



History of Call Fire & Permanent Intermittent Police Officers

Sections 4(2)(b) & 4(2)(b1/2)



Judith Corrigan, Esq. | General Counsel | PERAC
Felicia Baruffi, Esq. | Senior Associate General Counsel | PERAC

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Preliminary Note


- ❖ This presentation will mention the Athol Retirement Board, which became part of the Worcester Regional Retirement System on January 1, 2015, by virtue of Chapter 360 of the Acts of 2014.
- ❖ Though not part of this presentation, the Massachusetts Turnpike Authority was abolished and became part of the State Retirement System on June 26, 2009, by virtue of Chapter 25 of the Acts of 2009.
- ❖ PERAC never renumbered the retirement system list it maintains, for obvious, administrative reasons. So, Athol was No. 17, Mass Pike was No. 56, and the MA Water Resource Authority Board remains No. 106. Fun fact!



How Did AI Do When Asked About Section 4(2)(b)?

❖ AI says:

- Massachusetts General Laws Chapter 32, Section 4(2)(b) relates to creditable service for retirement, specifically allowing up to five years of credit for prior service as a reserve or permanent-intermittent police officer or firefighter. This section dictates that members must purchase this service to receive credit, often involving payments for the prior service, as confirmed by Mass.gov.
- ❖ AI did okay, although it doesn't seem to know about provisos. And the provisos are what matter most in this part of the statute!



Chapter 32, Section 4(2)(b) – Second Proviso

As Now Appearing:

- ❖ ...and provided, further, that the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment....

The background of the slide features a blue-tinted image. On the left, a police officer is visible, wearing a uniform with 'POLICE' written on the back. On the right, a firefighter is shown in full gear, including a helmet and oxygen tank, standing in front of what appears to be a fire truck.

Chapter 32, Section 4(2)(b) – Third Proviso

As Now Appearing:

- ❖ ...and provided, further, that such service as a permanent-intermittent or call fire fighter shall be credited only if such permanent-intermittent or call fire fighter was later appointed as a permanent member of the fire department.



Chapter 32, Section 4(2)(b1/2)

In Pertinent Part, as Now Appearing:

- ❖ In any city, town, or fire district, which accepts the provisions of this paragraph, service as a permanent-intermittent or call firefighter shall be credited as full-time service as provided in paragraph (b), except that credit for such service shall not be conditioned upon the appointment of said permanent-intermittent or call firefighter as a permanent member of the fire department....



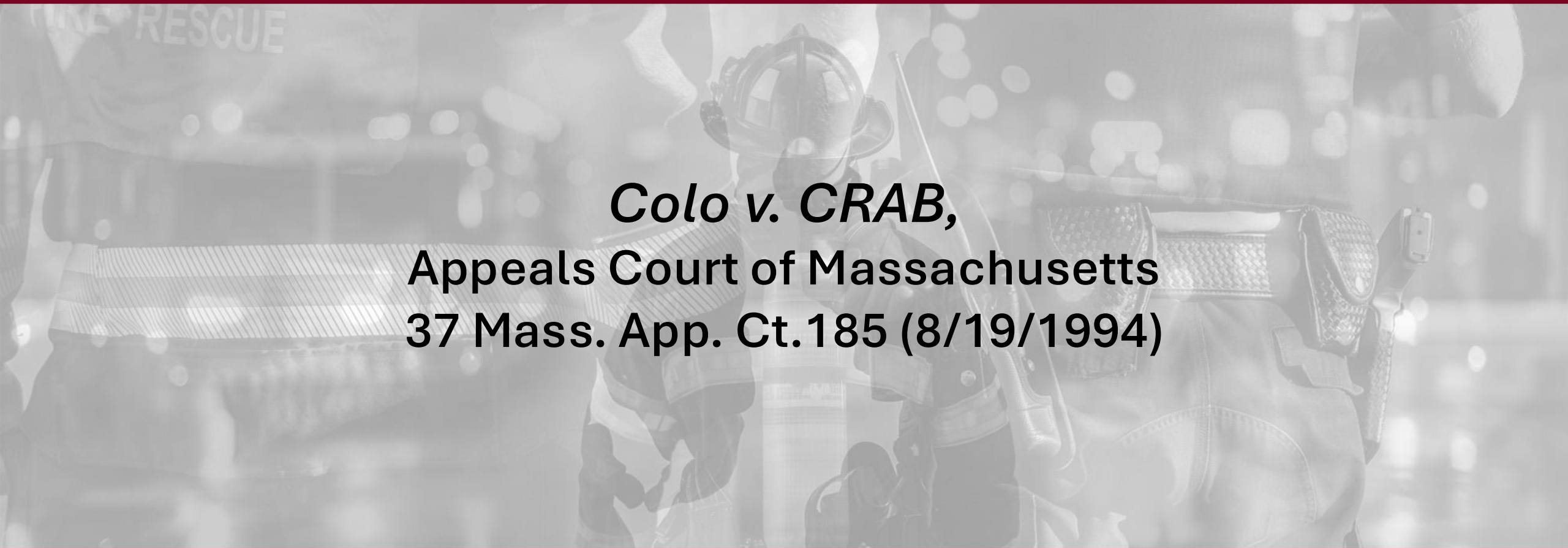
A Short History of Section 4(2)(b)

- ❖ **Statute 1945, c. 658, Section 1** – “Chapter 32 as we know it”
- ❖ Local boards given the authority to fix and determine the amount of credit to give to a part-time employee who entered the system.
- ❖ **Statute 1964, c. 738** – a proviso related specifically to call firefighters was added to Section 4(2)(b), mandating that retirement boards credit as full time service, only if such call firefighter was later appointed a permanent member of the fire department.
- ❖ **Statute 1966, c. 509** – certain time on the police or fire reserve list was to count as creditable full-time service, without consideration of the actual time served.



Greatest Thing About The 1964 Amendment

- ❖ It was 62 years ago.
- ❖ Therefore, it applies to everyone currently living and working as a call firefighter or permanent-intermittent police officer (“PIPO”).
- ❖ Nevertheless, we cannot possibly have a presentation about the history of call firefighters and their ability to earn credit toward their pensions, without mentioning the *Colo* case.



Colo v. CRAB,
Appeals Court of Massachusetts
37 Mass. App. Ct.185 (8/19/1994)



Colo v. CRAB (1)

- ❖ Angelo Colo was a call firefighter for the Town of Athol.
- ❖ Colo began his service as a call firefighter in 1957 and became a member of the Athol Retirement System.
 - This is how the late Athol Retirement System comes into this presentation.
- ❖ The statute was amended, as noted in previous slides, in 1964, to provide that call firefighters would only be entitled to their call firefighter service if they later became members of the fire department of the same system.



Colo v. CRAB (2)

- ❖ In 1990, Colo filed for superannuation retirement benefits.
- ❖ He was at the time 64 years old.
- ❖ He had been a call firefighter for 32 years and two months.
- ❖ The Athol Retirement Board “calculated Colo’s pension based upon seven years and four months of service.”



Colo v. CRAB (3)

- ❖ Public Employee Retirement Administration (“PERA”), PERAC’s predecessor agency, disapproved this calculation.
- ❖ PERA opined that Colo should receive service in “accordance with the board’s usual practice regarding part-time and intermittent employees at the time.”
- ❖ PERA further found that since Colo never became a permanent member of the fire department, he should not be awarded service for the time after the 1964 statute.
- ❖ Colo appealed.



Colo v. CRAB (4)

- ❖ **DALA:** An administrative magistrate, relying on contract principles, ruled in Colo's favor.
- ❖ **CRAB:** Relying on the statute, affirmed PERA's refusal to grant Colo credit for his post-1964 service.
- ❖ A Superior Court judge affirmed CRAB's decision.




Colo v. CRAB (5)

- ❖ **Appeals Court:** Colo is entitled to have all his years of employment as a call fire fighter counted as creditable service.
- ❖ We assume, for purposes of this case at least, that the 1964 amendment was intended to result in the denial of creditable service to a call fire fighter who did not thereafter become a permanent member of a fire department. **The issue remains, however, whether the amendment applies to one in Colo's position.**



Colo v. CRAB (6)

- ❖ Colo joined the system several years before the amendment. At least on the facts of this case, we think an adequate showing has been made that Colo would have had a reasonable expectation around the time of his employment that his service as a call fire fighter would continue to count as creditable service as long as deductions were being taken from his salary and until his employment terminated.
- ❖ For further information, please see PERA Memo No. 20 of 1994.



With *Colo* Safely Behind Us, a Quick Recap of Buying Back Time in General

- ❖ Chapter 32, Section 3(5)
- ❖ Chapter 32, Section 4(2)(c)
- ❖ Chapter 32, Section 4(1)(o) – The “Under \$5000 Rule”
- ❖ The greatest Venn Diagram ever told.



Buybacks of Earlier, Non-Membership Time

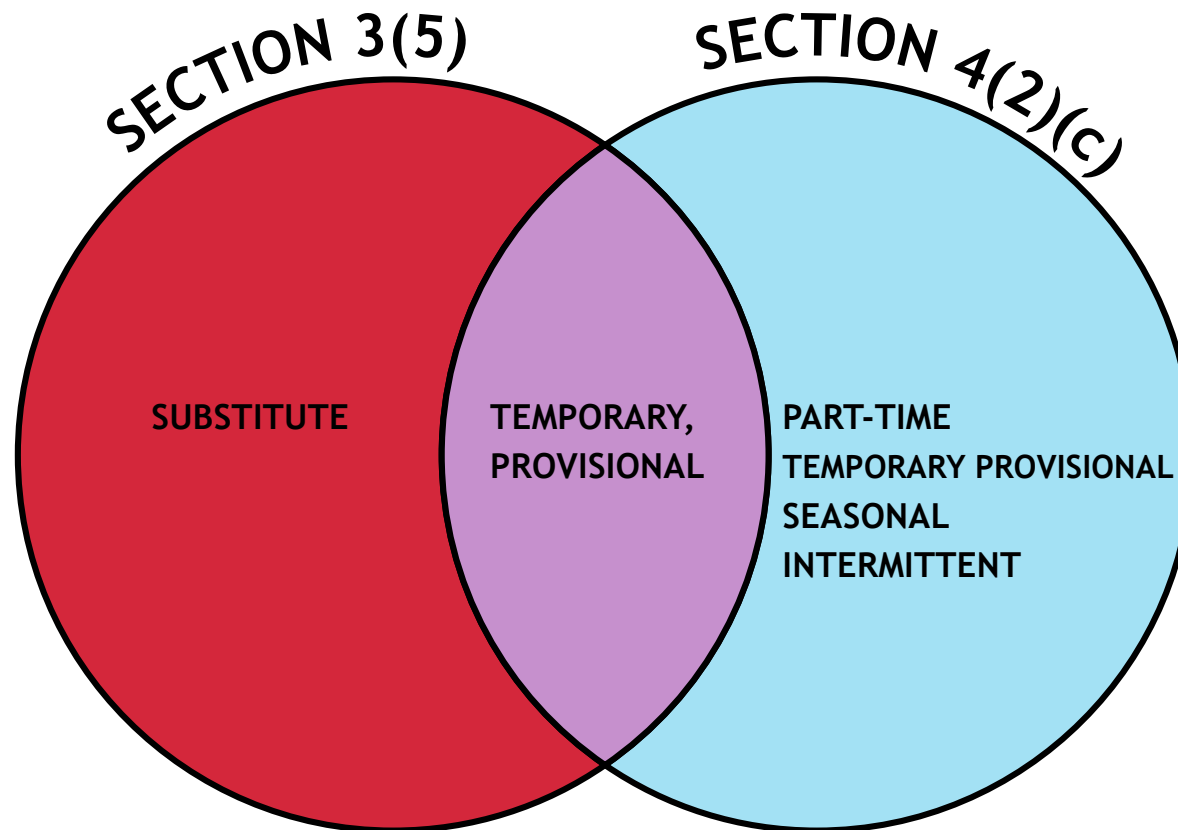
- ❖ Sometimes permissible, but not always.
- ❖ Conditions spelled out in Chapter 32, Section 3(5) or Section 4(2)(c) must be met.
- ❖ The section under which the buyback is being made will determine what interest rate will be used in making the purchase.



G.L. c. 32, s. 4(1)(o) — The “Under \$5,000 Rule”

- ❖ Creditable service is no longer available for purchase if the position which the person held had an annual compensation of under \$5,000, and if such service occurred on or after July 1, 2009.
- ❖ “elected or employee in a position receiving compensation of less than \$5,000 annually...”


Venn Diagram of Interplay Between Sections 3(5) and 4(2)(c)





Another Avenue...

- ❖ Basics of G.L. c. 32, ss. 4(2)(b) & 4(2)(b1/2)
- ❖ Two local options
- ❖ *MacAloney* → *Grimes* → *Gomes*
- ❖ PERAC Memoranda
 - No. 22 & 33 of 2013
 - No. 19 of 2014
 - No. 29 of 2016
 - No. 11 of 2020
 - No. 38 of 2020
- ❖ *Gloucester Ret. Bd. v. PERAC*



G.L. c. 32, s. 4(2)(b)

- ❖ The second proviso of G.L. c. 32, Section 4(2)(b) allows for a credit of up to 5 years of creditable service for members who served in certain capacities in the past.
 - Reserve or permanent-intermittent police officer (“PIPO”).
 - Reserve, permanent-intermittent or call firefighter.
- ❖ Historically, PERAC advised that this should be credited without cost.
 - However, as you will see, that guidance has changed.



Firefighters vs. Police Officers

- ❖ Reserve or permanent-intermittent police officer must have either worked or been on respective list.
 - Must be appointed as a member of a Chapter 32 retirement system
 - Does NOT need to be appointed as a police officer or to the same department.
 - See *Ryan v. Woburn and Wakefield Ret. Bd.*, CR-14-394 (DALA Mar. 19, 2021).
- ❖ Reserve, permanent-intermittent or call firefighter must have either worked or been on respective list.
 - Must be appointed as a full-time firefighter, and...
 - Appointment MUST be to **same** department where the service was performed.



Two Local Options Which Matter Here

- ❖ Firefighters & PIPO's "Day for a Day"
 - Section 4(2)(b)

- ❖ Firefighters don't need to be appointed as a permanent member of the same department.
 - Section 4(2)(b1/2)



Firefighters & PIPOs — Day for a Day Service (1)

❖ G.L. c. 32, s. 4(2)(b):

- For a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter retiring from a governmental unit accepting the provisions of this sentence, the board shall credit, in addition to the five years of credit allowed pursuant to the preceding sentence, as one day of full-time service each day in any year which is subsequent to the fifth year following said appointment and on which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was assigned to and actually performed duty as a reserve or permanent-intermittent police officer or reserve, permanent-intermittent or call fire fighter...(Emphasis supplied).



Firefighters & PIPOs — Day for a Day Service (2)

- ❖ Day for a Day service is a local option provision.
- ❖ Adopting this provision allows call firefighters and PIPOs to purchase additional service under Section 4(2)(b).
 - They must be “assigned to and actually performed” their job duty – not just on the respective lists.
 - Call firefighter must still be appointed as a permanent member of that same fire department.



Call Firefighter — Permanent Position Not Required (1)

❖ G.L. c. 32, s. 4(2)(b1/2)

- In any city, town, or fire district, which accepts the provisions of this paragraph, service as a permanent-intermittent or call firefighter shall be credited as full-time service as provided in paragraph (b), except that credit for such service shall not be conditioned upon the appointment of said permanent-intermittent or call firefighter as a permanent member of the fire department...(Emphasis supplied).



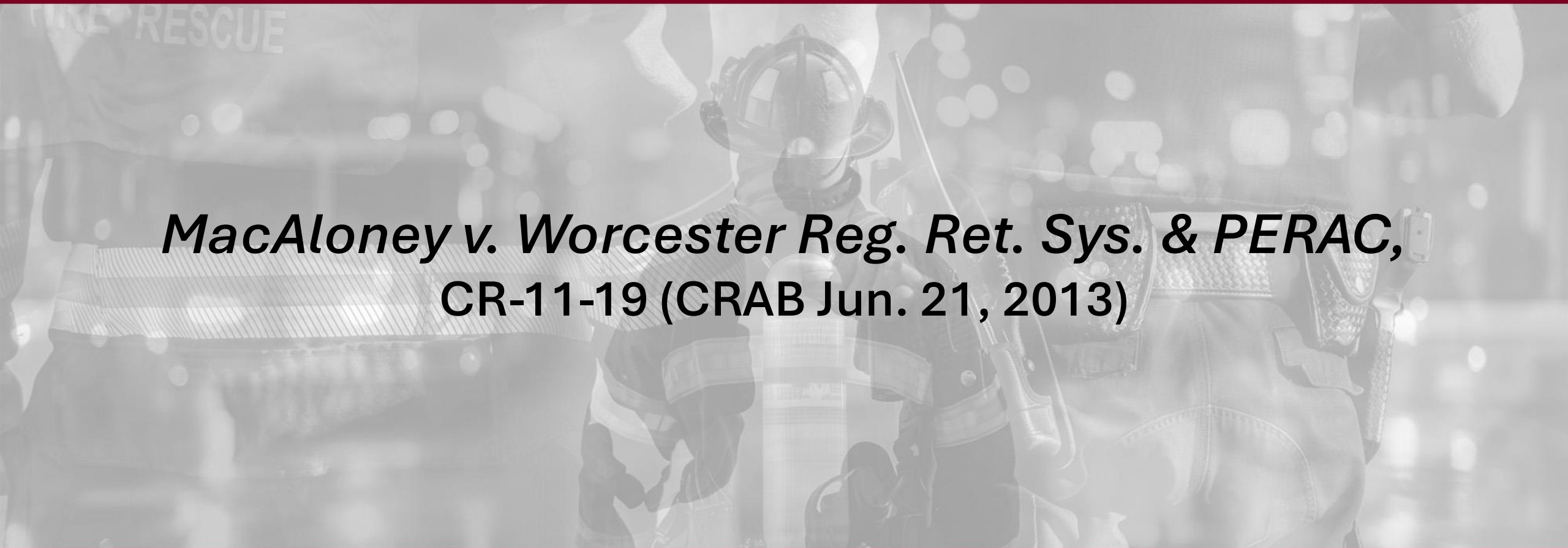
Call Firefighter — Permanent Position Not Required (2)

- ❖ Adopting this provision removes the requirement of Section 4(2)(b) that the call firefighter be appointed to a permanent position.
- ❖ To be eligible to use this local option, the city, town, district, or authority where the call firefighter service was performed must accept this provision.
 - It is not based on where the member is purchasing the service.



Interplay Between Sections 4(2)(b) & 4(2)(b1/2)

- ❖ When G.L. c. 32, ss. 4(2)(b) and 4(2)(b1/2) are read together, call firefighter service can be granted as follows:
 - A person will be granted call firefighter service upon becoming a full-time member of the fire department where the call firefighter service was performed.
 - In the alternative, if the city, town, or fire district where the person performed call firefighter service accepts the provisions of G.L. c. 32, s 4(2)(b1/2) then the requirement of becoming a full-time member of that fire department is irrelevant and the person would be eligible for such service.



***MacAloney v. Worcester Reg. Ret. Sys. & PERAC,
CR-11-19 (CRAB Jun. 21, 2013)***



MacAloney

- ❖ Mr. MacAloney was a call firefighter for Westminster who sought creditable service for his time as a firefighter.
- ❖ The Board denied his request because he was not a civil service employee.
- ❖ **In a Nutshell:** CRAB rejected the civil service argument. Pursuant to the provisions of Section 4(2)(b), a permanent firefighter can purchase up to 5 years of creditable service for any time they served as a call firefighter or for the time he or she was on the respective lists and/or rosters making him or her eligible for such duty, but they must pay for such service.



PERAC Memoranda No. 22 & 33 of 2013

- ❖ PERAC set a figure of “\$3,000” on which to base the buyback for those individuals who had not been paid for such service under Section 4(2)(b).
- ❖ The \$3,000 figure was based on G.L. c. 32, s. 85H.
 - It was also based on the defunct Sections 4(1)(o) and 4(1)(o)(1/2) which set a figure of \$2,500.
- ❖ Those who were paid compensation should pay the contributions they would have paid under the percentage rate then in effect, plus interest.



PERAC Memorandum No. 19 of 2014

- ❖ Provides methodology for calculating Section 4(2)(b) service purchases for uncompensated and compensated service.
- ❖ Instructed retirement boards to continue using \$3,000 as the annual rate of salary for PIPOs and call firefighters who were on the respective lists but did not actually respond to calls.
- ❖ Instructs retirement boards to charge interest prospectively starting from June 21, 2013, the date of the *MacAloney* decision.



***Grimes v. Malden Ret. Bd. & PERAC,
CR-15-5 (CRAB Nov. 18, 2016)***



Grimes (1)

- ❖ Mr. Grimes was a police officer for Malden who sought his creditable service for the time he was on the reserve list.
- ❖ The Board voted to take payment from the member but refused to grant creditable service pending the outcome of any appeal.
- ❖ **In a Nutshell:** DALA adopted PERAC's position that Grimes was entitled to creditable service based on an assumed rate of pay but rejected the \$3,000 number and substituted a \$5,000 amount.
- ❖ However, CRAB then determined that creditable service under Section 4(2)(b) does not require payment by the member if they were never compensated.



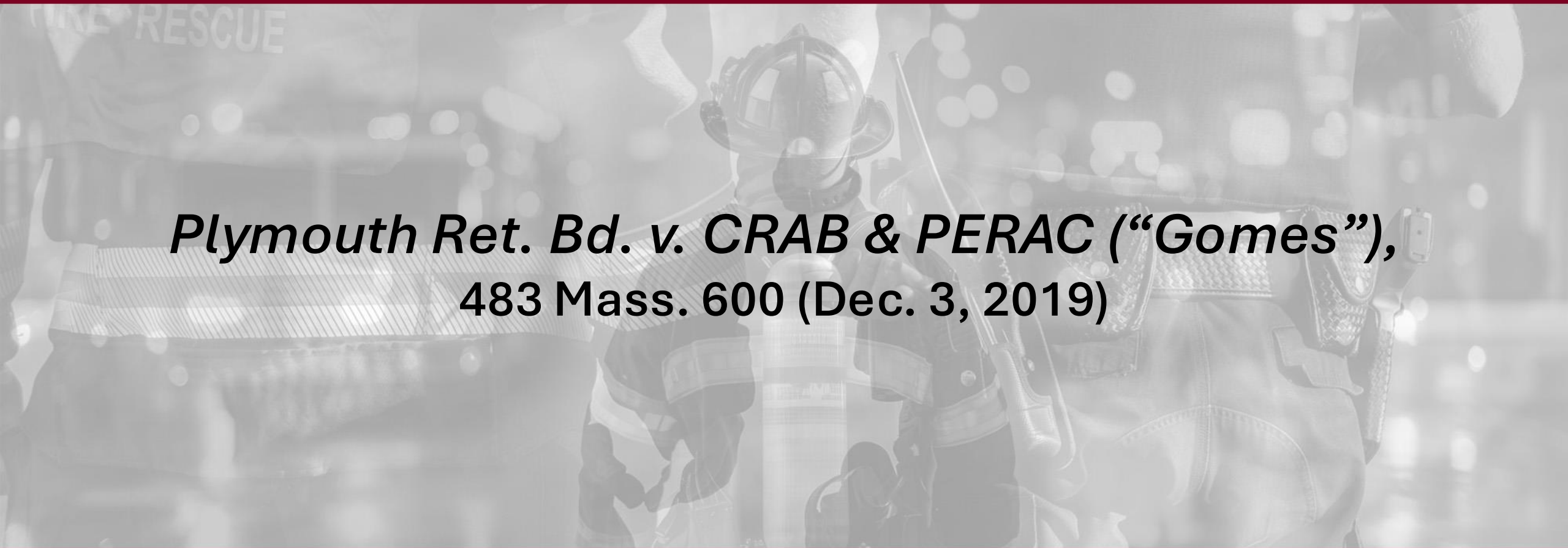
Grimes (2)

- ❖ *Grimes* was not appealed and is a final decision of CRAB.
- ❖ CRAB held in this decision:
 - “For these reasons, we agree with the DALA magistrate, and with the positions of *Grimes* and PERAC, that the memoranda issued by PERAC to the retirement boards are binding on the boards. Thus, it was error for the MRB to refuse to provide *Grimes* with his creditable service pending appeal. Retirement boards must follow PERAC's directives because of the statutory grant of power to PERAC to issue such directives in order to ensure that the more than one hundred retirement systems in the Commonwealth operate efficiently and apply uniform rules and policies.”



