

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

MYSTIC VALLEY REGIONAL
SCHOOL (ROBERT KRAVITZ)
Petitioner

Docket No. CR-20-0243

Date: November 10, 2022

v.

STATE BOARD OF RETIREMENT
and
PUBLIC EMPLOYEE RETIREMENT
ADMINISTRATION COMMISSION
Respondents

Appearance for Petitioner:

Michael Sacco, Esq.
Law Offices of Michael Sacco, P.C.
PO Box 479
Southampton, MA 01073

Appearance for Respondent:

James H. Salvie, Esq.
State Board of Retirement
One Winter Street, 8th Floor
Boston, MA 02108

Administrative Magistrate:

Eric Tennen

ORDER ON CROSS MOTIONS FOR SUMMARY DECISION

Pursuant to G.L. c. 32, § 16(4), Petitioner, Mystic Valley Regional Charter School (“MVRCS”), through Robert Kravitz (collectively, “the Petitioner”), appeals a decision by the State Board of Retirement (“SBR”) denying his application to become a member. Mr. Kravitz is a non-teaching employee of MVRCS. He applied to become a member of SBR in January 2020. On May 14, 2020, SBR denied his application for membership. MVRCS filed a timely appeal on May 21, 2020. SBR thereafter moved to add the Public Employee Retirement Administration Commission (“PERAC”) as a party, which was allowed.

The Petitioner then filed a motion for summary decision, with 9 exhibits, on November 30, 2020. SBR filed an opposition that, for all intents and purposes, will be treated as a cross-motion for summary decision, on January 7, 2021. A summary decision may be granted when “there is no genuine issue of fact relating to all or part of a claim.” 801 Code Mass. Regs. § 1.01(7)(h). “In such a circumstance, a hearing serves no useful purpose.” *Jordan v. State Bd. of Ret.*, CR-21-0201, 21-043, 22-0061 (Div. of Admin. Law App., Feb. 18, 2022). This is such a case. The parties agree there are no factual issues in dispute.

The Petitioner is a non-teaching employee for MVRCS, a charter school. PERAC’s predecessor, PERA, issued numerous opinion letters and a final determination that non-teaching employees of charter schools are not eligible for membership in a retirement system.¹ PERAC maintains that interpretation. *See e.g. Sarapas v. Plymouth Cty. Ret. Sys.*, CR-19-616 (Div. of Admin. Law App., Sept. 16, 2022).

DALA has dealt similarly with this issue in many cases, sometimes head on, *see Flanagan v. Mass. Teachers’ Ret. Sys.*, CR-15-650 (Div. of Admin. Law App., Aug. 11, 2017); *Jacobson v. State Bd. of Ret.*, CR-06-669 (Div. of Admin. Law App., Nov. 6, 2009), and sometimes indirectly. *See Sarapas, supra; Belanger v. Mass. Teachers’ Ret. Sys.*, CR-16-120 (Div. of Admin. Law App., Feb. 8, 2019). In each of these appeals, DALA has concurred with PERAC’s interpretation.²

¹ Charter school teachers are eligible for membership in the MTRS by statute. G.L. c. 71 § 89(y). *But see Whipple v. Mass. Teachers’ Ret. Sys.*, (CRAB Dec. 19, 2014) (Charter school teacher not eligible for MTRS membership because she was employed by a private management company rather than by the Board of Trustees (a governmental entity)).

² It does not appear any party appealed these decisions and thus CRAB has not directly addressed this issue.

The Petitioner asks that these precedents be overturned but offers no facts justifying departure from these prior decisions. Rather, the Petitioner argues that PERAC's interpretation is mistaken, and our prior decisions were wrongly decided. Administrative decisions "have at least some precedential value." *Cain v. Milton Ret. Bd.*, CR-12-573 (Div. of Admin. Law. App. Feb. 19, 2016).

[P]recedential value serves many purposes. It protects parties' reasonably "settled expectations." Relying on precedent, rather than case-by-case adjudication, improves predictability and consistency. It saves resources because an Administrative Magistrate need not "reinvent the wheel every time [he or she] reaches a decision." And recognizing precedential value and striving for consistency discourages "arbitrary discretion," especially when arbitrariness can be used to target disfavored parties. Deciding cases case-by-case can lead to abuses of power.

Ibid.

Moreover, since the PERAC policy memorandum was issued, and at least since *Jacobsen* and *Flanagan* were decided, the Legislature has amended G.L. c. 71, *et seq.* (which applies to charter schools) on several occasions. It has not, however, amended any of the provisions that apply to non-teaching employees of charter schools. "[T]he principle of *stare decisis* is particularly weighty where the Legislature has declined to exercise its authority to overturn the court's interpretation of a statute. 'It is a well settled rule of statutory interpretation that, when a statute after having been construed by the courts is re-enacted without material change, the Legislature are presumed to have adopted the judicial construction put upon it...'" *Commonwealth v. Rivera*, 445 Mass. 119, 128 (2005), quoting *Nichols v. Vaughan*, 217 Mass. 548, 551 (1914).

Prior to submitting his application, the Petitioner sought an opinion from the Attorney General's office, which it declined to give. The Petitioner also asked PERAC to reconsider its position, which it declined to do. That leaves the Petitioner with three options. It can establish its

own pension system. It can seek a Legislative solution, as the SBR suggests. Or it can appeal this decision. However, *stare decisis* precludes the relief the Petitioner seeks in this adjudicatory forum. Because no cause exists to revisit these decisions, they remain persuasive authority and are entitled to full deference.

For the above-stated reasons, Petitioner’s motion for summary decision is **denied** and the Respondents’ cross-motion for summary decision is **allowed**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

DATED: November 10, 2022

Notice of Appellate Rights

G.L. c. 32, § 16(4) provides that decisions of the Division of Administrative Law Appeals such as the instant decision:

shall be final and binding upon the board involved and upon all other parties, and shall be complied with by such board and by such parties unless within *fifteen days* after such decision, (1) either party objects to such decision, in writing, to the contributory retirement appeal board, or (2) the contributory retirement appeal board orders, in writing, that said board shall review such decision

(Emphasis added.) A party objecting to this decision shall mail specific objections to Uyen M. Tran, Assistant Attorney General, Chair, Contributory Retirement Appeal Board, Office of Attorney General, One Ashburton Place, 18th floor, Boston, MA 02108. Copies must be sent to the Division of Administrative Law Appeals, 14 Summer Street, Malden, MA 02148, and to the other party or parties involved in the case.

Proceedings before CRAB are governed by standing orders, copies of which may be found at <https://www.mass.gov/how-to/file-a-public-employment-retirement-appeal>. Pursuant to CRAB Standing Order 2008-1, ¶ 4(a)(2), the notice of appeal must include (a) the date of the DALA decision, (b) a copy of the DALA decision, and (c) a statement of the part or parts of the DALA decision to which objection is made.

The notice of appeal must be postmarked or delivered in hand to CRAB no later than fifteen days following the date of the DALA decision. Electronic submissions do not satisfy this filing requirement.

Pursuant to CRAB Standing Order 2008-1, ¶ 4(a)(3), within forty days following the date of the DALA decision, the appellant must supplement the notice of objection by filing with the chair of CRAB three copies, and serving on each other party one copy, of:

- (a) All exhibits admitted into evidence before DALA, numbered as they were numbered on admission;
- (b) A memorandum of no more than twenty pages containing a clear and precise statement of the relief sought and the findings of fact, if any, and legal conclusions to which objection is made, together with a clear and precise statement of the particular facts, with exact references to the record, and authorities specifically supporting each objection; and
- (c) If CRAB's passing on an objection may require a review of oral proceedings before DALA, the transcript of the relevant portion of those proceedings.

Do not send any such supplementary materials or exhibits to DALA. Failure to follow CRAB's procedures could lead to sanctions, including dismissal of the appeal.