

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Paula Fallon, Edith Goethals,
Kimberly Vanaman, and Elizabeth Whittum,**
Petitioners

v.

Docket Nos.: CR-22-0200; CR-22-0248;
CR-22-0180; CR-22-0211

Newton Retirement System,
Respondent

Dated: June 13, 2025

Appearance for Petitioner:

Jesse R. Gibbings, Esq.

Appearance for Respondent:

Jaclyn R. Zawada, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

The Petitioners contest the Newton Retirement System's calculation of their creditable service. The Petitioners worked for the Newton Public Schools as teacher aides at different schools and grade levels. Based on its erroneous interpretation of its supplemental creditable service regulation, the retirement system incorrectly determined that the petitioners worked exclusively part-time during their membership. Under a correct understanding of the regulation, two of the petitioners worked exclusively full-time and the other two worked both part-time and full-time. All are entitled to a recalculation of their creditable service.

DECISION

Petitioners Paula Fallon, Edith Goethals, Kimberly Vanaman, and Elizabeth Whittum appeal Respondent Newton Retirement System's (the Board) calculations of their creditable service. Their four appeals were consolidated on April 28, 2023.

I held a hearing via WebEx videoconference on October 22, 2024 and November 6, 2024. The Board called two witnesses to testify: Kelly Byrne, the former director of the Board, and Scentia Saintcyr, the current deputy director of the Board. The Petitioners testified on their own behalf and called one additional witness, Christine Walsh, the treasurer of the Newton Teachers Association. I entered 33 of the Petitioners' exhibits and 8 of the Respondent's exhibits into evidence. (Exhibits P 1-33, R 1-8.) The parties filed post-hearing closing arguments. The administrative record closed on January 10, 2025.

FINDINGS OF FACT

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

1. The Petitioners, Paula Fallon, Edith Goethals, Kimberly Vanaman, and Elizabeth Whittum, worked as teacher aides in the Newton Public School System (NPS) and were members of Unit C of the Newton Teachers Association. (Exs. P 3, P 7, P 11, P 15, P 32; Walsh Testimony.)
2. Before each school year, each Petitioner was provided a work assignment that included which school she would be working at and the number of hours she was expected to work. The assignments were based upon the needs of the students and of the district. The number of hours required for each assignment was generally determined by grade level (e.g., elementary, middle, or high school); the nature of the position (e.g., teaching assistant, special education aide, behavior therapist); and/or an individual student's individual education plan (IEP). Each Petitioner was assigned to a particular

class or a specific student or students. (Ex. P 18; Walsh Testimony; Vanaman Testimony; Goethals Testimony; Fallon Testimony.)

3. The Unit C Collective Bargaining Agreement, which governed the Petitioners' and other aides' work, divided teacher aides into four categories. Assignment to the four categories was determined by the aides' assignments and the hours that students attend school in each building. Each grade level required a different number of full-time hours: at the elementary school, aides were required to work up to 30 hours; at the middle school, up to 32 hours; at the high school, up to 35 hours; and there were a minority of positions that required 40 hours, depending on the needs of certain students. (Exs. P 18, P 32; Walsh Testimony.)

4. Most of the salary schedules in evidence reflect pay for aides who worked 30, 32, 35, and 40 hours per week. The salary schedules for 2020-2021 and 2021-2022, however, list different pay for aides working 30, 30.83, 32, 33.85, 35, and 40 hours. (Exs. P 21, P 32.)

5. In 2015, the required number of hours for teacher aides at the elementary school was adjusted from 30 hours per week to 30.83 hours per week to account for 10 minutes of prep time each day that the union bargained for. (Ex. P 19; Walsh Testimony.)

6. Christine Walsh, treasurer of the Newton Teachers Association, estimated that there were approximately 600 teacher aides employed by the NPS in 2022. Only 32 aides, or approximately 5% of all aides, worked a 40 hour per week schedule. (Walsh Testimony.)

7. In addition to the hours worked, the salary schedules assigned a full-time equivalent (FTE) designation to each of Petitioners' assignments each year. (Exs. P 3, P 7, P 11, P 15.)

