

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Martha Hendrickson,**  
Petitioner

v.

Docket No. CR-23-0362  
Date: May 23, 2025

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Martha Hendrickson, *pro se*

**Appearance for Respondent:**

Yande Lombe, Esq.

**Administrative Magistrate:**

Kenneth J. Forton

**SUMMARY**

Petitioner appeals a decision by the State Board of Retirement denying her request to be reinstated as a member of the retirement system. The Petitioner worked as a Campus Security Officer I at the Paul A. Dever State School from August 2, 1978 until she was laid off on July 24, 1999. From July 25, 1999, until August 12, 2003, Petitioner received a termination retirement allowance. *See* G.L. c. 32, § 10(2). In 2003, she waived her retirement allowance and began working full-time again for the same employer in the same position. She sought reinstatement retroactive to the date that she paused her retirement allowance in 2003. Although retroactive reinstatement is not possible, the Petitioner was entitled to receive a bill for the cost of reinstatement when she filed her reinstatement application in 2023. *See* G.L. c. 32, § 105.

**DECISION**

Petitioner Martha Hendrickson appeals from Respondent State Board of Retirement's April 27, 2023, decision to deny her request for reinstatement.

On December 20, 2023, DALA ordered the parties to file pre-hearing memoranda. On April 1, 2024, Ms. Hendrickson filed her pre-hearing memorandum along with 4 proposed exhibits. On June 12, 2024, the Board submitted its pre-hearing memorandum with 3 additional exhibits. On September 25, 2024, Ms. Hendrickson submitted additional argument.

I held a hearing via WebEx videoconference on April 1, 2025. Ms. Hendrickson was the sole witness. I entered 7 exhibits into evidence. (Exs. 1-7.) The parties made oral closing arguments, whereupon the administrative record closed.

### **FINDINGS OF FACT**

Based on the evidence presented by the parties, I make the following findings of fact:

1. Martha Hendrickson became a member of the Massachusetts State Employees Retirement System on August 13, 1978, working as a direct care worker at the Paul A. Dever State School (Dever). (Ex. 5; Testimony.)
2. In 1984, Ms. Hendrickson became a Campus Police Officer I at Dever. (Testimony.)
3. In July 1999, Ms. Hendrickson was laid off as part of a reduction in force at Dever. (Exs. 1, 5; Testimony.)
4. Ms. Hendrickson was given the option to be reassigned in title, to bump down within her bargaining unit to a position she was qualified for, or to retire. She chose to retire, effective July 24, 1999. (Exs. 1, 5; Testimony.)
5. From July 25, 1999, until August 12, 2003, Ms. Hendrickson received a termination retirement allowance. (Ex. 6; Testimony.)

6. Ms. Hendrickson returned to work at the Dever School shortly after she retired and worked the allowable part-time hours as a retiree. (Ex. 6; Testimony.)

7. On July 14, 2003, Ms. Hendrickson's former employer notified her that her name was on the recall list and extended her an offer to be recalled to her Campus Police Officer I position full time. (Ex. 2.)

8. She accepted the recall. On August 8, 2003, Ms. Hendrickson received her official offer letter for her job as a Campus Police Officer I back at the Dever, effective August 24, 2003. She was informed that she would need to contact the retirement board to have her retirement allowance stopped as of August 23, 2003. (Ex. 2.)

9. On August 13, 2003, Ms. Hendrickson requested that her retirement allowance be waived, under G.L. c. 32, § 90B, beginning on August 23, 2003. (Ex. 3.)

10. The Board did not take retirement deductions from her post-2003 pay. (Testimony.)

11. Effective July 1, 2004, the Legislature enacted a new statute, codified at G.L. c. 32, § 105, that would allow a retiree to "unretire" by being reinstated to membership in a contributory retirement system under certain conditions. Acts 2004, c. 149, §§ 88, 428.

12. For some time, Ms. Hendrickson was not aware that the new statute had been enacted and was therefore unaware that she could be reinstated. (Testimony.)

13. At some point Ms. Hendrickson became aware that she could be reinstated to retirement system membership. She wrote an undated letter to the Board explaining her employment and retirement history. She concluded the letter: "I want the opportunity

to retire at a full pension since I technically have 40 years of State service. I am requesting to be reinstated at this time.” (Ex. 4.)

14. On February 3, 2023, she submitted a form called “Section 105 (Return to Service) Request Form” to the Board. She responded “09/24/2003” on the line stating “I wish to be reinstated on.” She chose this date because she thought she could be reinstated effective the same date that she returned to full-time service. (Ex. 6; Testimony.)

15. Accompanying Ms. Hendrickson’s Section 105 form was a letter to the Board dated January 31, 2023. In it she stated that she had been working for the last 19 years and wanted the opportunity to retire at a full pension rate since she has over 40 years of state service. She also requested to be reinstated at such a date that would allow her to retire at 80%. (Exs. 4, 6.)

16. On June 27, 2023, the Board notified Ms. Hendrickson that she could not be reinstated until she entered into an agreement to repay the retirement allowance that she had received from 1999 to 2003. However, the Board failed to generate a bill or a proposed payment plan so that Ms. Hendrickson could evaluate whether she wanted to go through with reinstatement. (Ex. 4.)

17. Ms. Hendrickson timely appealed to DALA on July 6, 2023. In her appeal letter, she stated:

I understand that I need to be reinstated at the time that I repay any allowance I have previously received. With this letter, I will also include an updated “Return to Service” form so I may receive the letter confirming the amount of repayment necessary. This letter was not received last time I submitted the form to return to service.

. . . I understand that after reinstatement [] I may attempt to buyback any accrued service time through the Buyback office.

(Ex. 7.)

18. Ms. Hendrickson continues to work in the same position. (Testimony.)

**CONCLUSION AND ORDER**

The Board's decision denying Ms. Hendrickson's application for reinstatement is reversed. Ms. Hendrickson can be reinstated as a member of the retirement system once she pays back the retirement allowance she was paid, with interest, from her date of retirement in 1999 to the date that she returned to state service in 2003. As she requested in her appeal letter, Ms. Hendrickson is entitled to a statement or bill from the Board outlining the cost to repay her retirement allowance and reinstate her membership.

When Ms. Hendrickson returned to work full-time, it was not possible to re-join a retirement system after retiring. Instead, to return to full-time government work a retiree was required to waive her retirement allowance during the period of her re-employment.<sup>1</sup> Ms. Hendrickson did just that. When she returned to her security position at the Dever school, she stopped collecting her retirement allowance. She has continued to work full-time in the same position to the present date and has not collected her retirement allowance since 2003. If she does nothing further, when she stops working she will be able to resume collecting her original retirement allowance based only on her 1978-1999 service and regular compensation and not on the additional years of service or increases in her compensation since 2003 because she has not been restored to active membership in the retirement system.

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<sup>1</sup> G.L. c. 32, § 90B provides that a member may waive her retirement allowance. The waiver exempts the retiree from the earnings restrictions under G.L. c. 32, § 91 during the period of the waiver. Op. Atty. Gen., Jan. 10, 1972, p. 76.

In 2004, however, the legislature gave retired workers an opportunity to be restored to active membership if they returned to full-time work. Acts 2004, c. 149, §§ 88, 428. The new statute, codified at G.L. c. 32, § 105, now allows retirees to effectively un-retire and then be reinstated to active membership in a contributory retirement system so that they can potentially earn service credit for the work they do after their original retirement. Section 105 provides:

(a) Any member retired under section 5 or section 10 shall be eligible to be reinstated in a retirement system established under this chapter, if the retired member repays to the system from which he retired an amount equal to the total amount of any retirement allowance received by the retired member, together with buyback interest. Such payment shall be made in one lump sum or in installments as the board shall prescribe. Upon such reinstatement, regular deductions shall be made from regular compensation pursuant to paragraphs (b) and (b1/2) of subdivision (1) of section 22, and for such purpose, the member's date of entry into service shall be the date such member waived his retirement allowance or the date of reinstatement, whichever occurs earlier. Upon completion of such payment, the member shall be entitled to creditable service for all periods of service for which deductions were made from the member's regular compensation. For purposes of this section, the term "reinstatement service" shall mean a member's period of full-time employment after reinstatement in a retirement system under this section.

(b) If the member shall have less than 5 years reinstatement service, upon retirement, that member shall receive a refund of the payments actually made to the system under this section. The member shall not be entitled to any creditable service for the reinstatement service, nor shall the member be eligible to establish any additional creditable service under any provision for make up payments or other payments.

(c) If the member shall have 5 years or more of reinstatement service, the member shall be entitled to creditable service resulting from his reinstatement service upon the completion of payments required under subsection (a) and payment of regular deductions under section 22 for the reinstatement service. In the event that a retirement allowance becomes effective for the member before the completion of payments under subsection (a), the member shall be entitled to credit for that proportion of reinstatement service as the board shall prescribe, in addition to any credit for service rendered prior to the date of reinstatement, provided that the member would have otherwise been eligible for that prior service.

G.L. c. 32, § 105; *Walsh & PERAC v. State Bd. of Ret.*, CR-21-0135 (Div. Admin. Law. App. July 14, 2023).

When she became aware of the opportunity to be reinstated, Ms. Hendrickson applied to the Board on February 3, 2023. In her application, she requested that her reinstatement date be September 24, 2003, the date she began working full-time again. In the letters that she submitted to the Board, she was not so precise. In one, she wanted to be reinstated as of a date that would allow her to retire at 80%. In the other, she stated that she just wanted to retire with a “full pension.” From all of these submissions, it is not difficult to see that Ms. Hendrickson misunderstood either the substance of the statute or at least some of its terminology. However, from these statements and her testimony I conclude that she was trying to express that she wanted to know what was necessary for her to get service credit for her post-2003 service so that she could retire again with a larger retirement allowance than she originally had.

Rather than acknowledge Ms. Hendrickson’s circumstances and her imprecision and try to explain reinstatement to her<sup>2</sup> so that she could pursue her retirement goals expeditiously, the Board read her application as narrowly as possible. The Board denied Ms. Hendrickson’s application because the statute does not allow it to reinstate her retroactively to the 2003 date that she returned to full-time employment. The Board did not provide her with a bill or statement explaining how much she would need to pay the retirement system to be reinstated.

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<sup>2</sup> Shortly after § 105 was enacted, PERAC counseled retirement boards to “carefully counsel interested members to assure that they are aware of the requirements and benefits of this section. PERAC Memorandum #34/2004, Sept. 13, 2004.

Later, in her appeal letter, Ms. Hendrickson showed greater comprehension of § 105; she specifically asked for a “letter confirming the amount of repayment necessary.” Now, even after a specific request, the Board still refuses to perform the calculations and inform Ms. Hendrickson how much she must repay to be reinstated. This is troubling.

Although the Board does not have a duty to inform a member of changes in retirement law or how a change may affect them, it does have a duty to provide when requested “a statement of the benefits to which the member may be entitled under Chapter 32, the dates on which the benefits will accrue, and the effect of the benefits on federal Social Security.” *Parsons v. Norfolk Cnty. Ret. Sys.*, CR-08-160, at \*4 (Div. Admin. Law. App. Mar. 5, 2010). Ms. Hendrickson admittedly did not request a typical “statement of benefits,” but she was making a request to be reinstated, and the Board should not have ignored her request for reinstatement because of her original failure to understand § 105.

Ultimately, it will be up to Ms. Hendrickson to decide whether she *wants* to be reinstated once she sees how much it will cost. I would imagine repaying three to four years of retirement allowance along with more than twenty years of interest on it will add up to a sizeable sum. Then, if she wants credit for her post-2003 service, she must complete 5 years of service after her reinstatement for the “privilege” of purchasing any of her post-2003 service.

The Board concedes that Ms. Hendrickson’s reinstatement date—meaning the date on which her “reinstatement service” begins to be counted—would be the date that she either repays her 1999-2003 retirement allowance plus interest, or the date that she agrees to a payment plan to do so. If that rule is followed to the letter, then the clock on



Ms. Hendrickson's reinstatement service will not begin to run until the Board provides the statement and bill consistent with this decision. This would only compound the Board's already troubling error, as approximately two more years of interest would accrue on the amount due. Accordingly, it would be most reasonable to set Ms. Hendrickson's reinstatement date to a date when the Board would have provided her the repayment figure. The most reasonable date for that is the date of her denial letter, June 27, 2023, as that is the most likely date she would have received the repayment figure if the Board performed the calculations as it should have.

For the above-stated reasons, the Board's decision is VACATED and REMANDED for further processing consistent with this decision. The Board shall provide Ms. Hendrickson with a bill for the cost of her reinstatement so that she can decide whether she wants to be reinstated.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

DATED: May 23, 2025