

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

James Mealey,
Petitioner

v.

Docket No. CR-22-0215

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

James Mealey, *pro se*

Appearance for Respondent:

Salvatore Coco, Esq.
Massachusetts Teachers' Retirement System
500 Rutherford Avenue, Suite 210
Charlestown, MA 02129-1628

Administrative Magistrate:

Melinda E. Troy, Esq.

SUMMARY OF DECISION

Under G.L. c. 32, § 3(4), and 807 CMR 19.01 and 19.02, an individual who applies in Massachusetts to purchase credit for out-of-state service as a teacher or supervisor must demonstrate two things in order to purchase it: (1) that the applicant was employed in an out-of-state position that required certification; and (2) that he or she actually held the certification required by that other state. In this case, the MTRS properly determined that the Petitioner was only entitled to purchase creditable service for the period during which he was required to hold, and in fact held, certification in New Hampshire as a Business Administrator. The MTRS's decision is affirmed.

DECISION

This appeal concerns the determination by the Massachusetts Teachers' Retirement System ("MTRS") to deny the Petitioner's request to purchase certain creditable service pursuant to G.L. c. 32, § 3(4). I held a hearing in this matter on April 18, 2024, which I digitally recorded via the Webex platform with the parties' consent. I admitted into evidence the Respondent's exhibits as Exhibits 1-7, and the Petitioner's additional Exhibit 8. After the hearing I added into the record the Petitioner's letter of appeal, which I have marked as Exhibit 9. I have included an exhibit list as an addendum to this decision. I marked the following for identification: the Petitioner's submission dated January 19, 2023 as Pleading A and the MTRS's Pre-Hearing Memorandum dated March 29, 2023 as Pleading B. Neither party submitted a post-hearing memorandum, so the record closed at the conclusion of the hearing. For the reasons set forth below, I am affirming the MTRS's decision.

FINDINGS OF FACT

Based on the evidence presented by the parties and the uncontradicted statements of fact contained in the parties' written submissions, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. James Mealey ("Mr. Mealey" or "the Petitioner") has been an active member of the MTRS since July 31, 2009. (Stipulation of the parties.)
2. He currently works in the North Andover, MA Public Schools. His position was first known as the Assistant Superintendent of Finance and Operations. It is now a Deputy Superintendent position. (Testimony, Mealey.)
3. Before Mr. Mealey began working in this position, he worked in the public school systems in Londonderry, NH and Nashua, NH. (Exhibit 2.)

4. For two school years, from September 1, 1991 to June 30, 1992, and September 1, 1992 to June 30, 1993, Mr. Mealey worked as a high school teacher in Londonderry, NH. (Exhibit 2.)
5. By application dated March 22, 2020, Mr. Mealey applied to purchase this time as creditable service pursuant to G.L. c. 32, § 3(4). (Exhibit 2.)
6. General Laws c. 32, § 3(4), permits public employees in Massachusetts to purchase otherwise qualifying out-of-state employment service as a teacher or school administrator as creditable service for retirement purposes.
7. The MTRS permitted Mr. Mealey to purchase one year of this time as creditable service, when he served as a high school teacher in Londonderry, NH from September 1, 1991 to June 30, 1992. (Exhibit 3.)¹
8. Mr. Mealey also requested that he be permitted to purchase three separate periods of service during which time he had worked in the Nashua, NH School District (“NSD”). These were the 2006-2007 school year from July 1, 2006 to June 30, 2007; the 2007-2008 school year from July 1, 2007 to June 30, 2008; and the 2008-2009 school year from July 1, 2008 to June 30, 2009. (Exhibit 2.)²
9. During this time, Mr. Mealey held two different positions at the NSD. (Testimony, Mealey.)

¹ When it reviewed Mr. Mealey’s request to purchase time during the 1992-1993 school year as creditable service, the MTRS discovered that the Londonderry, NH Public Schools had no record of his service (Mr. Mealey had stated that he had served as a long-term substitute teacher). When he was informed that no record of this service existed with the Londonderry Public Schools, Mr. Mealey elected not to pursue this portion of his service purchase. (Exhibit 3; Exhibit 6.)

² These are the dates that Mr. Mealey listed on his service purchase application. The actual dates of service are different from the dates originally requested.

10. From May 15, 2006 to August 13, 2006, Mr. Mealey served as the Human Resources Director for the NSD. He did not hold a certification or license during this period, and he was not required to do so. (Testimony, Mealey; Exhibit 2.)³
11. From August 14, 2006 to July 3, 2009, Mr. Mealey served as the Chief Operating Officer (“COO”) of the NSD. A New Hampshire certification as Business Administrator was required to hold this position. (Exhibit 2; Exhibit 7; Testimony, Mealey.)
12. Mr. Mealey held that COO position from August 14, 2006 to November 6, 2008 without being certified as a Business Administrator. Mr. Mealey was pursuing certification during this time. As part of that process, he was required to participate in a mentorship program, which he did. He attained this certification as of November 7, 2008. (Testimony, Mealey; Exhibit 7.)
13. From November 7, 2008 to June 30, 2009 Mr. Mealey held the position of COO with the NSD and was also certified as a Business Administrator. The MTRS permitted him to purchase this portion of his time as creditable service pursuant to G.L. c. 32, § 3(4). (Exhibit 3.)
14. By notice dated May 18, 2022, the MTRS denied the Petitioner’s request to purchase creditable service from May 15, 2006 to November 6, 2008 because he did not hold the required certification for his position. (Exhibit 1.)
15. By letter dated May 24, 2022, Mr. Mealey timely appealed the MTRS’s determination to the Division of Administrative Law Appeals (“DALA”). (Exhibit 9.)

³ At the hearing, Mr. Mealey stated that he was not pursuing the appeal of the MTRS’s denial of this portion of his service purchase request. It will not be further discussed in this decision.

DISCUSSION

General Laws c. 32, § 3(4), states, in relevant part,

(4) *Credit for Teachers⁴ for Out-of-State Service*. — Any member in service...who is employed in a teaching position or as a principal, supervisor or president in a school or college...who had rendered service in any other state for any previous period as a teacher, principal, supervisor or superintendent in the public day schools...may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms and conditions as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof, as he may elect, had such service been rendered in a public school of the commonwealth and had he been a member of the teachers' retirement system during the period the service was rendered....⁵

The applicable MTRS regulations further clarify the meaning of these terms in the context of service purchases. Specifically, 807 CMR 19.01 provides,

For purposes of M.G.L. c. 32, § 3(4), a member may purchase service credit for out of state service as a “teacher” if, during such service, the member was required to have, and had, the qualifications of a teacher in that school in that state and performed the duties of a teacher. More specifically this means:

- (a) Public Schools. If the other state required certification, licensure or other qualifications to be a public school teacher, the member was employed in a public school position that required such qualifications, and the member possessed such qualifications during his or her service.

As relevant to this case, these requirements also apply to non-teachers (like the Petitioner) seeking to purchase creditable service pursuant to G.L. c. 32, § 3(4). An additional

⁴ The definition of “teacher” in G.L. c. 32, § 1, includes “any person who is employed...as a teacher...principal, supervisor or superintendent in any public school as defined in this section....”

This language is similar to the language of G.L. c. 32, § 3(4), authorizing otherwise qualifying individuals to purchase out-of-state teaching service. Both G.L. c. 32, §§ 1 and 3(4), list categories of individuals who either meet the definition of “teacher” or are qualified to purchase creditable service, respectively, by the title that they hold. Neither statutory provision further defines who qualifies as a “teacher. The MTRS regulatory definitions found at 807 CMR 19.01 and 19.02 do so in the context of service purchases involving out-of-state teaching.

⁵ The statute contains other restrictions and requirements not relevant here.

regulation, 807 CMR 19.02, states, “[t]he requirements of 807 CMR 19.01 also applies [sic] to out of state employment as a principal, supervisor or superintendent.”

The Petitioner’s sole argument on appeal relates to the time period during which he was not yet certified in New Hampshire as a Business Administrator as required for his COO position, which is the purchase of creditable service from August 14, 2006 to November 6, 2008. He relies on the fact that during this time, he was in the COO position in a “provisional” status in New Hampshire and was completing a mandatory mentoring program to attain the licensure required. He argues that since he was only allowed to fill the COO position because he had applied for and was completing the New Hampshire licensure requirements, the MTRS should have treated this as the equivalent of actually holding the Business Administrator license and permitted him to purchase all of the time during which he served as COO as creditable service. When examined in the context of the applicable statutory and regulatory requirements, the Petitioner’s argument is unavailing.

As noted above, G.L. c. 32, § 3(4), permits a “teacher” or a “supervisor” to purchase out-of-state employment service as creditable service for retirement purposes in Massachusetts. Unlike other provisions of chapter 32 which permit specified types of service purchases, G.L. c. 32, § 3(4), does not define either term.⁶ In an effort to clarify the meaning of these terms in the context of service purchases under G.L. c. 32, § 3(4), the MTRS enacted regulations defining the

⁶ For example, G.L. c. 32, § 4(1)(h), permits “any member who is a veteran as defined in section one” who otherwise qualifies to receive creditable service for a military leave of absence and/or purchase prior military service, and § 4(1)(h½) permits “any member in service of the teachers retirement system...who is or was employed as a teacher as defined by section 1 in a vocational-technical school or in a public school’s vocational-technical program” to purchase prior qualifying service as creditable service.

terms “teacher” and “supervisor.” In so doing, the MTRS expressly limited service purchases under § 3(4) to members “employed in a public school position that required” licensure or qualifications, and who also “possessed such qualifications during his or her service.”

