

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Elizabeth Callahan,
Petitioner

Docket No.: CR-25-0211

v.

State Board of Retirement,
Respondent

Appearances:

For Petitioner: Elizabeth Callahan, pro se

For Respondent: Marko Samardzic, Esq.

Administrative Magistrate:

Judi Goldberg

SUMMARY OF DECISION

Petitioner appealed Respondent's denial of her application to purchase contract service under G.L. c. 32, § 4(1)(s) for the time she worked at the Massachusetts Department of Environmental Protection (MassDEP) while being paid by the New England Interstate Water Pollution Control Commission (NEIWPCC). She was not a state employee nor a contract employee of the Commonwealth. Likewise, NEIWPCC, as a third-party vendor, was not established and operated by the Commonwealth nor was it an instrumentality of the Commonwealth. Respondent's decision is affirmed.

DECISION

Petitioner Elizabeth Callahan timely appealed the denial by Respondent State Board of Retirement (Board) of her application to purchase contract service from April 28, 1986, to January 25, 1987, because she was not a "contract employee" pursuant to Section 4(1)(s) of Chapter 32 of the Massachusetts General Laws. On April 7, 2025, the Division of Administrative Law Appeals (DALA) issued a Scheduling Order stating that the appeal could be decided based on the Parties' submissions pursuant to 801 CMR 1.01(10)(c); neither party objected. The Order also notified the Parties that if they did not submit additional information, "a decision will be reached based upon

the documents that have been submitted.” The Parties submitted a total of 19 exhibits (Pet. Exs. 1-6; Resp. Exs. 1-13), which I now admit as marked and make part of the record.

Findings of Fact

Based on the documents presented by the Parties, I make the following findings of fact:

1. In 1947, Massachusetts entered an interstate compact with other New England states that formed the New England Interstate Water Pollution Control Commission (NEIWPCC). (Resp. Exs. 1-3.)

2. NEIWPCC’s mission is to advance clean water by working with the participating states to abate pollution in interstate streams, ponds, lakes, and tidal waters. (Resp. Exs. 1, 4.)

3. To that end, NEIWPCC funds, staffs, and supports clean water projects in collaboration with state health and environmental agencies, program partners, and federal agencies. (Resp. Exs. 3-8.)

4. In its 2024 Annual Report, NEIWPCC listed its commissioners who come from each participating state; seven of the 46 commissioners were from Massachusetts. The 2024 Annual Report also noted that for that fiscal year, the participating states collectively contributed less than \$200,000 of NEIWPCC’s \$29 million total operating revenue. NEIWPCC received approximately \$12 million in federal grants, \$5 million in state contracts, \$6 million in other contracts, and \$3 million in donated services. (Resp. Ex. 6.)

5. Between April 28, 1986, and January 25, 1987 (referred to below as NEIWPCC time), NEIWPCC paid Ms. Callahan while she worked under the supervision of John Fitzgerald, who was a MassDEP section chief. (Pet. Ex. 6; Resp. Ex. 11.)

6. On January 26, 1987, Ms. Callahan began working for MassDEP as a benefited employee immediately after her NEIWPCC time. (Pet. Ex. 1; Resp. Memo.)

7. On January 17, 2024, Ms. Callahan applied to purchase contract service for her NEIWPCC time. (Pet. Ex. 1.)

8. On January 22, 2024, the Board requested additional information including Ms. Callahan's job descriptions and payroll records for the NEIWPCC time. (Resp. Ex. 10.)

9. Neither NEIWPCC nor MassDEP could provide Ms. Callahan's payroll records. Instead, Ms. Callahan provided an earnings statement from the Social Security Administration documenting that NEIWPCC was her employer during her NEIWPCC time and the Commonwealth of Massachusetts was her employer for subsequent time. (Resp. Ex. 11.)

10. On March 7, 2025, the Board denied Ms. Callahan's application to purchase contract service because she was not a "contract employee" of the Commonwealth but rather a third-party vendor's employee. (Pet. Ex. 2.)

11. On March 13, 2025, Ms. Callahan timely appealed the Board's denial. (Pet. Ex. 3.)

Analysis

When a member retires from public service, she may be entitled to a superannuation retirement allowance based in part on her years of creditable service. G.L. c. 32, § 5(2)(a). Section 1 of Chapter 32 of the Massachusetts General Laws defines "creditable service" as "all membership service, prior service and other service for which credit is allowable to any member under the provisions of sections one to twenty-eight inclusive." *Id.* § 1. One form of "other service" that a member may purchase under certain circumstances is "contract service" with the Commonwealth. *Id.* § 4(1)(s).

Section 4(1)(s) states in relevant part:

Any member in service of the state employees' retirement system who, immediately preceding the establishment of membership in that system . . . *was compensated for service to the commonwealth as a contract employee*

for any department, agency, board or commission of the commonwealth may establish as creditable service up to 4 years of that service if the member has 10 years of creditable service with the state employees' retirement system[.]

Id. (emphasis added). However, with limited exception, an employee may not purchase service credit for employment with a third-party vendor even if the employee performed work for the Commonwealth. *See, e.g., Hogan v. State Bd. of Ret.*, CR-16-0243 (Contributory Ret. App. Bd. June 1, 2021); *Kelley v. State Bd. of Ret.*, CR-24-0312, 2025 WL 3173928, at *3 (Div. of Admin. Law App. Nov. 7, 2025).

The Board has promulgated regulations that clarify when a “contract employee” of a third-party vendor can purchase service. Employees of third-party vendors may purchase contract service if the Commonwealth “established and operated” the vendor or if the vendor “functions as an instrumentality of” the Commonwealth or a Commonwealth agency. 941 CMR 2.09(3)(c).¹

As the petitioner, Ms. Callahan has the burden of proving by a preponderance of the evidence, or that it is more likely than not, that the facts support her entitlement to purchase contract service under Chapter 32. *See O'Malley v. Contributory Ret. App. Bd.*, 104 Mass. App. Ct. 778, 780 (2024) (plaintiffs seeking judicial review of agency decision pursuant to G.L. c. 30A bear “heavy burden” of demonstrating that agency’s decision is invalid); *Keefe v. State Bd. of Ret.*, CR-24-0282, 2025 WL 3679270, at *2 (Div. of Admin. Law App. Dec. 12, 2025). Ms. Callahan must show either that (1) she was a contract employee of the Commonwealth or (2) she may purchase

¹ Ms. Callahan argues that she should be able to purchase her NEIWPC time because two of her colleagues were able to purchase their NEIWPC time. The facts of those situations are not the subject of this appeal and as such are not relevant to Ms. Callahan’s application. However, I note that the Board offers that both of Ms. Callahan’s colleagues applied to purchase their service before the Board amended Section 2.09(3)(c). The previous version of Section 2.09(3)(c) allowed contract employees to purchase service if a Commonwealth agency or its employees had “supervision and control” over the contract employee. As the regulations in effect as of the date of a member’s application govern that purchase, Ms. Callahan is bound by the current regulation that does not include the “supervision and control” provision. *Kalu v. Boston Ret. Bd.*, 90 Mass. App. Ct. 501, 505 n.8 (2016).

her service under Section 2.09(3)(c) because the Commonwealth “established and operated” NEIWPCC or that it “functions as an instrumentality of the Commonwealth.” *See Keefe, supra*. For the reasons explained below, Ms. Callahan fails to establish either and therefore cannot purchase her NEIWPCC time.

