

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Ellen Groot,**  
Petitioner

v.

Docket No. CR-20-0259

**Wakefield Retirement Board**  
Respondent

**Appearance for Petitioner:**

Ellen Groot, *Pro Se*

**Appearance for Respondent:**

Michael Sacco, Esq.  
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**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF DECISION**

The Wakefield Retirement Board declined the petitioner's request to purchase her prior, non-membership service as an employee with another governmental unit. Such purchases are governed by G.L. c. 32, § 3(5). Because the petitioner's prior service does not fall within any of the categories set forth in § 3(5) authorizing the purchase of prior, non-membership service, the Board's decision is affirmed.

**DECISION**

The petitioner, Ellen Groot, appeals the decision of the Wakefield Retirement Board denying her request to purchase her prior non-membership service. This case is submitted on the papers pursuant to 801 CMR § 1.01(10)(c).<sup>1</sup>

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<sup>1</sup> The submission on the papers is made pursuant to an Order I have issued today denying the Wakefield Retirement Board's motion to dismiss this appeal on the ground that Ms. Groot failed to prosecute her appeal. For the reasons set forth in that Order, I denied the

I admit into evidence Respondent's Exhibits 1-5.

### **FINDINGS OF FACT**

Based on the evidence presented by the parties, the factual representations in their respective briefs as to which there is no genuine dispute, and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. On August 16, 2004, the Reading Retirement Board began to require employees to work 1,690 hours annually to be enrolled as members. (Respondent's Exhibit 1).
2. Between September 2004 and June 2008, Ms. Groot was employed as a paraprofessional in Reading, Massachusetts. (Petitioner's Statement of Facts, ¶ 2a.; Respondent's Statement of Additional Facts, ¶ 2).
3. Ms. Groot worked fewer than 1,690 hours annually. She did not contribute to the Reading Retirement System, but instead contributed to the Federal Social Security System. (Respondent's Exhibit 2).<sup>2</sup>
4. On December 12, 2019, the Wakefield Retirement Board set a policy whereby it declined to "accept non-membership employment with other communities." (Respondent's Exhibit 3).

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request to dismiss this case, but ordered the submission of this case on the papers as an alternative sanction. I further note that Ms. Groot assented to the submission of this case on the papers.

<sup>2</sup> Ms. Groot states in her pre-hearing brief that she "vaguely recall[s] having the option of not having retirement benefits deducted from my paycheck." (Petitioner's Pre-Hearing Memorandum). I do not credit this vague recollection (at least as it pertains to the Reading Retirement System) as it is inconsistent with the documentation showing that she was not eligible to participate in the Reading Retirement System and with the general rule that individuals eligible to participate in the retirement system are required to do so. See Opinion of the Justices, 364 Mass. 847, 853 (1973) (stating that the retirement system is predominantly compulsory).

5. On January 21, 2020, Ms. Groot began service in the Wakefield Retirement System. She wrote on her new member enrollment form that she had been employed as a teacher in Peabody, Massachusetts (from August 2008 to May 2016) and that she was a member of the Massachusetts Teachers' Retirement System during that service. She did not refer to any other retirement system. (Respondent's Exhibit 4).
6. Ms. Groot submitted a request to the Wakefield Retirement Board to purchase her prior service as a paraprofessional in Reading. On May 27, 2020, the Wakefield Retirement Board denied that request. (Respondent's Exhibit 5).
7. Ms. Groot timely appealed on June 10, 2020. (Appeal Letter dated June 10, 2020).<sup>3</sup>

### **CONCLUSION AND ORDER**

The rules governing the purchase of prior, non-membership service in a governmental unit other than the one by which the member is presently employed are set forth in G.L. c. 32, § 3(5). Section 3(5) provides in pertinent part as follows:

[1] Any member of any system who had rendered service as an employee of any governmental unit other than that by which he is presently employed, for any previous period during which the first governmental unit had no contributory retirement system or during which he had inchoate rights to a non-contributory pension or in a position which was not subject to an existing retirement system, or which was specifically excluded therefrom but which would be covered under the law now in effect, or . . . [2] any member who had a right to become a member of an existing system in any other governmental unit and who did not exercise such

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<sup>3</sup> Neither party has attached Ms. Groot's appeal letter. It appears that the original appeal letter was misplaced after receipt by DALA and that Ms. Groot was advised to re-send it. Ms. Groot re-sent the appeal letter (dated June 10, 2020) as an enclosure to a cover letter to DALA that is dated February 24, 2022. As the June 10, 2020 letter is contained in DALA's file and there is no dispute regarding the timeliness of Ms. Groot's appeal, I am admitting into evidence the appeal letter and the accompanying cover *sua sponte*. For the sake of clarity in the event there are any future proceedings in or relating to this appeal, I am marking a copy of the appeal letter and the accompanying cover letter collectively as "DALA File Exhibit."

right, and who, when he left the service of such other governmental unit, had such right, or [3] any member of any system who rendered service in any governmental unit other than that by which he is presently employed, in a temporary, provisional, or substitute position and who was excluded from membership by the rules of any board.

G.L. c. 32, § 3(5).<sup>4</sup>

The first [1] category may be divided into four sub-categories, covering the purchase of prior service: (1) “for any previous period during which the first governmental unit had no contributory retirement system”; (2) “during which [s]he had inchoate rights to a non-contributory pension”; (3) “in a position which was not subject to an existing retirement system”; or (4) “which was specifically excluded” from an existing retirement system. Id. All four sub-categories are subject to the following modifying phrase: “but which would be covered under the law now in effect.” Lydon v. Contributory Ret. Appeal Bd., 101 Mass. App. Ct. 365, 368-72, further appellate review denied, 490 Mass. 1106 (2022). In other words, in all four instances, the purchase will not be authorized unless the legal impediment to membership for the prior service has since been removed.

It is not apparent that any of the four sub-categories are applicable in this situation. The first sub-category is inapplicable because the Reading Retirement System existed during Ms. Groot’s service. The second sub-category is not applicable because there is nothing in the record to indicate that Ms. Groot had an inchoate right to a non-contributory pension. I interpret the third sub-category, service in a “position which was not subject to an existing retirement system,” to involve a position outside the reach of a retirement board’s authority. That is not the case here. The fourth sub-category is inapplicable as well. Ms. Groot’s

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<sup>4</sup> The statutory language omitted from the quotation above, marked by the ellipses, is inapplicable here because it pertains to situations in which the member seeks to purchase service for the same governmental entity by which she is presently employed. Ms. Groot is seeking to purchase service relating to her employment by Reading, not Wakefield.

service was excluded from the Reading Retirement System by virtue of its minimum 1,690 hour threshold for membership. There was nothing “specific” about the exclusion --- neither Ms. Groot’s specific position, nor any broader category to which it might belong (paraprofessionals, say) were expressly excluded.

Even if Ms. Groot’s service otherwise fell within the ambit of one of the four sub-categories, she would need to show a change to the rules governing membership in the Reading Retirement System under which she would be eligible for membership had she worked for Reading today. The record does not reflect any such change. Accordingly, first [1] category does not apply.

The second [2] category does not apply because Ms. Groot did not have a right to become a member of the Reading Retirement System while employed by Reading or when she left her position with Reading.

The third [3] category does not apply because Ms. Groot’s paraprofessional position with Reading was not a temporary, provisional, or substitute position. Ms. Groot’s position was arguably part-time, but §3(5) --- in contrast with another provision in the statute, § 4(2)(c) --- does not encompass part-time service. Santos v. MTRS, CR-04-70 (CRAB March 6, 2006).<sup>5</sup>

For the foregoing reasons, the decision of the Wakefield Retirement Board is affirmed.

SO ORDERED.

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<sup>5</sup> The Wakefield Retirement Board contends that Ms. Groot’s purchase would not be authorized by Chapter 32, § 4(2)(c). I agree. Section 4(2)(c) allows the purchase of prior creditable service for prior non-member service provided within the same governmental unit and only if the retirement board has authorized such purchase. Here, Ms. Groot is not seeking to purchase service for her prior employment by Wakefield. And even if she was, the Wakefield Retirement Board has not passed any regulations authorizing the purchase of prior non-membership service.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ TIMOTHY M. POMAROLE*

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Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: June 14, 2023