COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Division of Administrative Law Appeals

Ronald Mercier,
Petitioner

v. Docket No. CR-24-0533
Date: Apr. 25, 2025

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

Nicholas Adams, Esq.

Appearance for Respondent:

Ashley Freeman, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

This case is resolved by straightforward application of prior judicial and administrative precedents. Those precedents, *Pananos* and *Gaffney*, *infra*, raised the same question presented in this appeal: whether members barred from receiving "*a* retirement allowance" under G.L. c. 32, § 15(4) are permanently barred from receiving a retirement allowance for service they perform *after* their conviction. DALA, CRAB and the courts have unanimously answered "yes" to this question.

DECISION

Petitioner Ronald Mercier timely appealed, under G.L. c. 32, § 16(4), the August 13, 2024 decision of Respondent Massachusetts Teachers' Retirement System (MTRS) to rescind his membership in MTRS and return his accumulated contributions without

interest. On September 6, 2024, the Division of Administrative Law Appeals (DALA) ordered Mr. Mercier to show cause why this appeal should not be dismissed for failure to state a claim upon which relief can be granted in light of the Contributory Retirement Appeal Board's (CRAB) ruling in *Pananos v. MTRS*, CR-16-527 (Contributory Ret. App. Bd. Dec. 20, 2023), *aff'g* (Div. Admin. Law. App. July 12, 2019), *aff'd sub nom. Pananos v. CRAB & MTRS*, 2484-CV-00175 (Mass. Super. Ct. Feb. 3, 2025).

After Mr. Mercier submitted his response, I held a status conference. I explained that, under controlling precedent in *Pananos*, I was obligated to rule against him. Mr. Mercier contested my conclusion, but also informed me that he would be making a constitutional argument: that rescinding his membership and returning his retirement contributions amounts to an excessive fine under the Eighth Amendment of the United States Constitution. I agreed to accept evidence relevant to the constitutional arguments.[1]

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[1] These exhibits were admitted under the Appeals Court's directions in *Maher v. Justices of Quincy Div. of Dist. Court Dept*., 67 Mass. App. Ct. 612 (2006), in which the Court concluded

> that the fact finding required to resolve the Eighth Amendment issue does not involve specialized expertise. In determining whether a pension forfeiture is an excessive fine, the Supreme Judicial Court has calculated the lost benefits and the ill-gotten gains to determine whether the punishment is "grossly disproportional." This requires determining the value of the lost pension benefits after subtracting the returned contributions. It would also require an understanding of the value of continued employment to the plaintiff, at least in terms of salary and increased pension benefits. The "gravity of the offense, . . . whether the violation was related to any other illegal activities, and the harm resulting from the crime" must also be considered. *Although the board could have been helpful in developing some of the underlying facts, most of these facts are not within the special expertise of a retirement board. Rather, they involve the type of fact finding ordinarily undertaken by the courts.*"

Id. at 620–21 (emphasis added).

Then, I ordered the parties to submit an agreed-upon statement of facts and any additional legal argument, which both parties did by March 3, 2025. The parties filed 19 agreed-upon exhibits, which I have admitted into evidence as Exhibits 1–19. (Exs. 1–19.) Mr. Mercier also filed two additional proposed exhibits, which Respondent objected to. Because those are the documents relevant to Mr. Mercier's constitutional claims, I hereby overrule the objection and admit those documents as Exs. P1 and P2. (Exs. P1, P2.) This appeal was decided on written submissions under 801 CMR 1.01(10)(c).

FINDINGS OF FACT

Based on the parties' Statement of Agreed Facts and the documents in the record, I make the following findings of fact:

1. Ronald Mercier was a member of the Dracut School Committee from May 6, 2003 until May 12, 2012. (Agreed Facts ¶ 1; Ex. 2.)

2. From May 6, 2003 until May 12, 2012, Mr. Mercier was an active member of the Middlesex County Retirement System and made the required retirement contributions. (Agreed Facts ¶ 2; Ex. 3.)

3. On January 28, 2008, Mr. Mercier was hired as a laborer for the Lowell Regional Water Utility. He was terminated from the job on May 15, 2010. (Agreed Facts ¶ 3; Ex. 4.)

In an attempt to be helpful, as the Court directs, I have admitted Exs. P1 and P2. However, I have *not* independently assessed the correctness of the underlying calculations in Mr. Mercier's proposed exhibits, because "the fact finding required to resolve the Eighth Amendment issue *does not involve* [DALA's] *specialized expertise*" and instead "involve[s] the type of fact finding ordinarily undertaken *by the courts*." *Id.* at 620–21 (emphasis added). I therefore decline to make the findings required to press the constitutional claims, as urged by Mr. Mercier.

4. Mr. Mercier was a member of, and made contributions to, the Lowell Retirement System from January 28, 2008 through May 15, 2010. (Agreed Facts ¶ 4; Ex. 4.)

5. Mr. Mercier was terminated from the Lowell Regional Water Utility because he stole a tank of gas belonging to the Lowell Regional Water Utility. (Agreed Facts ¶ 5; Exs. 2, 5.)

6. On August 29, 2012, after a jury trial in the District Court, Mr. Mercier was found guilty of larceny under $250, under G.L. c. 266, § 30(1). He was sentenced to a year of probation (with an order to stay away from the grounds of the Lowell Regional Water Utility facility), $75.00 in restitution, and $50.00 in fines. (Agreed Facts ¶ 6; Ex. 5.)

7. Mr. Mercier was hired as a paraprofessional for Dracut Public Schools on October 7, 2012, and remained in that position until he was hired as a teacher by Dracut Public Schools on September 3, 2019. (Agreed Facts ¶ 7; Ex. 2.)

8. As a teacher, Mr. Mercier is a member of the Dracut Teachers Association employed under the collective bargaining agreement covering Unit A within Dracut Public Schools. (Agreed Facts ¶ 15; Ex. 9.)

9. Mr. Mercier made retirement contributions to the Middlesex County Retirement System from October 7, 2014 until August 10, 2015. During this period, he was an active member. (Agreed Facts ¶ 8; Exs. 3, 6.)

10. On August 10, 2015, as a consequence of his conviction, the Middlesex County Retirement System nullified Mr. Mercier's membership in the System and returned his retirement contributions pursuant to G.L. c. 32, § 15(4). On August 17,

2015, the Board notified him of its decision and his right to appeal under G.L. c. 32, § 16(3). (Agreed Facts ¶ 9, 10; Exs. 6, 7.)

11. Mr. Mercier did not appeal the Middlesex County Retirement Board's decision. (Agreed Facts ¶ 11.)

12. On November 24, 2020, the Lowell Retirement Board similarly notified Mr. Mercier by letter that it had refunded his annuity savings account pursuant to G.L. c. 32, § 15(4). This refund effectively terminated his membership in the Lowell Retirement System, as well. (Agreed Facts ¶ 12; Ex. 4.)

13. Mr. Mercier did not appeal this decision either. (Agreed Facts ¶ 12.)

14. Since September 3, 2019, when he was hired as a teacher in Dracut, Mr. Mercier has been a member of MTRS. He made retirement contributions to MTRS from September 3, 2019 until August 13, 2024. (Agreed Facts ¶ 13, 14; Exs. 2, 7, 8.)

15. On August 13, 2024, MTRS notified Mr. Mercier that his "rights in the Teachers' Retirement System were forfeited in 2012" when he was convicted of a "crime related to [his] office or position in Lowell," and as a result MTRS was "rescinding [his] membership in [MTRS] effective immediately and [would] be returning [his] accumulated contributions with no interest." (Agreed Facts ¶ 16; Ex. 8.)

16. In that same letter, counsel for MTRS noted: "Since this is not a decision on forfeiture, but on eligibility, I believe your appeal rights are to the Division of Administrative Law Appeals under M.G.L. c. 32, § 16(4), and not to the District Court under section 16(3)." (Agreed Facts ¶ 16; Ex. 8.)

17. On August 14, 2024, Mr. Mercier appealed MTRS's decision to DALA. (Exs. 12, 16.)

CONCLUSION AND ORDER

The dispute in this appeal is over the interpretation of G.L. c. 32, § 15(4), which provides, in relevant part:

> *In no event* shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive *a retirement allowance* under the provisions of section one to twenty-eight, inclusive, ... The said member . . . shall receive, unless otherwise prohibited by law, a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero.

(Empasis added.)

The outcome of this appeal is controlled by prior CRAB precedent, affirmed by the Superior Court. *See, e.g., Pananos v. MTRS*, CR-16-527 (Contributory Ret. App. Bd. Dec. 20, 2023), *aff'g* (Div. Admin. Law. App. July 12, 2019), *aff'd sub nom. Pananos v. CRAB & MTRS*, 2484-CV-00175 (Mass. Super. Ct. Feb. 3, 2025); *see also Gaffney v. Bristol Cnty. Ret. Bd.*, CR-12-505 (Div. Admin. Law. App. Feb. 1, 2013), *aff'd* (Contributory Ret. App. Bd. Dec. 5, 2013). Mr. Mercier urges DALA to depart from this settled precedent on the grounds that not doing so will lead to the "production of illogical unconstitutional results." *See* Petitioner's Br. at 14. DALA has no power to overturn conclusive CRAB decisions. *Fahey v. Boston Ret. Bd.*, CR-15-630 (Div. Admin. Law App. Nov. 2, 2016) ("DALA is bound by CRAB precedent until it is reversed by CRAB itself or the Court."). And even if it did, Mr. Mercier correctly concedes that DALA has no power to determine the constitutionality of statutes because "[i]t is for the courts, not administrative agencies, to decide the constitutionality of statutes." *See Maher v. Justices of Quincy Div. of Dist. Court Dept.*, 67 Mass. App. Ct. 612, 619 (2006) ("This is particularly true here given the novelty of Eighth Amendment excessive fine claims . . . .