8. Before 2022, it had been NPS's practice to assign a "1.0 FTE to all full-time Unit C positions . . . working 30, 30.83, 32, 35, or 40 hours per week." In March 2022, the NPS and the Newton Teachers Association agreed to base FTE designations on a 40-hour week. However, this change was only for "ease of accounting and payroll purposes." The parties agree that the change in FTE designation did not mean a change to any aides' status as full-time or part-time. (Walsh Testimony; Ex. 20.)

9. There was significant fluctuation in the FTE designations throughout the Petitioners' careers. Their FTEs ranged from 0.4666 FTE to 1.0 FTE. Sometimes, their FTE designations changed while their hours remained the same. NPS concedes that a less than 1.0 FTE does not mean the member did not work full time. Because of these factors, I conclude that the FTE designations are not helpful, and are actually distracting, in determining whether the Petitioners worked part-time or full-time as those terms are used in the Board's 2010 creditable service regulation. (Exs. P 4, P 8, P 12, P 16; Walsh Testimony.)

Board calculation of Petitioners' pro-rated creditable service

10. The Board's first written regulation bearing on creditable service was adopted in 1987. It then adopted the 2010 Supplementary Regulation, which was approved by PERAC on May 13, 2010. (Exs. P 32, R 1; Byrne Testimony.)

11. The 2010 Supplementary Regulation provides:

A member whose entire membership service is in a full-time position shall receive one year of creditable service for each year worked provided the member works the number of hours required by the position held.

A member shall be considered part-time if he regularly works fewer than *the number of hours required by the position held* and regularly works at least 20 hours per week.

A member whose entire membership service is part-time shall receive one year of creditable service for each year worked provided that the hours of part-time service have not fluctuated during his membership service.

A member whose membership service fluctuates between part-time and full-time shall be granted creditable service equal to 12 months for each year of full-time employment and a pro-rated period of years or fractions thereof equal to the percentage that his part-time hours worked bears to his full-time hours worked, multiplied by the number of part-time years of membership.

A member whose membership service consists of *fluctuating part-time hours* shall have his creditable service pro-rated as it bears to the average hours worked during the three highest consecutive years with the greatest number of hours worked.

(Ex. R 2.) (Emphasis added.)

12. To generate creditable service estimates, Board staff reviewed the members' retirement contributions for any changes in employment pattern, leave of absence, or other reasons resulting in increased or decreased hours. Staff also reviewed numerous other records including payroll, pay history, pay scales, and the annual assignment letters from NPS. Staff did not refer to the FTE designations discussed, *supra*. (Byrne Testimony; Saintcyr Testimony.)

13. Under the 2010 Supplementary Regulation specifically, Board staff also consulted numerous records including the members' annuity savings cards, which reflect line-by-line contributions and interest in their accounts, as well as check histories and other payroll records, position histories including assignments, and collective bargaining

agreements including pay scales. Staff reviewed all documents to determine year by year the number of hours per week each member worked. (Byrne Testimony; Saintcyr Testimony.)

14. The Board determined that none of the Petitioners worked full-time during any school year because it determined that “the number of hours required by the position held” was 40 hours per week and none of the Petitioners worked 40 hours per week in any school year. This conclusion was based on the fact that some aides—not the Petitioners—were required to work 40 hours per week. Following this logic, working less than 40 hours per week is working less than “the number of hours required by the position held.” Therefore, the Board concluded, the Petitioners worked part-time their entire careers. (Saintcyr Testimony; Byrne Testimony.)

15. After reviewing the records described, *supra*, the Board calculated the four Petitioners’ years of creditable service under the 2010 Supplementary Regulation as though they worked “fluctuating part time hours” only. (Ex. R 1; Saintcyr Testimony; Byrne Testimony.)

Paula Fallon

16. Ms. Fallon was hired as a special education aide by NPS on or about September 1, 2001. She worked at Oak Middle School for the entirety of her career at NPS. During her first year, she worked with a student one on one, and in the following years she worked in various classrooms in a variety of subjects. She also attended small group learning sessions, academic strategies classes, and classes such as music and health. (Ex. P 2; Fallon Testimony.)

17. For the 2001 to 2002 school year, Ms. Fallon worked 35 hours per week.
(Ex. P 3.)
18. For the 2002 to 2003 school year, Ms. Fallon worked 32 hours per week.
(Ex. P 3.)
19. For the 2003 to 2004 school year, Ms. Fallon worked 35 hours per week.
(Ex. P 3.)
20. Ms. Fallon worked 32 hours per week each school year from the 2004 to 2005 school year through the 2018 to 2019 school year. (Ex. P 3.)
21. Ms. Fallon worked 32 hours per week from September 2019 until December 2019. Starting in December 2019 and continuing until the end of the school year in June 2020, Ms. Fallon worked 35 hours per week. Her hours changed mid-year because the school allotted time for her to do prep work because her blocks during the school day were already full. (Ex. P 3; Fallon Testimony.)
22. Ms. Fallon continued to work 35 hours per week for the 2020 to 2021 and 2021 to 2022 school years. (Ex. P 3.)
23. On May 10, 2022, the Board notified Ms. Fallon that her creditable service was being pro-rated and that she had 21 years and 5 months of creditable service. (Ex. P 3.)
24. On May 16, 2022, Ms. Fallon timely appealed the Board's decision. (Ex. P 23.)
25. Ms. Fallon retired on June 30, 2022. (Exs. P 1, R 3A, R 3B.)

Kimberly Vanaman

26. Ms. Vanaman started at NPS as a special education aide at the Memorial Spaulding Elementary School. She became a member of the retirement system on or about December 4, 2000. (Ex. R 3E; Vanaman Testimony.)

27. Ms. Vanaman worked 32 hours per week from December 2000 to June 2001 and for the 2001 to 2002 school year. (Ex. P 11.)

28. Ms. Vanaman worked 30 hours per week from the 2002 to 2003 school year through the 2006 to 2007 school year. (Ex. P 11.)

29. Starting with the 2007 to 2008 school year, until her retirement in 2022, Ms. Vanaman was trained, and worked as, a behavioral therapist, which is a type of special education aide. During this period, she worked at the Memorial-Spaulding Elementary School with students who had severe behavioral challenges. (Ex. P 11; Vanaman Testimony.)

30. Ms. Vanaman worked 35 hours per week for the 2007 to 2008 and 2008 to 2009 school years. (Ex. P 11.)

31. Ms. Vanaman worked 40 hours per week for the 2009 to 2010 school year because she was working with a student who needed additional support outside of school hours. (Ex. P 11; Vanaman Testimony.)

32. Ms. Vanaman worked 32 hours per week for the 2010 to 2011 and 2011 to 2012 school years. (Ex. P 11.)

33. Ms. Vanaman worked 35 hours per week for most of the 2012 to 2013 school year. She was originally scheduled for 32 hours per week; however, in October 2012, her assignment was changed to 35 hours per week. (Ex. P 11.)

34. Ms. Vanaman again worked 35 hours per week for most of the 2013 to 2014 school year. She was originally scheduled for 32 hours per week; however, in October 2013, her assignment was changed to 35 hours per week. In March 2014, her assignment changed again to 32 hours per week. (Ex. P 11.)

35. Ms. Vanaman worked 33 hours per week for most of the 2014 to 2015 school years. She was originally scheduled for 32 hours per week; however, in November 2014, her schedule changed to 33 hours per week. (Ex. P 11.)

36. Ms. Vanaman worked 33.83 hours per week for the 2015 to 2016 and 2016 to 2017 school years. (Ex. P 11.)

37. Ms. Vanaman worked 32.83 hours per week for the 2017 to 2018, 2018 to 2019, and 2019 to 2020 school years. (Ex. P 11.)

38. Ms. Vanaman worked 33.85 hours per week from October 2020 to January 2021. In January 2021, she started a new assignment and for the rest of the school year worked 34.50 hours per week. (Ex. P 11; Vanaman Testimony.)

39. Ms. Vanaman worked 34.50 hours per week for the 2021 to 2022 school year. (Ex. P 11.)

40. On May 2, 2022, the Board informed Ms. Vanaman that her creditable service was being pro-rated and that she had accrued 20 years and 3 months of creditable service. (Ex. P 26.)

