

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Shelley Hamm-Moylan,
Petitioner,

No. CR-22-0243

Dated: July 5, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearances:

For Petitioner: Shelley Hamm-Moylan (pro se)

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner served as a substitute teacher in an overseas department of defense school. She worked more than half time. She is entitled to purchase retirement credit for the pertinent period of work regardless of whether she was eligible then for retirement-system membership.

DECISION

Petitioner Shelley Hamm-Moylan appeals from a decision of the Massachusetts Teachers' Retirement System denying her application to purchase retirement credit for a period of pre-membership service. The appeal was submitted on the papers under standard rule 10(c).¹ I admit into evidence exhibits marked A-K.

Findings of Fact

I find the following facts:

¹ In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

1. During 1998-2001, the petitioner worked in Germany as a substitute teacher for the Kaiserslautern Elementary School. That school is run by a federal entity known as the Department of Defense Education Activity (DoDEA). (Exhibits D, H, I.)

2. The petitioner began her stint at Kaiserslautern during the last week of the fall 1999 semester. She remained in a substitute role during the six ensuing semesters. Her assignments varied in length. During gaps between her longer assignments, she energetically pursued shorter ones. Recent letters from her supervisors recall that the petitioner worked “way more than halftime” and “way over 90 days per school year.” (Exhibits D, H, I.)

3. The documents containing specific data about the petitioner’s earnings and schedules are difficult to parse. Relying on her total annual incomes, the petitioner calculates that she worked approximately 298 days over the course of the pertinent period. An alternative method of calculation reliant on the petitioner’s personnel records would yield a total figure of 288.5 workdays.² (Exhibits D, J.)

4. The petitioner’s compensation was derived from per-day pay rates. Her work was not controlled by a collective bargaining agreement or by a written individual contract. (Exhibit D.)

5. The petitioner became an MTRS member in 2003. At some point thereafter, she applied to purchase retirement credit for her work in Kaiserslautern. In June 2022, MTRS

² For the petitioner’s fall semesters, her personnel records identify the specific dates on which she worked. Those dates add up to 49 days in fall 1999, 7.5 days in fall 2000, and 56.5 days in fall 2001. For the spring semesters, the personnel records do not identify specific work dates. They do list the petitioner’s total pay amounts and per-day pay rates. These datapoints together suggest that the petitioner most likely worked 83 days in spring 1999 ($68 * \$72.50 + 15 * \$79.00 = \$6,115.00$), 70 days in spring 2000 ($8 * \$75.50 + 62.00 * \$79 = \$5,502.00$), and 22.5 days in spring 2001 ($5.5 * \$79.00 + 17 * \$83.00 = \$1,845.50$).

denied the application, stating that “day to day substitute teachers in Massachusetts are not eligible to contribute to the MTRS.” The petitioner timely appealed. (Exhibit G.)³

Analysis

A public employee’s retirement benefits depend in part on the length of the employee’s “creditable service.” G.L. c. 32, § 5(2). A member is ordinarily credited with service she performed for Massachusetts governmental units while maintaining membership in Massachusetts retirement systems. *Id.* § 4(1)(a).

A provision specially applicable to teachers allows them to purchase credit for “service in any other state . . . as a teacher . . . in the public day schools.” G.L. c. 32, § 3(4). In this context, the public day schools of the other states are defined as including any “overseas dependent school conducted under the supervision of the department of defense.” *Id.* The purchase price charged under § 3(4) is the amount “which would have been withheld as regular deductions from [the employee’s] regular compensation . . . had he been a member of [MTRS] during the period the service was rendered.” *Id.*

There is no doubt that the Kaiserslautern school was an “overseas dependent school conducted under the supervision of the department of defense.” § 3(4). *See Staaterman v. MTRS*, No. CR-03-155 (CRAB Mar. 30, 2004). MTRS’s conclusory skepticism on this score ignores the pertinent record documents, including the petitioner’s personnel file.

The trickier question is whether, during the period at issue, the petitioner served as “as a teacher.” § 3(4). Section 1 of the retirement statute defines the term “teacher” to mean:

³ The petitioner refers in her submissions to another purchase application, relating to service in 2011. That application exceeds the scope of this appeal. *See Cedarquist v. Bristol Cty. Ret. Syst.*, No. CR-15-232, at *11-12 (DALA June 29, 2018).

any person who is employed by one or more school committees or boards of trustees . . . on a basis of not less than half-time service as a teacher, school psychologist, school psychiatrist, school adjustment counsellor or school social worker

The word “teacher” in § 3(4) incorporates certain elements of the § 1 definition, such as its application to school psychologists and social workers. *See Mackay v. Contributory Ret. Appeal Bd.*, 56 Mass. App. Ct. 924, 925 (2002). But other elements of the § 1 definition, such as its demand for employment “by one or more school committees or boards of trustees,” do not make sense in the out-of-state context that § 3(4) regulates. *See Weston v. Contributory Retirement Appeal Board*, 76 Mass. App. Ct. 475 (2010).

