

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kraig L. Gustafson,

Petitioner,

v.

Docket No. CR-20-0405

Massachusetts Teachers'

Retirement System,

Date: July 5, 2024

Respondent.

Appearances:

For Petitioner: Kraig L. Gustafson, pro se

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The petitioner did not furnish documentation of earnings required by MTRS to calculate the amount required to purchase service credit for his prior out-of-state teaching service at Nashua Public Schools, pursuant to G. L. c. 32, § 3(4). MTRS's decision that it had insufficient information to approve Gustafson's request to purchase this service credit is therefore affirmed.

DECISION

The petitioner, Kraig Gustafson, applied to purchase service credit for his prior service as a teacher for Nashua Public Schools. The Massachusetts Teachers' Retirement System

(MTRS) determined that it had insufficient documentation of earnings to grant his request for service credit for his part-time teaching service from January 25, 1988, to August 28, 1989. Gustafson appeals that decision.

I held an evidentiary hearing on July 24, 2023, over Webex. Gustafson was the only witness. I admitted seven exhibits into evidence. The parties elected to make oral closings in lieu of filing post-hearing briefs.

FINDINGS OF FACT

Based on the testimony and documentary evidence presented at the hearing, I make the following findings of fact:

1. In 1987, Gustafson was hired as a substitute teacher for Nashua Public Schools in Nashua, New Hampshire. (Testimony; Exhibit 3.)
2. From January 25, 1988, to August 28, 1989, Gustafson was employed by Nashua Public Schools as a permanent, part-time high school social studies teacher. This position required Gustafson to have an educator's license issued by the New Hampshire Department of Education, which he had. (Testimony; Exhibit 3.)
3. Gustafson became a full-time social studies teacher at Nashua High School the following school year, from August 29, 1989, to August 31, 1990. (Testimony; Exhibit 3.)

4. On September 1, 2001, Gustafson started a full-time position at Watertown Public Schools. He continued working as either a teacher or an administrator in that school district at least through the time of filing this appeal. (Exhibit 1.)
5. Gustafson applied to purchase service credit for his prior out-of-state public school teaching service in Nashua. (Exhibit 6.)
6. Nashua Public Schools furnished service and salary information to MTRS in connection with Gustafson's application. It reported that Gustafson worked: (1) as a substitute teacher from September 15, 1987, to January 24, 1988, at \$45 per day; (2) as a permanent part-time social studies teacher, on a 50% of full-time basis, from January 25, 1988, to August 28, 1989; and (3) as a permanent full-time social studies teacher from August 29, 1989, to August 31, 1990. (Exhibit 3.)
7. Nashua Public Schools reported an annual contract rate for Gustafson's employment as follows:
 - (1) \$9,000.00 for part-time service from January 25, 1988, to August 31, 1988;
 - (2) \$10,089.00 for part-time service from August 30, 1988,¹ to August 28, 1989; and
 - (3) \$23,193.00 for full-time service from August 29, 1989, to August 31, 1990.

¹There appears to be an error in the service periods identified for Gustafson's part-time service contracts, insofar as the second contract reportedly commenced a day before the first contract had expired.

(Exhibit 3.)

8. Nashua Public Schools was unable to provide the actual gross amount paid to Gustafson during any period of his employment, indicating that such information was "unavailable." (Exhibit 3.)
9. On October 2, 2020, MTRS issued a decision denying Gustafson's request to purchase credit for his service as a substitute teacher on the basis that such service is not eligible for purchase under 807 Code Mass. Regs. § 19.01. MTRS determined that his full-time teaching service was eligible, however, and allowed his request to purchase credit for that service. (Exhibit 5.)
10. With respect to Gustafson's part-time teaching service from January 1988 to August 1989, MTRS determined that it had insufficient information to evaluate his request and instructed him to submit "proof of earnings for that time period." (Exhibit 5.)
11. Aside from Nashua's service and salary verification, Gustafson does not have, and therefore has been unable to provide, any tax records or other documentation of earnings in support of his application. (Testimony.)

12. On October 6, 2020, Gustafson timely appealed MTRS's decision with respect to his part-time teaching service from January 25, 1988, to August 28, 1989.² (Exhibit 7.)

DISCUSSION

Massachusetts General Laws chapter 32, § 3(4), allows teachers to purchase service credit for prior out-of-state employment as a teacher at a public school. The teacher must be employed on at least a half-time basis for the out-of-state position to be eligible for service credit. G. L. c. 32, § 1 (defining "teacher"); 807 Code Mass. Regs. § 4.01.1 (defining "teacher position"). In addition, the teacher must "furnish the board with such information as it shall require to determine the amount to be paid and the credit to be allowed" for the out-of-state teaching service. G. L. c. 32, § 3(4).

MTRS's decision that it had insufficient information to approve Gustafson's application to purchase service credit for his part-time teaching service in Nashua is affirmed. Without documentation showing Gustafson's actual earnings, MTRS is unable to calculate the amount required to purchase this service credit under G. L. c. 32, § 3(4). See, e.g., *Rothwell v. Massachusetts Teachers' Retirement Sys.*, CR-13-532 & CR-13-584,

²Gustafson does not appeal MTRS's determination that his service as a substitute teacher is not eligible for service credit. (Testimony; Exhibit 7.)

at *5 (DALA Jan. 26, 2018) (board is unable to calculate buyback rate without employment records showing actual earnings and days worked); *Harvey v. Massachusetts Teachers' Retirement Sys.*, CR-07-438 (DALA Mar. 11, 2011) (teacher submitted insufficient documentation to determine her eligibility to purchase credit for prior non-membership public service).

MTRS had the discretion to require Gustafson to submit documentation of his earnings in order to determine the amount of service credit allowed and the purchase rate for that credit. See *Lydon v. Quincy Retirement Bd.*, CR-17-689 & CR-18-275, at *4 (CRAB Jan. 8, 2020) (noting that the board "has the discretion to determine the sufficiency of evidence when original documents are unavailable, and CRAB must defer to its decision in the absence of an abuse of discretion"). Although Nashua apparently no longer had such documentation available, the obligation to furnish MTRS with information is not excused by a former employer's lack of employment records. *Rothwell*, CR-13-532 & CR-13-584, at *6 (noting there is no exception to the applicant's obligation to submit documentation to board based on former employer's failure to keep employment records). Nashua was unable to certify the amount of earning actually paid to Gustafson for the service at issue, and it was not an abuse of discretion for MTRS to require Gustafson to furnish documentation of his earnings under the circumstances.

CONCLUSION AND ORDER

MTRS was entitled to require Gustafson to furnish documentation of his actual earnings as a part-time social studies teacher at Nashua Public Schools to determine the amount of credit allowed and the payment required for such credit, pursuant to G. L. c. 32, § 3(4). Gustafson did not provide this information. MTRS's decision is therefore affirmed.

Division of Administrative Law Appeals

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate