

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Christopher Gallagher,**  
Petitioner

v.

Docket No. CR-22-0599

Date: May 30, 2025

**Bristol County Retirement Board  
and Public Employee Retirement  
Administration Commission,**  
Respondents

**Appearance for Petitioner:**

James H. Quirk, Jr., Esq.

**Appearance for Bristol County Retirement Board:**

Linda Champion, Esq.

**Appearance for PERAC:**

Judith Corrigan, Esq.

**Administrative Magistrate:**

Kenneth Forton

**SUMMARY OF DECISION**

Petitioner's increase in annual wages during the 5 years preceding his retirement exceeded 100% in two of the five years. This triggers the anti-spiking provision of G.L. c. 32, § 5(2)(a) and the Petitioner's retirement should be calculated using the anti-spiking statute's 5-year look-back period, instead of the otherwise applicable 3-year period. Application of § 5(2)(a) does not deprive retirement system members of the core of their reasonable expectations in the retirement system. *See* G.L. c. 32, § 25(5).

**DECISION**

Petitioner Christopher Gallagher appeals from a decision of Respondent Bristol County Retirement Board applying the anti-spiking law, G.L. c. 32, § 5(2)(a), to the calculation of his retirement allowance. The Board's decision means that Mr. Gallagher's retirement allowance would be based on the average of his highest five years of regular compensation rather than the highest three. *See id.*

DALA initially determined that the matter could be decided on written submissions under 801 CMR 1.01(10)(c). On May 17, 2023, DALA ordered the parties to submit their arguments. Mr. Gallagher submitted his memorandum on August 28, 2023. On September 14, 2023, the Board moved DALA to join the Public Employee Retirement Administration Commission (PERAC) as a necessary party; DALA allowed the motion that day. On November 3, 2023, PERAC submitted its argument and 1 proposed exhibit. On November 20, 2023, Mr. Gallagher submitted additional argument and 3 proposed exhibits.

On April 18, 2024, I was assigned this appeal. After reviewing the parties' submissions, I notified the parties that I agreed with them that it was best to wait for the Supreme Judicial Court to decide *Hartnett v. Contributory Ret. App. Bd.*, CITATION, as it appeared that it could determine this case's outcome. I stayed the appeal until September 18, 2024. The parties submitted a joint status report on September 27, 2024. After reviewing it, I agreed with them that the Court's *Hartnett* decision did not resolve the instant appeal. In a further status report, the parties agreed that there were no material factual disputes that required an evidentiary hearing. On October 7, 2024, I notified the parties that I would decide it on written submissions.

On November 22, 2024, Mr. Gallagher submitted his final memorandum of law. On January 24, 2025, PERAC submitted its final memorandum of law. On that same day, the Board notified DALA that it adopts the PERAC memorandum as its own and relies upon the arguments set forth there. From the documents submitted, I enter into evidence exhibits marked 1-5.

### **FINDINGS OF FACT**

Based on the evidence presented by the parties and the uncontradicted statements of fact contained in the parties' written submissions, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Christopher Gallagher is a retired member of the Bristol County Retirement System. He retired for superannuation October 1, 2022 with approximately 10.5 years of creditable service. (Ex. 4.)
2. Over the course of Mr. Gallagher's career, he has worked in a variety of municipal positions. (Ex. 1.)
3. In Mr. Gallagher's last five years of employment preceding his retirement, his annual wages were as follows:

Year 1	07/2021-6/2022	\$100,913.60
Year 2	07/2020-6/2021	\$ 34,425.32
Year 3	07/2019-6/2020	\$ 8,466.00
Year 4	07/2018-6/2019	\$ 8,299.12
Year 5	07/2017-6/2018	\$ 8,132.00

(Ex. 4.)
4. Between Year 1 and Year 2, the difference in Mr. Gallagher's annual rate of regular compensation exceeded 100%. (Ex. 4.)
5. Between Year 2 and Year 3, the difference in Mr. Gallagher's annual rate

of regular compensation also exceeded 100%. (Ex. 4.)

6. The parties have stipulated that the anti-spiking limits in G.L. c. 32, § 5(2)(f) do not apply to Mr. Gallagher in this matter because his increases in compensation were based on an increase in working hours and on a bona fide change in position. (Stipulation.)

7. When PERAC calculated Mr. Gallagher's retirement allowance, it determined that he exceeded the 100% year-over-year limit imposed by Acts 2011, c. 176, § 14, and consequently instructed the retirement system that his retirement allowance must be calculated using a five-year average instead of the three-year average that would otherwise have applied to him under G.L. c. 32, § 5(2)(a). (Ex. 4.)

8. By letter dated November 22, 2022, the retirement system informed Mr. Gallagher of PERAC's calculations. Mr. Gallagher timely appealed the Board's decision. (Exs. 4, 5.)

### **CONCLUSION AND ORDER**

When a retirement system member who began working before April 2, 2012, like Mr. Gallagher, retires from public service, he is entitled to a superannuation retirement allowance that is based in part on "the average annual rate of regular compensation received by such member during any period of three consecutive years of creditable service for which such rate of compensation was the highest." G.L. c. 32, § 5(2)(a). "Regular compensation" for the period relevant to Mr. Gallagher's retirement calculation is defined as "compensation received exclusively as wages by an employee for services performed in the course of employment for his employer." G.L. c. 32, § 1. "Wages," in

turn, is defined as “the base salary or other base compensation of an employee paid to that employee for employment by an employer,” with certain exceptions. *Id.*

However, “if in the 5 years of creditable service immediately preceding retirement, the difference in the annual rate of regular compensation between any 2 consecutive years exceeds 100 per cent, the normal yearly amount of the retirement allowance shall be based on the average annual rate of regular compensation received by the member during the period of 5 consecutive years preceding retirement.” G.L. c. 32, § 5(2)(a).

Here, between Years 1 and 2 and Years 2 and 3, as illustrated above, Mr. Gallagher’s compensation increased year-over-year by more than 100%. Mr. Gallagher does not dispute these figures or that part of the calculation. Instead, he advances several alternative arguments why § 5(2)(a) should not apply to him.

First, Mr. Gallagher argues that the anti-spiking restrictions in §§ 5(2)(a) and 5(2)(f), as amended by Acts 2011, c. 176, violate his rights to due process and equal protection under the federal Constitution and the Massachusetts Declaration of Rights. The Division of Administrative Law Appeals has no jurisdiction to decide state or federal constitutional matters. *Maher v. Justices of the Quincy Div. of the Dist. Ct. Dept.*, 67 Mass. App. Ct. 612 (2006). Accordingly, I do not address these arguments here.

Next, Mr. Gallagher argues that the application of § 5(2)(a) to his retirement calculation interferes with the core of his reasonable expectations in the retirement system in contravention of the protections of G.L. c. 32, § 25(5). Mr. Gallagher essentially argues that he is entitled to the retirement benefits that were in effect on the

day that he first became a member, without diminution. Unfortunately for him, the law is not that simple.

Under G.L. c. 32, § 25(5), the state retirement system creates a quasi-contractual relationship between system members and the retirement boards. *Opinion of the Justices*, 364 Mass. 847, 860 (1973). Under this provision, “rights” to retirement benefits “vest” in public employees who have “worked for a legally significant period of time.” *Id.* at 862; *Dullea v. Massachusetts Bay Transp. Auth.*, 12 Mass. App. Ct. 82, 94 (1981). Each such employee is entitled to enforcement of “the core of his reasonable expectations” out of the retirement system. *Opinion of the Justices*, 364 Mass. at 862. The “core” consists of the expectations “which can reasonably be said to affect an employee’s decision to accept, and stay employed in, a position with the Commonwealth.” *McCarthy v. Sheriff of Suffolk Cty.*, 366 Mass. 779, 784 (1975).

However, § 25(5) does not protect “against subtractions which, although possibly exceeding the trivial, can claim certain practical justifications. Attention should then center on the nature of these justifications in the light of the problems of financing and administering these massive plans under changing conditions.” *Opinion of the Justices*, 364 Mass. at 862. The Legislature may make “reasonable modifications” to the contributory retirement system. *Id.*; *Madden*, 431 Mass. at 702. Reasonable modifications must bear “some material relationship to the theory of a pension system,” and must offset new “disadvantage[s] to the employees” with “comparable new advantages . . . to the [same] individual[s].” *Opinion of the Justices*, 364 Mass. at 862 (quoting *Wisley v. San Diego*, 188 Cal. App. 2d 482, 485 (1961)).

The Contributory Retirement Appeal Board (CRAB) has adopted a balancing test to determine whether a modification to the retirement system is legislative interference in contravention of § 25(5). *See Stanton v. State Bd. of Ret.*, CR-18-399 (Contributory Ret. App. Bd. Oct. 11, 2023); *Perreira v. State Bd. of Ret., et al.*, CR-16-558 (Contributory Ret. App. Bd. June 8, 2023). First, I must determine whether Acts 2011, c. 176 interfere with the core of Mr. Gallagher’s “reasonable expectations,” and if so, then I must determine whether the legislature’s reason for enacting the anti-spiking provision bore a “reasonable and material relationship to the theory of the pension system and its successful operation or was otherwise a permissible exercise of its reserved police powers.” *Stanton*, CR-18-399, at \*8 (quoting *Madden*, 431 Mass. 697 at 701).

Section 5(2)(a) does interfere with the core of Mr. Gallagher’s reasonable expectations in the retirement system. But for the application of § 5(2)(a), his retirement allowance would be substantially higher. Reductions in retirement benefits like this interfere with a member’s reasonable expectations in the retirement system. *Madden*, 431 Mass. at 701. This is consistent with CRAB’s holding in *Stanton*, which concluded that § 5(2)(f) amounted to interference because its application reduced the petitioner’s retirement benefit.

Next, I must address whether the Legislature’s reason for enacting 100% restriction in § 5(2)(a) bore a reasonable and material relationship to the theory of the pension system and its successful operation or was otherwise a permissible exercise of its reserved police powers. Acts 2011, c. 176 was part of “the Governor’s Phase Two pension reform legislation proposing additional systemic reforms necessary to ensure the

sustainability and credibility of [the state] pension system.” *FY 2011 House 2 Budget Recommendation: Issues in Brief*.<sup>1</sup>

In *Stanton*, CRAB recognized that Acts 2011, c. 176 was implemented in response to a severe financial crisis within the state retirement system including abuse specifically relating to individuals artificially inflating their retirement benefits, commonly known as spiking. *Id.* at 9. CRAB went on to conclude that implementation of Chapter 176’s anti-spiking provisions, including those codified at §§ 5(2)(a) and 5(2)(f), “falls far enough on the periphery of the core retirement expectations that modifications discouraging artificially padding compensation in the years leading up to retirement to increase one’s retirement benefit were permissible under these unprecedented fiscal circumstances.” *Id.* at 10. Moreover, Chapter 176 was supported by “ample justification” and was “aimed at the continued successful operation of the pension system.” *Id.* at \*9, 13. Therefore, I conclude that the interference with Mr. Gallagher’s reasonable expectations in the retirement system bears a reasonable and material relationship to the theory of the pension system and its successful operation.

Finally, Mr. Gallagher contends that the “change in his employment has nothing to do with an attempt to artificially inflate benefit calculations.” The absence of subjective intent to spike typically does not make a difference. See *Healy v. Mass. Tchrs. Ret. Sys.*, CR-18-515, at \*11 (Div. Admin. Law. App. June 14, 2019). Unlike § 5(2)(f),

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<sup>1</sup> [https://budget.digital.mass.gov/bb/h1/fy11h1/prnt\\_11/exec\\_11/pbudbrief5.htm](https://budget.digital.mass.gov/bb/h1/fy11h1/prnt_11/exec_11/pbudbrief5.htm) (last visited May 29, 2025).

§ 5(2)(a) does not contain any exceptions and is applied strictly mathematically.<sup>2</sup>

For the reasons stated above, § 5(2)(a) applies to Mr. Gallagher. His retirement allowance should therefore be calculated based on his highest five years of regular compensation and not the otherwise applicable three years.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

Dated: May 30, 2025

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<sup>2</sup> Section 5(2)(f) provides for a downward adjustment to a retirement allowance if the difference in a member's regular compensation exceeds more than 10% in two consecutive years. Section 5(2)(f) also contains several exceptions which include, in part, a "bona fide change in position," and "an increase in hours of employment." Both exceptions apply in this case and the parties agree § 5(2)(f) does not apply here.