The element of the § 1 definition pertinent here is its requirement that teachers must be “employed . . . on a basis of not less than half-time service.” CRAB has held that this requirement is transposable into § 3(4). *Squeglia v. MTRS*, No. CR-98-169, at *3 (CRAB May 2, 2000), *rev’d on other grounds*, 13 Mass. L. Rptr. 106 (Suffolk Super. 2001). DALA’s decisions have treated that holding as good law. *See, e.g., Farricker v. MTRS*, No. CR-16-492 (DALA Aug. 31, 2018); *McDonald v. MTRS*, No. CR-08-249 (DALA July 19, 2013).

No statute or regulation prescribes a particular method for assessing whether a teacher’s work exceeded the half-time threshold. MTRS’s informally adopted practice is to view half-time service as equaling 90 school days per school year. *See Farricker, supra*, at *8. The case law has also considered other datapoints on a fact-specific, record-dependent basis. Some decisions have looked to a member’s hours per week; others have consulted the percentage-of-position figures appearing in the member’s personnel file. *See id.* at *6-8 (surveying cases). The Superior Court in *Squeglia* relied on the average percentage of a full-time schedule that the member worked over a three-year period. 13 Mass. L. Rptr. at 107-08.

Applying MTRS's preferred approach to the petitioner's stint of just over three years, she would have needed to work just over 270 days to count as a half-time employee. She satisfied that mark. *See supra* page 2, paragraph 3. MTRS does not appear to dispute this point of fact.

Instead, MTRS argues that a period of work is purchasable under § 3(4) only if the member would have been *eligible for MTRS membership* during that period. MTRS consequently examines whether, at Kaiserslautern, the petitioner would have satisfied the membership eligibility criteria stated in 807 C.M.R. § 4.02. MTRS's answer is no, because no "contractual agreement" required the petitioner to work any minimum schedule.

Id. § 4.02(1)(b)-(d). *See Frazer v MTRS*, CR-16-315, at *12 (DALA Aug. 21, 2016).

The theory that § 3(4) requires the applicant to have satisfied MTRS's membership criteria during the pertinent period is erroneous. To start with, no such requirement appears in the language of either § 3(4) or the § 1 definition of "teacher." The unambiguous statutory language is ordinarily conclusive. *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012).⁴

MTRS's theory also is not logically compelling. Section 3(4) governs credit for work by *out-of-state non-members*. An inquiry into those individuals' eligibility for in-state membership mixes apples and oranges. It is thus unsurprising that the specific eligibility criteria of 807 C.M.R. § 4.02 are inapposite to out-of-state work: for example, they ask for a license or waiver from "DESE." § 4.02(1)(a). *See also Weston*, 76 Mass. App. Ct. at 479-80. The regulatory

⁴ MTRS appears to rely on § 3(4)'s phrase, ". . . had [the employee] been a member of [MTRS] during the period the service was rendered." But that phrase does not relate to the circumstances under which a § 3(4) purchase is permissible: it governs the *price* of such a purchase ("an amount equal to that which would have been withheld . . . had [the employee] been a member of [MTRS] during the period the service was rendered").

requirements that *do* address purchases under § 3(4) are stated in a *different* set of MTRS regulations, 807 C.M.R. §§ 19.01-19.04, which require neither eligibility for MTRS membership nor any “contractual arrangement.”

Finally, CRAB has already explained that § 3(4) is not concerned with “the requirements for [MTRS] membership.” *Berrick v. MTRS*, No. CR-05-91, at *3 (CRAB Dec. 29, 2005, *vacated on other grounds*, CRAB Aug. 7, 2007). Instead, the “correct . . . focus [is] on whether [the applicant] would have been entitled to purchase the service if it had been rendered in the commonwealth.” *Id.* A teacher seeking to purchase pre-membership service in-state is *not* required to have been membership-eligible during the purchasable period. *See* G.L. c. 32, § 4(1)(p); 807 C.M.R. § 3.03. It would make little sense to impose such a requirement on service performed out of state. *See also O’Rourke v. Contributory Ret. Appeal Bd.*, No. 06-389, at *3-4 (Suffolk Super. Feb. 12, 2007).

Conclusion and Order

The petitioner’s work as a substitute in Kaiserslautern during 1998-2001 is purchasable under G.L. c. 32, § 3(4). MTRS’s contrary decision is REVERSED. The matter is REMANDED to MTRS for calculations and processing consistent with this decision.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate