

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Anthony McDermott,
Petitioner,

Docket No.: CR-19-0071

v.

**State Board of Retirement and Public
Employee Retirement Administration
Commission,**
Respondents.

Appearances:

For Petitioner: Harry T. Daniels, Esq.

For State Board of Retirement: Brendan McGough, Esq.

For Public Employee Retirement Administration Commission: Kenneth J. Hill, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

After receiving a notice of termination, the petitioner negotiated a settlement agreement with his employer, which entitled him to a period of paid leave. The petitioner's pay while on leave was not "severance" pay: it was designed to compensate him for his continued advice, assistance, and full-time availability to his colleagues. The petitioner's entry into a settlement agreement did not make his departure from employment "voluntary," because he never held any realistic prospect of returning to his position. The petitioner is entitled to retire for termination under G.L. c. 32, § 10(2)(a).

DECISION

I. Procedural History

Based on nineteen years of employment with Roxbury Community College (college), followed by fifteen months of paid leave, petitioner Anthony McDermott applied to retire for termination. The State Board of Retirement (board) twice approved the application. The Public Employee Retirement Administration Commission (PERAC) twice withheld its own approval and

remanded the application to the board. The board then decided to take no further action, prompting this appeal.

Administrative Magistrate Kristin Palace initially granted summary decision in Mr. McDermott's favor. *McDermott v. Public Emp. Ret. Admin. Comm'n*, No. 19-71, 2020 WL 13584379 (Div. Admin. Law App. Aug. 21, 2020) (*McDermott I*). The respondents appealed to the Contributory Retirement Appeal Board (CRAB), which vacated *McDermott I* and remanded for further proceedings. 2025 WL 1675984 (Contributory Ret. App. Bd. Mar. 12, 2025) (*McDermott II*).

On remand, the parties stipulated to *McDermott II*'s recitation of facts (with one immaterial exception). An evidentiary hearing took place on July 22, 2025, at which the witnesses were Mr. McDermott, the chair of the college's board of trustees (Gerald Chertavian), and three of Mr. McDermott's former colleagues (Erica Rivers, Everad Samuels, and Richard Iacobucci). I admitted into evidence exhibits marked 1-23.

II. Findings of Fact

The following findings of fact combine those stated by CRAB with additional findings based on the testimony and the exhibits.

A. The Termination and Settlement

1. Mr. McDermott began working for the college in October 1997. Soon thereafter, he was named director of the Reggie Lewis Track and Athletic Center (Reggie Lewis center). Nineteen years later, in September 2016, Mr. McDermott received a letter from a vice

president of the college stating that he would be separated from employment effective March 2017. (*McDermott II*, at *1; McDermott; exhibits 2, 15.)¹

2. College president Valerie Roberson wanted Mr. McDermott to remain available to the college during a transitional “consulting phase.” She and Mr. McDermott met to discuss this plan soon after he received his separation letter. In contemporaneous text messages, they discussed the logistics: Mr. McDermott did not want to sit in an office outside the Reggie Lewis center; he proposed instead to: “do my consulting from [my] home office and meet with you as you require during the consulting phase.” President Roberson was “fine with that.” (*McDermott II*, at *1; McDermott; Chertavian; exhibits 4, 15.)

3. Around the same time, Mr. McDermott presented President Roberson with an appeal from his termination. His claim on appeal was that the college had not complied with the applicable employee handbook. Mr. McDermott soon hired an attorney, who began to negotiate with college officials. (*McDermott II*, at *1; McDermott; exhibits 1, 3, 15.)

4. In mid-February 2017, Mr. McDermott and Chair Chertavian spoke by telephone. Chair Chertavian opined that Mr. McDermott’s hope to be reinstated was not “realistic.” He also confirmed, orally and in a text message, that the college wanted to maintain access to Mr. McDermott’s “advice and help on an as needed basis.” (*McDermott II*, at *1; Chertavian; exhibit 5.)

5. Later that month, the college and Mr. McDermott executed a settlement agreement. Mr. McDermott agreed to forego any challenges to his termination. The college

¹ *McDermott II* is cited to the page numbers of the version reported at 2025 WL 1675984. The testimony is cited by witness name.

agreed to place Mr. McDermott on leave for nine extra months, through the end of 2017.

