS representatives with the information they needed to provide him with completely accurate information. Specifically, in her Conclusion and not in her Findings of Fact, the magistrate writes that "it is not clear from the record that the Petitioner explained to those employees that his salary for that year was pro-rated and that he received only one-third of his annual rate of compensation during that period of time." Similarly, the magistrate writes, "those employees of the Teachers' Retirement system with whom the Petitioner conversed may not have been supplied with all the information necessary to make a proper determination[.]"

In view of this gap in the findings, we are constrained to vacate the DALA decision and remand the case for further proceedings, including a hearing if requested by a party or decided by the DALA magistrate, consistent with this opinion.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL
BOARD

_____/s/_____

David A. Guberman
Assistant Attorney General
Chairman
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Vacant
Governor's Appointee

_____/s/_____

Joseph I. Martin
Public Employee Retirement Administration
Commission Appointee

Date: June 12, 2009