The MTRS had authority to enact a regulation limiting service purchases in this manner. When a statute is silent on an issue, as G.L. c. 32 is here on the definitions of the terms “teacher” and “supervisor” to be used in the context of § 3(4), an agency may enact a regulation to assist in interpreting the silent portion of the statute. *Massachusetts Teachers’ Retirement System v. Contributory Retirement Appeal Board*, 466 Mass. 292, 294 (2013) (If a statute is silent on an issue and an agency regulation reasonably interprets that silence, promulgation of the regulation is a valid exercise of statutory authority.); *Goldberg v. Board of Health of Granby*, 444 Mass. 627, 634 (2005) (“Statutory silence, like statutory ambiguity, often requires that an agency give clarity to an issue necessarily implicated by the statute but either not addressed by the Legislature or delegated to the superior expertise of agency administrators.”). If an agency regulation provides a reasonable resolution of a statute’s silence, an adjudicating agency such as the Contributory Retirement Appeal Board has an obligation to follow it. *Goldberg, supra* at 635; *Mass. Teachers’ Ret. Sys.*, 466 Mass. at 297. In reviewing an agency’s regulations, the first inquiry is whether the governing statute is either silent or its language is ambiguous on the issue in question. *Id.* at 301. When that is the case, the inquiry then becomes whether the agency’s properly promulgated⁷ regulation is reasonable. *Id.*

In this case, I find that G.L. c. 32, § 3(4) is silent regarding the definitions of the terms “teacher” and “supervisor” to be used within it.⁸ I next turn to the question of whether the

⁷ There is no dispute that these regulations were properly promulgated.

⁸ Even if it were found that the statute was not silent on these definitions, the terms are at the very least ambiguous. Whether a statute is silent, or its language is ambiguous, the inquiry is

regulatory definitions promulgated by the MTRS are “a reasonable resolution of the statute’s silence.” *Goldberg*, 444 Mass. at 635. I find that they are. The definitions are to be used in interpreting a statute which permits the purchase of out-of-state employment service as creditable service in Massachusetts. The MTRS regulations reasonably limit those service purchases to individuals who were both required to be licensed, and actually were licensed, to perform their jobs in the first state. By doing so, the regulations ensure that only qualified teachers and supervisors can purchase creditable service. In addition, the criteria to be applied while evaluating service purchase applications is clear. This relieves the MTRS staff of any obligation to determine what criteria should be used to determine whether each applicant qualified as a “teacher” or “supervisor” while employed in one of the 49 states outside of Massachusetts and allows the criteria to be consistently applied to all MTRS members. These are valid reasons to enact a regulatory definition. *See Kozloski v. Contributory Retirement Appeal Board*, 61 Mass. App. Ct. 783, 785-87 (2004) (Appeals Court affirmed MTRS’s authority to define the term “annual contract” in its regulations, holding that it served the valid purpose of relieving the MTRS staff of the obligation to “sift through a multiplicity of alleged oral or side agreements” to determine whether any particular payment is “regular compensation” for retirement purposes.).

The Petitioner seeks to have DALA substitute its judgment for that of the MTRS and to extend the definition of “supervisor” as used in G.L. c. 32, § 3(4), to include those whose licensure or qualifications were pending at the time they were employed outside of

the same. *Goldberg, supra* at 634; *Mass. Teachers’ Ret. Sys.*, 466 Mass. at 301 (“We therefore view the Legislature’s silence here as an invitation to MTRS to fill the gap with an appropriate regulation. In any event, whether the language of the...statute is ambiguous or silent, the result would be the same.”).

Massachusetts. A similar argument was made and rejected in *Goldberg, supra* at 635, with the Supreme Judicial Court stating,

The plaintiffs' argument reduces to the proposition that, had they been charged with enforcing the statute, they would have chosen a different regulatory approach.... Even if we might have preferred the plaintiffs' approach (a matter on which we express no view), it is the department's reasonable resolution of the statute's silence, not ours, that must govern.

Similarly, here, in light of the MTRS's reasonable resolution of the question of how to define "teacher" or "supervisor" in the context of out-of-state service purchases governed by G.L. c. 32, § 3(4), I defer to its interpretation. *Mass. Teachers' Ret. Sys.*, 466 Mass. at 301 (review of a reasonable agency regulation is deferential). The MTRS's decision to deny the Petitioner's request to purchase creditable service from May 15, 2006 to November 6, 2008 is affirmed.

SO ORDERED,

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy
Administrative Magistrate

Dated: September 20, 2024

Exhibit List

1. Letter from the MTRS to the Petitioner denying his request to purchase time as creditable service pursuant to G.L. c. 32, § 3(4) from May 16, 2006 to November 6, 2008, dated May 18, 2022.
2. Petitioner's service purchase application dated March 22, 2020.
3. Invoice to the Petitioner dated May 18, 2022 covering the periods of time for which the service purchase was approved.
4. Email from the staff at the Nashua, NH Public Schools to the MTRS dated February 11, 2022.
5. Email from the staff at the Nashua, NH Public Schools to the MTRS dated January 28, 2022.
6. Email from the Petitioner to the MTRS dated February 3, 2022.
7. Email from the Petitioner to the MTRS dated February 10, 2022.
8. Application for Certification in the state of New Hampshire dated July 17, 2006.
9. Petitioner's letter of appeal dated May 24, 2022.