

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Beverly Coles-Roby,
Petitioner

v.

Docket No. CR-25-0217
Date Issued: February 20, 2026

State Board of Retirement,
Respondent

Appearance for Petitioner:

Beverly Coles-Roby, pro se

Appearance for Respondents:

Marko Samardzic, Esq.

Administrative Magistrate

Kenneth J. Forton

SUMMARY OF DECISION

A former state employee is entitled to buy back prior service for which she had taken a refund because G.L. c. 32, § 3(6)(d) requires only that the member apply to purchase prior service before any retirement allowance becomes effective. Petitioner applied after she was terminated from her position but before she applied for superannuation retirement. *See Zavaglia v. Gloucester and Salem Ret. Bds.*, CR-09-459, at *2 n.2 (Contributory Ret. App. Bd. Apr. 13, 2015) (holding active membership is usually required to purchase service, but not in the case of buy backs under § 3(6)(d)).

DECISION

Petitioner Beverly Coles-Roby appealed timely under G.L. c. 32, § 16(4) the March 3, 2025 decision of Respondent State Board of Retirement denying her request to

purchase creditable service. On May 2, 2025, the Division of Administrative Law Appeals (DALA) ordered Petitioner to show cause why her appeal should not be dismissed for failure to state a claim upon which relief may be granted. Petitioner responded on May 29 and 30, 2025 with two affidavits and several attachments. On June 26, 2025, the Board filed a memorandum and 7 proposed exhibits. On October 24, 2025, I notified the parties that I would be deciding the appeal on written submissions under 801 CMR 1.01(10)(c) and gave them an additional opportunity to submit additional papers. Neither party did. I hereby enter 7 exhibits into evidence. (Exs. 1-7.)

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. From May 1, 1988, through October 14, 1992, Petitioner Beverly Coles-Roby worked for the Department of Children and Families. From October 15, 1992, through November 16, 2001, she worked for the Attorney General. She was a member of the State Board of Retirement during these periods and made the required retirement contributions. (Ex. 1.)
2. When she left the Attorney General's Office, she withdrew her accumulated deductions. (Ex. 1.)
3. In September 2008, Petitioner re-entered state service as Executive Director of the Board of Registration of Hazardous Waste Site Clean Up Professionals (Licensed Site Professional, or LSP, Board) at the Department of Environmental Protection. She once again became a member of the state retirement system. (Ex. 2.)

4. On or about July 13, 2023, Petitioner was terminated from her position at the LSP Board. (Ex. 2.)

5. On or around July 20, 2023, the Board received Petitioner's application, dated that same day, to buy back her time when she was employed with the Department of Children and Families and the Office of the Attorney General. (Ex. 1.)

6. By application dated September 6, 2023, Petitioner applied for a superannuation retirement benefit. (Petitioner erroneously responded "no" to the question, "Have you ever taken a refund?" and did not respond whether she wanted to buy back time.) Petitioner's retirement date was September 6, 2023. Her benefit effective date was September 7, 2023. Her first payment date (which included a payment of benefits retroactive to September 7, 2023) was January 31, 2024. (Exs. 2, 3.)

7. On or around January 24, 2024, Petitioner inquired of the Board when she would receive her retirement benefits. (Ex. 4.)

8. At the time of her September 6, 2023, retirement Petitioner had 14 years, 9 months, and 21 days of creditable service, all with the LSP Board. (Respondent's Response to Order to Show Cause.)

9. On November 7, 2023, Petitioner was elected a member of the Town of Randolph School Committee. She did not elect to become a member of the Norfolk County Retirement System, which serves the Town of Randolph, within 90 days of taking office on the School Committee. (Ex. 5.)

10. Under the Randolph Town Charter, School Committee members are uncompensated and may only be reimbursed for actual expenses incurred in the performance of their duties. (Ex. 6.)

11. On May 7, 2024, Petitioner filed a complaint with the Massachusetts Commission Against Discrimination (MCAD) to contest her termination from the LSP Board. As of this writing, MCAD has not yet issued a decision. See MCAD Docket No. 22BEM01880.

12. On March 3, 2025, the Board sent Petitioner a letter denying her buyback application on the grounds that she was not an active member in service when she applied. Petitioner timely appealed the Board's decision. (Ex. 7.)

CONCLUSION AND ORDER

Petitioner worked for the state from 1988 until 2001, when she resigned and withdrew her accumulated retirement contributions. A member who has made retirement contributions and accrued retirement credit may withdraw the contributions and relinquish the credit, as Petitioner did here. G.L. c. 32, §§ 10(4), 11(1). Withdrawing her contributions severed her relationship with the State retirement system.

In 2008, she re-entered State service and consequently became a state retirement system member again. See G.L. c. 32, § 3(6)(d). The retirement law allows members who have withdrawn contributions from earlier employment to buy back that service if they become retirement system members again. *Id.* Petitioner attempted to buy back the nearly 13 years of 1988-2001 service a week after she was terminated from her most recent state job at the LSP Board but before her effective retirement

date. The Board denied her application because she was no longer a member in service when she applied.

Generally, the purchase of creditable service must be accomplished while a government employee is an active member of a retirement system, or a member in service. *See Zavaglia v. Gloucester and Salem Ret. Bds.*, Amended Decision, CR-09-459, at *2 (Contributory Ret. App. Bd. Apr. 13, 2015). A member in service is “any member who is regularly employed in the performance of his duties.” G.L. c. 32, § 3(1)(a)(i). After Petitioner was terminated, she was no longer a member in service, as she was no longer regularly employed in the performance of her duties. At that point, she became a member inactive. *See* G.L. c. 32, § 3(1)(a)(ii) (member inactive includes any “member in service whose employment has been terminated and who may be entitled to any present or potential retirement allowance or to a return of [her] accumulated total deductions.”) According to the Board, that is the end of the analysis: Petitioner is not able to buy back her prior service because she applied after she was terminated.

The Board cites the July 3, 2014, Contributory Retirement Appeal Board (CRAB) decision in *Zavaglia*. In that initial decision, CRAB cited § 3(6), the provision that controls Ms. Coles-Roby’s buy back, in a list of creditable service provisions that typically require a member to be an active member to purchase service. However, on April 13, 2015, CRAB issued an amended decision in *Zavaglia* that omitted § 3(6) from that list and instead directed the reader to *McElholm v. Teachers’ Retirement Board*, CR-04-738 (Div. Admin. L. App. Apr. 19, 2006) for a discussion of the buyback of prior membership service under G.L. c. 32, § 3(6)(d). *See Zavaglia*, supra, at *2 n.2 (Apr. 13, 2015).

In *McElholm*, a teacher worked in a school system as a member of the Massachusetts Teachers' Retirement System (MTRS) from 1963 to 1980. He left the school system and took a refund of his accumulated retirement deductions. He returned to teaching for two years, became an MTRS member again, but was then laid off. He then requested to buy back his 1963 to 1980 service. MTRS initially denied his request because it concluded that only a member working in a membership position could buy back service and when he applied DALA had not issued its decision in *Marley v. Teachers' Retirement System*, CR-04-326 (Div. Admin. L. App. July 14, 2004).

The facts in *Marley* parallel those in *McElholm*. In *Marley*, the Petitioner worked for approximately six years in Lawrence public schools and was an MTRS member. She took a refund of her deductions two years after she had terminated service at Lawrence. Four years after she took her refund, she returned to Lawrence schools and the MTRS and taught for another nine years until she was laid off. Six years after that, she approached MTRS to buy back the service that she refunded. MTRS ultimately acknowledged "that an inactive member normally is eligible to redeposit his or her accumulated total deductions under G.L. c. 32, §§ 3(6)(c) and/or 3(6)(d)." *Marley*, supra. DALA agreed.

Section 3(6)(d) states, in pertinent part:

Any former member who is reinstated to . . . the active service of the governmental unit in which he was formerly employed . . . may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system . . . make-up payments of an amount equal to the accumulated regular deductions withdrawn by him, together with regular interest Upon the completion of such make-up payments such member shall be entitled to all creditable service resulting from his previous employment

The facts in the instant appeal are not materially different from those in *McElholm* and *Marley*. Ms. Coles-Roby took a refund of her 1988-2001 contributions from the State Retirement System after she left the Attorney General's office. She re-entered active state service and became a member of the State Retirement System again. She was terminated on July 13, 2023. One week later, on July 20, 2023, she applied to buy back her 1998-2001 service. Several weeks later, on September 6, 2023, she applied for superannuation retirement and requested that same date as her effective retirement date. This means that she applied to buy back her 1988-2001 service "before the date any retirement allowance [became] effective for [her]." *Id.* Therefore, nothing stands in the way of her purchasing her 1998-2001 service and she is entitled to do so.

Ms. Coles-Roby also argues that when she was recently elected to the Randolph School Board, she was entitled to membership in the Norfolk County Retirement System and was therefore entitled to buy back her 1998-2001 service. As discussed above, re-entry to active government service is not necessary for her to buy back her service. But, to the extent that CRAB or the courts conclude that it is necessary, Ms. Coles-Roby missed her opportunity to become a member of the retirement system.

Membership in a retirement system by virtue of holding elective office is controlled by G.L. c. 32, § 3(2)(a)(vi). It is well established that, under this provision, an elected official has a 90-day period after election to become a member of a retirement system. *Levesque v. Essex County Ret. Bd.*, CR-95-571 (Contributory Ret. App. Bd. Oct. 7, 1996) (former elected official unable to purchase that service because she failed to

become a member of the retirement system within 90 days of election); *Goode v. Weymouth Ret. Bd.*, CR-99-701 (Contributory Ret. App. Bd. May 1, 2001) (specifically reaffirming *Levesque*.) Petitioner did not apply for membership in the Norfolk County Retirement System in the 90-day window, and she cannot gain late entry to the retirement system under G.L. c. 32, § 3(3). *Awad v. Hampshire County Ret. Bd.*, CR-08-621, at *2, 5-6 (Contributory Ret. App. Bd. Dec. 19, 2014).

Finally, Petitioner urges me to find in her favor because she has filed a complaint with the Massachusetts Commission Against Discrimination alleging that her employer's decision to terminate her was discriminatory. Petitioner contends that she was illegally terminated and is therefore allowed to buy back her prior service.¹ As discussed above, it is not necessary for me to decide this question. Questions of legal discrimination are entrusted to the Commission Against Discrimination, and DALA has no power to decide that matter. *See generally* G.L. c. 151B, § 1 et seq. Moreover, even if I did conclude that her termination was discriminatory, "DALA and CRAB simply do not have the authority to provide equitable relief where it contravenes the retirement law." *Banks v. State Bd. of Ret.*, CR-24-0068, at *3 (Contributory Ret. App. Bd. Jul. 3, 2024).

¹ She argues in her affidavit, dated May 29, 2025: "Given its discretionary authority and based upon consideration of the entire record, the Division of Administrative Law Appeals can find that the termination was unwarranted by the facts and was not otherwise in accordance with Massachusetts law. On these bases, my application to purchase prior service should be granted."

For the above-stated reasons, Ms. Coles-Roby is entitled to purchase her 1998-2001 service, and the State Board of Retirement is hereby ordered to issue her an invoice for the service. The Board's decision is REVERSED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: February 20, 2026