

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Noëlle Costa,
Petitioner,

Docket No.: CR-25-0239

v.

Dated: May 22, 2026

Newton Retirement System,
Respondent.

Appearances:

For Petitioner: Noëlle Costa (pro se)

For Respondent: Jaclyn R. Zawada, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner worked for municipal school systems in 2000-2004, relinquished her accumulated retirement credit (by withdrawing her retirement contributions), and returned to state service in 2005. In 2020 and 2025, the petitioner attempted to repurchase her original retirement credit. By then, she had missed her deadline to make the repurchase at the discounted, “buyback” interest rate. G.L. c. 32, § 3(8)(b). The repurchase is therefore governed by the higher, “actuarial assumed” interest rate.

DECISION

Petitioner Noëlle Costa appeals from a purchase invoice issued to her by respondent Newton Retirement System (board). The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-5.

Findings of Fact

The following facts are not in dispute.

1. In 2000-2004, Ms. Costa worked for three municipal school systems in sequence, accumulating approximately two years and seven months’ worth of retirement credit. In late

2004, Ms. Costa left public service and withdrew her accumulated retirement contributions.

(Exhibit 2.)

2. Ms. Costa returned to public service one year later, in late 2005, working first in Watertown and then in Newton. She has been a member of the retirement system administered by the board since 2019. (Exhibit 2.)

3. In 2020, Ms. Costa informed the board of her interest in repurchasing retirement credit for her work in 2000-2004. A letter from the board quoted Ms. Costa a purchase price of approximately \$13,000. The letter added: “If you wish to initiate the . . . process [at a later date] . . . interest will accrue (at the rate of 3.625%) monthly.” (Exhibit 1.)

4. In 2025, Ms. Costa and the board corresponded again. She still had not made payments in connection with her repurchase request. According to the board’s updated calculations, the purchase price was now approximately \$30,000. While acknowledging the contrary guidance stated in its 2020 letter, the board explained that the purchase was subject to “actuarial interest of 6.9%.” Seeking a lower interest rate, Ms. Costa timely appealed. (Exhibit 2; administrative record.)

Analysis

A Massachusetts public employee who departs from public service may withdraw her retirement contributions and relinquish the corresponding retirement credit. G.L. c. 32, §§ 10(4), 11(1). If the member later returns to service, she is entitled to repurchase the same amount of credit. *Id.* § 3(8)(b).

The cost of the repurchase is the sum that the member previously withdrew from the system plus interest. G.L. c. 32, § 3(8)(b). Depending on the circumstances, two alternative

interest rates may apply. The “actuarial assumed” rate is a figure established from time to time by the Public Employee Retirement Administration Commission; it is designed to reflect a retirement system’s normal return on invested funds. *Id.* § 1. The “buyback” rate is half of the actuarial assumed rate. *Id.*

Any repurchase at the buyback rate benefits the member at the system’s expense: the member reacquires all of her original credit, while the system receives only half of the investment income that it could have accumulated if it had retained the member’s contributions all along. The magnitude of the benefit (to the member) and burden (on the system) grows with the passage of time, i.e., with each additional period for which the member pays only half of the system’s expected earnings.

At one time, the law nevertheless permitted all credit repurchases, at any time, to be made at the buyback rate. The Legislature adopted a more restrictive rule in St. 2011, c. 176, § 9, which inserted the following language into G.L. c. 32, § 3(8)(b):

[A] member who is reinstated to, or re-enters the active service of, a governmental unit . . . and who does not, (i) pay . . . make-up payments . . . or (ii) make provision for the repayment in installments . . . within 1 year from the date of reinstatement or re-entry or within 1 year after April 2, 2012, whichever is later, shall pay actuarial assumed interest instead of buyback interest on all make-up payments

The statute as amended still grants members returning to service the benefit of a discounted credit repurchase at the buyback rate. But now members cannot delay their repurchases for lengthy additional periods, placing an ever-increasing burden on their systems. *See Spinelli v.*

Massachusetts Tchrs.’ Ret. Syst., No. CR-17-188, at *12-13 (Div. Admin. Law App.

Aug. 14, 2020). The new general rule is that the buyback rate applies only to repurchases made within one year after a member’s return to service.

At the time of the 2011 amendment, many members of the retirement systems held not-yet-realized rights to repurchase prior service at the buyback rate; that is, many members had returned to service, were entitled to make buyback-rate repurchases of previously relinquished credit, and were justified in expecting that they would be able to make the discounted repurchases later in their careers. To accommodate these members, the Legislature granted them a grace period: regardless of when they returned to service, such members could make their discounted repurchases as late as April 2, 2013.

The application of these statutory rules to Ms. Costa is straightforward. After withdrawing her accumulated contributions in 2004, she returned to service in 2005. As of the time of the 2011 amendment, Ms. Costa had not yet repurchased credit for her original period of service. Her grace period to make the repurchase at the buyback rate ended on April 2, 2013. By 2020 and 2025, when Ms. Costa expressed interest in initiating her repurchase, she could do so only at the actuarial assumed rate.

Ms. Costa does not quarrel with the foregoing points. Her argument focuses on the board's statement to her in 2020 that her purchase price would accrue interest at the buyback rate of (at that time) 3.625%. Ms. Costa maintains that, as a result, "the doctrine of equitable estoppel should be applied." But as a panel of the Appeals Court has explained: "[Tribunals] cannot estop the conduct of a governmental officer or agency, as they might a private actor, because the public interest in the lawful work of the governmental actor overrides the unfairness or injury to the private complainant." *Moynihan v. Contributory Ret. Appeal Bd.*, 104 Mass. App. Ct. 1108, slip op. at 7-8 (2024) (unpublished memorandum opinion). A retirement

board's erroneous earlier statements do not relieve it from the obligation to enforce the law correctly today. *See Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010).

In a related vein, Ms. Costa asks for the interest owing from her to be set at some "fair and reasonable amount." The board plausibly interprets the request as seeking a departure from the governing statutory framework based on considerations of sympathy and fairness. But the Legislature's instructions must be enforced even when the results seem harsh or unfair. "[E]quitable concerns may not trump a statutory rule." *O'Malley v. Contributory Ret. Appeal Bd.*, 104 Mass. App. Ct. 778, 782 (2024). *See also Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 446, 450-51 (2006).¹

Conclusion and Order

The board's decision is AFFIRMED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals

¹ The board's brief and some of the administrative cases make the point in subtly different words: they say that administrative tribunals lack "equitable powers." The downside of this phrasing is that it tends to evoke the set of remedies "originating in the English Court of Chancery." *Black's Law Dictionary* 656 (10th ed. 2014). As *O'Malley* illustrates, the problem is not one of equity jurisdiction in that sense, which the Superior Court does possess. *See* G.L. c. 214, § 1. The operative principle is that "equitable concerns," i.e., intuitive senses of fairness, justice, and sympathy, cannot overpower legislative commands. That principle applies both in administrative tribunals and in the courts. *See also McCarthy v. Governor*, 471 Mass. 1008, 1011 (2015); *T.F. v. B.L.*, 442 Mass. 522, 533-34 (2004); *Freeman v. Chaplic*, 388 Mass. 398, 406 n.15 (1983).