41. On May 6, 2022, Ms. Vanaman timely appealed the Board's decision. (Ex. P 27.)

42. Ms. Vanaman retired on June 30, 2022. (Ex. P 9.)

Edith Goethals

43. Ms. Goethals first worked for the NPS in October 1999 as a part-time reading aide. She left the position after approximately one year. (Ex. P 7.)

44. Ms. Goethals then worked as a teacher aide at a middle school in Wellesley for one year. (Goethals Testimony.)

45. Ms. Goethals returned to NPS in the Fall of 2002 as a kindergarten aide at Countryside Elementary School. She worked 15 hours per week for the 2002 to 2003 school year. (Ex. P 7; Goethals Testimony.)

46. For the 2003 to 2004 school year, Ms. Goethals changed positions from kindergarten aide to special education aide and continued to work at Countryside Elementary School in that role through the 2018 to 2019 school year. (Ex. P 7; Goethals Testimony.)

47. Ms. Goethals worked 30 hours per week for the 2003 to 2004 school year, year. (Ex. P 7.)

48. Since she was working full-time, Ms. Goethals became a retirement system member on or about September 1, 2003. On her enrollment form, she was identified as a full-time employee. (Exs. P 6, P 7; Goethals Testimony.)

49. Ms. Goethals worked 18 hours per week for the 2004 to 2005 school year. (Ex. P 7.)

50. Ms. Goethals worked 26 hours per week for the 2005 to 2006 school year. (Ex. P 7.)

51. Ms. Goethals worked 24 hours per week for the 2006 to 2007, 2007 to 2008, and 2008 to 2009 school years. (Ex. P 7.)

52. Ms. Goethals worked 26 hours per week for the 2009 to 2010 school year.
(Ex. P 7.)

53. Ms. Goethals worked 25 hours per week for the 2010 to 2011 and 2011 to 2012 school years. (Ex. P 7.)

54. Ms. Goethals worked 30 hours per week for the 2012 to 2013, 2013 to 2014, and 2014 to 2015 school years. (Ex. P 7.)

55. Ms. Goethals worked 30.83 hours per week for the 2015 to 2016 school year. (Ex. P 7.)

56. Ms. Goethals worked 25.83 hours per week for the 2016 to 2017 and 2017 to 2018 school years. (Ex. P 7.)

57. Ms. Goethals worked 30.83 hours per week for the 2018 to 2019 school year. (Ex. P 7.)

58. Ms. Goethals worked 33.85 hours per week for the 2019 to 2020, 2020 to 2021, and 2021 to 2022 school years. During these years, she worked as a kindergarten aide again. (Ex. P 7; Goethals Testimony.)

59. On June 10, 2022, the Board informed Ms. Goethals that her creditable service was being pro-rated and that she had accrued 15 years and 11 months of creditable service. (Exs. P 24, R 3C.)

60. On June 17, 2022, Ms. Goethals timely appealed the Board's decision.
(Ex. P 25.)

61. Ms. Goethals retired on June 30, 2022. (Ex. P 5.)

Elizabeth Whittum

62. In January 2003, Ms. Whittum was hired by NPS as a literacy aide for Mason-Rice Elementary School. As a literacy aide, Ms. Whittum was assigned to different classrooms and worked with students during their reading periods. (Whittum Testimony.)

63. From January 2003 to May 2003, Ms. Whittum worked 16 hours per week. (Ex. P 15.)

64. From May 2003 to June 2003, Ms. Whittum worked at Underwood Elementary School for 22 hours per week. (Ex. P 15.)

65. Ms. Whittum worked at the Mason-Rice Elementary School from the 2003 to 2004 school year through October 2012. (Ex. P 15.)

66. From the 2003 to 2004 school year through the 2006 to 2007 school year, Ms. Whittum worked 15 hours per week. (Ex. P 15.)

67. For the 2007 to 2008 school year Ms. Whittum worked 16.35 hours per week. (Ex. P 15.)

68. For the 2008 to 2009 school year, Ms. Whittum worked 14 hours per week. (Ex. P 15.)

69. For the 2009 to 2010 school year, Ms. Whittum worked as a special education aide for 20 hours per week and as a building aide for 6 hours per week. As a special education aide Ms. Whittum worked with one student, and as a building aide she helped students as needed around the school. (Whittum Testimony.)

70. Ms. Whittum explained that she began working more than twenty hours per week to get insurance benefits. (Whittum Testimony.)

71. Effective September 1, 2009, once she was assigned to a year-long position working 20 hours per week, Ms. Whittum became a member of the retirement system. Payroll/Personnel Department staff indicated on Ms. Whittum's application that she was a "permanent" and "part-time" employee. (Exs. P 14, R 3G, R 3H.)

72. For the 2010 to 2011 school year, Ms. Whittum worked 25 hours per week solely as a special education aide. (Ex. P 15.)

73. Ms. Whittum worked 30 hours per week for the 2011 to 2012 school year. She continued to work 30 hours per week for the 2012 to 2013 school year; the 2013 to 2014 school year;¹ and the 2014 to 2015 school year. She worked with the same student from 2013 until 2016. (Ex. P 15.)

74. Ms. Whittum worked 30.83 hours per week for the 2015 to 2016 school year; 2016 to 2017 school year; 2017 to 2018 school year; and the 2018 to 2019 school year. (Ex. P 15.)

75. In the 2019 to 2020 school year, Ms. Whittum worked at the F.A. Day Middle School because a student she had been assigned to switched schools. She worked 32 hours per week that year. (Ex. P 15.)

76. Ms. Whittum returned to the Mason-Rice Elementary School for the 2020 to 2021 school year and continued to work there for the 2021 to 2022 school year. She worked 32.34 hours per week both school years. (Ex. P 15.)

¹ Ms. Whittum worked for 25 hours per week as a special education aide and 5 hours per week as a building aide for this school year. She worked only 25 hours as a special education aide because she was assigned to a kindergarten student. (Whittum Testimony.)

77. On May 19, 2022, the Board informed Ms. Whittum that her creditable service was being pro-rated and determined that she had accrued 12 years and 3 months of creditable service. (Ex. P 28.)

78. On May 23, 2022, Ms. Whittum timely appealed. (Ex. P 29.)

79. Ms. Whittum retired on June 30, 2022. (Ex. P 13.)

CONCLUSION AND ORDER

When retirement system members retire from public service, they may be entitled to a superannuation retirement allowance that is based in part on their years of creditable service. G.L. c. 32, § 5(2)(a). The Petitioners challenge the Board's calculation of their creditable service. The Board's calculation is considerably lower than the Petitioners' because the Board has pro-rated the Petitioners' years of service, while the Petitioners maintain that they are entitled to full service credit during those same years.

G.L. c. 32, § 5(3)(c) provides that a retirement board may adopt appropriate rules and regulations to calculate creditable service for members who render part-time, provisional, temporary, temporary provisional, seasonal or intermittent service. *Abele v. Newton Ret. Bd.*, CR-08-495 (Div. Admin. Law. App. Oct. 16, 2009). The Board's 2010 regulation requires the Board to determine whether the teacher aides were full-time or part-time based on the number of hours required by the positions they held. If the member works part-time at any point, then there are three options for pro-rating the part-time service. If the member works the same exact part-time hours during all of her membership service, she will receive a full service credit for each year. If the member works some part-time and some full-time, the part-time service is pro-rated against the full-time hours. Finally, if the member works all part-time hours but those hours

fluctuate, then the service is pro-rated against the average hours worked during the three consecutive years with the greatest number of hours worked.

The Petitioners argue that the Board miscalculated their years of creditable service by treating them as if they worked only fluctuating part-time hours. The Petitioners insist that, for at least some of those years, they worked full-time because they worked the number of hours required by their positions. They additionally argue that interpreting the regulation to require them to work 40 hours per week to be considered full-time is incorrect. They base their argument on the fact that no school in Newton has a 40-hour school week, only about 5% of the approximately 600 teacher aides work 40 hours per week because of additional required hours outside the school day, and the language of the regulation does not define a 40-hour work week as full-time employment.

The Board argues that the Petitioners never worked full-time in any of their years of employment, and therefore their service must be calculated as if it consisted of “fluctuating part-time hours” only. The Board pro-rated the Petitioners’ creditable service because it considered 40 hours per week to be full time for teacher aides and none of the Petitioners worked 40 hours per week. The Board chose 40 hours as the full-time figure because some teacher aides were required to work 40 hours per week.

The creditable service regulation does not explicitly define how many hours is “full-time.” Instead, it provides that an employee is full-time if she “works the number of hours required by the position held.” Members are part-time if they work “fewer than the number of hours required by the position held” but at least 20 hours per week. To make the determination of full-time or part-time, then, it is necessary to understand what the regulation means by “the number of hours required by the position held.”

The Board interprets the “position” as “teacher aide,” regardless of any of the actual requirements of any particular teacher aide’s position. The Board compares teacher aides to other city employees, for instance those in administrative roles who are considered full-time at 37.5 hours per week and police officers considered full-time at 40 hours per week. For the reasons explained below, this one-size-fits-all approach makes little sense for teacher aides.

The Petitioners’ approach, on the other hand, takes account of more of the circumstances surrounding each teacher aide’s annual assignment. It takes into account each of the teacher aides’ schedules, not just one theoretical teacher aide schedule that the vast majority of them are not required to work. Teacher aides in Newton are assigned a fairly large variety of schedules based on, among other things, their specific school assignment, the grade(s) they support, specific students they support, and the nature of the work they are assigned each year. The Petitioners worked varying assigned hours throughout their careers because, as teacher aides, they technically received a new assignment each school year.

Under the collective bargaining agreement, there were four categories of teacher aides and each required different base hours: at the elementary schools, aides were required to work 30² hours per week; at the middle school, aides were required to work 32 hours per week; at the high school, aides were required to work 35 hours per week; and there were a few positions that required 40 hours per week because those aides had duties after the regular school day was complete. There was some minor variation from

² In 2015, the number of hours was adjusted to 30.83 hours per week to account for an additional 10 minutes of prep time each day.

these basic figures. For instance, the CBA salary schedule for 2019-2020 lists full-time hours as: 30, 32, 30.83, 32, 33.85, 35, 35, and 40. The 2020-2021 full-time hours were: 30, 32, 32.34, 33.51, 33.85, 35, 36.51, and 40.

The Board has provided no plausible reason to arbitrarily use 40 hours per week as the full-time standard for school aides when so few school aides work that schedule and the aides who worked the accepted full-time schedules listed in the CBA worked all of the hours required of the positions that they held year to year. With so many work schedules considered full-time by everyone involved except the retirement board, it is a more reasonable construction of the regulation to interpret “position” to mean each position held by each aide, so long as the aide works one of the full-time schedules listed in the CBA.³

Ms. Fallon and Ms. Vanaman worked full-time during their entire membership. Ms. Fallon worked at a middle school and therefore was required to work at least 32 hours per week, which she did her entire career. Ms. Vanaman worked at an elementary school and worked the required minimum of 30 hours per week her entire career. Ms. Fallon and Ms. Vanaman are therefore entitled to receive one year of creditable service for each year they worked because each year they worked the number of hours required by the positions they held.

Ms. Goethals and Ms. Whittum worked both part-time and full-time during their membership. Ms. Goethals was assigned to an elementary school and worked the required minimum of 30 hours per week in the 2003-2004, 2012-2013, 2013-2014, 2014-

³ It is not necessary for me to decide in the abstract if there is any minimum number of hours that qualifies as full-time. My decision is based solely on the regulation’s language and the record evidence.

2015, 2015-2016, 2018-2019, 2019-2020, 2020-2021, and 2021-2022 school years. Ms. Whittum also worked at an elementary school; she worked at least 30 hours per week from the 2012-2013 school year, until her retirement at the conclusion of the 2021-2022 school year. The remainder of the years Ms. Goethals and Ms. Whittum worked were part-time. This means that their service fluctuated between part-time and full-time. Therefore, Ms. Goethals's and Ms. Whittum's service must be re-calculated so they receive a full year of service credit for the years they worked full-time and pro-rated service credit based on 30 hours as full-time for the part-time years.

For the above-stated reasons, I find that the Boards' calculations of the Petitioners' creditable service were erroneous. The Board shall recalculate the petitioners' creditable service consistent with this decision.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: June 13, 2025