

March 9, 2015

Elena M Kothman
Executive Director of Retirement Services
Andover Contributory Retirement System
Town Offices
36 Bartlet Street
Andover, MA 01810

Dear Ms. Kothman:

This is in response to your e-mail, dated July 24, 2014, regarding the possible buy back of service as a call firefighter in the Town of Pepperell for a current member of the Andover Retirement System. I apologize for the delay in responding to your inquiry.

Specifically, you pose the following inquiry:

Can a member of the Andover Fire Department buy back call firefighter service he did for a different Mass municipality? If he is allowed to do so, who does he pay the buyback to? And, which system, assumes liability?

The member is not eligible for service pursuant to the provisions of G.L. c. 32, § 4(2)(b), as his call firefighter time was not with the Town of Andover by which he is presently employed.

You ask if he could still receive credit for this service. The answer to this question is no. There is a provision of Chapter 32, which must be accepted by a municipality (as opposed to a retirement board). It is G.L. c. 32, § 4(2)(b1/2) which provides as follows:

In any city, town, or fire district, which accepts the provisions of this paragraph, service as a permanent-intermittent or call firefighter shall be credited as full-time service as provided in paragraph (b), except that credit for such service shall not be conditioned upon the appointment of said permanent-intermittent or call firefighter as a permanent member of the fire department. This paragraph shall take effect in a city by vote of the city council in accordance with its city charter, in a town which maintains a separate contributory retirement system by vote of the town meeting, in a town whose eligible members are members of the county retirement system of the county wherein such town lies by vote of the town meeting, in a district which maintains a separate contributory retirement system



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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.
(Emphasis supplied.)

We have no record of this paragraph having been accepted by either Andover or Pepperell so this avenue is foreclosed to him.

He is also not able to buy back this service through any other section of Chapter 32. Please refer to G.L. c. 32, § 3(5), which provides in pertinent part as follows:

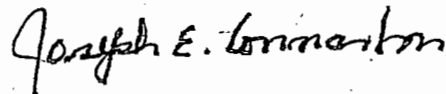
...[O]r any member of any system who rendered service in any governmental unit other than that by which he is presently employed, in a *temporary, provisional, or substitute position* and who was excluded from membership by the rules of any board, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof...(Emphasis supplied.)

It does not appear that the member in question was a temporary, provisional or substitute employee, but that is a determination best left to the retirement board. If he was considered a temporary, provisional or substitute employee as a call firefighter, a buy back could be undertaken under G.L. c. 32, Section 3(5). Otherwise, it may not be undertaken.

It might be, depending upon the status of his prior service, as noted above, that the member may not be eligible to buy back this time under any provision of Chapter 32. It should be noted that even if he did undertake a buy back other than via the Section 4(2)(b1/2) route, he would only be entitled to credit for time actually served, on a day by day basis.

We trust the foregoing will be of some assistance to you. Please contact this office if you have any further questions or concerns about this.

Sincerely,



Joseph E. Connarton
Executive Director

April 29, 2015

Lynn Rea, Retirement Administrator
Westfield Contributory Retirement System
P.O. Box 106
Westfield, MA 01086

Dear Ms. Rea:

This is in response to your letter, dated April 16, 2015, regarding a member's eligibility for a particular buyback. Specifically, you write:

I have a current member from our school department who wants to do a make-up payment for time while she was a substitute teacher and not contributing to our system or the Teachers System.

From 9/91 to 6/30/96 she was a member of the MTRS and this money has been transferred to us in 1/13.

Earnings were: 2007-780.00, 2008-6,107.02, 2009-23,396.56, 2010-19,879.08, 2011-3,758.10 and in 2012 they were 5,385.85.

I have called the MTRS and since they no longer have an account they will not accept service.

I believe we will have to accept the service but just wanted to verify. In 2011 she was under 5K so I am presuming she wouldn't receive service for that and the make-up wouldn't include any of that salary.

Buybacks of a member's prior non-membership service with her current board are covered by G.L. c. 32, Section 4(2)(c) which provides in pertinent part as follows:

(c) In the case of any employee of any governmental unit who is a member of the retirement system pertaining thereto, the board may allow credit, upon whatever proportionate basis it shall determine under appropriate rules and regulations which shall be subject to the approval of the actuary, for any previous period of part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service rendered by him after such a retirement system becomes operative and while he was not eligible for membership excluding any prescribed waiting period under the provisions of the law...



