

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Massachusetts Teachers' Retirement System,

No. CR-23-0621

Petitioner,

Dated: September 13, 2024

v.

Arlington Retirement Board,

Respondent.

Appearances:

For Petitioner: Salvatore Coco, Esq.

For Respondent: Timothy J. Smyth, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

A retirement system's refusal to accept liability in advance for a portion of a public employee's future retirement allowance is not an appealable decision under G.L. c. 32, § 16(4).

DECISION

The Massachusetts Teachers' Retirement System (MTRS) appeals from a decision of the Arlington Retirement Board (Arlington system) determining that a certain public employee had accumulated no creditable service in the latter system. The appeal was submitted on the papers without objection. I admit into evidence MTRS's exhibits marked 1-5 and the Arlington system's exhibits marked 1-4.

Findings of Fact

The following facts are undisputed.

1. Ms. Johanna Dymek is certified behavioral analyst in the Arlington public schools. She began working there in 2014, became a member of MTRS, and made regular retirement contributions to MTRS thereafter. (Petitioner exhibit 5; respondent exhibit 4.)

2. In April 2019, MTRS issued a decision determining that Ms. Dymek is not a “teacher” and thus does not belong in MTRS after all. Ms. Dymek appealed that decision to DALA. While the appeal was pending, Ms. Dymek became a member of the Arlington system and made retirement contributions to it. (Petitioner exhibits 2, 3; respondent exhibits 1-4.)

3. In April 2022, DALA reversed MTRS’s decision and ruled that Ms. Dymek is entitled to membership there. *Dymek v. Massachusetts Teachers’ Ret. Syst.*, No. CR-19-208 (DALA Apr. 29, 2022). The Arlington system subsequently transferred to MTRS the retirement contributions it had collected from Ms. Dymek. In an accompanying letter, the Arlington system indicated that it did not view Ms. Dymek as having accumulated any creditable service in that system. MTRS promptly lodged this appeal. (Petitioner exhibits 1-5.)¹

Analysis

The public retirement law requires the retirement system from which a public employee retires to disburse the employee’s retirement allowance. However, any other systems in which the employee served are required to bear proportional responsibility for the allowance’s financial burden. G.L. c. 32, § 3(8)(c). Such systems discharge that responsibility through annual reimbursement payments to the allowance-disbursing system. *Id. See generally Haverhill Ret. Sys. v. Contributory Ret. Appeal Bd.*, 82 Mass. App. Ct. 129, 132-33 (2012).

The parties agree on the essential meaning of the Arlington system’s letter to MTRS: the letter’s message was that the Arlington system intends to decline any future requests by MTRS

¹ The Arlington system’s letter did not feature the appellate-rights information prescribed by *Barnstable Cty. Ret. Bd. v. Public Emp. Ret. Admin. Comm’n*, No. CR-07-163, 2012 WL 13406336, at *5-6 (CRAB Feb. 17, 2012). It is less than certain whether that omission made the Arlington system’s letter unappealable. *See Massachusetts Teachers’ Ret. Syst. v. Blue Hills Reg’l Sch. Ret. Bd.*, No. CR-19-226, 2022 WL 16921463, at *3 (DALA Jan. 14, 2022). Given the analysis of the current decision, further proceedings focused on this issue would not advance fairness and efficiency.

for proportional reimbursement under § 3(8)(c). *See Camara v. Fall River Ret. Bd.*, No. CR-21-231, 2024 WL 413687, at *1 n.1 (DALA Jan. 26, 2024).

There appear to be good reasons for the retirement systems to engage in early discussions about their respective shares of future allowances. But the pivotal question is whether a system's statement of its position in such discussions is appealable under G.L. c. 32, § 16(4). The Arlington system argues that the answer is no.

That argument is meritorious for the reasons discussed recently in *Worcester Regional Retirement System v. Middlesex County Retirement System*, No. CR-23-6 (DALA Aug. 16, 2024). In brief, the controlling statute calls for each system's proportional responsibility to be calculated by the Public Employee Retirement Administration Commission (PERAC). § 3(8)(c). That calculation is performed once the member is "retired." *Id.* It does not hinge on any agreements among the affected systems. *Tremblay v. Leominster Ret. Bd.*, No. CR-07-685, at *8-9 (CRAB May 19, 2011). And any effort to resolve responsibilities under § 3(8)(c) in advance is a speculative exercise, given that the pertinent member may never retire, may eventually withdraw her accumulated deductions, and/or may serve in additional systems as well. In short, as long as a member remains active, her prior retirement systems are required neither to make § 3(8)(c) payments nor to promise that they will honor future requests for payment.

Appeals under § 16(4) may be brought only by an "aggrieved" person. The letter that MTRS seeks to challenge here was not "aggrieving," because it left MTRS's rights and obligations undisturbed. *See Board of Health of Sturbridge v. Board of Health of Southbridge*, 461 Mass. 548, 557 (2012); *Gloucester Ret. Bd. v. Public Emp. Ret. Admin. Comm'n*, No. CR-21-217, 2022 WL 16921454 (DALA June 10, 2022). Just as if the Arlington system had said

nothing at all, MTRS's entitlement to § 3(8)(c) reimbursement remains to be determined, if ever, on an application to PERAC after Ms. Dymek's retirement.

Conclusion and Order

In view of the foregoing, this appeal does not arise from an appealable decision under G.L. c. 32, § 16(4). The appeal is therefore DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate