

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Deborah Donohoe,
Petitioner

Docket No.: CR-25-0394

v.

Massachusetts Teachers' Retirement System,
Respondent

Appearances:

For Petitioner: James A.W. Shaw, Esq.

For Respondent: Ashley Freeman, Esq.

Administrative Magistrate:

Judi Goldberg

SUMMARY OF DECISION

Petitioner was a member of the Massachusetts Teachers' Retirement System (MTRS) when the school where she worked reduced her hours below half-time for the 2009–2010 school year; the MTRS then excluded her from membership and the school ceased her retirement contributions. The next year, the school increased her hours, MTRS reenrolled her as a member, and the school resumed her contributions. Her removal from membership was an error under *Retirement Board of Stoneham v. Contributory Retirement Appeal Board*, 476 Mass. 130 (2016), the correction of errors rate applies to her service buy-back, and she is entitled to purchase pro-rated service under the then-applicable regulations.

DECISION

Petitioner Deborah Donohoe timely appealed, under G.L. c. 32, § 16(4), the decision of the MTRS that she was not eligible for membership during the 2009–2010 school year because she worked less than half time. When she later sought to purchase creditable service for that school year, the MTRS decided that she would need to pay either actuarial or buyback interest on her purchase and that she could only purchase pro-rated time rather than a full year of service.

The parties agreed to have the appeal decided on their written submissions. 801 CMR 1.01(10)(c).

I now admit into evidence Exhibits 1-9, 11-15 and Addenda A-C.¹

Findings of Fact

Based on the evidence in the record and reasonable inferences drawn from it, I make the following findings of fact:

1. Ms. Deborah Donohoe has been a licensed registered nurse in Massachusetts since 1984. (Ex. 1.)

2. She began working as a substitute teacher in the Tyngsborough Public School District (Tyngsborough) in January 2004 and continued through the end of the 2005–2006 school year. (Exs. 3, 11.)

3. At the start of the 2006–2007 school year, she began working as a school nurse at 70% of full-time hours (FTE) and enrolled as a member of the MTRS, having satisfied the eligibility criteria then in effect. She continued working more than half-time through the 2008–2009 school year. (Exs. 1, 3.)

4. However, during the 2009–2010 school year, Tyngsborough reduced Ms. Donohoe's hours to 40% FTE because of budget cuts. The MTRS unenrolled her from its system and her employer no longer deducted retirement contributions from her pay. (Exs. 1, 3.)

5. The next school year (2010–2011), Ms. Donohoe's hours increased to 50%. She was re-enrolled as a member of MTRS and her employer resumed her retirement contribution payroll deductions. (Ex. 3.)

¹ The parties did not submit an Exhibit 10.

6. Beginning in August 2011, Ms. Donohoe began working full-time and continued to do so until she retired on June 30, 2025. (Exs. 1, 3, 11.)

7. Thus, Ms. Donohoe continuously worked for the Tyngsborough Public School District from 2004 until 2025, although as noted above her hours varied over the years. (Ex. 1.)

8. On October 1, 2021, Ms. Donohoe applied to purchase her 2004–2006 substitute service and her 2009–2010 part-time service. (Ex. 11.)

9. On February 16, 2022, the MTRS issued a single invoice covering both periods at a buyback interest rate of 7%. On March 1, 2025, it reissued an invoice just for the 2009–2010 service with an actuarial interest rate of 7%. (Exs. 12, 13.)²

10. On June 10, 2025, the MTRS denied Ms. Donohoe’s request to treat the 2009–2010 service as membership service, stating that less than half-time service is not eligible for MTRS membership. That notice stated that Ms. Donohoe was eligible to purchase this time pursuant to G.L. c. 32, § 3(5), “which covers service rendered as a public employee of a governmental unit in Massachusetts, even if that service does not meet membership eligibility criteria.” (Ex. 6.)

11. The June 2025 notice also provides that “non-membership service is always prorated to the percentage of FTE% worked.” (*Id.*)

12. Ms. Donohoe timely appealed on June 24, 2025.

² It is unclear why the MTRS included a 7% rate for both the actuarial and buy back interest rates. See G.L. c. 32, § 1 (buyback interest is “one-half of actuarial assumed interest”).

Analysis

This appeal presents three interrelated questions: whether the MTRS erroneously removed Ms. Donohoe from membership for the 2009-2010 school year; what rate of interest, if any, applies to her purchase of that service; and what amount of creditable service she should earn for that year.

As to whether the MTRS properly unenrolled her for the 2009-2010 school year, Chapter 32 governs Massachusetts public retirement systems and explicitly includes the MTRS. G.L. c. 32, § 1. Among the “members” of a public retirement system are “any employee included . . . in the teachers’ retirement system[.]” *Id.* Once a person becomes a member in a retirement system, their status as a member “shall continue as such until . . . death or until . . . prior separation from the service becomes effective by reason of . . . retirement, resignation, failure of re-election or reappointment, removal or discharge from [the] office or position, or by reason of an authorized leave of absence without pay.” *Id.* § 3(1)(a)(i).

Central to this case, the events terminating membership “do not include a member’s subsequent failure to satisfy the eligibility criteria that led to that member’s admission.” *Retirement Bd. of Stoneham v. Contributory Ret. App. Bd.*, 476 Mass. 130, 136 (2016). Thus, a reduction in hours below the admission threshold is not a terminating event under Chapter 32. *Id.* at 136-38. Here, it is uncontested that Ms. Donohoe satisfied the MTRS’s eligibility criteria in 2006 when she enrolled as a 70% FTE school nurse. See 807 CMR 4.02(1)(b) (person is eligible if working “not less than half-time”) (effective Dec. 13, 1996; amended Apr. 15, 2022). It is also uncontested that none of the terminating events – death, separation from service due to retirement, resignation, failure of reappointment, removal, or discharge – occurred in 2009.

Thus, under Section 3(1)(a)(i) and the Supreme Judicial Court's decision in *Stoneham*, Ms. Donohoe's membership continued during the 2009-2010 school year.

The MTRS argues that *Stoneham* does not apply to Ms. Donohoe because although Chapter 32 provides that teachers "shall be included" in the MTRS, Chapter 32 also defines "teacher" as a person employed "not less than half-time." G.L. c. 32, § 1. Therefore, the MTRS posits, a teacher who falls below half-time ceases to be eligible for membership. This argument fails. The definition of "teacher" in Chapter 32 is a prerequisite to admission, not a condition of continued membership. *Id.* § 3(2)(iv). As noted above, later failure to meet an admission criterion does not end membership unless or until one of the terminating events occurs. *Retirement Bd. of Stoneham*, 476 Mass. at 136. In fact, the MTRS directly addressed *Stoneham* in its 2022 amendment to its supplemental eligibility regulation, deeming eligible "[a]ny member in service of the MTRS whose employment status becomes less than half-time without an intervening separation from service[.]" 807 CMR 4.02(2)(c) (providing example of eligible member as "a full-time teacher whose position in the same district is reduced to 40%").³ Thus, the MTRS erroneously excluded Ms. Donohoe from membership for the 2009-2010 school year.

Having found that the MTRS erroneously excluded Ms. Donohoe from membership during the 2009-2010 school year, the next issue involves the applicable rate of interest, if any, that applies to her purchase of the erroneously excluded service. In a 2018 Memorandum, the Public

³ To the extent the MTRS relies on *Hamilton v. Massachusetts Teachers' Retirement Board*, CR-01-711 (Div. Admin. L. App. May 3, 2002), *aff'd*, (Contributory Ret. App. Bd. Oct. 21, 2002), that decision predates *Stoneham* and applies the reading of Section 1 that *Stoneham* expressly rejects.

Employee Retirement Administration Commission (PERAC) reviewed the serpentine history of the application of interest for employees like Ms. Donohoe who have been erroneously excluded from service. It concluded that “since these members have been excluded by an error, . . . the ‘correction of errors’ interest rate [should] attach to the payments of those erroneously excluded.” Memorandum from PERAC 14 (Mar. 5, 2018).

The Contributory Retirement Appeals Board (CRAB) has deferred to PERAC on this issue. *Wright v. State Bd. of Ret.*, CR-16-068, 2022 WL 22989077, at *5 (Contributory Ret. App. Bd. Oct. 18, 2022). Specifically, CRAB observed in *Wright* that “[g]iven the silence of G.L. c. 32 on the matter of interest for wrongfully excluded members and PERAC’s regulatory role in filling in statutory gaps, it logically flows that absent any authority to the contrary, PERAC’s guidance is reasonable and due deference.” *Id.*; *Lapalme v. Worcester Reg. Ret. Bd.*, CR-19-0461, 2023 WL 6806269 (Div. Admin. L. App. Oct. 6, 2023) (“CRAB has adopted PERAC’s position, holding that the correction of errors interest rate, rather than buyback interest, applies to a wrongfully excluded member’s purchase of creditable service.”). As the Division of Administrative Law Appeals (DALA) is bound by CRAB decisions,⁴ the correction of errors interest rate applies to Ms. Donohoe’s service buyback.

Ms. Donohoe argues that she should not pay any interest on her purchase of creditable service, citing *Weiss v. Massachusetts Teachers’ Retirement System*, CR-21-0341, 2025 WL 957992 (Div. Admin. L. App. 2025). However, *Weiss* involved an employer’s failure to withhold pension contributions, which was a mistake that required correction pursuant to a statutory

⁴ See *Fahey v. Boston Ret. Bd.*, CR-15-630 (Div. Admin. Law App., Nov. 2, 2016) (“DALA is bound by CRAB precedent until it is reversed by CRAB itself or the Court.”).

provision that does not authorize a retirement system to charge interest. See G.L. c. 32, § 20(5)(c)(2). Here, CRAB has adopted PERAC's guidance after noting that PERAC has the "regulatory role in filling in statutory gaps" for Chapter 32, *Wright, supra*, at *5, which distinguishes this case from *Weiss*.

Having determined that Ms. Donohoe was erroneously excluded from membership for school year 2009-2010 and that she should pay the correction of errors interest rate to purchase her service, the final question is how much creditable service she is entitled to purchase. Ms. Donohoe asserts that she is entitled to receive a full year of creditable service even though she worked 40% FTE; the MTRS's notice indicates its intent to prorate her time.

Looking to the regulation in effect for the 2009-2010 school year,⁵ "[a]ny part-time employee who qualifies for membership[] shall receive one (1) year of creditable service provided they work the hours required by their position and provided their entire service is on a part-time position." 807 CMR 3.04(1) (effective May 24, 2001; amended July 9, 2010). And part-time employees who later became full-time employees "shall receive credit for their part-time service on a pro-rated basis as it relates to a full-time position." *Id.* 3.04(2). Applying these standards to Ms. Donohoe's situation results in the conclusion that she is entitled to purchase pro-rated credit for her part-time service during the 2009-2010 school year; her entire service was not part-time and she later became a full-time employee.

⁵ *Stoneham, supra*, at 652 (using membership eligibility criteria for part-time employees in effect during the time in question).

Conclusion and Order

The decision of the MTRS is affirmed insofar as it requires Ms. Donohoe to purchase her service for the 2009–2010 school year and for its determination that Ms. Donohoe is entitled to purchase pro-rated credit for her part-time service for the 2009-2010 school year. The decision of the MTRS is reversed regarding its application of the actuarial or buy back interest rates and must apply its correction of errors interest rate for the purchase of creditable service for the 2009-2010 school year.

Dated: July 17, 2026

/s/ Judi Goldberg
Judi Goldberg
Administrative Magistrate
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