PERAC Memorandum No. 29 of 2016

- ❖ Provides methodology for calculating Section 4(2)(b) service purchases for uncompensated and compensated service.
- ❖ Instructs retirement boards to continue to charge interest prospectively starting from June 21, 2013.
- ❖ No payments made for those who were uncompensated – prior guidance issued after *MacAloney* now incorrect.
- ❖ Requires that any payments made by members for uncompensated service must be returned to the member with interest pursuant to G.L. c. 32, s. 20(5)(c)(2) and *Herrick v. Essex Reg. Ret. Bd.*, 465 Mass. 801 (2013).



***Plymouth Ret. Bd. v. CRAB & PERAC (“Gomes”),
483 Mass. 600 (Dec. 3, 2019)***



Gomes (1)

- ❖ Mr. Gomes worked as a permanent-intermittent police officer for the Town of Plymouth from June 1987 to June 1991.
- ❖ He eventually purchased this time in 1994.
- ❖ In 2003, PERAC instructed that the Board must give G.L. c. 32, Section 4(2)(b) service for free, and so should refund him his money.
- ❖ After the *MacAloney* decision in 2013, PERAC instructed that Mr. Gomes must now pay for that service.



Gomes (2)

- ❖ **In a Nutshell:** CRAB held that employees listed in Section 4(2)(b) can buy back service if make-up payments are made equal to what would have been contributed based on the salary paid to them.
- ❖ Acknowledging that Section 4(2)(b) is silent on payment for creditable service, the SJC concluded that this section is intended only as a “measurement scheme,” and, reading the statute as a whole, the requirement for payment is found in Section 4(2)(c).
- ❖ Broke new ground in determining that the “Under \$5,000 Rule” will also be applied to Section 4(2)(b) service.



Gomes: Footnote 4

- ❖ “The CRAB decision in *Grimes v. Malden Retirement Board*, No. CR-15-5 (Nov. 18, 2016), is not inconsistent with our holding. In that decision, CRAB found that former [Permanent-Intermittent Police Officers] who were available to be called into service, yet never were, could obtain creditable service under G.L. c. 32, § 4(2)(b), without any remittance payments, because their purchase price under the formula set forth in G. L. c. 32, § 4(2)(c), was zero, given that they never earned any money as [Permanent-Intermittent Police Officers]. Although contributory retirement systems inevitably result in some inequities, we will not remedy possible unfairness in the face of clear legislative intent. See *Housman v. LBM Fin., LLC*, 80 Mass. App. Ct. 213, 218, 952 N.E.2d 418 (2011). Further, to the extent that this appears unfair, in 2009, the Legislature addressed such outcomes in the new G. L. c. 32, § 4(1)(o), discussed *infra*. See St. 2009, c. 21, § 5.”



Gomes, Segue to Footnote 9

- ❖ “We conclude that the Legislature intended these amendments to provide former PIPOs with creditable years of service in recognition of their service as police officers; any PIPO who worked even the minimal amount of qualifying work within one calendar year could receive one year of creditable service, and local retirement boards are denied any discretion to interfere.⁽⁹⁾”



Gomes: Footnote 9

- ❖ “Until 2009, the minimal amount of qualifying work for PIPOs was zero. So long as they were on call, they could receive credit even if they were never called into duty.”
- ❖ See note 4, *supra*.



PERAC Memorandum No. 11 of 2020

- ❖ Provided methodology for calculating purchases.
- ❖ Instructions given as to active members and retirees.
- ❖ The required actual receipt of \$5,000 per year will only apply to the category of employees listed in the Second Proviso of Section 4(2)(b).
 - Most other buybacks under Section 3(5) or Section 4(2)(c) can be done using an annualized salary.
- ❖ Limitations on purchasing this service through another avenue.



How Do Call Fire & PIPOs Reach \$5,000?

- ❖ PERAC Memorandum No. 38 of 2020
- ❖ **Q.** The *Gomes* decision mandated that a person must receive \$5,000 or more in a year for such service to be considered creditable service. Should the \$5,000 compensation include detail pay? The person is able to do detail pay only because of the position that they hold.
 - **PERAC’s Response:** Yes, detail pay and other such pay should be counted as compensation. Section 4(1)(o), the “Under \$5,000 Rule” refers to “receiving compensation” and not “regular compensation.” It must be remembered that this interpretation only pertains to those being given credit for the service at issue in the *Gomes* case. Much of that service, some of it being sporadic by nature, would not fit into the definition of “regular compensation.”



Gloucester Ret. Bd. v. PERAC, et. al. (1)

❖ **Case No.:** CR-22-0452 (DALA)

❖ **Decision Date:** May 30, 2025

❖ **Facts:**

- Following the Supreme Judicial Court Decision in *Plymouth Ret. Bd. v. CRAB & PERAC*, 483 Mass. 600 (2019) (“*Gomes*”), PERAC issued two memoranda: #11 of 2020 and #38 of 2020 instructing that to purchase service under G.L. c. 32, s. 4(2)(b), the member must have earned at least \$5,000 per G.L. c. 32, s. 4(1)(o), inclusive of detail pay and overtime.
- In March 2022, the Gloucester Retirement Board requested PERAC clarify its Memos issued in the wake of the *Gomes* decision, specifically whether the public retirement law requires retirement boards, when calculating creditable service under Section 4(2)(b), to include overtime pay for the purpose of exceeding the “Under \$5,000 Rule.”
- In October 2022, PERAC declined to reconsider its previous directives and provided the Board with appeal rights.



Gloucester Ret. Bd. v. PERAC, et. al. (2)

- ❖ **In a Nutshell:** PERAC argued that while overtime and detail pay is excluded as regular compensation, Section 4(1)(o) was read as “receiving regular compensation,” much of the Section 4(2)(b) service would not fit into the definition of “regular compensation” and therefore, would be unable to be purchased. The service being purchased is sporadic and not guaranteed, which would normally not be considered “regular compensation.”
- ❖ DALA found that PERAC’s explanation of why detail pay should be included was “simple and persuasive” and “conform[ed] to the statute’s intent.”
- ❖ DALA agreed with PERAC that to limit Section 4(1)(o) to only including “regular compensation” payments as part of the \$5,000 calculation would effectively eliminate the ability to purchase service under Section 4(2)(b), a result that the Legislature could not have intended.
- ❖ **Appealed to CRAB.**



Questions Naturally Arise

- ❖ Should call firefighters and PIPOs be made members of a system?
- ❖ What if they are already members of a system?
- ❖ Which system is liable for such service?
- ❖ Did *MacAloney* change that?
- ❖ Is liability different if a community has adopted Section 4(2)(b1/2)?



What if the Call Fire or Reserve Police Officer was Made a Member?

- ❖ Creditable service should be awarded based on the supplemental regulations of the retirement board.
- ❖ To receive any creditable service for the period after July 1, 2009, members must satisfy the requirements of G.L. c. 32, s. 4(1)(o) by having earned at least \$5,000 in a calendar year.
- ❖ If the member failed to earn at least \$5,000 in a year, then they cannot receive creditable service for that time, but deductions should still be taken.



Liability – Where it Lands

- ❖ For many happy years, no one paid anything for the special 4(2)(b) grant of service. At the end of a person’s career, which system was liable for such service?
 - The system pertaining to the municipality where the PIPO/call firefighter was on the respective list would be liable for the time.
- ❖ Did we do a Section 3(8)(c) on this?
 - In the case of a call firefighter who was on a list in Municipality A, but became a firefighter in Municipality B, if Municipality A adopted Section 4(2)(b1/2), then the retirement system pertaining to Municipality A would be liable for the service.
 - *Correia v. Fairhaven RB*, CR-17-062 (DALA Aug. 27, 2021).



Liability in a Post-*MacAloney* World

- ❖ After *MacAloney*, when it was determined that people would have to pay for such service, did that change which system was liable for it?
 - No, it didn't change who was liable for the service.
- ❖ Did it change Section 3(8)(c) notices?
 - No, it did not.



Conclusion – The Big Takeaway

- ❖ From 2013-2019, the requirements for purchasing service under Section 4(2)(b) were in a state of flux.
- ❖ PERAC Memoranda were continually issued to help guide retirement boards with the ever-changing case law.
- ❖ Finally cemented an answer with the *Gomes* SJC decision that:
 - (1) firefighters and PIPOs must pay for Section 4(2)(b) service, and
 - (2) they must have actually received at least \$5,000 pursuant to Section 4(1)(o).
- ❖ Any questions or issues please contact us!
 - judith.a.corrigan@mass.gov
 - felicia.m.baruffi@mass.gov



QUESTIONS?