During his period of leave, Mr. McDermott was to receive his full pay and benefits, disbursed on the usual periodic schedule (not in a lump sum). Mr. McDermott was to be “relieved of all duties associated with the position of director,” retaining “no authority to act on behalf of the college.” At the end of the leave, Mr. McDermott’s employment was to “end.” The settlement agreement did not include an integration clause, i.e., a provision rejecting all preliminary commitments and side agreements. (*McDermott II*, at *1; exhibit 7. *See generally Realty Fin. Holdings, LLC v. KS Shiraz Manager, LLC*, 86 Mass. App. Ct. 242, 247-48 (2014).)

6. An early draft of the settlement agreement stated that the college president or her designee would be permitted to “consult with Mr. McDermott regarding the [Reggie Lewis center’s] operations and the transition to new management.” The final agreement dropped that language. Nevertheless, both Mr. McDermott and Chair Chertavian believed that Mr. McDermott was obligated to consult for the college upon request throughout his leave. Chair Chertavian testified repeatedly that Mr. McDermott’s consulting work was mandatory, not voluntary. He believed that the college retained the right to terminate Mr. McDermott’s paid leave in the event of Mr. McDermott’s failure to cooperate. (McDermott; Chertavian; exhibits 6, 7, 17.)

7. The settlement agreement did not specify what exactly Mr. McDermott was to be paid for during his leave. PERAC interprets the arrangement as a form of severance pay, i.e., a reward to Mr. McDermott for losing and leaving his job. A preponderance of the evidence supports Mr. McDermott’s alternative understanding: that the college agreed to continue his full pay in exchange for his advice, assistance, and full-time availability. Chair Chertavian shared

that understanding. The record includes no evidence that any college personnel thought Mr. McDermott was being paid for his departure. As for the text of the written settlement agreement, it relieved Mr. McDermott specifically of his role as “director,” without necessarily precluding him from retaining or assuming other responsibilities. (McDermott; Chertavian; exhibits 7, 17.)

8. A provision of the settlement agreement required the college “to take all reasonable action to support Mr. McDermott’s application for state retirement.” Mr. McDermott understood that provision as requiring the college to deal expeditiously with any eventual requests for retirement-related paperwork. But when the parties prepared and signed the agreement, Mr. McDermott was still in his early fifties. He was pursuing jobs with other employers. He was not planning to retire. No discussions about Mr. McDermott potentially retiring took place among Mr. McDermott, his attorney, Chair Chertavian, or other college personnel. (*McDermott II*, at *1; McDermott; Chertavian; exhibit 7.)

9. Mr. McDermott was reluctant to accept the settlement. He did not view his termination as either justified or compliant with his employment rights. But he was mindful of Chair Chertavian’s opinion that reinstatement was not a “realistic” option; and the March 2017 separation date originally announced by the college was approaching. The settlement agreement afforded Mr. McDermott another nine months of pay, health insurance, and time to find new employment. (McDermott; exhibit 7.)

B. The Paid Leave Period

10. Throughout his September 2016-December 2017 leave, Mr. McDermott provided his services to the college on a regular basis, on average several hours per day. He

worked mostly from home, communicating with college personnel by telephone, email, and text message. Mr. McDermott's colleagues leaned heavily on his assistance. College executives never advised them to avoid Mr. McDermott or to seek assistance from other sources instead. (McDermott; Chertavian; Iacobucci; Samuels; Rivers; exhibit 17.)

11. Mr. Iacobucci was one of the colleagues with whom Mr. McDermott worked extensively, both before and during his leave. Mr. Iacobucci was the college's director of advancement and alumni affairs, with responsibilities revolving around fundraising. During Mr. McDermott's leave, the projects he and Mr. Iacobucci shared included two especially time-intensive initiatives: the assembly of a team of Boston Marathon runners whose "bibs" would raise money for the college; and a gala of more than one thousand participants to celebrate the Reggie Lewis center's twentieth anniversary. Mr. McDermott and Mr. Iacobucci spoke about these and other matters frequently, often several times per week, with Mr. McDermott remaining available to Mr. Iacobucci at all times. (Iacobucci; exhibit 11.)

12. Mr. Samuels was another colleague who drew on Mr. McDermott's advice and assistance during his leave. Mr. Samuels was the Reggie Lewis center's afternoon operations coordinator. Because Mr. McDermott was no longer on site, Mr. Samuels needed frequent input from him on how to run the center's routine operations and scheduled events. They spoke multiple times per week during the first six months or so of Mr. McDermott's leave and at least weekly after that. Mr. McDermott was available to Mr. Samuels throughout, honoring every request for advice or assistance. (Samuels; exhibit 13.)

13. Ms. Rivers was the college's director of athletics and student life. She collaborated with Mr. McDermott daily prior to his leave and approximately three times per

week once the leave began. Mr. McDermott was a critical resource to Ms. Rivers, having accumulated knowledge of the “ins and outs” of athletic programs. As one example, Mr. McDermott made in-person visits to the Reggie Lewis center to assist Ms. Rivers with a report she needed to file under the Equity in Athletics Disclosure Act, 20 U.S.C. § 1092; no one else at the college was similarly knowledgeable about this obligation. Ms. Rivers observed that Mr. McDermott was consistently accessible not only to her but also to other college employees who needed his help and guidance. (Rivers; exhibit 12.)

C. Pre-Appeal Proceedings

14. By late December 2017, Mr. McDermott had not yet secured new employment. He contacted the board to discuss his entitlements under the retirement law. A board employee advised Mr. McDermott that the statutory provision potentially applicable to his circumstances was G.L. c. 32, § 10, concerning retirement for termination. (McDermott; exhibit 8.)

15. Mr. McDermott filed his retirement application in January 2018, soon after his leave ended. The board twice approved Mr. McDermott’s application and advanced it to PERAC. Both times, PERAC withheld its own approval and remanded to the board for further proceedings. After the second remand, the board informed Mr. McDermott that it would take no further action. Mr. McDermott timely appealed. (Exhibits 9, 10, 20-23.)

III. Analysis

Several related statutes define the conditions under which public employees are entitled to retirement allowances. Mr. McDermott seeks an allowance under G.L. c. 32, § 10(2)(a). The questions presented under that statute are whether Mr. McDermott

“completed twenty or more years of creditable service,” and whether he was “removed or discharged” from his position. *Id.*²

A. Creditable Service

An allowance under G.L. c. 32, § 10(2)(a), is available only to an employee who has “completed twenty or more years of creditable service.” Creditable service generally means public service “as an employee” by a member of a Massachusetts retirement system.

Id. § 4(1)(a). By the time his leave began, Mr. McDermott had accumulated nineteen years of credit. The question is whether his fifteen months of leave were also creditable: if they were, then Mr. McDermott reached the twenty-year threshold.

In addition to standard stretches of work, creditable service is defined to include “any period of . . . continuous absence with full regular compensation.” G.L. c. 32, § 4(1)(c). At first reading, this provision may seem applicable unambiguously to Mr. McDermott’s fully paid leave; but a complication arises from the statute’s use of the term “regular compensation,” which is ordinarily defined to mean “compensation received . . . as wages . . . for services performed.” *Id.* § 1 (emphasis added). See generally *Zelesky v. Commissioner of Div. of Pub. Emp. Ret. Admin.*, 30 Mass. App. Ct. 106 (1991).

Likely based on this standard definition, CRAB stated in *McDermott II* that Mr. McDermott’s rights turn on whether he “provided services to [the college] in return for the compensation paid to him during the Leave.” 2025 WL 1675984, at *2. CRAB explained:

² PERAC’s closing brief drops the unsupported theory that Mr. McDermott’s “removal or discharge was brought about by collusion or conspiracy.” G.L. c. 32, § 10(2)(c).

This dispute over services is critical to the determination as to whether the pay McDermott received in accordance with the Settlement is regular compensation. This factor is needed to decide whether McDermott is entitled to creditable service during the period he was on administrative leave pursuant to G.L. c. 32, § 4(1)(c) and ultimately as to whether he is entitled to a termination retirement allowance under G.L. c. 32, § 10(2)(a).

Id. at *3. CRAB's guidance on this point is the law of the case. *See City Coal Co. of Springfield v. Noonan*, 434 Mass. 709, 712 (2001); *Cavanagh v. Cavanagh*, 105 Mass. App. Ct. 620, 625 (2025); *Steinberg v. State Bd. of Ret.*, No. CR-08-171, at *12 n.45 (Contributory Ret. App. Bd. Mar. 3, 2011).³

The evidence on remand confirmed that Mr. McDermott performed employment services on the college's behalf throughout his leave. He spent several hours per day providing advice and assistance to college personnel. Perhaps just as importantly, Mr. McDermott was available full time for consultation. His "advice and help on an as needed basis," in Chair Chertavian's words, were the same services that the college had negotiated to receive in exchange for Mr. McDermott's full pay and benefits.

PERAC relies largely on another passage of G.L. c. 32, § 1, according to which "wages" and "regular compensation" do not include payments "for termination, severance, [or] dismissal." The word "for" in this provision asks implicitly what the pertinent payments are

³ The definitions in G.L. c. 32, § 1, give way where "a different meaning is plainly required by the context." *Id.* On a future occasion, it may be important to consider whether the context of § 4(1)(c) plainly requires a departure from the usual definition of "regular compensation." When the Legislature determined that creditable service should include paid "continuous absences," § 4(1)(c), it may not necessarily have expected that phrase to be construed as limited to the rare cases of continuous absences during which the employee continued to perform "services," § 1.

intended to accomplish: roughly speaking, pay is disqualified if it seeks to induce or reward not the employee's work, but his or her departure from work. *See Boston Ass'n of Sch. Adm'rs & Sup'rs v. Boston Ret. Bd.*, 383 Mass. 336, 341-42 (1981); *Burke v. Hampshire Cty. Ret. Syst.*, No. CR-10-35, 2015 WL 14085602, at *2 (Contributory Ret. App. Bd. Aug. 14, 2015). *See also Bolta Prods. Div. v. Director of Div. of Emp. Sec.*, 356 Mass. 684, 688 (1970).

Periodic payments made under a separation agreement may qualify as severance pay in some circumstances. In *Burke*, CRAB identified the key question as whether an employee receiving such payments was compensated "for services rendered" or "for the . . . elimination of her position." 2015 WL 14085602, at *2. The magistrate in another case likewise focused on whether the member was paid "for resigning" or "for performing his duties." *Dodge v. Montague Ret. Bd.*, No. CR-18-288, at *5 (Div. Admin. Law App. Dec. 7, 2018). *See also Langsam v. State Bd. of Ret.*, No. CR-22-0437, 2025 WL 957985, at *4 (Div. Admin. Law App. Mar. 14, 2025).

On balance, Mr. McDermott's pay while on leave was not severance pay. The only piece of evidence tending to support the conclusion that he was being paid for his departure from work is the provision of the settlement agreement relieving him of his "director" duties. But both Mr. McDermott and Chair Chertavian understood that Mr. McDermott was taking on important "consulting" obligations instead. They both believed that Mr. McDermott's advice, assistance, and full-time availability were the reason why he would continue to receive full pay. No witnesses thought otherwise.

In *Burke*, *Dodge*, and perhaps many other cases, members on pre-termination leaves performed only illusory, contrived, or minimal services. The instructive testimony of Chair

Chertavian and Mr. McDermott's colleagues put this case on a different footing. The college's leaders arranged for Mr. McDermott to enter into a "consulting phase" because they understood that important work at the college would require his input and assistance. They appreciated that Mr. McDermott's services while on leave would be extremely valuable to his colleagues. For these reasons, the college expected Mr. McDermott's services to be mandatory, not voluntary. Contrast *Langsam*, 2025 WL 957985, at *4.

Mr. McDermott's fifteen months of paid leave amounted to a "period of . . . continuous absence with full regular compensation." G.L. c. 32, § 4(1)(c). Section 10(2)(a)'s twenty-year threshold is therefore satisfied.

B. Termination

The allowance that Mr. McDermott seeks is available only to employees who have been "removed or discharged" from their positions. G.L. c. 32, § 10(2)(a). Only "involuntary" removals or discharges count in this context. *Megiel-Rollo v. Contributory Ret. Appeal Bd.*, 81 Mass. App. Ct. 317 (2012). PERAC maintains that Mr. McDermott's separation from employment with the college was voluntary and therefore nonqualifying.

Megiel-Rollo is the leading precedent on this issue. The member and her employer in that case were litigating a dispute before the Massachusetts Commission Against Discrimination. An eventual settlement agreement provided for the member to receive pay during a period of leave and a notice of termination thereafter. 81 Mass. App. Ct. at 318.

Reasoning by analogy from unemployment-compensation cases, the Appeals Court held in *Megiel-Rollo* that a "resignation . . . will be deemed involuntary if the employee reasonably believed that [his or her] discharge was imminent." 81 Mass. App. Ct. at 323 (quoting *Connolly*

v. Director of the Div. of Unemployment Assistance, 460 Mass. 24, 25 (2011)). But the member in *Megiel-Rollo*, “[p]rior to entering settlement negotiations . . . had never been notified or advised of any possibility . . . of [the employer] terminating her employment.” *Id.* at 318. “[She] could not have reasonably believed that her employment would soon be terminated if she did not sign the settlement agreement.” *Id.* at 324. Her separation from employment was therefore voluntary. *Id.* See also *State St. Bank & Tr. Co. v. Deputy Dir. of Div. of Emp. & Training*, 66 Mass. App. Ct. 1, 9-10 (2006).

The analysis prescribed by *Megiel-Rollo* calls for the opposite result here. It would be understating matters to say that Mr. McDermott “reasonably believed that [his] discharge was imminent.” 81 Mass. App. Ct. at 323. By the time the parties began to negotiate the settlement agreement, there was no room for speculation: the college had already announced that Mr. McDermott’s job was ending. The imminence of the discharge was a matter not of reasonable belief but of established reality.

PERAC’s view that Mr. McDermott’s termination was nonetheless “voluntary” relies on a portion of *Tarlow v. Massachusetts Teachers’ Ret. Syst.*, No. CR-10-793, 2013 WL 12629448 (Contributory Ret. App. Bd. Nov. 26, 2013), *aff’d on other grounds*, 32 Mass. L. Rptr. 487 (Super. Ct. 2015). After receiving a notice of termination, the member in that case sued for damages. Under the ensuing settlement, the member received “back pay” and then resigned. *Id.* at *1-2. CRAB viewed the member’s resignation as voluntary, explaining:

Where the underlying claim is of involuntary termination . . . it does not make sense to ask whether the employee reasonably could have expected to stay on after receiving back pay The question should

rather be whether the circumstances . . . showed coercion or other indicia of involuntariness.

Id. at *3.

The decisive problem for PERAC's position is that, on appeal in the *Tarlow* case, the Superior Court rejected the pertinent portion of CRAB's analysis. The court wrote:

Central to the Appeals Court's reasoning [in *Megiel-Rollo*] was the fact that absent the settlement agreement, the [employee] "could not have reasonably believed that her employment would soon be terminated." Here, the opposite is true: Mr. Tarlow was terminated with or without the settlement agreement. . . . [T]he settlement . . . was merely an agreement indicating . . . an official date of termination.

32 Mass. L. Rptr. at 488. This reasoning applies with equal force to Mr. McDermott's circumstances. In Chair Chertavian's phrasing, once Mr. McDermott received his original termination letter, his prospect of returning to his position was not "realistic." Because Mr. McDermott "was terminated with or without the settlement agreement," 32 Mass. L. Rptr. at 488, it would be illogical to view his departure from employment as voluntary: a voluntary decision can be made only by a person who faces a "choice between real options." *Coventry v. U.S. Steel Corp.*, 856 F.2d 514, 525 (3d Cir. 1988). For purposes of G.L. c. 32, § 10(2)(a)'s requirements, Mr. McDermott was "discharged."⁴

⁴ CRAB's own analysis in *Tarlow* also arguably might play out in Mr. McDermott's favor. CRAB emphasized there that the member obtained a "back pay award." 2013 WL 12629448, at *3. The significance of that award is that it recognizes that the member should not have been terminated, and should have remained "regularly employed." *Id.* at *2. See *Murphy v. State Bd. of Ret.*, No. CR-20-386, 2021 WL 9697058 (Div. Admin. Law App. Nov. 19, 2021). Ordinarily, an employee with a contractual entitlement to remain regularly employed does possess a real choice between enforcing that entitlement and resigning; whereas Mr. McDermott never had such a choice.

Conclusion and Order

In view of the foregoing, Mr. McDermott is entitled to retire for termination. The board's contrary decision is REVERSED. The matter is REMANDED to the board for processing.

Dated: October 17, 2025

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

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