

# Commonwealth of Massachusetts



Supporting a Commonwealth of Communities

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## What's New in Municipal Law 2020 – Part Two

Recent Court and

Appellate Tax Board Decisions

Division of Local Services

Bureau of Municipal Finance Law






## Part Two - Court and Appellate Tax Board Decisions

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**Part 2A - Property Tax (9 cases)**

 **Part 2B – Tax Collection and Public Employment (6 cases)**

**Part 2C – Finance and Land Use Law (6 cases)**

**Part 2D – Other Municipal Decisions (8 cases)**



## Tax Collection Issues

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# Tax Collection Issues



*Tallage Lincoln, LLC v. Williams, 485 Mass. 449 (8/19/20)*

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**Tallage Lincoln, LLC v.  
Jessye L. Williams  
485 Mass. 449  
August 19, 2020**



## *Tallage Lincoln, LLC v. Williams, 485 Mass. 449 (8/19/20)*

### **Tax Title Assignments**

- **Appeal from Land Court decision**
- **Taxpayer Williams didn't pay \$2775.64 FY11 real estate taxes**
- **New Bedford collector performed a tax taking under G.L. c. 60, ss. 53-54**
- **Tax title account established for \$2957.16 in unpaid tax, 14% interest and costs to date**
  - **Interest at 16% accrues on balance**
- **Taxpayer's subsequent unpaid FY12, 13, 14 and 15 taxes certified to tax title account**



***Tallage Lincoln, LLC v. Williams, 485 Mass. 449 (8/19/20)***

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- **Tax title account sold by City to Tallage under G.L. c. 60, s. 52 for \$22,901.97, minimum required by law – represents taxes owed, accrued interest and costs**
- **Tallage filed Land Court foreclosure action**
- **Taxpayer filed answer, but continued to not pay taxes FY16, FY17 and FY18**
- **Tallage paid additional unpaid taxes to protect its investment**



***Tallage Lincoln, LLC v. Williams, 485 Mass. 449 (8/19/20)***

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- **Tallage moved Land Court for redemption amount to include**
  1. **Unpaid taxes FY11 - 15, plus interest and costs at time of Tallage's purchase**
  2. **Subsequent delinquent taxes paid by Tallage FY16 – 18, plus 16% interest**
- **Land Court agreed with Tallage regarding amounts within #1, but not #2**
- **Tallage appealed**



***Tallage Lincoln, LLC v. Williams, 485 Mass. 449 (8/19/20)***

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- **Tallage argued section 52 puts “assignee” of a tax title on same footing as a “purchaser” under section 45 at a tax sale**
- **Court disagreed – section 62 distinguishes between assignees and purchasers, allowing purchasers of collector’s deeds, but not s. 52 assignees, to add subsequent tax payments to redemption demand**





*Tallage Lincoln, LLC v. Williams, 485 Mass. 449 (8/19/20)*

- **The rights of an assignee are explicitly defined in G.L. c. 60**
- **G.L. c. 60 doesn't state assignee has right to recover subsequent paid taxes by adding them to the redemption amount**
- **Case law instructs the court against declaring rights for assignees that are not explicitly mentioned in G.L. c. 60**
- **Tallage will have to address taxes it subsequently paid through a separate lien under section 60**
- **Land Court decision for taxpayer upheld**



***Town of Ware v. Owners Unknown, 29 LCR 54 (1/31/20)***

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**Town of Ware v.  
Owners Unknown  
29 Land Court Reporter 54  
January 31, 2020**





*Town of Ware v. Owners Unknown, 29 LCR 54 (1/31/20)*

## **Land Court Foreclosure – Owners Unknown**

- **Claimant sought to vacate Land Court foreclosure decree issued ten years earlier in favor of Town of Ware**
- **Subject parcel is 34-acre undeveloped lot**
- **Assessors had conducted diligent search of records at Registry of Deeds and Probate and could not determine ownership of parcel**
- **In 1997, Commissioner of Revenue authorized Owners Unknown assessment for FY98 taxes under G.L. c. 59, s.11**





*Town of Ware v. Owners Unknown, 29 LCR 54 (1/31/20)*

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- **Ware collector made tax taking for unpaid FY 1998 taxes in 2003**
- **In 2004, Ware treasurer filed petition in Land Court to foreclose on the tax title**
- **Land Court examiner could not determine name of owner**
- **Land Court ordered service by publication in local newspaper**
- **Land Court issued judgment of foreclosure on March 7, 2006**





*Town of Ware v. Owners Unknown, 29 LCR 54 (1/31/20)*

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- **Ware advertised auction of 34-acre parcel to take place in December 2008**
- **New owner of adjacent parcel (Hull Forestlands LP) wrote to town in December 2008, claiming ownership of parcel by a May 2008 deed**
- **Town withdrew the parcel from auction**
- **Hull took no further action – does not attempt to pay taxes, prove ownership or move to vacate foreclosure**





*Town of Ware v. Owners Unknown, 29 LCR 54 (1/31/20)*

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- **Town again schedules auction for February 28, 2013**
- **Hull again writes to town protesting sale**
- **This time, town proceeded with auction**
- **Hull attended auction and submitted letter of protest and bid**
- **Treasurer's deed to high bidder recorded in March 2013 (Hull not high bidder)**
- **Hull hired surveyor and attorney who filed motion to vacate Land Court judgment entered more than 10 years before**





*Town of Ware v. Owners Unknown, 29 LCR 54 (1/31/20)*

- **G.L. c. 60, s. 69A allows one year to vacate judgment unless due process denial**
- **Land Court found no denial of due process**
- **Land Court found claimant Hull acted unreasonably and never established its ownership**
- **Land Court denied Hull's motion to vacate tax foreclosure judgment**
- **Note - today, due to statutory amendment, assessors can assess to Owners Unknown without Commissioner approval**





## Employment Issues

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# Employment Issues







***Plymouth Retirement Board v. CRAB, 483 Mass. 600 (12/3/19)***

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**Plymouth Retirement Board v.  
Contributory Retirement  
Appeal Board (CRAB)  
483 Mass. 600  
December 3, 2019**





## *Plymouth Retirement Board v. CRAB, 483 Mass. 600 (12/3/19)*

### **Creditable Service**

- **Police officer Gomes served as “permanent-intermittent police officer” before becoming member of a municipal retirement system**
- **After becoming member, officer purchased creditable time as intermittent**
- **Then issued a refund by Retirement Board**
- **Then told by Board needed to purchase again**
- **Gomes appealed to DALA - Division of Administrative Law Appeals**





***Plymouth Retirement Board v. CRAB, 483 Mass. 600 (12/3/19)***

- **Issue – Whether G.L. c. 32, s. 4(2)(b) relieves police officers from paying to obtain creditable service for prior work as a permanent-intermittent police officer**
- **DALA said – Gomes must pay (appeal)**
- **CRAB said – Gomes must pay (appeal)**
- **Superior Court said – Gomes does not have to pay (appeal)**
- **SJC transferred appeal to itself**





***Plymouth Retirement Board v. CRAB, 483 Mass. 600 (12/3/19)***

- **On appeal, SJC noted**
  - **Retirement benefits are based upon “creditable service” and other factors**
  - **Some intermittent service rendered before becoming a member of retirement system is creditable upon petition to local retirement board**
    - **Board determines how much creditable service is available for previous intermittent work**





***Plymouth Retirement Board v. CRAB, 483 Mass. 600 (12/3/19)***

- **C. 32 s. 4(2)(b) applies specifically to creditable service for police permanent-intermittent time and requires one year of service credit for any time spent during a calendar year as permanent-intermittent officer, but s. 4(2)(b) is silent whether payment for service is required**
- **Under s. 4(2)(c), to acquire creditable service for previous intermittent work, members must remit payments "with buyback interest" – there are no express exemptions from this purchase formula**





***Plymouth Retirement Board v. CRAB, 483 Mass. 600 (12/3/19)***

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- **To determine legislative intent, must consider chapter 32 as a whole**
- **Court concluded s. 4(2)(b) is silent on payment for police intermittent service not because Legislature intended credit for past service without payment, but to establish how much service is credited instead of leaving it to retirement boards**
- **Court agreed with CRAB – officer must remit payment to receive credit for service**





***New Bedford v. New Bedford Police Union, 97 Mass. App. Ct. 502 (5/27/20)***

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**City of New Bedford v.  
New Bedford Police Union  
97 Mass. App. Ct. 502  
May 27, 2020**





***New Bedford v. New Bedford Police Union, 97 Mass. App. Ct. 502 (5/27/20)***

## **Labor Dispute**

- **Police union filed grievance against the Police Chief, alleging Chief's actions in assigning officers to conduct background checks as part of regular duties violated Collective Bargaining Agreement (CBA) which required Chief assign officers to perform checks outside their regular work**
- **City countered that the CBA did not preclude Chief from taking such action as it enhanced public safety and within Chief's managerial rights**







***New Bedford v. New Bedford Police Union, 97 Mass. App. Ct.502 (5/27/20)***

- **Arbitrator ruled in favor of union, holding that Chief's actions violated the CBA – action did not enhance public safety and was really a ruse for Chief to avoid paying overtime to officers performing background checks**
- **Arbitrator held that Chief required to make assignments per the CBA**





***New Bedford v. New Bedford Police Union, 97 Mass. App. Ct.502 (5/27/20)***

- **The City appealed the arbitrator's decision to the Superior Court to vacate the award**
- **On appeal, the Superior Court found for the City, stating the arbitrator exceeded his authority by substituting his judgment and decision-making for the Chief's**
- **On further appeal, Appeals Court also ruled for the City, holding that the CBA provision infringed on Chief's non-delegable exclusive assignment authority and City cannot be required to surrender it, even voluntarily through a CBA**





***Newton v. Newton Police Association***

***Rule 1:28 Unpublished, 97 Mass. App. Ct. 1127 (7/1/20)***

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**City of Newton v.  
Newton Police Association  
97 Mass. App. Ct. 1127  
July 1, 2020**





***Newton v. Newton Police Association***

***Rule 1:28 Unpublished, 97 Mass. App. Ct. 1127 (7/1/20)***

## **Labor Dispute**

- **Police filed for arbitration when City sought to deny payment for two details to three officers where they worked only one detail and the other was cancelled**
- **CBA required officers be paid four hours detail pay for every detail lasting less than 4 hours**
- **City agreement with parties hiring details included late cancellation fee equal to four hour minimum for detail officers if cancelled within two hours of detail start**





***Newton v. Newton Police Association***

***Rule 1:28 Unpublished, 97 Mass. App. Ct. 1127 (7/1/20)***

- **Arbitrator ruled in favor of police union – cancelled detail is a “detail” under the CBA and officers entitled to four-hour minimum**
- **Superior Court vacated arbitration award**
- **Police appealed to Appeals Court**
- **On appeal, City claimed**
  - **Arbitration award unlawfully imposed late cancellation fee in violation of G.L. c. 40, s. 22F, which allows “reasonable charges” for City services and**
  - **Payment for cancelled detail is a windfall to officers**





***Newton v. Newton Police Association***

***Rule 1:28 Unpublished, 97 Mass. App. Ct. 1127 (7/1/20)***

- **Appeals Court**
  - **Cannot say late cancellation fee is in direct conflict with 40:22F**
  - **Arbitrator's determination that cancelled detail is "detail" under CBA for purposes of 4-hour minimum is beyond scope of court to question absent fraud**
  - **Upheld award of detail fees to officers**
- **City has requested further appellate review (FAR)**





***Dracut v. Dracut Firefighters Association, 97 Mass. App. Ct. 374 (5/1/20)***

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**Town of Dracut v.  
Dracut Firefighters Association,  
97 Mass. App. Ct. 374  
May 1, 2020**





***Dracut v. Dracut Firefighters Association, 97 Mass. App. Ct. 374 (5/1/20)***

## **Labor Dispute**

- **Union grieved implementation of new policy preventing on-duty firefighters in district stations from attending union meetings at central station**
- **CBA provision had allowed attendance of meetings at the central station**
- **Town argued that public safety needs required Chief's new policy**
- **The arbitrator found violation of CBA**







***Dracut v. Dracut Firefighters Association, 97 Mass. App. Ct. 374 (5/1/20)***

- **Arbitrator concluded Chief's public safety needs rationale was undermined by his allowance of on-duty district firefighters to attend memorial services, inspections, training and drills at the central station**
- **Superior Court vacated arbitration award on the ground that arbitrator exceeded his authority by infringing on the non-delegability of the Chief's authority regarding deployment of fire personnel**





***Dracut v. Dracut Firefighters Association, 97 Mass. App. Ct. 374 (5/1/20)***

- Appeals Court balanced the principle of non-delegability, which extends only as necessary to preserve the public employer's discretion to carry out its statutory mandates, with public policy that favors collective bargaining
- Appeals Court found for union after concluding that, due to the numerous exceptions to the Chief's policy, the City did not make a clear showing that public safety considerations were paramount

