

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**JAMES M. BOYLE,**

**Petitioner**

**v.**

**PITTSFIELD RETIREMENT BOARD,**

**Respondent.**

**CR-02-0587**

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**DECISION**

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For the third time, we are called upon to review a decision by a magistrate in the Division of Administrative Law Appeals (DALA) that, reversing a decision by respondent Pittsfield Retirement Board (the Pittsfield board), concludes that petitioner James M. Boyle (Boyle) is entitled to membership in the Pittsfield Retirement System (the system) for the period of his employment by the Berkshire Training and Employment Program (BTEP). Without reaching the merits of the DALA decision, however, we are constrained to vacate it and dismiss Boyle's appeal for want of jurisdiction or, alternatively, because his failure to timely appeal from the Pittsfield board's original decision denying him eligibility in the system (see below) operates as an absolute bar to his ability to obtain review by us of that decision.

*Background.* Approaching the end of more than two decades of service as a Pittsfield city councilor, Boyle obtained the recommendation of the Mayor of the City of Pittsfield for employment by BTEP. In December 1999, Boyle informed the chairman of the Pittsfield board that he would like to continue as a member of the system, by reason of his employment with BTEP, after his status as Pittsfield city councilor ended on December 31, 1999.<sup>1</sup>

In early January 2000, the Pittsfield board sought advice from the Public Employee Retirement Administration Commission (PERAC) concerning Boyle's eligibility for continued membership in the system. The Pittsfield board's letter requesting advice stated that neither it nor the City of Pittsfield considered employees of BTEP, including Boyle, eligible for membership as they had never been considered municipal employees.<sup>2</sup>

On February 3, 2000, PERAC opined that BTEP employees should be members of the system.<sup>3</sup> Notwithstanding the PERAC opinion, on May 24, 2000, an assistant city solicitor for the City of Pittsfield gave the mayor a

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<sup>1</sup> DALA Decision, Finding of Fact (FF) 16.

<sup>2</sup> FF 25. BTEP was created, following the enactment of St. 1974, c. 183, to provide the residents of Berkshire County with employment and training services as administered under the Federal Comprehensive Employment and Training Act of 1973. (FF 2). Chapter 183 authorized "any governmental unit, as defined in [G. L. c. 40, § 4,]" to "enter into an agreement with one or more other governmental unites, as so defined, to perform jointly or for such other unit or units, any service . . . which each contracting unit is authorized by law to perform, if such agreement is authorized by each party thereto[.]" The referenced definition of "governmental unit" includes cities and towns.

<sup>3</sup> FF 26.

legal opinion concluding that BTEP employees were not municipal employees. The opinion noted that BTEP, a subrecipient of state and federal funds, served as a separate administrative entity to manage all aspects of certain state and federal grant programs. The opinion also noted that the City of Pittsfield simply passed this funding through to BTEP; no city funds were used to pay BTEP employees. Accordingly, the opinion reasoned, BTEP employees did not meet the statutory definition of employee.<sup>4</sup>

On June 22, 2000, the Pittsfield board voted to accept the opinions of the assistant city solicitor and of its own counsel that BTEP employees were not employees of the City of Pittsfield.<sup>5</sup> A letter of denial issued on June 26, 2000. On August 24, 2000, Boyle wrote a letter to us appealing from the Pittsfield board's decision. We received the letter on August 29, 2000.<sup>6</sup> On August 10, 2001, DALA allowed the Pittsfield board's motion to dismiss the appeal on the ground that it was untimely.<sup>7</sup> We affirmed the dismissal without reaching the merits.<sup>8</sup>

On February 18, 2002, while still employed by BTEP, Boyle again requested membership in the system.<sup>9</sup> On April 4, 2002, the Pittsfield board

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<sup>4</sup> FF 27. See G. L. c. 32, § 1 (defining "employee").

<sup>5</sup> FF 28.

<sup>6</sup> FF 30.

<sup>7</sup> FF 45. See G. L. c. 32, § 16(4) (permitting appeal to us from a local board's decision "within fifteen days of notification of such action or decision").

<sup>8</sup> FF 46. N.b., the DALA magistrate had concluded that Boyle satisfied the eligibility criteria for membership in the system. (FF 45).

<sup>9</sup> FF 52.

formally notified Boyle that his request for membership had been denied.<sup>10</sup>

On April 16, 2002, we received an appeal from Boyle from that decision.<sup>11</sup>

On January 16, 2004, a DALA magistrate reversed the Pittsfield board and ordered it to allow Boyle to purchase creditable service for his employment by BTEP. On appeal to us, we, on October 20, 2004, reversed the magistrate's decision and remanded the case to DALA for additional proceedings to determine BTEP's status. On May 19, 2006, the same magistrate reaffirmed her original decision. On January 3, 2007, we again reversed the magistrate's decision and remanded the case to DALA "solely on the issue of the legal status of [BTEP]." On May 11, 2007, the same magistrate again reaffirmed her original decision.

*Discussion.* In the decision currently under review, the DALA magistrate rejected the Pittsfield board's contention that we lacked jurisdiction because of the untimeliness of Boyle's first appeal. Concluding that the dismissal of Boyle's appeal did not preclude him from renewing his request to the Pittsfield board and appealing to us from the denial of that second request, the magistrate reasoned "that [Boyle's] initial appeal was dismissed not on the merits but on the procedural issue of timeliness of the appeal. Moreover, [Boyle] as an employee of BTEP was entitled to apply

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<sup>10</sup> FF 54.

<sup>11</sup> FF 55.

prior to the time of his retirement for membership in the Pittsfield Retirement system.”<sup>12</sup> We disagree.

The failure to timely appeal from the decision of a local board is not just a procedural misstep. Just as courts hold filing within Chapter 30A’s thirty-day period for appealing decisions of administrative agencies to be a “jurisdictional requirement” for judicial review,<sup>13</sup> so, too, do we regard as jurisdictional the timeliness of an appeal from a decision of a local board or DALA.<sup>14</sup> The upshot is that, “[w]ith extremely rare exceptions not relevant here, failure to timely file is thus typically an absolute bar to a plaintiff’s ability to obtain judicial review of a final agency action.”<sup>15</sup>

The Pittsfield board’s 2000 decision denying Boyle’s request was a final decision by the Pittsfield board holding Boyle, and other BTEP employees, ineligible for membership in the system. Boyle failed to timely appeal from that decision. Hence he is barred from obtaining administrative review of

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<sup>12</sup> DALA Decision at 17.

<sup>13</sup> *Flynn v. Contributory Retirement Appeal Bd.*, 17 Mass. App. Ct. 668, 669 (Mass. App. Ct. 1984). See also *Schulte v. Director of the Div. of Employment Security*, 369 Mass. 74, 79 (1975) (“Some errors or omissions are seen on their face to be so repugnant to the procedural scheme ... as to call for dismissal of the appeal. A prime example is attempted institution of an appeal seeking judicial review of an administrative decision after expiration of the period limited by a statute or rule”).

<sup>14</sup> We recognize that our governing statute, G. L. c. 32, § 16(4), expressly says that, in the absence of a timely appeal from a DALA decision, that decision “shall be final and binding upon the board involved and upon all other parties[.]” The absence of similar language regarding appeals from local boards does not affect our conclusion. No statutory provision is needed to inform a local board that it may enforce its decision in the absence of a timely appeal.

<sup>15</sup> *Herrick v. Essex Regional Ret. Bd.*, 68 Mass. App. Ct. 187, 190 (2007).

that decision by us. Nor may he circumvent his failure to timely appeal from that decision by renewing the same request. Possibly, but we do not so decide, Boyle could have asked the Pittsfield board to reconsider its 2000 decision. If so, and if the Pittsfield board were to have denied such a request, we could not reverse that denial “except upon a showing of clear abuse of discretion.”<sup>16</sup> “The standard is one of marked deference.”<sup>17</sup> Here, we note only that Boyle has not claimed, and therefore has waived, any abuse of discretion by the Pittsfield board.

It follows that we must vacate the DALA decision and dismiss Boyle’s appeal for want of jurisdiction, or, alternatively, because his failure to timely appeal from the Pittsfield board’s original decision denying him eligibility in the system operates as an absolute bar to his ability to obtain review by us of that decision.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL  
BOARD

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/s/

David A. Guberman  
Assistant Attorney General  
Chairman  
Attorney General’s Appointee

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<sup>16</sup> *Scannell v. Ed. Ferreirinha & Irmao, Lda.*, 401 Mass. 155, 158 (1987) (discussing appeals from denial of Rule 60(b) motions).

<sup>17</sup> *Taj v. Boston*, 45 Mass. App. Ct. 220, 224 (1998) (discussing appeals from denial of Rule 60(b) motions).

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Vacant  
Governor's Appointee

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Joseph I. Martin  
Public Employee Retirement Administration  
Commission Appointee

Date: June 12, 2009