

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Christopher Finn,
Petitioner

v.

Docket No. CR-20-0434

Date: June 21, 2024

**Massachusetts Teachers'
Retirement System,**
Respondent

Appearance for Petitioner:

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Appearance for Respondent:

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Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The Massachusetts Teachers' Retirement System properly determined that the Petitioner is ineligible to purchase creditable service for his employment at a charter school because he was not employed by the charter school he worked at, but rather by a private management company.

DECISION

On October 29, 2020, Petitioner Christopher Finn appealed timely under G.L. c. 32, § 16(4) the October 26, 2020 decision of Respondent Massachusetts Teachers' Retirement System (MTRS), denying his request to purchase creditable service based on

his employment at a charter school. Initially, MTRS denied the entire period Mr. Finn applied to purchase—September 1, 1998, through July 15, 2005—but, after receiving additional documentation from Petitioner, it decided that he could purchase his service from March 22, 2000 through July 15, 2005. The remaining disputed dates are therefore September 1, 1998 through March 21, 2000.

A hearing was conducted by Administrative Magistrate John Wheatley on September 7, 2023. Exhibits 1-18 were admitted into evidence. Neil Kinnon, the current business manager of Mystic Valley Regional Charter School, testified on Mr. Finn’s behalf, as did Mr. Finn. MTRS called no witnesses. On February 9, 2024, Magistrate Wheatley recused himself from the case because two of his children were subsequently admitted to Mystic Valley. The appeal was subsequently assigned to me. On March 4, 2024, the parties agreed that the appeal could be decided by me on the record thus far. Mr. Finn and MTRS submitted closing briefs on April 29, 2024.

FINDINGS OF FACT

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

1. Mystic Valley Regional Charter School (MVRCS) is a Massachusetts charter school. (Kinnon testimony.)
2. Mr. Finn has worked at MVRCS since it opened in September 1998. His first job title was “site coordinator,” but it was changed in 1999 to “business manager.” His job duties were the same in both positions. (Kinnon testimony; Exs. 4(B) and (F); 7; 8; 9.)
3. The Subject Matter Knowledge Guidelines created for the position of School Business Administrator by the Department of Elementary and Secondary

Education (DESE), and referenced in its regulations, cover the following topics: financial planning and management methods, accounting systems, management of federal and state appropriations for special services, municipal and school finance laws and regulations, personnel matters including contract negotiations, purchasing and district level facilities management, insurance, payroll, and scheduling. (Ex. 15.)

4. Mr. Finn’s position as business manager required him to be responsible for the “operational aspects of all school-related activities and systems[, t]ransportation, foodservice, purchasing, admissions, recruitment, budget management and physical plant operations.” His job description referenced all of the topics listed by DESE in its School Business Administrator description, including fiscal management, human resources management, procurement, and contract management. (Exs. 4(B), (D), (F), (G).)

5. In 1998, MVRCS entered into a five-year contract with Advantage Schools, Inc. (“Advantage”), a private company that managed and operated the school. (Finn testimony; Ex. 4(Q).)

6. Advantage was contracted to be responsible for “selecting, hiring, reviewing, compensating . . . and terminating all personnel associated with the Charter School.” Additionally, Advantage was expressly required to “[manage] all personnel and payroll functions of the Charter School for all employees of ASI working at the Charter School” Finally, Advantage was “responsible, in its capacity as educational manager of the Charter School, for all aspects of the hiring, management and training of the educational and administrative staff” (Finn testimony; Ex. 4(E).)

7. In July 1999, MVRCS terminated its five-year contract with Advantage and entered into a new one-year contract. It was Mr. Finn’s understanding that the remaining material terms of the contract were the same as the 1998 contract. (Finn

testimony; Exs. 4(E), 4(Q).)

8. In March 2000, MVRCS and Advantage terminated their one-year contract. (Finn testimony; Exs. 4(I)-(J), (N)-(Q).)

9. On March 17, 2000, Advantage and the school’s board of trustees sent a memorandum to teachers and staff. It notified them that the school was ending its contract with Advantage and that “[s]chool personnel who have existing employment agreements with Advantage, as the present manager of the School, need to sign acknowledgements which state that their employment relationships with Advantage have been discontinued and that their existing salaries and benefits for the rest of the academic year will be paid by the School directly.” (Ex. 4(N).)

10. On the same day—as the March 17, 2000 memorandum directed—Mr. Finn signed a “Consent and Acknowledgment” agreement. It stated that Mr. Finn “ha[d] previously contracted for employment with Advantage Schools, Inc . . . to perform services at the school” and that “[t]he School and Employee agree and acknowledge that on and after March 22, 2000 through June 30, 2000, the Employee shall be an employee of the School for all purposes.” (Finn testimony; Ex. 4(O).)

11. The tax records of Mr. Finn’s earnings are confusing and shed little light on who was his employer. On Mr. Finn’s 1998 W-2, MVRCS’s EIN is listed and “Mystic Valley Advantage Region” is the stated employer name. In 1999, Mr. Finn received two W-2s: one had Advantage’s EIN and “Advantage Schools Inc” as the employer’s name, and the other had MVRCS’s EIN and the employer’s name as “Mystic Valley Advantage Region.” In 2000, Mr. Finn again received two W-2s, one with Advantage’s name and EIN and the other had MVRCS’s EIN and the employer’s name was “Mystic Valley Region.” In 2000 and 2001, only MVRCS’s EIN was used, and the

W-2s stated the employer's name as "Mystic Valley Region." From 2003 through 2005, the EIN stayed the same, but the employer's name changed to "Mystic Valley Regional Charter School." (Exs. 17, 18.)

12. As the result of a 2005 audit performed for MVRCS by a private consultant, which found that Mr. Finn had never been enrolled as a member with MTRS, Mr. Finn was finally enrolled on July 31, 2005. (Finn testimony; Ex. 10(C).)

13. For purposes of membership, MTRS defines a teacher in a charter school as any position that typically requires certification in non-charter schools. The role of School Business Administrator is subject to certification by the Massachusetts Department of Elementary and Secondary Education (DESE). Thus, MTRS has recognized charter school business managers as eligible for membership. (Exs. 14-16.)

14. In 2006, Rick Veilleux replaced Mr. Finn as MVRCS's business manager and Mr. Finn was promoted to Assistant Director/Principal. He continued in this and other positions in the following years. (Exs. 8, 11, 12.)

15. On March 7, 2013, Mr. Finn applied to MTRS to purchase his pre-membership MVRCS service for the years 1998 through 2005 by filing an application for "Other Massachusetts public service." (Ex. 1.)

16. Between 2013 and 2016, Mr. Finn primarily communicated with MVRCS's HR Director, Anthony Chiccuarelli, and David Harbison from MTRS about his application. At first, the primary issue MTRS identified with Mr. Finn's application was whether he and other employees of MVRCS were paid under Advantage's or MVRCS's employer identification number ("EIN"). (Exs. 10(B)-(C).)

17. On March 3, 2017, Mr. Veilleux sent a letter to MTRS in support of Mr. Finn's application, acknowledging that Mr. Finn and other MVRCS employees were paid

using Advantage’s EIN between August 1, 1999 and March 15, 2000. (Ex. 11.)

18. In July 2018, Mr. Finn’s application was transferred to Robert George of MTRS. Mr. George continued to ask for documentation to resolve the EIN issue. He also requested information on Mr. Finn’s job responsibilities, which was provided. (Exs. 10(B)-(R), 12.)

19. On October 26, 2020, MTRS finally denied Mr. Finn’s application to purchase service because it was unable to substantiate facts regarding his job title and responsibilities, and it claimed there were inconsistencies in the documentation submitted to MTRS. (Ex. 2.)

20. On October 29, 2020, Mr. Finn timely appealed MTRS’s decision. (Ex. 3.)

21. In March 2021, Mr. Finn provided Mr. George additional documentation, including the Business Manager’s Annual Evaluation and Bonus Schedule and a letter from Neil Kinnon, the current business manager of MVRCS and founding charter school board member. Mr. Kinnon stated that Mr. Finn was always the business manager despite originally having the title of “site coordinator.” (Exs. 4(A), 10(V)-(W).)

22. After examining the additional documentation, MTRS determined that Mr. Finn *could* purchase credit for his service from March 22, 2000 through July 15, 2005, when it was clear that he worked directly for MVRCS and he was the school business manager during this period. (Stipulation.)

CONCLUSION AND ORDER

MTRS’s denial of Mr. Finn’s application to purchase creditable service for the period of September 1, 1998 through March 21, 2000 is affirmed. Mr. Finn has failed to prove by a preponderance of the evidence that he was an employee of MVRCS during

this time period.

MTRS maintains that Mr. Finn is disqualified from purchasing his September 1, 1998 through March 21, 2000 service because during that period (1) he was an Advantage employee, and not an employee of the charter school, and (2) his position as “site coordinator” for part of the period is not a position that qualifies for MTRS membership.

Mr. Finn was an Advantage employee.

In Massachusetts, charter schools are considered public schools “managed by a board of trustees,” their teachers are eligible to be members of MTRS, and “service in a charter school shall be creditable service within the meaning [of Chapter 32].” G.L. c. 71, §§ 89(c), 89(y). There is a restriction, however. Only teachers who are employed by the charter school’s board of trustees are eligible for membership in MTRS. *Whipple v. MTRS*, CR-07-1136, at *14 (CRAB Dec. 19, 2014). Teachers who are hired and supervised by a private company are not eligible for membership. *Id.* at *13.

There is ample evidence that Mr. Finn was employed by the management company Advantage from 1998 to 2000, and not MVRCS. First off, the board of trustees and Advantage entered into a five-year contract that essentially provided that Advantage would fully run the school. Several provisions of the contract make this clear. First, Advantage was responsible for selecting, hiring, reviewing, compensating and terminating all personnel associated with the school. Second, Advantage was responsible, in its capacity as educational manager of the school, for all aspects of hiring, management and training of the educational and administrative staff. Finally, Advantage was expressly required to manage all personnel and payroll functions of the school. The board of trustees relinquishing its right to control and hire staff is evidence that MVRCS

staff were employees of Advantage, not the board of trustees. *See Whipple*, CR-07-1136 at *13.

The second school year, the board of trustees and Advantage entered into a new contract under which the material terms were the same, except that the term of the new contract was only that second school year. The board grew increasingly unhappy with Advantage's performance until the contract was terminated early. On March 17, 2000, a notice of transition was sent to MVRCS's teachers and staff explaining that, "school personnel who have existing employment agreements with Advantage, as the present manager of the [s]chool, need to sign acknowledgements which state that their employment relationships with Advantage have been discontinued." Because he had been an Advantage employee, Mr. Finn signed one of the acknowledgment forms, which stated he was "previously contracted with Advantage Schools to perform services at the [s]chool," and "as of March 22, 2000, he . . . will have no further employment relationship with Advantage."

Mr. Finn's W-2 tax forms also lend some support to the conclusion that he was an Advantage employee. His 1999 and 2000 W-2s list Advantage's Employer Identification Number (EIN). However, additional W-2s in 1999 and 2000 list MVRCS's EIN. It is not clear from the evidence why both Advantage and MVRCS claimed Mr. Finn as an employee. Nonetheless, a preponderance of the evidence supports the conclusion that Mr. Finn was an employee of Advantage from September 1, 1998 until March 21, 2000, not MVRCS. *See Lisbon v. Contributory Retirement Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996) (burden of establishing each element of a claim for benefits by a preponderance of the evidence is on the petitioner). He is therefore not entitled to membership or service credit for this period.

Mr. Finn was the business manager from 1998 to 2000.

The MTRS also denied Mr. Finn membership because, it asserts, he was not the school's business manager the first two years but rather was the "site manager," a position not eligible for membership. The MTRS follows a general practice of allowing business managers in charter and non-charter schools into membership if they otherwise qualify. *See Mello v. MTRS*, CR-19-0003 (DALA July 7, 2023). The MTRS membership eligibility requirements are: (a) the individual holds a license granted by the Department of Elementary and Secondary Education (DESE), or has been granted a waiver pending licensure by the DESE; (b) the individual is covered by a contractual agreement for employment with one or more school committees or boards of trustees or by any combination of such committees and boards; (c) the contractual agreement requires not less than half-time service as a teacher, as defined in G.L. c. 32; and (d) the contractual agreement requires that the individual be licensed by the DESE as a condition of employment. 807 CMR 4.02(1). A strict application of these requirements to Mr. Finn would result in his not being eligible for membership, as he holds no DESE license.

For charter schools, however, the MTRS considers eligible for membership "one who either holds the title of teacher, meets all four of the eligibility criteria set forth in 807 CMR 4.02(1) above, or works in a position that would be eligible for MTRS membership if it were performed in a Massachusetts public school." 807 CMR 4.02(2)(b). Presumably, MTRS has concluded that public school business managers satisfy the criteria for membership because DESE licenses public school business administrators who are otherwise eligible for membership. This is exemplified by its decision to approve Mr. Finn's claim of membership and creditable service for March 22, 2000, through July 15, 2005, while he worked directly for the school and held the

“business manager” job title.

Mr. Finn has proven that he was the school’s business manager from September 1998 through March 2000. In those first two years, Mr. Finn was in charge of the operations and finances of the school—business manager duties. Mr. Kinnon, the current MVRCS business manager, credibly testified that Mr. Finn was the business manager during this period. Mr. Kinnon was not aware of the “site coordinator” title. Mr. Finn performed the same business manager duties before and after his formal title changes from site coordinator to business manager. While Mr. Finn does not qualify for membership or creditable service during the period in question because he was an employee of Advantage, and not the charter school itself, he is not disqualified based on his job.

Interest on 2000 to 2005 service.

After the appeal was filed, Mr. Finn raised an additional issue. He now claims that MTRS should not charge him buyback interest for the five years of credit that MTRS has since conceded that he is entitled to, but rather it should charge him the lower “correction of errors” rate because he was erroneously excluded from membership. MTRS counters that Mr. Finn was not erroneously excluded from membership, but rather his employer, the school, erroneously failed to make the appropriate retirement deductions. MTRS explains that for “deductions omitted in error,” the member receives an invoice for the appropriate deductions to be paid without interest if he pays them in the first 60 days. If the member pays after 60 days or opts into the five-year installment plan, then interest is calculated only for the period after 60 days expires and a balance remains.

I decline to decide this issue for two reasons. First, it is not properly before me. Mr. Finn has not requested that MTRS charge a different interest rate from the one that

was charged. As a result, MTRS has not issued a final decision on the matter with appeal rights. Consequently, the interest issue exceeds the scope of this appeal. *See* G.L. c. 32, § 16(4); *Barnstable Cty. Retirement Bd v. PERAC*, CR-07-163, at *12 (CRAB Feb. 17, 2012); *Cedarquist v. Bristol Cty. Retirement Sys.*, CR-15-232, at *11-12 (DALA June 29, 2018). Moreover, the factual record on this issue has not been fully developed. Perhaps this is not surprising, as MTRS has not made its final decision on the matter.

For the above stated reasons, Mr. Finn has failed to prove that he is eligible to purchase service credit for his work from September 1, 1998 through March 22, 2000. MTRS's decision is affirmed as to Mr. Finn's employment from September 1, 1998 through March 21, 2000.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: June 21, 2024