COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DARLA HARTUNG *Petitioner*	:	Docket Nos. CR-22-0194 & 0195
	:	Date: October 27, 2023
v.	:	
MASSACHUSETTS TEAHCERS' RETIREMENT SYSTEM *Respondent*	:	

Appearance for Petitioner:

Edward Pietnik, Jr., Esq.

Appearance for Respondent:

Salvatore Coco, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Massachusetts Teachers' Retirement System rightly denied the Petitioner's application to purchase two different kinds of prior service. First, the Petitioner, a vocational teacher, sought to purchase prior work experience from a decade before she was licensed. However, this experience was not "required" for her to obtain her license; the Petitioner did not even submit it to the licensing authority when she applied for her license. G.L. c. 32 § 4(1)(h ½). Moreover, a member is only entitled to purchase the three most recent years of vocational experience (prior to licensing) and the Petitioner already received creditable service for that time.

Second, the Petitioner was not eligible to purchase her service at the Dever School from the early 1980's. A threshold requirement to purchase prior service is that someone must be an "employee," which requires they work for, and be "paid by" a political subdivision. The Petitioner's job at the Dever School was paid for by a private entity.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Darla Hartung, timely appeals two decisions[1] by the Respondent, the Massachusetts Teachers' Retirement System ("MTRS") that she was not entitled to purchase prior service. DALA issued a scheduling order indicating that the matter could be decided without a hearing pursuant to 801 Code Mass. Regs. § 1.01(10)(c) and instructing the parties to file memoranda and evidence in support of their positions. Each party submitted a memorandum. The Petitioner submitted 18 proposed exhibits; MTRS submitted 8 proposed exhibits. After the case was assigned to me, I issued a further scheduling order asking the parties to address some additional arguments. On September 29, 2023, the parties submitted supplemental briefs and the Petitioner submitted one additional exhibit, at which point I closed the administrative record. I now admit all but two of the exhibits into evidence.[2]

FINDINGS OF FACT

Based on the exhibits, I find the following facts:

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1. The Petitioner became an active member of MTRS in 2001 when she was hired by the Taunton Public Schools to teach architectural design and drafting. (Pet. Exs. 12 & 14.)

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[1] The two appeals were docketed separately but arise out of a single denial letter. Though not formerly consolidated, they have proceeded together. Some proposed exhibits overlap the two different claims. Accordingly, I will consider the full set of exhibits for each case.

[2] MTRS objects to the admission of Petitioner exhibits 15 and 17, both affidavits, absent a hearing. As will become clear in my decision, I do not rely on any facts raised by these affidavits. I therefore make no findings with respect to the issues the affidavits raise. Should findings later become necessary—for example because the case is remanded after an appeal—I would hold a hearing since the alleged facts are disputed. For now, I take no action on MTRS' objection and mark the two documents A for identification.

2. She did not have a teaching license, so she applied and received a provisional license in April 2001. It is not clear what requirements she had to meet to obtain it. Undoubtedly, some of her prior work and/or educational experience in the field of architecture was considered. (Pet. Ex. 3.)
3. In 2011, the school district received conditional approval for a new vocational program, computer aided design, which included a class titled "Drafting." (Pet. Ex. 6.)
4. The class was identical to what the Petitioner was already teaching, and she was expected to continue teaching it. However, because the class was now going to be part of the vocational curriculum, the Petitioner required a vocational license. (Pet. Ex. 15.)
5. The parties do not dispute that she ultimately received this license. Rather, the dispute centers around what experience was used by the licensing authority in granting her this license.
6. The Petitioner had significant schooling and employment experience working as an interior designer and architect by 2001. She had a Bachelor of Fine Arts in Architecture.[3] She worked as an architect assistant for Keyes Associates from 1996 until 2000. She was a self-employed interior designer. And she worked as an architectural intern at NEMD Architects. (Pet. Ex. 1.)
7. For the next ten years, the Petitioner taught drafting. (Pet. Exs. 4 & 6.)
8. In addition to teaching, she simultaneously worked at Custom Home Designs as a drafter. (Res. Ex. 2.)

[3] A handwritten note on one of the exhibits indicates she may also have a Master's degree. (Pet. Ex. 6.)

9. In support of her vocational license application, she submitted a resume that presumably contained this information. (Pet. Ex. 9.)

10. The Petitioner submitted an application to purchase her prior service at Keyes Associate (from 1996 to 2000). (Pet. Ex. 12.)

11. As part of the process, MTRS reached out to the Department of Elementary and Secondary Education ("DESE"), who is in charge of approving vocational licenses. DESE no longer has records of the Petitioner's vocational work experience. (Pet. Ex. 8.)

12. However, some information about the licensing process exists.

13. In response to a 2022 e-mail by MTRS, an employee of DESE forwarded information from their database about the Petitioner's license approval. It noted DESE had "letters from Taunton High School and Custom Home Plans that state she's worked in Drafting capacity for 10 years but have no specific dates." (Res. Ex. 4.)

14. In a separate e-mail correspondence between the Petitioner and DESE in 2022, she explained that she had "work experience as a drafter/designer prior to becoming a teacher in 2001. I worked at an architecture firm (Keyes Associates) and the reasons I did not provide verification of these years to DESE is because it was not required at that time." She added that "in order for me to continue teaching in this program [in 2011], I was required to obtain my vocational license in drafting. I had been working at Custom Home Designs as a drafter in addition to teaching. I took the vocational performance test in drafting and provided applicable work experience verification and received my preliminary vocational license in drafting in 2011." (Res. Ex. 2.)

15. Department of Education regulations at the time required an applicant to have, *inter alia,* "Four years of recent full-time work experience, if the applicant is a graduate of an

accredited collegiate program holding a Bachelor's degree related to the occupational field to be taught; provided that two years of experience have occurred within three years preceding application." 603 Code Mass. Regs. § 4.10(12)(c) (in effect in 2011).

16. The Petitioner also submitted a document, seemingly from DESE, listing requirements for a drafting vocational teaching license. It notes a candidate needs "four years of full-time experience directly related to drafting." It adds that a bachelor's or master's degree "may substitute for one of the four years of required employment experience." (Pet. Ex. 6.)

17. There are also some e-mail exchanges between the Petitioner and DESE from 2011 about her application status. In the e-mails, the Petitioner was asked to document her self-employment and she responded, "I think you misunderstood. I do freelance work on occasion. My primary full time experience is with the City of Taunton[.]" (Pet. Ex. 6.)

18. After forwarding all this to MTRS, it still denied her application because "you have been a full-time employee with Taunton Public Schools and are currently receiving full credit with the MTRS from 9/1/2001 – present." (Pet. Ex. 5.)

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19. The Petitioner also attempted to purchase prior service as an administrative assistant to Joseph Reilly, Principal of Educational Services in Institutional Settings for the Department of Education at the Paul A. Dever State School in Taunton, MA. She worked in this capacity from 1980 to 1984. (Pet. Exs. 1 & 16.)

20. Both sides agree that, during this time, the Petitioner was an employee of Brockton Area Multi Services, Inc. ("BAMSI") meaning, she was paid by funds BAMSI provided. (Petitioner Pre-Hearing Memo, pg. 13-15; Res. Ex. 8.)

21. When the Petitioner applied for this creditable service, she sent the employer's portion of her application to BAMSI. BAMSI no longer had records of her employment and could not fill out the form. A separate letter indicated it could not verify details of her employment. (Res. Ex. 7.)

22. However, someone did unearth social security records confirming she was paid by BAMSI during that time. (Res. Ex. 8.)

DISCUSSION

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1. The Petitioner was not entitled to purchase her prior vocational work experience.

Licensed vocational teachers may purchase creditable service for "for any period or periods of prior work experience in the occupational field in which the member became a vocational-technical teacher and which was required as a condition of the member's employment and licensure under regulations of the department of education." G.L. c. 32 § 4(1)(h ½). "The creditable service allowable under this paragraph shall not exceed 3 years." *Id*. Moreover, a member may only purchase "up to three years" of "the most recent eligible years to be purchased." 807 Code Mass Regs. § 14.03. "Prior trade service that is not reflected in [DESE] records cannot be verified and cannot be purchased." *Id*. Given these limitations, the Petitioner is not entitled to purchase creditable service for her work experience at Keyes Associates.

To begin with, MTRS does not rely on prior service that is not reflected in DESE records and cannot be verified. The Petitioner acknowledged in an e-mail that she did not provide verification of this experience to DESE in 2011. That alone is dispositive because DESE cannot verify employment experience that it never had. Moreover, the Petitioner probably did not provide this information because, according to her, it was "not required at that time." It is clear

DESE had more than enough information to grant her a license based on her teaching experience and contemporaneous work at Home Design from 2001 through 2011. DESE did not require the Keyes Associate experience as a precondition to licensure.

Even if the Petitioner had submitted this information, a member can purchase only the three most recent eligible years of experience. The correspondence between the Petitioner and DESE demonstrates that DESE was focused on her work as a teacher and for Home Design between 2001 and 2011. The regulations in force at the time instructed DESE that some, if not all, of the experience it had to consider had to have occurred within the three years preceding the application. Therefore, her time at Keyes Associates, even if it were part of her application, could not have been part of the three most recent years used to support her application because that service ended 11 years before she applied for a vocational license. The three years immediately before the Petitioner's licensure in 2011 were years in which she worked a second job with Home Design. For those years, she was already a member of MTRS and already receiving credit for her service. 807 Code Mass Regs. § 14.03; *see* G.L. c. 32, § 4(1)(a) ("in no event shall [a member in service] be credited with more than one year of creditable service for all such membership service rendered during any one calendar year.).

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2. <u>The Petitioner was not an "employee" because she was not paid by a political subdivision</u>

The Petitioner sought to purchase her prior service at the Dever School. As a threshold matter, purchase of prior, non-membership service in a governmental unit other than the one by which the member is presently employed under G.L. c. 32, § 3(5) is limited to "employees."

Employees are, *inter alia*, persons who are regularly employed by a political subdivision of the Commonwealth and also "paid" by that same political subdivision. G.L. c. 32, § 1.[4]

There is no dispute that the funds used to pay the Petitioner came from BAMSI. The Petitioner asserts that the source of her funding is not dispositive. But that is based on a slight misreading of relevant cases. In two cases, DALA and the Appeals Court have put aside the source of funding because, in those cases, the Petitioners were still paid by political subdivisions. *See Crowley v. CRAB*, 73 Mass. App. Ct. 1103 (2008) (unpublished decision); *Callahan v. Revere Ret. Bd.*, CR-12-523, 2017 WL 5195186 (DALA Aug. 25. 2017). In *Crowley*, though it was not clear which entity was the source of the member's payment, the two entities in dispute—the city of Boston and the trust department of the city—were both political subdivisions. *See Crowley, supra*. Similarly, in *Callahan*, that the member's funding came from a grant was irrelevant because she "was regularly employed in the service of the City of Revere, *she was paid regular compensation for her services by the City, which is a political subdivision of the commonwealth*, and her work was controlled by the Revere Police Department." *Callahan, supra*, at *6 (emphasis added).

DALA previously considered an appeal by a former employee of BAMSI in almost identical circumstances. *See Deguire v. State Bd. of Ret*., CR-92-316 (DALA Oct. 15, 1992). Deguire was employed as a nurse at the Wrentham State School. In 1979, she was given a leave of absence but immediately returned. She continued to perform the same duties but was now paid by the "Brockton Area Mutli Services, Inc." She was ineligible to purchase this service because

[4] Section 1 also defines employees as persons regularly employed and paid by different governmental units, such as the Commonwealth or various specifically enumerated agencies, none of which is applicable here.

she was paid by BAMSI, which was not a political subdivision. *Id.*; *see Sprague v. State Bd. of Ret.*, CR-01-943, * 4 (DALA Jul. 19, 2002) (petitioner did not meet the definition of "employee" for prior service not paid by political subdivision).

The Petitioner agrees she was employed and paid by BAMSI. The Petitioner also acknowledges BAMSI was not a political subdivision of the Commonwealth. She focuses her argument on whether she was an independent contractor; but that is irrelevant because, regardless, she was not paid by a political subdivision of the Commonwealth. Therefore, she was not an "employee" under G.L. c. 32.

CONCLUSION AND ORDER

The Board's decision denying the Petitioner's request to purchase her prior vocational service and her service at the Dever School is **affirmed**.

SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate