

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Richard Lyons,
Petitioner

v.

Docket No. CR-21-0401
Date: Sept. 27, 2024

**Middlesex County Retirement System,
Cambridge Retirement Board, and
Massachusetts Teachers' Retirement System,**
Respondents

Appearance for Petitioner:

Jesse R. Gibbings, Esq.
D.S. O'Connor & Associates, P.C.
639 Granite Street, Suite 305
Braintree, MA 02184

Appearance for Middlesex County R.S.:

Thomas F. Gibson, Esq., Chairman
Middlesex County Retirement Board
P.O. Box 160
25 Linnell Circle
Billerica, MA 01865

Appearance for Cambridge R.B.:

James H. Quirk, Jr., Esq.
Post Office Box 268
Yarmouthport, MA 02675-0268

Appearance for MTRS:

Lori Curtis Krusell, Esq.
MTRS
500 Rutherford Avenue, Suite 210
Charlestown, MA 02129-1628

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

Petitioner, a full-time, long-term substitute teacher and building substitute teacher at Cambridge Public Schools from 2002 through 2018, was erroneously excluded from membership in the Cambridge Retirement System. He was not entitled to membership in the MTRS because his position did not require a license. As Petitioner is now a member of the Middlesex County Retirement System, he may purchase service credit for those years by paying Middlesex the retirement contributions he would have made to Cambridge, along with interest at the “correction-of-errors” rate.

DECISION

Petitioner Richard Lyons timely appeals under G.L. c. 32, § 16(4) two decisions of Respondent Middlesex County Retirement System (“Middlesex”) dated October 13, 2021 and October 14, 2021. The first decision denies Mr. Lyons’s request to purchase his service in the Cambridge Public Schools from 2002 through 2018. The second decision allowed him to purchase his substitute service, also at Cambridge Public Schools, from January 1, 1994 through June 30, 1996 at the buyback interest rate. *See* G.L. c. 32, §§ 1, 3(5). He urged that the interest should be recalculated at a lower rate.

Middlesex moved to add the Cambridge Retirement Board (“Cambridge”) as a necessary party, and later Cambridge moved to add the Massachusetts Teachers Retirement System (MTRS) as a necessary party. DALA allowed both motions. DALA ordered the parties to submit pre-hearing memoranda and proposed exhibits. After some confusion on Mr. Lyons’s part and several additional DALA orders, the parties finally filed their prehearing memoranda and proposed exhibits. Cambridge filed its memorandum and 9 proposed exhibits on June 23, 2023. Middlesex filed its memorandum and 11 proposed exhibits on June 29, 2023. MTRS filed its memorandum on September 8, 2023. Mr. Lyons filed his memorandum and 13 proposed exhibits on February 5, 2024. On August 5, 2024, Mr. Lyons submitted two additional exhibits.

None of the parties objected to any of the exhibits; they are therefore entered into evidence as marked. (Exs. Cambridge 1-9, Middlesex 1-11, Lyons 1-15.)

I held a hearing by Webex videoconference on August 6, 2024. It was recorded digitally. Mr. Lyons testified on his own behalf. Respondents called no witnesses. The parties made short oral closing arguments.

FINDINGS OF FACT

Based on the record evidence, I make the following findings of fact:

1. Richard Lyons is a member of the Middlesex County Retirement System (MCRS) and an employee of the Town of Bedford. He is a teaching assistant for Bedford Public Schools. (Exs. Lyons 1; Middlesex 1.)

2. From 1994 through 1996 and again from 2002 through 2018, Mr. Lyons was an employee of the City of Cambridge. During these periods, he worked as a “building substitute” teacher or long-term substitute teacher for the Cambridge Public Schools. (Testimony; Ex. Lyons 3.)

3. From 1996 through 2002, Mr. Lyons worked as a social worker for a private agency. (Testimony.)

4. As a full-time building substitute teacher, Mr. Lyons was required to report to work every day that school was in session. He would report to a particular school building and then would be assigned to whichever classroom needed him. If no classroom required a substitute, then Mr. Lyons would be assigned other school duties for the day. Mr. Lyons continued in this role until 2018. (Testimony; Ex. Lyons 4.)

5. Mr. Lyons worked under a collective bargaining agreement and was entitled to health and life insurance. (Ex. Cambridge 7.)

6. No teaching license was required for the building substitute or long-term substitute positions. (Testimony; Exs. Lyons 14, Lyons 15.)

7. During these periods, he was not a member of any contributory retirement system. (Testimony.)

8. In 1995, Mr. Lyons received a provisional teaching certificate from the Department of Education for Social Studies 9-12 and later Social Studies 5-9. The certificate was valid for five years of employment and has been long expired. Mr. Lyons did not seek an “initial license,” the next step after provisional. Mr. Lyons held no other teaching license. (Testimony; Ex. Lyons 2.)

9. In September 2020, Mr. Lyons began working for the Town of Bedford as a teaching assistant. When he was hired, he became a member of MCRS. (Testimony; Ex. Lyons 1.)

10. In June 2021, Mr. Lyons filed with MCRS an application to purchase his prior non-contributing service with the City of Cambridge. He listed August 15, 1990 through August 15, 2019 as the dates. (Exs. Lyons 5; Middlesex 2.)

11. On June 10, 2021, MCRS contacted the Cambridge Retirement Board for information regarding Mr. Lyons’s service with Cambridge. (Ex. Lyons 6.)

12. On June 11, 2021, Cambridge Public Schools consulted with the Cambridge Retirement System regarding the eligibility of building subs for retirement system membership. On June 14, 2021, the retirement system advised that if a building substitute teacher does not have a teaching license and works at least half-time, he would be entitled to retirement system membership. (Ex. Cambridge 4, Cambridge 5.)

13. On June 16, 2021, the Cambridge retirement board notified MCRS that Mr. Lyons was never a Cambridge member and that the retirement system would not accept liability for his service, as it had erroneously concluded that he was not entitled to membership in the retirement system because he had a teaching license. However, Mr. Lyons's provisional teaching certificate had expired by 2002. (Exs. Cambridge 9, Lyons 2, Lyons 7.)

14. Cambridge Retirement supplemental membership regulations state:

Any permanent employee of the Cambridge School Department who is not a certified teacher and therefore eligible to apply for membership in the Cambridge Retirement System will be given credit for a full year of creditable service if they are employed full time for the job they perform if the job only occurs during the school year,

and,

Permanent full-time employment in the Cambridge School System would be the maximum number of hours that are assigned to the job function so long as the number equals 20 hours per week.

(Ex. Lyons 8.)

15. MCRS obtained Mr. Lyons's payroll records from the Cambridge Public Schools. It confirmed that he worked there from 1994 through 1996 and 2002 through 2018. MCRS calculated that Mr. Lyons could be credited with 1 year, 24 days of service for the 1994-1996 service and 15 years, 2 months, 7 days for the 2002-2018 service. Mr. Lyons does not dispute these calculations. (Ex. Lyons 3.)

16. MCRS issued two decision letters. On October 13, 2021, MCRS denied Mr. Lyons's application to purchase his 2002-2018 Cambridge service because he was entitled to membership in the Cambridge Retirement System and was wrongfully omitted. MCRS suggested that Mr. Lyons contact Cambridge to purchase his Cambridge

service. On October 14, 2021, however, MCRS informed Mr. Lyons that, under G.L. c. 32, § 3(5), he could purchase 1 year, 24 days of service for his 1994-1996 Cambridge employment.¹ (Exs. Lyons 9, Lyons 10.)

17. On October 27, 2021, Mr. Lyons timely appealed MCRS's decision regarding his 2002-2018 service. (Exs. Lyons 11, Middlesex 8.)

CONCLUSION AND ORDER

This appeal is about whether Mr. Lyons may purchase his 2002-2018 service as a building substitute at Cambridge Public Schools. He argues that he was erroneously excluded from membership with the Cambridge Retirement System and should be able to purchase that service from MCRS, his current system. MCRS agrees that Mr. Lyons was erroneously excluded from Cambridge retirement membership, but that he must purchase his service directly from the Cambridge system and then have it transferred to MCRS. The Cambridge Retirement System argues that Mr. Lyons did not qualify for membership and that he likely was entitled to membership in the MTRS. Both of Cambridge's arguments are based on its conclusion that Mr. Lyons had a teaching license while he worked for Cambridge Public Schools. MTRS rejects Cambridge's argument because Mr. Lyons did not have a teaching license and is further disqualified from MTRS membership on additional grounds.

To get to the answer in this appeal, I will first determine whether Mr. Lyons was entitled to membership in the MTRS. MTRS's membership regulation provides the following:

¹ Mr. Lyons ultimately chose not to purchase his 1994-1996 service because he decided it was too expensive. (Testimony.)

(1) No individual shall be eligible for membership within the retirement system unless the retirement board finds:

(a) The individual holds a license granted by the Department of Elementary and Secondary Education (“DESE”), or has been granted a waiver pending licensure by the DESE;

(b) The individual is covered by a contractual agreement for employment with one or more school committees or boards of trustees or by any combination of such committees and boards;

(c) The contractual agreement requires not less than half-time service as a teacher, as defined in M.G.L. c. 32 and clarified herein; and

(d) The contractual agreement requires that the individual be licensed by the DESE as a condition of employment.

807 CMR 4.02(1). Mr. Lyons is disqualified from MTRS membership for two reasons.

First, he did not hold a teaching license when he worked for Cambridge Public Schools.

Second, his collective bargaining agreement did not require that he be licensed by DESE to work as a building substitute.

Since he was not entitled to MTRS membership, then the next question is whether he was entitled to Cambridge retirement membership. Relevant Cambridge membership regulations provide:

Any permanent employee of the Cambridge School Department who is not a certified teacher and therefore eligible to apply for membership in the Cambridge Retirement System will be given credit for a full year of creditable service if they are employed full time for the job they perform if the job only occurs during the school year,

and,

Permanent full-time employment in the Cambridge School System would be the maximum number of hours that are assigned to the job function so long as the number equals 20 hours per week.

Mr. Lyons was a permanent full-time employee of Cambridge Schools, and he was not a certified teacher. He was therefore entitled to Cambridge Retirement System

membership while he worked in Cambridge from 2002 through 2018. The Cambridge system essentially agrees with this conclusion, as the only original reason that it decided Mr. Lyons was not entitled to membership was his provisional teaching certificate.

At the hearing on this appeal, the Cambridge system argued that, even if Mr. Lyons had been excluded from membership, he was not erroneously or wrongfully excluded. To the extent that Cambridge is attempting to argue that Mr. Lyons was required to request membership to become a member, that is incorrect. An employee who is entitled to membership is not required to initiate the membership process, and failure to do so does not have any effect on whether he can rightfully become a member when it is discovered later that he had been erroneously excluded. *Mankowsky v. MTRS and Franklin Reg'l Retirement Sys.*, CR-17-238, at *10-11 (DALA Apr. 26, 2019).

Now that we know that Mr. Lyons was erroneously excluded from membership while he worked for Cambridge, he must purchase the service if he wants credit for it. He no longer works for Cambridge, and he is currently a MCRS member, so he must purchase the service through MCRS. *Ryan v. Woburn Retirement Bd. and Wakefield Retirement Bd.*, CR-14-394 (CRAB July 23, 2018), Decision after Remand (DALA March 19, 2021).

Mr. Lyons and MCRS agree that he should be charged the correction-of-errors interest rate, which cannot exceed 3%.² This is consistent with the Contributory

² The correction-of-errors interest rate developed following a Supreme Judicial Court decision that required retirement boards, when correcting errors that affect retirees' retirement allowances, to put retirees in the position they would have been in absent the error. *Herrick v. Essex Regional Retirement Bd.*, 465 Mass. 801 (2013). The Court instructed board actuaries to determine an interest rate that would ensure retirees received the actuarial equivalent of the amount that should have been distributed. *Id.* at 809. This instruction led to PERAC Memorandum No. 32/2013 that guides boards in selecting what

Retirement Appeal Board's decision in *Wright v. State Bd. of Retirement*, CR-16-68, at *2, 5 (CRAB Oct. 18, 2022).

Based on the above analysis, I conclude that Mr. Lyons was not entitled to membership in MTRS. He was entitled to membership in the Cambridge Retirement System from 2002 through 2018. He may purchase that service from his current retirement system, MCRS, by paying the retirement contributions he would have made plus interest at the correction-of-errors rate.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Sept. 27, 2024

came to be called the "correction-of-errors interest rate" to apply to the correction of both over- and underpayment of retirement allowances. PERAC Memorandum No. 14/2018 extends the application of the correction-of-errors interest rate to purchases of service for periods when members were wrongfully excluded.