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Thus, a Board may permit the buyback of non-membership time providing it excluded the employee from membership and has a supplemental regulation permitting it to allow such a buyback. Westfield does have such a regulation, effective January 26, 1994, which may or may not be applicable to this present case and provides as follows:

Employees who start employment with the City of Westfield under 20 hours/week and are contributing to FICA and MEDICARE can buy-back this time for creditable service on a pro-rated basis after they have become eligible for membership by working 20 or more hours/week. This proration will be based on the number of hours worked -per week when becoming a member to the average of the hours worked while not a member. Members of the Retirement System who drop under 20/hours/week will continue retirement deductions and will receive full-time creditable service.

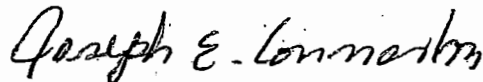
Although this regulation may not have general applicability, if the Board has permitted a buyback of prior non-membership time in Westfield before, it should permit it in this case. As you have indicated, in one year, 2011, her pay was under \$5000. G.L. c. 32, Section 4(1)(o), the so-called "Under \$5000 Rule," provides as follows:

(o) The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

Given all of the above, and providing none of this time coincides with creditable service from the Massachusetts Teachers' Retirement System or any other system, this member should be permitted to buyback time for the years 2007, 2008, 2009, 2010, and 2012 under the provisions of G.L. c. 32, Section 4(2)(c). In regard to 2011, such a buyback would only be possible if she were serving under the terms of a contract which had not yet expired and was entered into prior to July 1, 2009.

We trust the foregoing will be of some assistance to you. Please contact this office if you have any further questions or concerns about this.

Sincerely,



Joseph E. Connarton
Executive Director

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

PHILIP Y. BROWN, ESQ., *Chairman*

JOSEPH E. CONNARTON, *Executive Director*

Auditor SUZANNE M. BUMP | KATHLEEN M. FALLON | KATE FITZPATRICK | JAMES M. MACHADO | ROBERT B. MCCARTHY | JENNIFER F. SULLIVAN

July 25, 2017

Karen DeAngelis
Board Administrator
Stoneham Retirement Board
35 Central Street
Stoneham, MA 02180

Dear Ms. DeAngelis:

This letter is in response to your correspondence dated April 14, 2017 in regards to the proper interest to be applied to the buyback of time for a member. I apologize for the delay in our response.

Specifically, your email reads:

I was wondering about the status of the inactive member I have who was erroneously excluded (the once a member case that Stoneham lost). You were going to check into her buying back the time when she was erroneously excluded because now she is inactive.

She also has non-membership time in Stoneham (Nov 2000-April 2001) prior to becoming a member in Stoneham so would I use buyback interest thru 4/23/01 and then correction of errors interest through current (probably around April 2017)? And finally, she has refunded time for which I will use buyback interest thru 3/29/13 (the day she brought in a letter stating that she wants to buyback her refunded time use buyback interest and this letter preserved her right to buyback at buyback interest).

Your assessment of the interest rates to be applied in this case is correct. The facts as outlined above is, in accordance with the law. There are three components to this buyback.



Karen DeAngelis
Board Administrator
Stoneham Retirement Board
July 25, 2017
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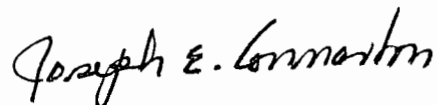
First, the non-membership time of November 2000 to April 2001 would be purchased pursuant to G.L. c. 32, §4(2)(c), and so the proper interest rate would be buyback interest.

Second, the payment regarding the correction of errors falls under G.L. c. 32, § 20(5)(c)(2) as discussed in PERAC Memorandum #32/2013. Thus, the correction of errors interest rate which the Stoneham Retirement Board adopted by regulation dated October 25, 2016 would be utilized. The fact that she is inactive at this time does not negate her right to buy back this time in this circumstance.

Finally, the refunded time falls under the purview of G.L. c. 32, § 3(8)(b). That section has strict rules about the interest rate to be used for a buyback. A member must make the payment within a year of entering service, or enter into an agreement to make the payment within a year of entering service, in order to use a buyback interest rate. Otherwise, actuarial interest will be assessed. We are assuming from your description that the member in question preserved her right to make a payment using buyback interest.

We trust the forgoing is of assistance. If you have further questions or concerns do not hesitate to contact this office.

Sincerely,



Joseph E. Connarton
Executive Director

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

PHILIP Y. BROWN, ESQ., *Chairman*

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September 24, 2018

Margaret R. Shea
Executive Director
Marlborough Retirement Board
255 Main Street, Room 201
Marlborough, MA 01752

Dear Ms. Shea:

This is in response to your August 9, 2018 email regarding the date when a member's five year period starts for the purposes of General Law Chapter 32 Section 105 reinstatement process.

Specifically you state:

PERAC's annual memorandum regarding reinstatement always contains the following:

Since some members must repay large amounts and all members must work at least five years of full-time employment (though they need not necessarily earn five years of creditable service)....

I have a member who retired June 30th and just agreed to take a full-time position with another school system in September. (Yes, I did explain the consequences of retirement.) She will be able to work September to December of 2018 and a few months into 2019 without going over the hourly and salary limitations. She then wants to repay her retirement allowance and become a reinstated member of the State Retirement Board. Does the 5 year clock start running when she begins her position in September or when she is reinstated as a member of the retirement system.

Please see G.L. c. 32, §105 which states in part:

Any member retired under section 5 or section 10 shall be eligible to be reinstated in a retirement system established under this chapter, if the retired member repays to the system from which he retired an amount equal to the total



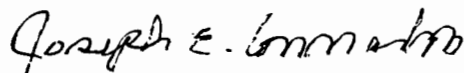
Margaret R. Shea
Executive Director
Marlborough Retirement Board
September 24, 2018
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amount of any retirement allowance received by the retired member, together with buyback interest. Such payment shall be made in one lump sum or in installments as the board shall prescribe. Upon such reinstatement, regular deductions shall be made from regular compensation pursuant to paragraphs (b) and (b1/2) of subdivision (1) of section 22, and for such purpose, the member's **date of entry into service shall be the date such member waived his retirement allowance or the date of reinstatement**, whichever occurs earlier. (emphasis added).

In the scenario referenced in your email, the member's entry date will be the date she waives her allowance and begins having regular deductions taken from her salary. If the member begins working in September, but does so as a retiree, while collecting a pension and staying under the hours and earnings restrictions, then her reinstatement date would not be until she waives her retirement allowance which would be, according to your scenario, a few months into 2019. This date would be her reinstatement date and the five year work requirement of Section 105 would begin at that point. However, if she were to waive her allowance in September, and begin the reinstatement process, her five year service period would begin in September.

I trust the foregoing is of assistance. If you have further questions or concerns please contact this office.

Sincerely,



Joseph E. Connarton
Executive Director

March 19, 2019

Kaitlyn Doucette
Retirement Board Administrator
Methuen Retirement Board
41 Pleasant Street, Suite 303
Methuen, MA 01844

Dear Ms. Doucette:

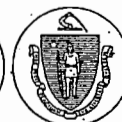
This is in response to your email, dated October 24, 2018, regarding whether _____ a member of the Methuen Retirement System, was required to purchase his veterans time or whether he should have been granted the time without cost under G.L. c. 32, §4(1)(h). I apologize for the delay in this response.

Specifically you state:

I am requesting an expert legal opinion from PERAC on retiree _____ military service buyback. _____ was employed by Lawrence and then served in the military from 1971 to 1973. He then became a member of the Methuen Retirement System. He subsequently bought back 2 years of active military service and 6 months of reserve time. He paid a total of \$1,817.09 for the 2 years of active service and another \$454.27 for the 6 months of reserve time. It seems since he became a member in Methuen shortly after leaving Lawrence for active duty that _____ should not have had to purchase this time. Please advise.

When a member in service goes on leave for active duty in the military and then returns to public employment within two years of completing such active duty the member is granted creditable service for that period. Please see G.L. c. 32, §4(1)(h) which states:

(h) The period or periods during which any member who is a veteran as defined in section one was on leave of absence from the governmental unit to which the system of which he is a member pertains, for the purpose of serving in such campaign and until he was discharged or released from such service in the armed forces, shall be allowed as creditable service.



Any such period of leave of absence which is subsequent to his becoming a member of such system shall be counted as membership service, and any such period prior thereto shall be counted as prior service; provided, that he would have been entitled to such credit in the event he had continued in the active service of such governmental unit during the period of time covered by such leave of absence.

Any member who served in the armed forces between January first, nineteen hundred and forty and the termination of the Selective Service Act of 1948, **shall have such actual service credited to him as creditable service when reinstated or reemployed in his former position or in a similar position or when employed in any governmental unit in a position which is subject to the provisions of sections one to twenty-eight, inclusive, within two years of his discharge or release from such service;** provided, however, that such service shall not be construed to include service for more than four years unless such further period of service in excess of four years was involuntary service required by the government of the United States or unless such service in excess of four years was rendered prior to July first, nineteen hundred and sixty-four and such member was reinstated or reemployed on or before June thirtieth, nineteen hundred and sixty-six. The provisions of sections nine and nine A of chapter seven hundred and eight of the acts of nineteen hundred and forty-one, as amended, and as may be further amended, shall be applicable to any person referred to in section one of said chapter seven hundred and eight who is a member of any retirement system established under the provisions of this chapter whose last discharge or release from military service was under honorable conditions as defined in defense department regulations. (Emphasis added).

Based on the information provided by you and the Lawrence Retirement Board, it appears that [redacted] should not have been required to purchase his active duty service. He was a member of the Lawrence Retirement System from December 25, 1970 until May 14, 1971 at which time he left for military service. He was discharged from the military on May 5, 1973 but remained in the Reserves. According to his enrollment forms he began employment with Methuen on April 22, 1974. As the bolded language above shows, if a member leaves government service for military service and then is employed in "any governmental unit in a position which is subject to the provisions of section one to twenty-eight, inclusive, within 2 years of his discharge or release from such service" he is entitled to creditable service for his military time. Thus, [redacted] should have been credited with his two years of military service upon employment in Methuen and did not need to purchase that time.

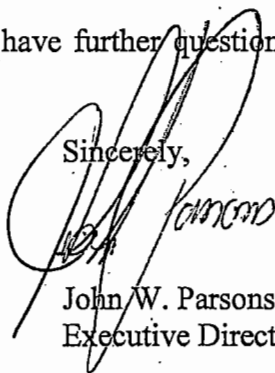
Kaitlyn Doucette
Retirement Board Administrator
Methuen Retirement Board
March 19, 2019
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Although he was entitled to receive creditable service for his active duty time, in order to receive credit for his reserve time he was required to purchase that time under the fourth paragraph of section 4(1)(h) at the 5 to 1 ratio.

The amount that [redacted] paid to purchase his active duty military time, \$1,817.09, should be returned to him without interest.

I trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Parsons", is written over the word "Sincerely," and the printed name below.

John W. Parsons, Esq.
Executive Director

December 27, 2018

Mark Minervini
Retirement Administrator
Medford Contributory Retirement System
City Hall – Room 215
85 George P. Hassett Dr.
Medford, MA 02155

Dear Mr. Minervini:

This is in response to your letter, dated November 26, 2018, wherein you request PERAC's assistance in answering several questions concerning corrections of errors interest and the date of membership of a member of your system,

Specifically, you write:

The Board has been presented with a member, who was originally hired on 5/15/2000 and did not meet the qualifications for system membership due to working less than 20 hours per week. On 9/3/2008, _____'s hours increased from 10 hours per week to 30 hours per week, reaching the threshold for membership. The retirement office was not notified of the change in hours and as a result, _____ did not become a member. On 3/28/2018 the Retirement Board voted to approve _____ membership. _____ would like to buyback her service time.

You then go on to ask several specific questions, which PERAC will address in turn.

In calculating the buyback, do I use the correction of errors interest (3%) for the entire buyback? Or do I apply buyback interest for the service between 9/2/2008 – 5/15/2000?



Mark Minervini
Retirement Administrator
Medford Contributory Retirement System
December 27, 2018
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Section 20(5)(c)(2) states, in pertinent part, that when "an error is made in computing a benefit" and, as a result, a member receives more or less than the member would have been entitled, the error shall be corrected. Thus, for the time period of 9/3/08 through 3/28/18, the Board must utilize its correction of errors rate, which is 3%, pursuant to the Board's Supplemental Regulation effective 11/21/17, because [redacted] was erroneously excluded from membership during this period. For the time period of 5/15/00 through 9/2/08, the Board must utilize the buyback interest rate.

Does the Board have the option to waive interest as indicated in memo # 14/2018?

Section 20(5)(c)(3) provides retirement boards with the ability to waive any funds that a member is found to owe that retirement system provided that:

- (i) the error in any benefit payment or amount contributed to the system persisted for a period in excess of one year;
- (ii) the error was not the result of erroneous information provided by the member or beneficiary; and
- (iii) the member or beneficiary did not have knowledge of the error or did not have reason to believe that the benefit amount or contribution rate was in error.

Based on your letter, it appears that all of the above factors are present. Given that retirement boards have great discretion to determine whether to waive repayment of any amounts owed by a member to that retirement system, it would appear that the Board would be within its right to waive the interest owed. See *Bristol County Retirement Board v. CRAB*, 65 Mass. App. Ct. 443 (2006). It is important to keep in mind, however, that:

Interest represents the time value of money and puts the person paying late in the same position as the person who all along was having retirement deductions taken from her paycheck. *Marie McDonough v. Quincy Retirement Board*, CR-13-357.

Is the date of membership backdated to 9/3/2008, after the service is purchased?

Yes.

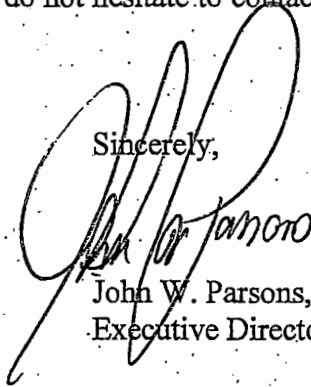
Mark Minervini
Retirement Administrator
Medford Contributory Retirement System
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If _____ decides not to purchase the service, what date is used for the date of membership?

Based on your letter, it appears that (_____) is interested in purchasing her erroneously excluded service time. As the above question seems to posit a hypothetical, PERAC chooses to refrain from answering it at this time.

I hope this information is helpful, but please do not hesitate to contact us if you have any further questions or concerns.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John W. Parsons".

John W. Parsons, Esq.
Executive Director

PERAC

19/042

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

PHILIP Y. BROWN, ESQ., *Chairman*

JOHN W. PARSONS, ESQ., *Executive Director*

Auditor SUZANNE M. BUMP | KATHLEEN M. FALLON | KATE FITZPATRICK | JAMES M. MACHADO | ROBERT B. MCCARTHY | JENNIFER F. SULLIVAN

March 21, 2019

Leslie Ring
Executive Director
Attleboro Retirement Board
77 Park Street
Attleboro, MA 02703

Dear Ms. Ring:

This is in regard to the Bristol County Retirement Board's ("BCRB") e-mail, dated February 11, 2019, regarding the buyback of service of [REDACTED] ("[REDACTED]"), a member of your system, who was a reserve police officer in the Town of Seekonk, a member unit of the Bristol County Retirement System.

The facts of this case are as follows. The Attleboro Retirement Board ("ARB") received a buy back request from [REDACTED] for his time as a reserve police officer in Seekonk. ARB granted the request and upon [REDACTED]'s retirement billed BCRB for the service pursuant to G.L. c. 32, § 3(8)(c). PERAC understands that the member in question was never a full-time member of the Seekonk Police Department. Also, PERAC understands that ARB may have allowed multiple purchases similar to this type under G.L. c. 32, § 4(2)(b).

The two sections dealing with the right to receive service for time served as reserve police officers and call firefighters are G.L. c. 32, §§ 4(2)(b) and 4(2)(b½).

Regarding G.L. c. 32, § 4(2)(b), the statute reads in pertinent part as follows:

...the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment; and provided, further, that such service as a *permanent-intermittent or call fire fighter* shall be credited only if such *permanent-intermittent or call fire fighter* was later appointed as a *permanent member of the fire department*.

(Emphases supplied.)



Leslie Ring
Executive Director
Attleboro Retirement Board
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Concerning G.L. c. 32, § 4(2)(b½), this provision must be accepted by a municipality (as opposed to a retirement board). G.L. c. 32, § 4(2)(b½) provides as follows:

In any city, town, or fire district, which accepts the provisions of this paragraph, service as a permanent-intermittent or call firefighter shall be credited as full-time service as provided in paragraph (b), except that credit for such service shall not be conditioned upon the appointment of said permanent-intermittent or call firefighter as a permanent member of the fire department. This paragraph shall take effect in a city by vote of the city council in accordance with its city charter, in a town which maintains a separate contributory retirement system *by vote of the town meeting, in a town whose eligible members are members of the county retirement system of the county wherein such town lies by vote of the town meeting*, 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.

(Emphasis supplied.)

When these two sections are read in conjunction with each other, service can be granted as follows:

A call firefighter will be granted service upon becoming a full-time member of the fire department where the call firefighter service was performed. In the alternative, if the municipality where the call firefighter provided the service accepts the provisions of G.L. c. 32, § 4(2)(b½) then the requirement of becoming a full-time member of that fire department is forgiven.

A reserve police officer is granted the service for the period of time that he/she was on the respective list. There is no corresponding requirement that reserve police officers must become members of the same police department in order to receive this credit. See *Ryan v. Woburn and Wakefield Ret. Bd.*, CR-14-394.

In the immediate case of [redacted], whereas he was a reserve police officer for the Town of Seekonk, he is eligible for the service pursuant to the provisions of this statute, even though he never became a full-time member of the Seekonk Police Department under G.L. c. 32, § 4(2)(b).

As for the other instances when the ARB allowed members to purchase service under the provisions of G.L. c. 32, § 4(2)(b), the ARB will need to review the records of each member to determine whether the service purchased was as a reserve police officer or a call firefighter and whether the service purchase is allowable under Chapter 32 as explained in this letter.

As previously discussed, if the member served as a reserve police officer, the service can be granted despite the fact the member may never have become a full-time member of the police

Leslie Ring
Executive Director
Attleboro Retirement Board
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department where the reserve time was performed. However, if the member served as a call firefighter, then the service can only be granted if the member became a full-time member of the fire department where the call service was provided. The exception to this would be if the municipality where the call firefighter service was performed has adopted the provisions of G.L. c. 32, § 4(2)(b½).

It should be noted that G.L. c. 32, § 3(5) also provides no viable option for a member to buyback a call firefighter or reserve police officer service. G.L. c. 32, § 3(5) provides in pertinent part as follows:

...[O]f any member of any system who rendered service in any governmental unit other than that by which he is presently employed, in a temporary, provisional, or substitute position and who was excluded from membership by the rules of any board, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof...(Emphasis supplied.)

A call firefighter or reserve police officer is not considered a temporary, provisional or substitute employee. *See Dias v. Bristol County Red. Bd.*, CR-00-807 (CRAB 2010).

Pursuant to G.L. c. 32, § 20(5)(c)(1), "The board, upon discovery of any error in any record of the system, shall, as far as practicable, correct such record." Thus, if the ARB finds that any current or retired member of the system was erroneously granted service under § 4(2)(b), the ARB must correct any and all such errors.

If the ARB determines that a member purchased service to which he/she was not entitled as described above, then the ARB must refund any monies paid by the member to purchase this service at the correction of errors rate adopted by the ARB. *See PERAC Memorandum #14/2018*. In the case of an active member, the ARB must adjust the service records accordingly. In the case of a retired member, the ARB must adjust the service record and recalculate the retirement allowance removing said service. The new allowance must be applied retroactively to the original date of retirement.

The ARB, at the request of the member, could grant a waiver of repayment of the past allowances under the provisions of § 20(5)(c)(3) if all of the following conditions are met:

- (i) the error in any benefit payment or amount contributed to the system persisted for a period in excess of one year;
- (ii) the error was not the result of erroneous information provided by the member or beneficiary; and

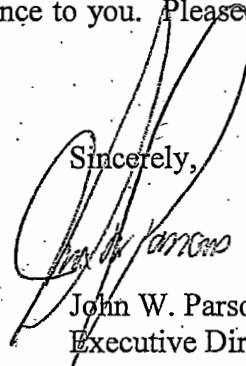
Leslie Ring
Executive Director
Attleboro Retirement Board
March 21, 2019
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(iii) the member or beneficiary did not have knowledge of the error or did not have reason to believe that the benefit amount or contribution rate was in error.

If the ARB does forgive the repayment of past allowance, they must still pay the reduced allowances prospectively.

We trust the foregoing will be of some assistance to you. Please contact this office if you have any further questions or concerns about this.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Parsons", is written over the word "Sincerely,".

John W. Parsons, Esq.
Executive Director

cc: Roxanne Donovan, Bristol County Retirement Board

JWP/keb
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December 11, 2019

Dear Mr. _____

This is in response to your letter, dated July 10, 2019, wherein you ask PERAC for an advisory opinion as to whether _____ an elected employee for the Town of Rockland, is eligible for membership in the Plymouth County Retirement System ("PCRS") and, if so eligible, whether she may purchase prior creditable service. In an email dated October 17, 2019, you supplemented your inquiry with an attached letter from _____ wherein she provided further details regarding her interactions with employees of the Plymouth County Retirement Board (the "Board").

In brief, you and _____ provide the following information:

- _____ was first elected Town Collector for the Town of Rockland in 2009, when she defeated the incumbent, who happened to be the sister of the then Town Treasurer.¹
- Upon the start of her tenure, the Town Treasurer "instructed [her] to go into OBRA as [her] retirement option."
- The Town Collector position is a three-year term that is considered a full-time benefitted position. She was successfully re-elected to that position in 2012, 2015, and 2018.
- She has always earned a salary of over \$5,000 annually while the Town Collector.²
- In 2015, shortly after successfully retaining her elected position as Town Collector, she contacted _____ an employee of the Board. According to _____ informed her that she was not eligible to become a member of the PCRS or purchase her prior service until she had worked ten years in a member unit of the PCRS.
- In 2018, she met with PCRS's Executive Director, David J. Sullivan, who reviewed her situation and eventually advised her to seek membership in the PCRS.
- On June 25, 2019, the Board voted to grant _____ membership in PCRS upon proper repayment of deductions effective April 11, 2009.

As you know, elected officials are given the option of membership in a retirement system pursuant to G.L. c. 32, § 3(1)(a)(vi), which provides:

¹ You write in your letter that _____ has stated that she was immediately confronted with an "unbelievably hostile work environment."

² Hence, G.L. c. 32, § 4(1)(o) does not apply.



Any person hereafter elected by popular vote to a state, county or municipal office or position who files with the board on a prescribed form a written application for membership within ninety days after the date of assuming office; provided, that a member becoming an elected official shall retain his membership and an elected official who is a member shall remain a member upon his re-election or upon his election or appointment to any other position which would otherwise entitle him to membership.

In your letter, you analogize _____'s situation to the situation of the petitioner in the matter entitled *Roberge v. Worcester Regional Ret. Bd.*, CR-04-670 (DALA decision dated 1/26/06). Although it appears that _____'s situation is similar to the petitioner in that matter, the Magistrate's decision in *Roberge* is inconsistent with other similar DALA and CRAB decisions, wherein elected officials have been denied membership for failure to adhere to Section 3(1)(a)(vi)'s ninety day requirement.

In *Levesque v. Essex County Ret. Bd.*, CR-95-571 (CRAB decision dated Oct. 7, 1996), CRAB determined that the petitioner in that matter could not purchase prior elected service time because she did not become a member of the relevant retirement system within ninety days of assuming office, as required by Section 3(2)(a)(vi). CRAB further held that a retirement board is not required by Chapter 32 to notify newly elected officials of their right to membership.

Similarly, in *Goode v. Weymouth Ret. Bd. and Norfolk County Ret. Bd.*, CR-99-701 (CRAB decision dated May 1, 2001), CRAB reaffirmed its decision in *Levesque* that Section 3(2)(a)(vi) "provides the mechanism for elected officials to become members of a retirement system and provides the time period during which they must exercise this option." Thus, the petitioner in *Goode* was not permitted to purchase prior elected service time, because he never became a member of that retirement system within the ninety day requirement of Section 3(2)(a)(vi).

More recently, CRAB reaffirmed its prior decisions in both *Levesque* and *Goode* and concurred that Section 3(2)(a)(vi) conditions an elected official's membership upon application within a specific time limit. See *Awad v. Hampshire County Ret. Bd.*, CR-08-621 (CRAB decision dated Dec. 19, 2014). In the *Awad* decision, CRAB further provided:

It would be entirely illogical for the Legislature to have enacted a ninety-day application limit and, at the same time, nullify that limit by allowing a late application.

...

We cannot conclude that the ninety-day limit was intended to be optional or subject to a late application – if it were, there would have been no reason to include it at all.

...

If creditable service for work as an elected official could be purchased later, it would also render the ninety-day limit for membership by elected officials meaningless as to those who later become members of a retirement system.

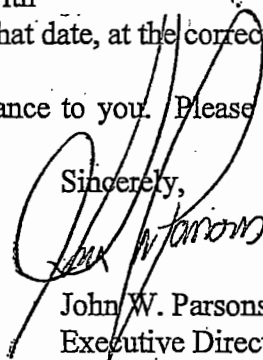
In *Awad*, CRAB sympathized that some elected officials may not be properly informed of their eligibility for membership under Section 3(2)(a)(vi), but noted that that statute contains no requirement that municipal employers notify newly-elected officials of their eligibility to join a retirement system. Further, CRAB held that compliance with the ninety day statutory deadline cannot be avoided "for equitable reasons or because of incorrect information supplied by an employer or a retirement board." CRAB thereupon noted that:

Although there are quite a few decisions by DALA that appear to support such an equitable remedy for erroneous advice, they are not consistent with caselaw from the appellate or Superior Courts, as DALA has recently pointed out.³

One of the inconsistent DALA decisions cited by CRAB is the *Roberge* case, which you rely upon in your letter. Given the prevailing caselaw, it normally would be PERAC's position that [redacted] is not eligible for membership at this time because she did not apply for membership within ninety days of her assuming office. However, the evidence here suggests that Ms. Hartigan was provided clearly erroneous information from [redacted] of the Board that prevented her from exercising her membership option within ninety days of assuming office. Pursuant to G.L. c. 32, § 20(5)(c)(2), retirement boards are required to correct any errors made by that board. If the Board determines that an error was made, of a Board employee in 2015 that led to [redacted]'s exclusion from membership, the Board should correct this error by making [redacted] a member of the PCRS, effective July 10, 2015 (according to your email, this is the date on or around when [redacted] spoke with [redacted] must make all contributions that she should have made since that date, at the correction of errors interest rate.

We trust the foregoing will be of some assistance to you. Please contact this office with any further questions or concerns.

Sincerely,



John W. Parsons, Esq.
Executive Director

cc: Plymouth County Retirement Board

JWP/kjh
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³ See *Donnelly v. Mass. Teachers' Retirement System*, CR-09-176 (DALA Sept. 7, 2012) (Heidlage, C.M.) and cases cited; *Clothier v. Teachers' Retirement Bd.*, 78 Mass. App. Ct. 143, 146 (2010) (reliance on advice contrary to statute is not reasonable; estoppel not applied against government).

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

PHILIP Y. BROWN, ESQ., *Chairman*

JOHN W. PARSONS, ESQ., *Executive Director*

Auditor SUZANNE M. BUMP | KATHLEEN M. FALLON | KATE FITZPATRICK | JAMES M. MACHADO | ROBERT B. MCCARTHY | JENNIFER F. SULLIVAN

July 23, 2020

Christopher LaFlamme
Assistant Director
Plymouth County Retirement Board
10 Cordage Park Circle, Suite 234
Plymouth, MA 02360

Dear Mr. LaFlamme:

This is in response to your email, dated November 12, 2019, wherein you request PERAC's opinion regarding the regular compensation status of several categories of payments and stipends, pursuant to G.L. c. 32, § 1 and 840 CMR 15.03. We apologize for the delay in responding.

Your email to PERAC follows an email sent to you on November 5, 2019, from Erin Barry, the Assistant Town Treasurer-Collector for the Town of Abington. PERAC shall address Ms. Barry's regular compensation inquiries in turn, with PERAC's responses following each inquiry in italics. Please note, these quotes are taken directly from Ms. Barry's email and PERAC is unaware as to whether the language contained within these quotes is identical to the language contained within the relevant employee contracts and/or Collective Bargaining Agreements.

- Education Incentive Stipends: Police Union pays out bi-annual stipends for holding an Associates, Bachelors or Master's Degree. The amount of the lump sum bi-annual stipend is calculated using a percentage of their base pay. The Fire Union wraps their education incentive for having an Associates, Bachelors or Master's Degree into their base pay, so I don't believe there is any way to separate the difference if education is not pensionable.

Yes, the stipend is pensionable, pursuant to 840 CMR 15.03(3)(b), which defines "wages" as including, in pertinent part, "payments made by the employer to the employee ... because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds..."

- Training Stipends: Police Union pays out a \$250 stipend once per year as officers complete training.

Yes. See above.



Christopher LaFlamme
Assistant Director
Plymouth County Retirement Board
July 23, 2020
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- Specialist Stipends: Police and Fire pay out annual stipends for various specialist credentials in the field; for Fire it is required to have the hazmat specialist credential.

Yes. See above. PERAC's opinion is limited to its consideration of the stipend received, and does not extend to attendance at Haz-Mat training sessions and/or situations where a member may have received overtime payments related to a Haz-Mat incident.

- State Hazmat Officer Stipend: There is one fireman that gets a bi-annual stipend for being the state's hazmat officer

Yes. See above.

- State Hazmat Officer Reimbursements: If the State Hazmat Officer gets called while on or off duty either him or the fireman covering his shift receives OT pay for the hours he performs the state hazmat duties, if he gets called while on duty and no one can cover for him, he gets reimbursed at his regular hourly rate for the hours he performs the state hazmat duties – I'm assuming in the OT scenarios, that would not be pensionable, but I'm not sure on the last scenario of the regular rate reimbursement.

No, overtime would not be pensionable. If he is paid his regular wage for his regular shift, it would be regular compensation.

- Fitness Stipend: Police have the option to try for a fitness stipend each year and if they achieve it, they receive the benefit as a lump sum payment.

No. This appears to be a voluntary, non-guaranteed payment akin to a bonus and not regular compensation.

- Sick Leave Incentives: There are some slight differences among the various contracts, but most allow a day's pay for 6 months without using sick time; the police union has an incentive that allows stipends of decreasing value for using 0, 1, or 2 days in a fiscal year.

No. This payment is in the nature of a bonus; bonuses are specifically excluded from the definition of regular compensation.

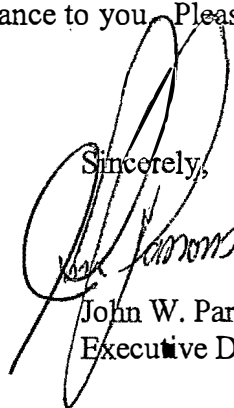
Christopher LaFlamme
Assistant Director
Plymouth County Retirement Board
July 23, 2020
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- Vacation Buyback: Option to buy back 1 or 2 weeks of accrued time depending on contract.

No. A one-time payment for vacation buybacks is specifically excluded from the definition of "wages" pursuant to 840 CMR 15.03(3)(f). Recent case law, currently under appeal however, has held that numerous payments for working in lieu of taking vacation time also does not constitute regular compensation. See PERAC Memorandum #26 of 2018, and PERAC Memorandum #33 of 2018 for more information regarding vacation buybacks.

We trust the foregoing will be of some assistance to you. Please contact this office if you have any questions or concerns about this.

Sincerely,

A handwritten signature in black ink, appearing to read 'John W. Parsons', is written over the word 'Sincerely,'.

John W. Parsons, Esq.
Executive Director