Recognizing this limitation on their jurisdiction, retirement boards have declined to consider constitutional challenges to G.L. c. 32, § 15, forfeitures."). Consequently, I do not decide the Eighth Amendment issue raised by Mr. Mercier. I must therefore apply the law as it currently stands, interpreted by CRAB and affirmed by the Superior Court.

Before I address the merits, as both parties have addressed jurisdiction, I would like to clarify DALA's jurisdiction over this appeal. They agree that DALA, and not the District Court, is the proper forum to bring this appeal because the issue here is whether MTRS was authorized to rescind Mr. Mercier's membership (and return his accumulated contributions without interest). I am not determining whether Mr. Mercier should have forfeited his retirement rights based on his conviction for stealing from his government employer in 2010. The district court has jurisdiction over forfeiture cases. *See* G.L. c. 32, § 16(3) (cases regarding "dereliction of duty as set forth in section fifteen" are left to the district court). That forfeiture has already occurred, and Mr. Mercier did not contest it. However, because the parties dispute only Mr. Mercier's post-forfeiture membership in MTRS and the refund of his fees, DALA has jurisdiction to hear the non-constitutional aspects of this appeal. *Compare* G.L. c. 32, § 16(3), *with id.* § 16(4); *see also Maher*, 67 Mass. App. Ct. at 619 (noting that "[a]lthough an agency cannot decide an ultimate constitutional issue . . . such an issue must nonetheless be brought before it to inform the agency's resolution of the statutory and regulatory questions it must consider and to draw on its specialized expertise for necessary fact finding.").

On the merits, Mr. Mercier insists that the DALA, CRAB, and judicial decisions that have interpreted § 15(4) misinterpret the phrase "a retirement allowance" by reading "*a* retirement allowance" to mean "*any* retirement allowance." Mr. Mercier urges that

G.L. c. 32, § 15(4)'s use of "a retirement allowance" should be best read to mean "the retirement allowance earned pursuant to the 'office or position' which the member's final conviction involved violation of the laws applicable to." Petitioner's Brief, at 12–16. In effect, Mr. Mercier's proposed interpretation would require treating "a retirement allowance" as if it read "*the* retirement allowance," referring only to his retirement rights accumulated before his conviction.

In *Pananos*, the Superior Court directly addressed this argument:

> This Court reads the plain language of G.L. c. 32, § 15(4) to mean what it says. "In no event **shall.**" That language is definitive. It means under no circumstances "shall." It means never. "[A]ny member after final conviction of a criminal offense involving violation of the laws applicable to his office or position . . . ." Again, this language is clear. And Pananos['s] conviction falls within the confines of the statute. . . .
>
> Moving on [to] the words, ". . . be entitled to receive a retirement allowance . . .". Again, the language is clear. Because of his 1997 felony conviction for larceny over $250, Pananos is not entitled to receive a "retirement allowance." Unfortunately for Pananos, to read the plain language of the statute in another way would defy logic.

Pananos v. CRAB & MTRS, 2484-CV-00175, at *7–8 (Mass. Super. Ct. Feb. 3, 2025) (emphasis in original). And, as DALA previously held in the same case below:

> The statutory language is clear and unambiguous. "In no event" means regardless of what else may happen, including subsequent employment. *Gaffney v. Bristol County Retirement Board*, CR-12-505, at *4 (DALA Feb. 1, 2013), *aff'd* (CRAB Dec. 5, 2013). Once his pension was forfeited under § 15, Mr. Pananos was precluded from ever receiving a retirement allowance from a Massachusetts public retirement system. Mr. Pananos is entitled only to the return of his accumulated deductions without interest. *See id*. at *6. Mr. Pananos's appeal is indistinguishable from *Gaffney*. *See id.* . . . The magistrate [there] interpreted "in no event" from § 15(4) to mean "regardless of what else may happen, including subsequent employment." *Id*. at *4. Mr. Gaffney's appeal was dismissed because he "will never be entitled to a retirement allowance." *Id*. at *6.

Pananos v. MTRS, CR-16-527, at *8 (Div. Admin. Law. App. July 12, 2019).

Applying these precedents to this case leads to the same result reached in *Pananos* and *Gaffney*: "under no circumstances 'shall'" someone barred by § 15(4), like Mr. Mercier, "be entitled to receive a retirement allowance." *See Pananos*, 2484-CV-00175, at *7–8 (Mass. Super. Ct. Feb. 3, 2025) (quoting G.L. c. 32, § 15(4)). In *Gaffney*, CRAB reached the same conclusion as the Superior Court did in *Pananos*, explaining that "the plain words of " § 15(4) "do not state that the person convicted shall forfeit only the retirement allowance 'arising from his employment in the position which he held at the time of his offense.' It states that *'in no event' shall a person so convicted receive a retirement allowance*." *See Gaffney*, CR-12-505, at *2–3 (CRAB Dec. 5, 2013) (emphasis added). Therefore, § 15(4) precludes Mr. Mercier from membership in the MTRS and is likewise barred from ever receiving a retirement allowance.

For the above-stated reasons, MTRS's decision to rescind Mr. Mercier's membership in MTRS and return his accumulated contributions is **AFFIRMED**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Apr. 25, 2025