**COMMONWEALTH OF MASSACHUSETTS**

|  |  |
| --- | --- |
| Suffolk, ss. | **Division of Administrative Law Appeals** |
| **Carol Farricker,** Petitioner v.**Teachers’ Retirement System,** Respondent | Docket No. CR-16-492 |

|  |
| --- |
| **Appearance for Petitioner**:Matthew D. Jones, Esq.Massachusetts Teachers Association2 Heritage Drive, 8th FloorQuincy, Massachusetts 02171 |
| **Appearance for Respondent** |

Cristina I. Keefe, Esq.

Massachusetts Teachers’ Retirement System

500 Rutherford Ave., Suite 210

Charlestown, MA 02129

**Administrative Magistrate**:

Bonney Cashin

**Summary of Decision**

The Massachusetts Teachers’ Retirement System properly denied the Petitioner’s request to purchase creditable service for her out-of-state employment in the Providence, Rhode Island Public School System, because she was not a “teacher” as defined in G.L. c. 32, § 1.

**DECISION**

On October 5, 2016, the Massachusetts Teachers’ Retirement System (“MTRS”) denied the purchase of out-of-state service for Carol Farricker’s work as a substitute teacher in the Providence, Rhode Island Public School System in the 1976-1977 and 1977-1978 school years. Ms. Farricker filed a timely claim for an adjudicatory hearing.

 I held a hearing on November 15, 2017 at the office of the Division of Administrative Law Appeals, located at One Congress Street in Boston, Massachusetts. I admitted into evidence five documents that the parties filed with their joint pre-hearing memorandum on June 30, 2017. I also admitted into evidence two documents filed by the Respondent on November 9, 2017. The exhibits are numbered 1-7. (Exs. 1-7).[[1]](#footnote-1) I digitally recorded the hearing. Ms. Carol Farricker testified on her own behalf. The parties filed their post-hearing briefs on December 12, 2017, and the record closed.

**FINDINGS OF FACT**

Based on the testimony provided and other evidence in the record, I find the following:

1. The Petitioner, Carol Farricker, has been employed as a teacher at Wachusett Regional School District from September 1996 to the present day. (Farricker Testimony).

2. Ms. Farricker, at all times material to this appeal, has been a member in service of the Respondent, MTRS.

3. Ms. Farricker graduated from the Rhode Island School of Design in 1976 with a Bachelor of Fine Arts in Art Education. She received a Master’s Degree in Art and Special Education from Rhode Island College in 1980. In 2004, she received a Certificate of Advanced Graduate Study in Supervisor/Director of the Fine Arts. Ms. Farricker holds Massachusetts Department of Elementary and Secondary Education art teacher certifications for kindergarten through 8th grade and 9th through 12th grade. During the time in question, Ms. Farricker held the equivalent certification in Rhode Island. (Farricker Testimony).

4. Ms. Farricker was employed as a substitute art teacher on a per-diem basis by the Providence, Rhode Island Public School System. During the school years 1976-1977, 1977-1978, and 1978-1979, the Providence Public School System had a contracted 181-day school year. (Ex. 4).

5. Ms. Farricker worked as a substitute art teacher in the Providence Public School System for 68 days from October 14, 1976 to June 21, 1977, for 81 days from September 27, 1977 to June 16, 1978, and for 127 days from September 6, 1978 to June 15, 1979. (Ex. 4).

6. From October 14, 1976 to June 21, 1977 and from September 27, 1977 to June 16, 1978, Ms. Farricker did not know when, where, or if she would be substitute teaching on a particular day until she received a call from the Providence Public School System giving her an assignment. She had a long-term assignment for part of the 1978-1979 school year. (Exs. 6, 7; Farricker Testimony).

7. On or about April 1, 2013, Ms. Farricker applied to purchase service for her work as a substitute teacher in the Providence Public School System, under the provisions of G.L. c. 32, § 3(4). (Ex. 3).

8. By letter dated October 5, 2016, the Respondent denied the application for Ms. Farricker’s work for the school years 1976-1977 and 1977-1978. (Ex. 2). The MTRS allowed the purchase of service for the 1978-1979 school year. (Ex. 5).

9. By letter dated October 23, 2017, the Petitioner timely appealed the Respondent’s decision. (Ex. 2).

**DISCUSSION AND CONCLUSION**

The decision of the MTRS is affirmed. Ms. Farricker may not purchase credit for her out-of-state teaching in the Providence Public School System because she was not a “teacher” as defined in G.L. c. 32, § 1.

The purchase of out-of-state service is governed by G.L. c. 32, § 3(4), which provides in pertinent part:

Any member in service…of the teachers’ retirement system…who is employed in a teaching position…in a school or college…who had rendered service in *any other state* *for any previous period as a teacher*…in the public day schools or other day school under exclusive public control and supervision… may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system…an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period…had such service been rendered in a public school of the commonwealth and had he been a member of the teachers’ retirement system during the period the service was rendered.

(Emphasis added).

G.L. c. 32, § 1 defines a teacher as “any person who is employed by one or more school committees or boards of trustees or by any combination of such committees and boards on a basis of *not less than half-time service* as a teacher…in any public school as defined in this section.” (Emphasis added).

 The Petitioner argues that the definition of “teacher” in G.L. c. 32, § 1 cannot be co-extensive with the language “teacher” and “in any other state” in G.L. c. 32, § 3(4). The Petitioner further challenges the application of the definition of “teacher” in G.L. c. 32, § 1 to G.L. c. 32, § 3(4) on the grounds that MTRS’s interpretation of “not less than half-time service,” which requires that at least 90 days be worked out of a 180 day school year, is incorrect.

For this understanding of the relationship between G.L. c. 32, § 3(4) and G.L. c. 32, § 1, the Petitioner relies upon *Mackay*, where the court held that a school social worker, whose position had been added to the G.L. c. 32, § 1 definition of a “teacher” in 1990, could purchase out-of-state service for work as a school social worker in periods prior to 1990 when, in Massachusetts, social workers were not yet “teachers” for retirement purposes. *Mackay v. Contributory Ret. App. Bd.,* 56 Mass. App. Ct. 924 (2002).

 The Petitioner correctly cites *Mackay* but misinterprets its holding. “The definition of teacher for purposes of § 3(4), and all other provisions of c. 32, is found in G.L. c. 32, § 1.” *Id.* at 925; s*ee Cope v. Massachusetts Teachers Ret. Sys.*, CR-08-206, Decision (Div. Admin. Law Appeals, Aug. 12, 2009); s*ee also McDonald v. Massachusetts Teachers Ret. Sys.*,CR-08-249, Decision (Div. Admin. Law Appeals, Jul. 19, 2013). The difficulty faced in *Mackay* was that at the time that the service was rendered, the § 1 definition did not include “social worker,” but at the time of the member’s application to purchase the service, it did. The question to resolve was whether the definition as it existed at the time the service was rendered, or at the time of the application, should govern. There was never any question in *Mackay* that the c. 32, § 1 definition applied to the purchase of out-of-state service.[[2]](#footnote-2)

 In this instance, there is no such ambiguity as in *Mackay.* At the time of Ms. Farricker’s out-of-state service in the late 1970s, and at the time of her application in 2013, the definition of “teacher” encompassed Ms. Farricker’s work as an art teacher. G.L. c. 32, § 1.

While *Mackay* establishes that the definition of “teacher” in G.L. c. 32, § 1 applies to G.L. c. 32, § 3(4), the term “not less than half time service” in c. 32, § 1 needs further clarification. The Petitioner argues that she was wrongly denied benefits because c. 32, § 3(4) is not limited to a particular service threshold, but refers to service in another state for “any previous period.” The Petitioner also argues that the MTRS incorrectly applies the definition of teacher to c. 32, § 3(4) and is overreaching its authority by inserting a 90-day threshold in place of the phrase “not less than half time service.” I find these arguments unpersuasive.

G.L. c. 69, § 1G states that, “the [school] board shall establish the minimum length for a school day and the minimum number of days in the school year,” and 603 CMR 27.03(3) states, “[e]very school committee shall operate the schools within its district at least 180 school days in a school year.” Neither G.L. c. 32, § 1, G.L. c. 32, § 3(4), nor MTRS’s regulations specifically state that a 90-day minimum threshold is equivalent to “not less than half-time service.”

In *Weston*, the court warned that the statute must be interpreted “so as not to produce an illogical result.” 76 Mass. App. Ct. at 480. For MTRS to read into the statute that “not less than half time service” is equivalent to at least 90 days, because teachers in Massachusetts have a contracted 180-day school year, does not produce an illogical result. “Where the language [of a statute] is clear and unambiguous, it is to be given its ‘ordinary meaning.’” *Commonwealth v.Mogelinski*, 466 Mass. 627, 633 (2013). The plain meaning of a statute must be reasonable and supported by the purpose and history of the statute.” *Id*., quoting *Wright v. Collector & Treas. of Arlington*, 422 Mass. 455, 457-458 (1996). The term “not less than half time service” is both clear and unambiguous. That MTRS interprets it by providing a quantitative number to give meaning to a descriptive term is straightforward and reasonable under the circumstances.

Interpreting the descriptive term “not less than half time service” by assigning it a quantitative value is not new. In *Squeglia*, the Petitioner wanted to purchase her out-of-state creditable service for her part-time employment as a “Learning Disability Tutor,” where for three years she worked 73%, 68%, and 61% of a full-time school schedule. *Squeglia v. Contributory Ret. Appeals Bd.,* No. CIV. A. 00-2416, 2001 WL 499376, at \*3 (Mass. Super. May 4, 2001). CRAB affirmed DALA’s decision denying her purchase, but on appeal the court found that CRAB’s interpretation of c. 32, § 1 was incorrect. CRAB’s interpretation of “not less than half time service” focused on whether an employee was hired for “part-time” or “full-time” work. This view, the court concluded, could lead to inconsistent results with part-time employees becoming ineligible to purchase creditable service, even though they may have worked more hours than an employee who is hired to work “full-time.” Instead, the court stated that the statutory language should be given its plain meaning. Even though Ms. Squeglia worked part-time, she worked 73%, 68%, and 61% of a full-time school year schedule for three consecutive years. This led the court to state, “[i]t is undisputed that Ms. Squeglia worked in excess of half-time thus satisfying the statutory definition of ‘teacher.’” *Id.* at 4. *Compare* *Magiera v. Massachusetts Teachers’ Ret. Sys.*, CR-07-443, Decision (Div. Admin. Law Appeals, April 8, 2011) (holding that the Petitioner did not work on at least a half-time basis because he worked only 33% of a full-time employee’s hours) *and* *Neal v. Massachusetts Teachers’ Ret. Sys.*, CR-01-602, Decision (Div. Admin. Law Appeals, Jan. 6, 2005) (the Petitioner did not work on at least a half-time basis because she was paid for .08 in 1976 and .25 in 1989 of a full-time employee’s salary).

A similar result was reached in *McDonald*. There, the Petitioner was denied the purchase of out-of-state service because it was “in a non-day school and for less than half-time service.” *McDonald v. Massachusetts Teachers’ Ret. Sys.,* CR-08-249, Decision (Div. Admin. Law Appeals, Jul. 19, 2013). The Petitioner worked in a public-school district where full-time service was determined by the number of hours worked, as opposed to the number of days worked. A full work week was thirty-three and three-quarter hours per week. To be considered a half-time employee, Ms. McDonald would need to work at least sixteen hours and twenty-two minutes per week. Ms. McDonald did not meet this minimum time requirement, which was one of the grounds for denying her purchase of creditable service. No meaningful difference exists between the analysis of the meaning of half-time service in *McDonald* and the circumstances here.

While *Squeglia* and *McDonald* used different expressions of values to measure “not less than half time service,” *Schoman* uses the exact system at issue. In *Schoman*, the Petitioner was denied the purchase of her creditable service for the time she worked as a home teacher. *Schoman v. Massachusetts Teachers’ Ret. Sys.*, CR-05-171, Decision (Div. Admin. Law Appeals, Sept. 29, 2006). The magistrate explained that “[a]n ordinary school year has 180 days. The Petitioner would have had to work a minimum of 90 days in any school year to work half-time. Since the Petitioner did not work more than 58 days in any year, she worked less than half-time. She therefore does not meet the definition of teacher in G.L. c. 32, § 1.”

Massachusetts requires public schools to have at least a 180-day school year schedule, and MTRS reasonably interprets “not less than half time service” to mean working 90 days or more. “[Courts] are constrained to follow the plain language of a statue when its language is plain and unambiguous, and its application would not lead to an ‘absurd result,’ or contravene the Legislature’s clear intent.” *Comm’r of Revenue v. Cargill, Inc.,* 429 Mass. 79, 82 (1999) quoting *White v. Boston,* 428 Mass. 250, 253 (1998) (internal citations omitted).

Both parties agree that Ms. Farricker worked for 68 days from October 14, 1976 to June 21, 1977 and for 81 days from September 27, 1977 to June 16, 1978, which both fall short of the 90-day threshold. Denying Ms. Farricker’s purchase of creditable service for her out-of-state employment because she did not work more than 90 days does not “contravene the Legislature’s clear intent,” as the MTRS’s interpretation is consistent with “not less than half time service.” Nor does the MTRS’s interpretation produce an “absurd result,” as Ms. Farricker was able to purchase her service in 1978-1979 when she worked more than 90 days.

 For the foregoing reasons, Ms. Farricker is precluded from purchasing her out-of-state service in the Providence Public School System from October 14, 1976 to June 21, 1977 and from September 27, 1977 to June 16, 1978 because her work was “less than half time service.”

 DIVISION OF ADMINISTRATIVE LAW APPEALS

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Bonney Cashin

 Administrative Magistrate

DATED: August 31, 2018

1. Redacted copies of Exhibits 1-5, filed on July 5, 2017, have been substituted for the copies originally filed. [↑](#footnote-ref-1)
2. The definition of teacher in c. 32, § 1 refers to “any public school,” which in turn is defined as “any day school conducted in the commonwealth….” G.L. c. 32, § 1. *Mackay* did not address the implications of applying the definition of “public school” to c. 32, § 3(4), which necessarily addresses service outside of the Commonwealth. *Weston v. Contributory Ret. App. Bd.,* 76 Mass. App. Ct. 475 (2010), a case concerning the statutory construction of the definition of “teacher” in G.L. c. 32, § 1, addressed the tension created by a “narrow and literal application” of teacher. *Id.* at 479. The court concluded “that the term ‘teacher’ as it appears in G. L. c. 32, § 3(4), encompasses employment…by any day school in another State that is under exclusive public control and supervision….” *Id.* at 480. [↑](#footnote-ref-2)