

M E M O R A N D U M

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Inactive member buybacks and *James Zavaglia v. Gloucester Retirement Board and Salem Retirement Board*, CR-09-459. (April 13, 2015)

DATE: June 25, 2015

The issue of whether an inactive member may purchase time has been a vexing one for retirement boards, and PERAC has received many questions about this issue throughout the years. Recently, the Contributory Retirement Appeal Board (“CRAB”) issued an amended decision in the case noted above, which may be helpful to retirement boards in deciding whether to permit the purchase of service from someone who is no longer an active member.

The *Zavaglia* decision was issued on April 13, 2015. None of the parties appealed from this decision, and the decision is now final under G.L. c. 32, § 16(4). While a CRAB decision binds only the parties to it, PERAC believes it would be prudent, consistent, and helpful to the boards to follow the guidelines laid out in this decision. CRAB has now considered this matter twice, and has made a well-reasoned determination regarding the issue of inactive members purchasing time.

In *Zavaglia*, CRAB states that in the usual case purchases of prior service may only be made at a time when the purchaser is an active member of a retirement system. However, CRAB also notes in footnote 1 and 2 of the amended decision that there are in fact specific statutory provisions that permit inactive members to make service purchases. Below are the precise situations cited by CRAB in this decision in which an inactive member is permitted to make a service purchase.

Chapter 32 Sections 3(4) and 3(4A) both contain provisions for teachers who are on an authorized leave of absence (and therefore in certain instances inactive members) to be eligible for creditable service buybacks. Chapter 32 Section 4(1)(q) allows for members who are on leave after being elected to certain veteran’s organizations to purchase such time not to exceed 15 months. Chapter 32 Section 4(1)(r) provides that active and inactive members who served as volunteers in the Peace Corps may purchase up to 3 years of creditable service.

CRAB also cites to the case of *McElholm v. Teachers’ Retirement Board.*, CR-04-738 (DALA April 19, 2006) in a footnote. The *McElholm* case dealt with a member purchasing prior service after they were laid off. DALA, in *McElholm*, states that such a buyback is allowed under section 3(6)(d) of Chapter 32, even if a member is inactive.



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Massachusetts General Laws, Chapter 32 Section 3 (6)(d) provides:

Any former member who is reinstated to or who re-enters the active service of the governmental unit in which he was formerly employed to serve in a position which is subject to the provision of this chapter, more than two years after the date of his last separation therefrom 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 installments, upon such terms and conditions as the board may prescribe, make-up payments of an amount equal to the accumulated regular deductions withdrawn by him, together with buyback interest.

The above quoted section allows members who reenters active service to buy back prior creditable service time. Once a member is reinstated or reenters service after having withdrawn their deductions, they have the ability to purchase their prior service. This ability will continue until the date that a retirement allowance becomes effective for them regardless of whether they again leave service provided that they leave their accumulated deductions in the system.

While CRAB's decision in *Zavaglia* only addresses the specific sections of the statute set out above, there are other provisions of Chapter 32 which may theoretically permit an inactive member to buy back time. These sections use the phrase "member" and do not distinguish between a member in service and a member inactive and in these situations the board will have to review each provision to determine eligibility. By way of example, Chapter 32 section 4 (1)(1 ³/₄), allows a member of the State Retirement System who served as an employee of an educational collaborative prior to 1983 to purchase time. Chapter 32 section 4(1)(n) and (n ¹/₂) allow for members, who previously served in a position with the Veteran's Employment Service, to purchase such time as creditable service.

The cases in which an inactive member will be able to buy back service are extremely limited. In each case in which an inactive member wishes to buy creditable service the board should conduct an analysis to determine whether a particular provision allows for an inactive member to make the purchase.

If you have any questions, please feel free to contact this office.