

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**JEFFREY BRIGGS,**

**Petitioner-Appellant**

**v.**

**WORCESTER REGIONAL RETIREMENT SYSTEM AND PUBLIC EMPLOYEE  
RETIREMENT ADMINISTRATION COMMISSION**

**Respondents-Appellees.**

**CR-20-384**

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**DECISION**

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Respondent Worcester Regional Retirement System (“WRRS”) timely appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (“DALA”) vacating WRRS’s September 17, 2020, decision and thereby reinstating WRRS’s prior calculation of the creditable service available to Mr. Briggs. WRRS moved for summary decision and sought to submit the case on the papers. 801 C.M.R. § 1.01(7)(h), (10)(c). The DALA magistrate admitted five exhibits and issued a decision on March 11, 2022. WRRS timely appealed that decision to us.

After considering the arguments presented by the parties and after a review of the record, we adopt the magistrate’s Findings of Fact 1 -2 as our own and incorporate the DALA decision by reference. Based on our decision in *MacAloney v. Worcester Regional Retirement Syst. and PERAC*, CR-11-19 (CRAB June 12, 2013), we affirm. We agree with the magistrate that G.L. c. 32, § 4(2)(b) does not preempt the WRRS’s local rules as applied to Mr. Briggs. Thus, Mr. Briggs is entitled to purchase nine months in addition to the five years of creditable service for his call firefighting pursuant to G.L. c. 32, §4(2)(b) and WRRS’s local rules.

**Background.** Mr. Briggs, a former call firefighter and current permanent firefighter in the Town of Sutton, applied to purchase creditable service for his prior call fire fighter service

from 1987 to 2018. WRRS originally granted Mr. Briggs to purchase five years and nine months of service,<sup>1</sup> but in 2020, it rescinded the nine months and informed Mr. Briggs that he had been entitled to purchase five years only.<sup>2</sup> Mr. Briggs appealed the decision of WRRS to reduce the amount of creditable service available for purchase to only five years for his call firefighting. The DALA magistrate reversed the decision of WRRS, holding that WRRS's local regulations allowing for creditable service purchase beyond the five years remain effective alongside G. L. c. 32, §4(2)(b).<sup>3</sup> WRRS appealed.

**Discussion.** This matter involves G.L. c. 32, §4(2)(b), which establishes the measurement scheme for calculating creditable service for intermittent work (in this case call firefighter service) by members who are later made permanent in their departments.<sup>4</sup> WRRS contends that it properly reduced Mr. Briggs' creditable service because § 4(2)(b) explicitly allows credit for prior call firefighting service beyond the five years only if the municipality adopted the relevant provision – the local option provision of § 4(2)(b). In support of its position, WRRS asserts that the Supreme Judicial Court (SJC) in *Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd.*, 483 Mass. 600 (2019), determined that only service that qualifies under § 4(2)(b) can be purchased and once qualified, § 4(2)(c) provides how the cost of purchasing the service would be calculated.<sup>5</sup> Specifically, WRRS deemed that the local option statute in § 4(2)(b) is the exclusive mechanism by which credit beyond the five years is allowed, but would only take effect when a municipality adopts the local option statute. Since the Town of Sutton did not adopt the local option statute and WRRS contends the SJC implicitly invalidated CRAB's decision in *MacAloney*,<sup>6</sup> WRRS determined that Mr. Briggs was not permitted to receive credit for his prior call firefighter service beyond the five years permitted pursuant to § 4(2)(b). Additionally, based on its interpretation of the SJC's decision

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<sup>1</sup>There is no indication that Mr. Briggs disputes the original calculation by WRRS of five years and nine months for the purchase of his call firefighter service for the years in question.

<sup>2</sup> Exhibits 2, 4.

<sup>3</sup> Ex. 4, 5.

<sup>4</sup> *Plymouth v. Contributory Ret. App. Bd. & PERAC*, 482 Mass. 600 (Dec. 3, 2019)

<sup>5</sup> Respondent Memorandum at \*3-4.

<sup>6</sup> *MacAloney v. Worcester Regional Retirement Syst. and PERAC*, CR-11-19 (CRAB June 12, 2013).

in *Plymouth*, WRRS urges CRAB to reverse *MacAloney*. For the reasons discussed below, we find this argument unavailing and decline to revisit our decision in *MacAloney*.

The question we must address here is whether the SJC's holding in *Plymouth* and §4(2)(b)'s local option provision invalidates a retirement board's regional regulation allowing for the purchase of creditable service beyond the five years for call firefighter service.<sup>7</sup> We determine it does not. In answering this question, we considered the interplay between the regional regulation the WRRS established in 1984, which we called the "four-month rule" and § 4(2)(b). It is crucial to understand each individually to discern how they work together to provide additional credit to Mr. Briggs beyond the five years.

1. Preemption of WRRS local rules by the rule under M.G.L. c. 32, §4(2)(b).

Enacted in 1988, the local option provision of §4(2)(b), which if adopted by a town, city, county or district, entitles reserve police officers and call firefighters who later became permanent members of their departments, to receive credit for additional service beyond the five years already provided for in the statute, of one full day of service for each day beyond the five years which the reserve police officer or call firefighter actually performed duties.

G.L. c.32, §4(2)(b) reads in part:

For a reserve or permanent-intermittent police officer, or a reserve, permanent-intermittent or call firefighter . . . *the board shall credit, in addition to 5 years of credit allowed to the proceeding sentence, as one day of full-time service each day in any year which is subsequent to the 5<sup>th</sup> year following said appointment and on which call firefighter was assigned to and actually performed duty . . . ; provided however that such service as a permanent-intermittent or call firefighter shall be credited only if such firefighter was later appointed as a permanent member of the service as a permanent-intermittent or call firefighter shall be credited only if such firefighter was later appointed as a permanent member of the department*; provided further, that this sentence shall take effect in a city by vote of the city council in accordance with its charter, in a town which maintains a separate contributory retirement system by vote of the town meeting, *in a town whose eligible employees are members of the county retirement system of the county wherein such town lies by vote of a town meeting and by acceptance by the county commissioners of said county*, in a district which maintains a separate contributory retirement system by vote of the district meeting, and in a district the eligible employees of which are members of a county retirement system by vote of the district meeting and by acceptance of the county commissioners of said county.

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<sup>7</sup> *Id.*

In addition to this local option, WRRS established the “four-month rule” in 1984 which allowed call firefighters to receive credit for service beyond the required five years under §4(2)(b). The four-month rule states:

“*Call Firemen*. If earnings are \$225.00 per year or more, 4 months of creditable service is allowed for each calendar year of service.”

In considering the interplay between the local option provision and the four-month rule, CRAB determined in *MacAloney*, that the four-month rule established by WRRS was still available for MacAloney to receive credit for additional call firefighter service beyond the five years already provided for in the statute. The factors that CRAB considered to conclude that §4(2)(b) did not preempt a retirement board’s local rules is incorporated here by reference.<sup>8</sup>

In *MacAloney*, CRAB determined that there was no prohibition language in §4(2)(b) against retirement boards adopting local rules providing creditable service in situations other than those addressed by the statute. Further, WRRS’s four-month regulation does not frustrate the legislative intent behind §4(2)(b). CRAB explained that the amendments the Legislature made to §4(2)(b) demonstrates that it was seeking to provide full time credit for less than full time work due to the hazardous nature of the work of public safety employees, such as reserve police officers and call firefighters, and for the time they may be available to work but not actually called out.<sup>9</sup> *MacAloney* at \*11-12. Because the Legislature intended greater creditable service to certain call firefighters and other part-time public safety personnel, there was no frustration of the purpose of allowing retirement boards to adopt local rules that govern the time period beyond the five years or that governs creditable service for employees where §4(2)(b) does not apply.

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<sup>8</sup> *MacAloney* at \*10-13. To determine whether a statute preempts local retirement board regulations, we consider (1) whether the statute contains an express prohibition against local rules; (2) whether the local rules frustrate the legislative purpose; and (3) whether the legislation so completely occupies the area that no room is left for local regulations. *Fafard v. Conservation Comm’n of Barnstable*, 432 Mass. 194, 200-204 (2000).

<sup>9</sup> CRAB noted though that full-time credit for less than full-time was limited to five years. *MacAloney* at \*12.

Finally, CRAB explained that the local option provision allows municipalities and districts, but not retirement boards, to elect to provide a full day's credit for any day the call firefighter, who is a member of the retirement system, actually worked. Thus, the local option provision applies to circumstances where the municipality adopted the provision, the call firefighter became permanent, and where the individual worked longer than five years as a call firefighter. This local option allows the municipality to require retirement boards to provide the additional credit and defines the credit to be provided under the circumstances described above. This legislation does not address circumstances where the municipality has not adopted the local option or where the call firefighter never becomes a permanent member of his or her department. Accordingly, CRAB concluded that § 4(2)(b) does not preclude retirement boards from applying their own local rules to circumstances not addressed by the legislation. *MacAloney* at \*14-16.

2. The *Plymouth* decision.

Additionally, we agree with the DALA magistrate that WRRS's interpretation of *Plymouth* is flawed. As discussed by the magistrate, WRRS appeared to focus on the SJC's explanation for why § 4(2)(b) makes no reference to payments. *Briggs v. Worcester Reg'l Ret. Bd.*, CR-20-384 at \*4 (DALA Mar. 11, 2022). Specifically, the SJC stated in *Plymouth*:

“Where § 4(2)(c) describes how to purchase creditable service for precious PIPO work, § 4(2)(b) explains how boards can or must measure the amount of that ‘creditable prior service for intermittent work, subject to specific criteria for categories of members, like PIPOs, to whom local retirement boards ‘shall credit’ up to five years.... We conclude that § 4(2)(b) therefore is silent on payment for creditable service not because the Legislature intended for member police officers to receive credit for past permanent-intermittent service without payment, but *because the Legislature intended § 4(2)(b) only as a measurement scheme.*”

WRRS appears to argue that the SJC specified in *Plymouth* that § 4(2)(b) is the exclusive mechanism by which credit beyond the five years is permitted for call firefighter service but would only take effect upon adoption of the local option provision by the municipality. We do not find this to be the intent of the Legislature. CRAB has repeatedly emphasized what the SJC concluded in *Plymouth* – that is, § 4(2)(b) is only a measurement scheme and not a payment formula. CRAB concluded, and the SJC agreed, that subsections of §4(2) only makes sense when it is read as a whole in order to be consistent with the statute's plain

language, and that accords with the legislative purpose of the retirement laws and § 4(2) specifically. *Plymouth*, 482 Mass. at 601, 604, 605-606.<sup>10</sup> Here, *MacAloney* concerns the validity of a regulation. *Plymouth* does not. Neither the language of §4(2)(b) nor *Plymouth* changes the validity of the four-month rule, or the ability of regional retirement boards to duly promulgate their own rules in circumstances that legislation does not address. Thus, we conclude that *Plymouth* does not implicitly invalidate *MacAloney* but allows CRAB's determination in *MacAloney* to stand - that retirement board regional regulations are not preempted by the local option in §4(2)(b).

In accordance with CRAB's decision in *MacAloney*, WRRS correctly initially credited Mr. Briggs with additional credit for his call firefighter service beyond the five years provided for in § 4(2)(b).<sup>11</sup> Where a member is seeking credit for prior service as a call firefighter beyond the five years provided for in §4(2)(b), the statute does not preempt retirement boards from applying their own rules to allow the additional credit. While WRRS rightly points out that the Town of Sutton has not affirmatively adopted the local provision for granting additional creditable service past the initial five years, WRRS's duly enacted four-month rule remains available to allow for the additional creditable service granted to former call firefighters, such as Mr. Briggs. Accordingly, the WRRS's local four-month rule was properly applied to Mr. Briggs to credit him with the additional nine months beyond the five years under § 4(2)(b) for his call firefighter service.

**Conclusion.** We affirm the decision that the local option language in §4(2)(b) does not preempt WRRS's local retirement rules both for the reasons stated in the magistrate's decision and for the reasons stated in our decision in *MacAloney v. Worcester Regional Retirement Syst. and PERAC*, CR-11-19 (CRAB June 12, 2013). Mr. Briggs is entitled to five years and nine months of call firefighter service pursuant to § 4(2)(b) and WRRS's local rule.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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<sup>10</sup> See *Gomes v. Plymouth*, CR-14-127, at 5-6 (CRAB Nov. 18, 2016).

<sup>11</sup> At the time this regulation was made in 1984, the WRRS was known as the Worcester County Retirement Board, or WRCB. To avoid confusion, we refer to the board by its current title and abbreviation.

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