

# **Service Credit Purchases and *Plymouth Retirement* v. *CRAB* and *PERAC***

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## 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.

## 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...”

## Two Avenues for Purchase

Section 3(5)	Section 4(2)(c)
<ul style="list-style-type: none"> <li>■ temporary</li> <li>■ provisional</li> <li>■ substitute</li> </ul>	<ul style="list-style-type: none"> <li>■ part-time</li> <li>■ provisional</li> <li>■ temporary</li> <li>■ temporary provisional</li> <li>■ seasonal</li> <li>■ intermittent</li> </ul>

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





## Another Avenue

- 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
- Reserve, permanent-intermittent or call firefighter
- Traditionally credited without cost

## ***MacAloney v. Worcester Regional Retirement System & PERAC***

- **Case No.:** CR-11-19
- **Decision Date:** June 21, 2013
- **In a Nutshell:** 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.

## ***Grimes v. Malden Retirement Board & PERAC***

- **Case No.:** CR-15-5 (CRAB)
- **Decision Date:** November 18, 2016
- **In a Nutshell:** CRAB determined that creditable service under G.L. c. 32, Section 4(2)(b) does not require payment by the member if they were never compensated.
- **Not Appealed.**



## ***Gomes v. Plymouth Retirement Board & PERAC***

- **Case No.:** CR-14-127 (CRAB)
- **Decision Date:** November 18, 2016
- **In a Nutshell:** CRAB held that employees listed in G.L. c. 32, Section 4(2)(b) are able to buy back service if make-up payments are made equal to what would have been contributed based on the salary paid to them.
- CRAB upheld by SJC in the decision *Plymouth Retirement Board v. CRAB*, and *PERAC*, 483 Mass. 600 (December 3, 2019).

## ***Plymouth Retirement Board v. CRAB and PERAC, 483 Mass. 600 (December 3, 2019)***

- Acknowledging that Section 4(2)(b) is silent on payment for creditable service, the SJC concludes 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).
- Breaks 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: 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 Memo No. 11 of 2020

- “Payment Required for Service Credited under G.L. c. 32, Section 4(2)(b)”
- Issued January 6, 2020
- Provided methodology for calculating purchases.
- Instructions given as to active members and retirees.
- The required receipt of \$5,000 per year will only apply to the category of employees listed in the Second Proviso of Section 4(2)(b).
- Limitations on purchasing this service through another avenue.



## Questions Which Have Arisen In the Wake of Memo # 11 of 2020

- Does the receipt of detail pay count toward the annual \$5,000 requirement?
- Does the “same department” mentioned in memo apply to both police officers and firefighters?
- Why does the memo state that if a member is ineligible to purchase Section 4(2)(b) time, they will be unable to purchase it via Sections 3(3), 3(5) or 4(2)(c)?

## Conclusion

- The second proviso of Section 4(2)(b) has undergone radical changes in interpretation in recent years.
- Paying for the service is a relatively new (since MacAloney) requirement.
- The Under \$5,000 Rule applying to such service is very new (since the SJC decision in Gomes in December of 2019.)
- Retirement boards and PERAC continue to adapt.
- PERAC is soon to issue further guidance.