COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Jennifer Kelly,
Petitioner,

v.

Massachusetts Teachers' Retirement System,
Respondent.

No. CR-19-137

Dated: June 5, 2023

ORDER ON ELIGIBILITY FOR ELECTION UNDER ACTS 2022, C. 134, § 3

This appeal originated with an MTRS decision that petitioner Jennifer Kelly is not entitled to be enrolled in the benefits program known as Retirement Plus. The merits of that decision aside, Ms. Kelly maintains that she is now entitled to join Retirement Plus under the recently enacted provisions of Acts 2022, c. 134, § 3. MTRS disagrees, and its position is ultimately meritorious.

I

Retirement Plus reflects the Legislature's judgment that the usual formula for calculating public employees' retirement benefits may not be optimally suited to teachers. The program went into effect on July 1, 2001. Participating teachers make enlarged retirement contributions of 11%. They are entitled to advantageous retirement-allowance calculations that, in essence, may enable them to retire earlier than usual. *See* G.L. c. 32, § 5(4).

The statute that enacted Retirement Plus prescribed three methods by which teachers could join the program. Teachers who were already MTRS members as of 2001 (2001 teachers) were permitted to "elect" into Retirement Plus during January-June 2001, i.e., the six months leading up to the program's commencement. Teachers who later transferred into MTRS from other retirement systems (transfer teachers) were permitted to elect into the program "within 180

days of establishing [MTRS] membership." Enrollment was automatic for any additional individuals hired as teachers—not from other public employment—after mid-2001. G.L. c. 32, § 5(4)(i) (as in effect until Aug. 2, 2022).

Through the years, MTRS has issued numerous decisions notifying teachers that they are not entitled to be enrolled in Retirement Plus. Hundreds of teachers receiving such decisions have appealed to DALA. Consolidated proceedings concerning their pending appeals have been ongoing since late 2001. *See In the Matter of Enrollment in Retirement Plus*, No. CR-21-369 (consolidated docket).

A statute enacted in late 2022 provided relief to a certain subset of the teachers excluded from Retirement Plus, enabling them to elect into the program during January-June 2023. A teacher is eligible for the new election "window" if he or she:

> (i) is a teacher; (ii) transferred from another contributory retirement system . . . to [MTRS] . . . ; (iii) became eligible for membership in [MTRS] on or after July 1, 2001 . . . ; (iv) began contributing to [MTRS] on or after July 1, 2001 . . . ; and (v) did not provide a written election to participate in [Retirement Plus] to [MTRS] on or before December 31, 2022.

Acts 2022, c. 134, § 3(a).

II

Ms. Kelly became a teacher and joined MTRS in approximately 1994. She resigned her position and left public employment in April or May of 2001, i.e., four or five months into the original Retirement Plus election period for 2001 teachers.

In late 2008, in connection with a part-time tutoring job, Ms. Kelly became a member of the Plymouth County Retirement Association. In late 2010, she returned to full-time teaching and transferred back into MTRS. Ms. Kelly's employer thereafter withheld retirement contributions from her pay at the enlarged, 11% rate.

In February 2019, MTRS issued a decision stating that Ms. Kelly is not entitled to participate in Retirement Plus. She timely appealed.

A late-2022 order in the consolidated docket identified Ms. Kelly as a transfer teacher. That order anticipated that all transfer teachers would be able to resolve their appeals by enrolling in Retirement Plus through the 2023 election window. MTRS subsequently took the position that Ms. Kelly's original stint as an MTRS member makes her ineligible for the 2023 window. Ms. Kelly filed a brief and exhibits presenting the contrary view.[1]

III

"[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature . . . ." *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012). "Where the statutory language is clear and unambiguous and leads to a workable result, we need look no further." *Harmon v. Commissioner of Correction*, 487 Mass. 470, 479 (2021). On the other hand, when a statute is susceptible to multiple "common meanings," the proper construction is the one that "most appropriately suits [the statute's] intent and purpose." *Ortiz v. Examworks, Inc.*, 470 Mass. 784, 788 (2015).

Ms. Kelly unambiguously satisfies three of the 2022 statute's five criteria. She is a "teacher" (clause (i)). In late 2010, she "transferred" into MTRS from the Plymouth County Retirement Association (clause (ii)). And she provided MTRS with no "written election" to participate in Retirement Plus before the end of 2022 (clause (v)).

The pivotal questions are whether Ms. Kelly "became" MTRS-eligible and "began" to make MTRS contributions after mid-2001 (clauses (iii) and (iv)). For simplicity's sake, the

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[1] The deadline for additional submissions from MTRS has expired, and MTRS has not requested an extension. *See* 801 C.M.R. § 1.01(4)(e).

analysis that follows focuses on the latter word, which is synonymous with "started" and "commenced," may mean "came into existence," and may denote the "first part of an action." *Merriam Webster's Collegiate Dictionary* 110 (10th ed. 1994).

Ms. Kelly first contributed to MTRS in 1994, stopped contributing in 2001, and started again in 2010. In the case of stop-and-start actions or events, the common meanings of terms "beginning," "start," etc. may be either absolute or relative. This distinction is illustrated by the tension inherent in the phrase "new beginnings." A relative, broad use of the term "begin" stretches to include new, non-first beginnings. An absolute, strict use of the term reaches no further than a single, original starting point.

Judicial decisions feature both usages of "begin." The absolute usage is exemplified by a Wisconsin case about a business that opened up shop in 1931, left the state in 1935, and returned in 1936. A majority of the state supreme court concluded that 1931 was when the company "began to transact . . . business . . . in this state." *Ex rel. Assoc'd Indem. Corp. v. Mortensen*, 272 N.W. 457, 458 (Wis. 1937). The relative usage may be illustrated by cases stating that a worker's employment "begins" anew upon each arrival at the workplace. *See Benjamin H. Sanborn Co. v. Industrial Comm'n*, 89 N.E.2d 804, 807-08 (Ill. 1950).

The legislative purposes of the 2022 statute support a narrow, absolute reading of the word "began" in the phrase, "began contributing to [MTRS] on or after July 1, 2001." On this reading, the phrase refers to original beginnings; it does not reach post-2001 returns to MTRS. The following paragraphs explain.

The 2022 statute "tends to reflect the general legislative view that Retirement Plus is a suitable program for teachers." *Pelletier v. MTRS*, No. CR-19-301, 2023 WL 3434952, at *3 (DALA May 8, 2023). Still, the statute's five eligibility criteria make clear that the Legislature

did not intend to open the 2023 window to *all* teachers. In a nutshell, the statutory criteria gear the 2023 window toward transfer teachers, not 2001 teachers.

The goals underlying the statute's approach are illuminated by its litigative and legislative antecedents. Soon after Retirement Plus's enactment, it became clear that transfers of membership from other systems to MTRS are logistically challenging. In essence, MTRS may not learn of a transferring member's enrollment or receive the member's prior contributions until many months after the member has started her MTRS-eligible job, has discussed her retirement options with her HR office, and has begun making MTRS-eligible retirement contributions. These logistical challenges promptly generated a large population of transfer teachers who intended to enroll in Retirement Plus but failed to do so effectively. *See Pelletier*, *supra*, at *3. A 2004 statute thus created an earlier short-term election window for teachers whose enrollment efforts had failed. Acts 2004, c. 149, § 397; *Desiré v. MTRS*, No. CR-14-200, 2017 WL 6335487 (DALA July 7, 2017); *Sabella v. MTRS*, No. CR-05-133, 2006 WL 4211623 (DALA Aug. 29, 2006).[2]

Teachers who were already MTRS members in 2001 did not share these particular problems. The enrollment path that the Legislature had designed for such teachers was the one-time, six-month enrollment opportunity open during the first half of 2001. That path sprouted no unforeseen complications. The Legislature in 2022 apparently did not discern a need to grant another shot at enrollment to the teachers that it had directed to that path.

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[2] *Pelletier*, *supra*, deemed the teacher there eligible for the 2023 window even though she had received a logistically effective invitation to join Retirement Plus (and had chosen to opt out). But the statutory language at issue in that case did not entail the type of ambiguity present here: it "couldn't [have been] clearer." *Pelletier*, *supra*, at *2. Unambiguous statutory language must be enforced as written as long as the result is "workable." *Harmon*, 487 Mass. at 479.

All teachers who were MTRS members in 2001 fit within the group that the 2022 statute's criteria are built to exclude. All such teachers received 2001's one-time, six-month[3] enrollment opportunity. During those six months, any of them could have joined Retirement Plus by notifying MTRS in writing of their desire to join the program. *Cf. Desiré*, 2017 WL 6335487, at *4. The Legislature would have had no reason to extend extra leniency to the subset of such teachers who received the 2001 enrollment opportunity, left MTRS, and subsequently returned to it.

A different conclusion might have been plausible if it were the case that a member's return to MTRS entitles that member to another election opportunity. In that scenario, the Legislature might have wished to extend the 2023 window to teachers whose *second* (or successive) enrollment opportunities were susceptible to logistical snags. But that scenario is counterfactual. An MTRS regulation states: "[A]ny Transferee into the MTRS who . . . has made an election . . . or . . . failed to [do so] when an opportunity was available . . . shall not have another Election Opportunity." 807 C.M.R. § 13.04(2).[4] *See Pelletier*, *supra*, at *4-5. This regulation would be presumed valid in the courts; in administrative tribunals, it is conclusively binding. *See Massachusetts Teachers' Ret. Sys. v. Contributory Ret. Appeal Bd.*, 466 Mass. 292, 296-97 (2013); *Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014). The regulation's consequence is that there *is no* second election opportunity, prompted by a member's return to MTRS, that logistical difficulties might have impeded.

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[3] Ms. Kelly does not claim that she is entitled to special treatment on the basis that her MTRS membership became inactive before the end of the 2001 election period.

[4] The quoted language is an operative, not explanatory, portion of the regulation. Contrast *Pelletier*, *supra*, at *5.

The foregoing analysis dictates the conclusion that, properly construed, the 2022 statute restricts the 2023 window to teachers who "became" MTRS members post-2001 and "began" making MTRS contributions post-2001 in the strict, absolute senses of these terms. Ms. Kelly, who first joined MTRS before 2001, is not among the group that the 2022 statute seeks to cover.

IV

It is therefore ORDERED as follows:

1. Ms. Kelly is not eligible to enroll in Retirement Plus through the election window enacted by Acts 2022, c. 134, § 3.

2. The balance of Ms. Kelly's appeal remains pending. It will be decided later this year along with the appeals of other 2001 teachers.

3. If necessary, Ms. Kelly may propose appropriate procedural measures designed to make the instant order immediately appealable to CRAB. Any such proposal shall be made after consultation with MTRS.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate