



PERAC HITS THE INTERNET

2020 BOARD ADMINISTRATOR WEBINAR SERIES

Buybacks Under Chapter 32



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November 19, 2020

Two Main Types of Service Purchases

Redeposit of Withdrawn Time	Earlier, Non-Membership Time
<ul style="list-style-type: none"> ▪ Straightforward ▪ Creditable Service Known ▪ Amount to be Paid Known, except: <ul style="list-style-type: none"> ▪ Timing of buy back may lead to different interest rates. 	<ul style="list-style-type: none"> ▪ Runs the gamut ▪ May or may not be a permissible purchase ▪ Facts, circumstances and rules of various boards matter

2

Sections of Chapter 32 Most Likely to Be Used in a Buyback (or Attempted Buyback)

Section 3	All the Other Sections
<ul style="list-style-type: none"> ▪ 3(3) ▪ 3(5) ▪ 3(6)(c) ▪ 3(6)(d) ▪ 3(8)(b) 	<ul style="list-style-type: none"> ▪ 4(1)(h) ▪ 4(2)(b) ▪ 4(2)(c) ▪ 20(5)(c)(3) ▪ 105

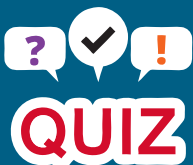
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NOTES:

Scenario 1

- Mr. Lee is an active employee, who became a member of the retirement system in 2012. He is an animal control officer, and loves the work, since he loves animals so much. Prior to his getting a full time job, which awakened membership, he worked since 2007 in a job with an employer with the same retirement system. He had no set hours, but a regular stipend.

4



May Mr. Lee Buyback Creditable Service From 2007 For His Position For Which He Received A Yearly Stipend Of Over \$5,000 But Had No Set Hours?

- A. Yes, under Section 3(5).
- B. Yes, under Section 20(5)(c)(3).
- C. Yes, under Section 4(2)(c).
- D. No, there is no way for him to do this.

5

NOTES:

Buybacks of Earlier, Non-Membership Time

- Sometimes permissible, but not always.
- Conditions spelled out in Chapter 32, Section 3(5) or Section 4(2)(c) must be met.
- The section under which the buyback is being made will determine what interest rate will be used in making the purchase.

6

The Under \$5,000 Rule

- Creditable service is no longer available for purchase if the position which the person held had an annual compensation of under \$5,000, and if such service occurred on or after July 1, 2009.

G.L. c. 32, Section 4(1)(o)

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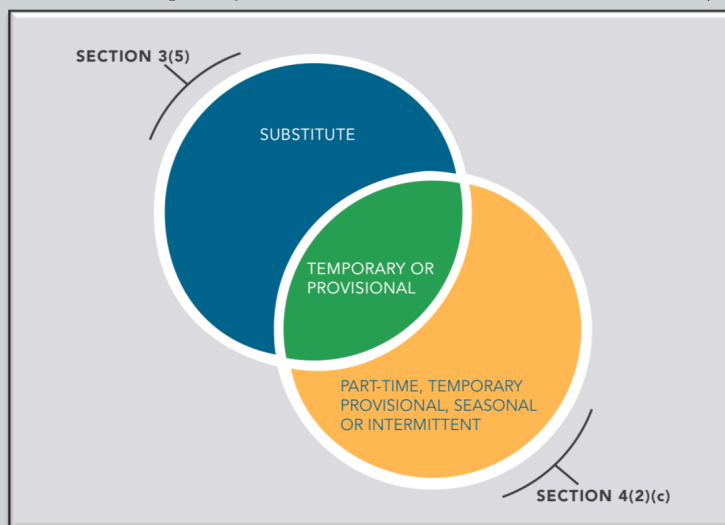
NOTES:

Categories of This Eligible Time

Section 3(5)	Section 4(2)(c)
<ul style="list-style-type: none"> temporary provisional substitute 	<ul style="list-style-type: none"> part-time provisional temporary temporary provisional seasonal or intermittent

8

Venn Diagram of Interplay Between Sections 3(5) and 4(2)(c)



9

NOTES:

Service With the Same System

- “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 or under the board's rules and regulations in effect during such previous period before eligibility for membership...”

G.L. c. 32, Section 4(2)(c)

10

Scenario 2

- In 2009, Camille Harrison was a candidate for a 3-year term as Town Collector. The Town Collector is paid an annual salary of \$6,000. After a hard fought and often contentious campaign, she was elected the Town Collector. After her election, she was instructed to contribute to OBRA instead of to the Quabbin Regional Retirement System (“QRRS”). After seeing the wonderful job she was doing as the Town Collector, she ran unopposed in 2012, 2015 and 2018.

11

NOTES:

Scenario 2 (Continued)

- In 2015, after securing her third term as Town Collector, she met with an employee of the Quabbin Regional Retirement Board, who informed her she was not eligible for membership in the QRRS and could not purchase her prior service until she had worked 10 years in a member unit of the QRRS.

12

Scenario 2 (Continued)

- Even though she had served for 6 years already, she still felt something was amiss with the prior advice she had received. In 2019, one full year into her fourth term, she met with the Executive Director of the Quabbin Regional Retirement Board who advised her to seek membership in the QRRS.

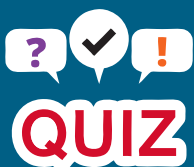
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NOTES:

Scenario 2 (Continued)

- Later in 2019, the Quabbin Regional Retirement Board voted to grant her membership in the QRRS upon proper repayment of the deductions she would have contributed effective retroactive to 2009.

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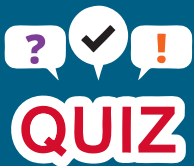


Is Ms. Harrison Eligible For Membership In The QRRS?

- A. Yes
- B. No

15

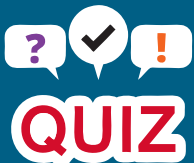
NOTES:



Can She Purchase Her Prior Service?

- A. Yes, under §3(2)(a)(vi)
- B. Yes, under § 20(5)(c)(2)
- C. Yes, under § 4(1)(s)
- D. No

16



****BONUS****

Would She Be Considered a Post-4/2/12 Member?

- A. Yes
- B. No

17

NOTES:

Elected Officials: They Get To Decide

- May be excluded from initial membership in a system if making under \$5,000 a year.
- Otherwise, in the absence of such a rule, may elect whether or not to become a member of said system by filing **“a written application for membership within ninety days after the date of assuming office.”**
- If they elect to become a member of the system and withdraw funds, they are subject to the same “redeposit” requirements as anybody else.

18

Elected Officials: Don't Get to Decide Retroactively

- If they do not elect to become a member of the system while in office, they may not buy back the time thereafter.
- They may decide to become a member after any subsequent election to office, but may not buy back the prior elected official time.

19

NOTES:

Correction of Errors

- Retirement Boards must correct errors when discovered. (Section 20(5)(c)(2)).
- “Certainly PERAC has the same duty to correct any error as do the local retirement boards under the provisions of G. L. c. 32, s. 20(5)(c).” *Essex County Ret. Bd. v. Coppola, PERAC & Lynn Ret. Bd.*, CR-99-725 (2001)

20

Scenario 3

- Mr. Green is a police officer in the Town of Quabbin. Previously, he was a reserve police officer, but never a member, in the Town of Prestonsburg. He would like to buy back his 3 years and 2 months of reserve service. (Note: He made over \$5,000 each year he served as a reserve police officer.)

21

NOTES:



Can Mr. Green Buy Back This Time?

- A. No, because he was never a member in Prestonsburg.
- B. Yes, under Section 4(2)(b).
- C. Yes, but he gets five years of service under Section 4(2)(b), not just 3 years and 2 months.
- D. Yes, under Section 3(5).

22

MacAloney v. Worcester Regional Retirement System & PERAC

- Case No.: CR-11-19
- Decision Date: June 21, 2013
- In a nutshell: Pursuant to the provisions of Section 4(2)(b), a permanent firefighter can purchase up to 5 years of creditable service for any time they served as a call firefighter or for the time he or she was on the respective lists and/or rosters making him or her eligible for such duty, **but they must pay for such service.**

PERAC Memoranda 22/2013 & 33/2013

23

NOTES:

Grimes v. Malden Ret. Bd. & PERAC

- Case No.: CR-15-5 (CRAB)
- Decision Date: November 18, 2016
- In a nutshell: CRAB determined that creditable service under G.L. c. 32, Section 4(2)(b) does not require payment by the member if they were never compensated.
- Not Appealed, but mentioned in an SJC decision.

24

Gomes v. Plymouth Ret. Bd. & PERAC

- Case No.: CR-14-127 (CRAB)
- Decision Date: November 18, 2016
- In a nutshell: CRAB held that employees listed in G.L. c. 32, Section 4(2)(b) are able to buy back service if make-up payments are made equal to what would have been contributed based on the salary paid to them.
- Went all the way to the SJC.

25

NOTES:

Plymouth Retirement Board v. CRAB and PERAC, **483 Mass. 600 (December 3, 2019)**

- Acknowledging that Section 4(2)(b) is silent on payment for creditable service, the SJC concludes that this section is intended only as a “measurement scheme,” and, reading the statute as a whole, the requirement for payment is found in Section 4(2)(c).
- Breaks new ground in determining that the “Under \$5,000 Rule” will also be applied to Section 4(2)(b) service.

26

Gomes: Footnote 4

- The CRAB decision in *Grimes v. Malden Retirement Board*, No. CR-15-5 (Nov. 18, 2016), is not inconsistent with our holding. In that decision, CRAB found that former [Permanent-Intermittent Police Officers] who were available to be called into service, yet never were, could obtain creditable service under G.L. c. 32, § 4(2)(b), without any remittance payments, because their purchase price under the formula set forth in G. L. c. 32, § 4(2)(c), was zero, given that they never earned any money as [Permanent-Intermittent Police Officers]. Although contributory retirement systems inevitably result in some inequities, we will not remedy possible unfairness in the face of clear legislative intent. See *Housman v. LBM Fin., LLC* 80 Mass. App. Ct. 213, 218, 952 N.E.2d 418 (2011). Further, to the extent that this appears unfair, in 2009, the Legislature addressed such outcomes in the new G. L. c. 32, § 4(1)(o), discussed *infra*. See St. 2009, c. 21, § 5.

27

NOTES:

Scenario 4

- In 2000, as a parent with small children in school, Josephine Nazarine, was looking to get out of her house and hang around people her own age for a few hours a day. She found a nice part-time job working 3 hours a day in a town covered by the Quabbin Regional Retirement System (“QRRS”). Since she didn’t work at least 20 hours per week, she was not eligible for membership in the QRRS.

28

Scenario 4 (Continued)

- In 2008, with her children being much older, the town asked Josephine Nazarine if she would like to work more hours. She agreed and began working 6 hour days, instead of 3 hour days. However, the town was negligent and never informed the Quabbin Regional Retirement Board, that Josephine Nazarine, was now working 30 hours per week, and would now qualify for membership in the QRRS.

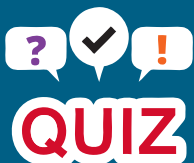
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NOTES:

Scenario 4 (Continued)

- In 2018, Josephine Nazarine asked about how the retirement system worked and wondered if she should be a member. The Quabbin Regional Retirement Board subsequently voted to allow Josephine Nazarine to become a member of the QRRS.
- Josephine Nazarine would like to purchase her prior service.

30



Is Josephine Nazarine Eligible For Membership?

- A. Yes
- B. No

31

NOTES:



Can Josephine Nazarine Purchase Her Prior Service?

- A. Yes, she can purchase time back to 2000.
- B. Yes, she can purchase time back to 2008.
- C. Yes, she can purchase up to 4 years of service.
- D. No, she cannot purchase any prior service.

32

Scenario 5

- Mr. Quinn was employed by an employer in the Paintsville Retirement System, and then had service in the military from 1971 to 1973, for a total of two years. When he returned home, he got a job with an employer in the Pikeville Retirement System. He would like to purchase this service and some reserve time.

33

NOTES:



Can Mr. Quinn Purchase His Military Time?

- A. Yes, from Pikeville, under 4(1)(h).
- B. Yes, from Paintsville, under 4(1)(h).
- C. He doesn't have to purchase the service time for it to be credited, but does have to purchase the reserve time.
- D. He needs to purchase the 1972-1973 time using a 5 to 1 ratio.

34

Purchase Of Up To 4 Years: Veterans

- a) Must be a member in service
- b) 10% of regular compensation when the member most recently established membership in the system
- c) 5 to 1 ratio for national guard and active reserve time **MUST** qualify as a veteran
- d) Active duty leave time **cannot** be counted towards buyback
- e) Member has 180 days from notice to begin purchase process
- f) Active duty for training for the National Guard and Reserves is excluded
- g) Must have been discharged from the service, and discharged honorably or "under honorable conditions."

G.L. c. 32, Section 4(1)(h)

35

NOTES:

Creditable Service For Military Leave

- Mandatory creditable service for military leave under G.L. c. 32, s. 4(1)(h)
- c. 708 of the Acts of 1941
- USERRA

36

Scenario 6

- Sammy Ejukater had a job he loved; he worked in the Quabbin Elementary School. In June of 2018, after a long and illustrious career working in the Quabbin Elementary School, he retired from the only job he had ever had. He retired as a member of the Quabbin Retirement System.

37

NOTES:

Scenario 6 (Continued)

- After a couple of months of playing golf, traveling, brushing up on Chapter 32 of the Massachusetts General Laws, and of course, community bus trips to the local casinos, Sammy realized that come September, he would not be returning to school. This prospect frightened Sammy. He asked if his position at the Quabbin Elementary School was still available. Sadly, the school had filled the position. Sammy Ejukater was devastated.

38

Scenario 6 (Continued)

- Sammy heard about an opening at the Elementary School in the next town. He applied for and was hired. This new job paid twice what his old job paid. Sammy was ecstatic. Because he had been brushing up on his Chapter 32, Sammy knew he could work the rest of 2018 with no issues. He also know that he could work only a few months in 2019 without violating the hours and earnings limitations of a retiree from a Chapter 32 system. Sammy really didn't want to waive the retirement he had worked all of his life to receive.

39

NOTES:

Scenario 6 (Continued)

- One Saturday in 2020, during his self imposed quarantine, Sammy was doing a little light reading of Chapter 32. Surprisingly, he fell asleep with Chapter 32 open on his lap. In what can only be described as a miracle, when he awoke, Chapter 32, was opened to Section 105. Sammy's interest was piqued! He decided this is what he was going to do!

40



When Does The Reinstatement Service Under Section 105 Begin?

- A. It starts on the last day Sammy worked at the Quabbin Elementary School.
- B. It starts on the day Sammy begins working at the new school.
- C. It starts on the day Sammy signs the Section 105 application.

41

NOTES:

Section 105

- Has consumed Section 5(1)(g), although 5(1)(g) remains on the books.
- Allows a person retired under Sections 5 or 10 to be reinstated to active membership in a retirement system.
- They must pay back the amount of retirement allowance received by them, plus buyback interest, to the retirement system from which they retired.
- Must then work another 5 years.

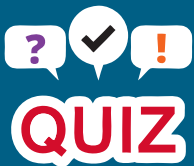
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Scenario 7

- Susan Esposito worked for the Johnson County Library full time for 4 years. She withdrew her funds on termination from service. Later, she became employed with the Magoffin County Library, full time, and left after 7 years of service but left her money in. She has approached the Magoffin County Retirement System, asking to buy back the Johnson County time. Susan currently works for Raytheon.

43

NOTES:



Scenario 7: May Susan Purchase the Four Years?

- A. No, Susan needs to get a public job covered by Chapter 32 before she can do this.
- B. Yes, Susan is inactive, but she has the right to redeposit this money “at any time” before a retirement allowance becomes effective for her.
- C. No, this would be an unfunded liability for Magoffin County.
- D. Yes, but she needs to pay back Johnson County.

44

Inactive Members Buying Back Service

- *Zavaglia v. Gloucester Retirement Board*, CR-09-459 (2015) (a final decision of CRAB)
- Purchases of service may usually be made only by active members of a retirement system.
- The ability of an inactive member to buy back service is extremely limited.
- Exceptions to this general rule include: Sections 3(4), 3(4A), 4(1)(q), 4(1)(r).
- The biggest exception: Section 3(6)(d).
- Other sections of limited applicability are in a grey area.

45

NOTES:

Ability To Buy Back Time, Everlasting

- “Any former member who is reinstated to or who re-enters the active service of the governmental unit in which he was formerly employed to serve in a position which is subject to the provision of this chapter, more than two years after the date of his last separation therefrom 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 installments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to the accumulated regular deductions withdrawn by him, together with buyback interest...”

G.L. c. 32, Section 3(6)(d)

46

Scenario 8

- Brad Shaw was a full-time member of the Pondville Retirement System (PRS) from September 1991 through June 1996. He stopped his employment and took his money out of the system.
- He returned to work as a substitute teacher in the Shiny Lake public schools (a member unit of the Pondville Retirement System).
- The following is his earning history:

■ 2007: \$780	■ 2010: \$20,000
■ 2008: \$6,100	■ 2011: \$3,800
■ 2009: \$23,400	■ 2012: \$5,500

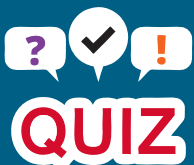
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NOTES:

Scenario 8 (Continued)

- In 2013, he became a full-time employee in a different position covered by the Quabbin Retirement System and he became a member of the Quabbin Retirement System.
- Brad Shaw would like to purchase the time when he served as a substitute teacher.

48

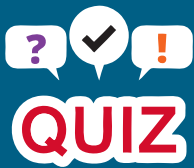


Can Brad Shaw Purchase His Substitute Teacher Time?

- A. Yes, under § 3(5).
- B. Yes, under § 4(1)(o).
- C. Yes, under § 4(2)(c).
- D. No, he cannot purchase his substitute teacher service.

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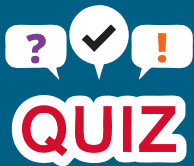
NOTES:



Who Would Be Liable For This Service?

- A. Pondville Retirement System
- B. Quabbin Retirement System
- C. Brad Shaw
- D. Shiny Lake Public Schools

50



Are There Any Other Things To Consider?

- A. Yes, anti-spiking under Section 14 of Chapter 176 of the Acts of 2011.
- B. Yes, Section 4(1)(o).
- C. Yes, what happened to Carole Baskins' husband.
- D. No.

51

NOTES:

Service With Another System

- “Pre-membership service in a temporary, provisional, or substitute position in a governmental unit other than that by which the current member is presently employed where the member was excluded from membership by the rules of the prior employer's retirement board and where the retirement board of the current employer system has rules permitting the buy-back of such service...”

G.L. c. 32, Section 3(5)

52

Scenario 9

- Samantha Davenport, a member of the Salyersville Retirement System, is thinking about retirement. She once worked for the Town of Dalton, which has its own retirement system, but withdrew her funds **[7 years worth.]** She has 29 years of service, and needs 3 more years to make it to 80%. She comes to the retirement board office and asks to purchase the 3 years.

53

NOTES:



May Samantha Purchase 3 Years of Service?

- A. Yes, because she only needs 3 years to get the maximum.
- B. No, because the law requires that any amount withdrawn be repaid in full.
- C. Yes, but she has to pay the most recent time first.
- D. Yes, but it doesn't matter whether she buys the most recent time first.

54

How Much Time Needs To Be Purchased?

Redeposit of Withdrawn Funds	Buyback of Prior Non-Membership Service
<ul style="list-style-type: none"> ▪ Entire amount must be repaid, together with interest. ▪ Lump sum or installment payments not to exceed five years. ▪ Payment plan may exceed five years “with the approval of the board.” 	<ul style="list-style-type: none"> ▪ May be purchased in accord with the Board’s regulations. ▪ Less than all non-membership time may be purchased. ▪ If less than all non-membership time is to be purchased, the member must purchase the most recent time first.

840 CMR 15.02(1) & (2)

55

NOTES:

Redeposits

- “Any former member of any contributory retirement system established under the provisions of this chapter, or under corresponding provisions of earlier laws or of any special law, who subsequently becomes employed in a position in any other governmental unit in which such a system is operative, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system pertaining to his new employment in one sum, or in installments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to the accumulated regular deductions withdrawn by him from the system from which he last became separated, together with ...interest...”

G.L. c. 32, Section 3(8)(b)

56

Scenario 10

- Louis J. Lipsett worked for the City of Berlin (“the City that Paper Built”) Athletic Department for six months after he graduated from high school.
- Louis left Berlin and America for a time, and the Athletic Department was flooded by molasses and all records were destroyed.
- Louis now wants to buyback the six months of time.

57

NOTES:



Scenario 10: Assuming This Time Is Otherwise Eligible For Purchase, May Louis Buyback The Time?

- A. Yes, he shouldn't be disqualified because the molasses flood wasn't his fault.
- B. Yes, because the time was earned fair and square before the molasses flood.
- C. No, the burden is on the member to prove entitlement to the time.
- D. Both A & B.

58

Lack of Documentation/Proof

- Member has burden to establish right to purchase service
- What happens if service was so long ago, no documentation is available?
 - Affidavits from prior colleagues
 - Newsletters
 - Social Security statements

G.L. c. 32, Section 20(5)(c)(1)

59

NOTES:

Conclusion

- Many considerations come into play when a member seeks to purchase creditable service.
- The facts of each case will need to be examined.
- Chapter 32 and the rules of each board will determine which time is eligible for purchase and under which conditions.

NOTES:

COMMONWEALTH OF MASSACHUSETTS

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