Ms. Callahan was not “compensated for service to the commonwealth as a contract employee for any department, agency, board, or commission of the commonwealth” during her NEIWPCC time. G.L. c. 32, § 4(1)(s). Although neither NEIWPCC nor MassDEP have records of Ms. Callahan’s employment dating back to her NEIWPCC time, the Social Security Administration (SSA) records list NEIWPCC as Ms. Callahan’s employer during the NEIWPCC time. The SSA records also list the Commonwealth of Massachusetts as Ms. Callahan’s employer immediately following the NEIWPCC time.² NEIWPCC appearing in the SSA records as Ms. Callahan’s employer demonstrates that although she may have provided work to MassDEP, Ms. Callahan was not a contract employee of MassDEP but rather was a NEIWPCC employee.

For the purposes of Section 4(1)(s), NEIWPCC is not a Commonwealth “commission” despite having the word “commission” in its name. The Legislature simply approved Massachusetts joining the interstate compact; it did not create a Commonwealth commission or agency. Indeed, NEIWPCC has an existence distinct from the Commonwealth. For example, NEIWPCC receives only a small portion of its funding from member states like Massachusetts and enters its own contracts with private individuals and corporations. These factors both distinguish it from typical commissions that the Legislature creates. *See Daveiga v. Boston Health Comm’n*,

² The SSA records show list Ms. Callahan’s employer by year only for 1986 through 1988, showing NEIWPCC as her employer during 1986 and 1987 and the Commonwealth during 1987 and 1988. The earnings and the dates are consistent with Ms. Callahan’s contract service buy-back application.

449 Mass. 434, 441 (2007) (listed factors that distinguish commissions that are – and are not – part of the Commonwealth). Consequently, during the NEIWPCC time, Ms. Callahan was not a contract employee of a Commonwealth commission.

NEIWPCC also does not meet either of Section 2.09(3)(c)’s exceptions for employees of third-party vendors. The first regulatory exception allows for purchase of service if the Commonwealth “established and operated” the vendor. Although the 1947 Massachusetts Legislature ratified the NEIWPCC, it did not “establish” NEIWPCC.³ Similarly, the Commonwealth does not “operate” NEIWPCC. Instead, the Commonwealth, as well as the other member states to the compact, appoint commissioners to NEIWPCC. These commissioners set goals and priorities for the organization to address water pollution and advance water quality through proper standards and training. Among the commissioners listed as NEIWPCC’s “Leadership” in their 2024 Annual Report, only seven of the 46 state commissioners were from Massachusetts. Thus, although the Commonwealth’s commissioners may be able to influence NEIWPCC’s policy decisions and the standards NEIWPCC implements may become binding on the Commonwealth,⁴ having some degree of influence over policy is not the same thing as operating a state commission. *Cf.* G.L. c. 10, §§ 70–72 (creating the Alcoholic Beverages Control Commission, funded by legislative appropriations, with members whom the Treasurer appoints and removes, and which reports to the Governor, Treasurer, and Legislature).

³ As codified in Article XI, the interstate compact became “effective and operative” upon the consent of Congress, only after which could the Massachusetts governor appoint NEIWPCC commissioners. This aligns with how NEIWPCC describes itself as being “created by Congress[.]”

⁴ Some of NEIWPCC’s initiatives overlap with MassDEP. For instance, it provides septic and wastewater certifications and trainings on behalf of the Commonwealth. However, these services are more akin to a third-party vendor contracting with the Commonwealth rather than an administrative agency of the Commonwealth instituting policy.

Finally, NEIWPCC is not an “instrumentality of the Commonwealth.” An “instrumentality of the Commonwealth” refers to “a public entity created by the legislature and placed by the legislature within state government.” *Hogan, supra*. As noted above, the Legislature did not create NEIWPCC and the Legislature did not place NEIWPCC within state government nor within any state agency.

Conclusion and Order

Based on the above analysis, Ms. Callahan cannot purchase prior contract service under G.L. c. 32, § 4(1)(s). The decision of the Board is hereby **affirmed**.

Dated: June 26, 2026

/s/ Judi Goldberg

Judi Goldberg, Magistrate

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