

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

March 31, 2023

Middlesex, ss.

Docket No. CR-14-520

JANICE A. NATALE, Petitioner

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM, Respondent

DECISION

Appearance for Petitioner:

Janice A. Natale, *pro se*
36 Cary Ave.
Revere, MA 02151-2707

Appearance for Respondent:

Ashley Freeman, Esq.
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Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

Retirement - Creditable Service - Service Ineligible for Creditable Service Purchase - Prior Contract Employment Paid Through Commonwealth's "03" Subsidiary Account - Public school teacher - Application to purchase retirement credit for teaching state college courses during summer sessions - Denial of application affirmed.

A public school teacher's application to purchase, for retirement credit, four years of her service as a teacher during Salem State College's 1988-2008 summer sessions was properly denied by the Massachusetts Teachers' Retirement System (MTRS), because (1) as a contract summer session employee at the state college, she was paid through one of the Commonwealth's "03" subsidiary accounts; (2) for this reason, she was not, per the definition of employee recited by M.G.L. c. 32, § 1, an "employee" of the college who was eligible to purchase her summer session teaching service for retirement credit; (3) she did not qualify to purchase such service under an exception for state retirement system members, *see* M.G.L. c. 32, § 4(1)(s), as she was not a member of that retirement system at any time; and (4) during eight of the years in question (2001-08, when she was employed as a full-time Revere Public Schools teacher and was a member of MTRS, her retirement contributions to MTRS were deducted from her weekly paychecks, and she was (or is) entitled to a full year of creditable service for each of those years; therefore, she could not, purchase other service for retirement purposes for any of those years that would give her credit for more than one year of creditable service for a year of service rendered. *See* M.G.L. c. 32, § 4(1)(a).

Background

Petitioner Janice A. Natale appeals, pursuant to M.G.L. c. 32, § 16(4), from the September 9, 2014 decision of respondent Massachusetts Teachers' Retirement System (MTRS) denying her October 2011 application to purchase, for retirement credit, four years of service teaching summer session courses at Salem State College (since 2010, Salem State University) between 1988 and 2008. MTRS denied her application because she was a contract employee during the summer semesters in question and was paid from the Commonwealth's "03" subsidiary account, and therefore her summer session service was not that of an "employee" of the State College and was not eligible for

retirement credit purchase, per the definition of “employee” recited by M.G.L. c. 32, § 1. Ms. Natale contends that MTRS’s determination was not correct.

DALA scheduled a hearing in this matter for September 18, 2018. Shortly before the hearing, Ms. Natale filed a request to have her appeal decided upon the parties’s written submissions without a hearing, pursuant to 801 C.M.R. § 1.01(10)(c). I issued an Order on September 14, 2018 listing the documents on which the appeal would be decided if MTRS did not object to proceeding as Ms. Natale proposed. MTRS responded that it did not object, and that it rested upon the exhibits and argument it included in its January 29, 2019 prehearing memorandum. Ms. Natale filed a response that included a summary of her argument on appeal, and stated that she had no additional exhibits or witness testimony to present. I treated this filing as her prehearing memorandum and exhibits. On October 5, 2018, I issued an Order confirming that the appeal would be decided upon the parties’ written submissions, the Orders issued in this appeal, and the parties’ related filings. I refer to these documents below with the prefix “**DOC**,” and have listed them in the attached Appendix.

Findings of Fact

Based upon the parties’ written submissions, the Orders and filings related to them, and the reasonable inferences drawn from these documents, I make the following findings of fact:

1. Petitioner Janice A. Natale was first employed full-time as a Revere (Massachusetts) Public Schools teacher in August 2001. She remained employed in that capacity when she filed her prehearing memorandum in this appeal on November 19, 2017, and at that time expected to retire in five years. (*See DOC. 2* (Ms. Natale’s Prehearing Memorandum, dated November 19, 2017), at

1.)

2. As a Revere Public Schools teacher, Ms. Natale was a member of the Massachusetts Teachers' Retirement System (MTRS). She remained an active member of this retirement system when MTRS filed its prehearing memorandum in this appeal on January 29, 2018. (Undisputed; *see* MTRS Prehearing Memorandum at 2; statement of additional relevant facts, para. 2.)

3. Ms. Natale has made regular contributions to an MTRS retirement account since August 2001, when she became a Revere Public Schools teacher and MTRS member. Through at least March 2010, her retirement contributions to this account were automatically deducted every week from her Revere Public Schools employee paycheck. (**DOC. 3** (MTRS's Prehearing Memorandum and attached Exhibits, dated Jan. 29, 2018), **Exh. 3**: Emails dated January 29, 2018 between James O'Leary, Esq., MTRS Deputy General Counsel, and Christopher V. Delisi, MTRS Service Coordinator, Service Credit Administration, re credit for retirement contributions made by Ms. Natale from and including 2001, and credit for full years of creditable service during that time period; and **DOC. 3, Exh. 4**: Ms. Natale's MTRS Member Account Balance and Service Credit, printout for the period August 31, 2001 through March 5, 2010.)

4. Ms. Natale has received full credit for retirement purposes for her regular contributions as a Revere Public Schools employee to her retirement annuity savings account since September 1, 2001. (*See* **DOC. 3, Exh. 3**.)

5. Starting during the summer of 1988, and continuing the during summers of 1990-2008, Ms. Natale taught classes in reading and study skills, and developmental skills, at Salem State

College (now Salem State University) in Salem, Massachusetts, during the college's summer sessions. (**DOC. 2** (Ms. Natale's Prehearing Memorandum, dated November 19, 2017, and attached Exhibits), **Exh. C**: Ms. Natale's undated Chart showing information regarding her work during Salem State College summer sessions between 1988 and 2008; **DOC. 3, Exh. 5**: Salem State College internal Emails dated October 18, 2013 re Ms. Natale's personnel history; spreadsheet printout listing payment to Ms. Natale for teaching during the college's 2004-08 summer programs; and Ms. Natale's "Commonwealth of Massachusetts Personnel History Card" with handwritten entries showing her summer session work at Salem State College in 1990-1991, 1997-2005, and 2006-08); **DOC. 3, Exh. 6**: Chart entitled "MTRS 'Other Massachusetts Public Service,' Janice A. Natale, Salem State University," prepared by Salem State College Benefits Coordinator Pamela Oppelt when she prepared the employee information sections of Ms. Natale's creditable service purchase application in October 2011 (summarizing Ms. Natale's work at the College during each of the 1988-2008 summer sessions).)

6. During these summer sessions, Ms. Natale worked as a Facilitator, Special Education Tutor and/or Visiting Instructor appointed to do so under contracts with the College, each of which expired when the summer session ended. The documents filed by the parties include contracts (most of which are entitled "Contract Form Letter of Appointment") for Ms. Natale's summer session work in 1990 and in each of the Salem State College summer sessions from 2002 through 2008. Each of the contracts for teaching courses that are included in the record here specify Ms. Natale's job title, the course name and number she would be teaching under the contract, the number of credits per

each of the courses the contract specified (generally 3 credits per credit course), and Ms. Natale's rate of pay and/or total compensation for teaching the class or classes specified by the contract. (*See DOC. 3, Exh. 6.*) There are no contracts among the documents filed by the parties for the 1991-2001 Salem State College summer sessions.¹

7. The documents filed by the parties also include copies of Ms. Natale's Salem State College W-2 Forms for 1988-2008, as well as several of her Salem State College pay advices ("pay stubs") showing payments for her summer session work during the summers of 2003-08. (*See DOC. 3, Exh. 6.*) None of Ms. Natale's Salem State College W-2 Forms show Ms. Natale's earnings from any work other than what she performed during the College's summer sessions. None of them shows any contribution by Ms. Natale to a public employee contributory retirement plan.

8. Starting in 1992, Ms. Natale's Salem State College W-2 Forms included a checkmark at the box entitled "deferred compensation" (Box 17 on the 1992 W-2 Forms; Box 13 on the 1994-2000 W-2 Forms; and Box 12G on the W-2 Forms for 2003-08). This "deferred compensation" and related contributions relate to Ms. Natale's contributions to the "Massachusetts Deferred Compensation 457 SMART Plan. This was, as it is now, a retirement savings account, rather than a contributory retirement plan, to which part-time and temporary Commonwealth employees were required to contribute in lieu of contributions to Social Security after July 1991. (*See Federal*

¹/ Both Ms. Natale and Salem State College Benefits Coordinator Pamela Oppelt attempted, without success, to locate additional documents other than those ultimately filed here. (*See, e.g., DOC. 3, Exh. 5:* Email correspondence between Pamela Oppelt and Mary Gachignard, a Salem State College Staff Assistant at the time) dated October 18, 2011 regarding Ms. Natale's personnel history.)

Omnibus Budget Reconciliation Act of 1990 ("OBRA 90") Pub. L. 101-508.)²

9. There is no evidence in the documents filed by the parties, and no assertion by either of them, that Ms. Natale ever became a member of the Massachusetts State Employees' Retirement System to which Commonwealth employees eligible for contributory retirement system membership belong, such as those employed as full-time faculty at Salem State College. Since becoming a Revere Public Schools teacher in 2001, Ms. Natale has remained a member of the Massachusetts Teachers' Retirement System, and her pension contributions to that contributory retirement system have been deducted from her weekly Revere Public Schools paycheck. (*See* Finding 3.)

10. Since becoming a Revere Public Schools teacher and a member of MTRS, Ms. Natale's pre-tax contributions to her MTRS member retirement account have been deducted regularly from her pay. The documents filed here include a computer printout from the MTRS benefits system (MYTARS) showing these contributions to Ms. Natale's MTRS member retirement account from August 31, 2001 to March 5, 2010. (*See* **DOC. 3, Exh. 4**: MYTARS printout, eleventh

²/ Among other things, the federal OBRA 90 statute required that employees not eligible to participate in their employer's retirement program be placed in Social Security or another program meeting federal requirements,"which includes the Massachusetts Deferred Compensation 457 SMART Plan. (*See* Massachusetts Deferred Compensation SMART Plan, "Basic Facts about OBRA and the Massachusetts Deferred Compensation SMART Plan, <https://mass-smart.empower-retirement.com/participant/#!/articles/Massachusetts/OBRA>; follow the hyperlink at this website to "OBRA Part-Time Information.") Based upon the Salem State College W-2 box numbers where Ms. Natale's deferred compensation was shown for her summer session work starting in 1992, and because no Social Security contributions are shown on these W-2 Forms, it is reasonable to conclude that the College considered her to be an employee who was not eligible to participate in the Commonwealth's contributory retirement plan and therefore placed her in the Massachusetts Deferred Compensation 457 SMART Plan, per the federal OBRA 90 statute.

column from left entitled “Reg. Ded,” meaning “Regular Deductions”).

11. When she worked at Salem State College during its 1988-2008 summer sessions, Ms. Natale’s status was that of a contract employee working on a temporary or part-time basis and, as such, she was paid from the Commonwealth’s “03” subsidiary account. I base this finding upon the following:

(a) Ms. Natale’s “Commonwealth of Massachusetts Personnel History Card” showing her Salem State College summer session service starting in 1990 includes the notation “STATUS 03” at the top of this document, at the upper right. This notation refers to her payroll status during the summer sessions at the College, in particular the Commonwealth subsidiary account from which she was being paid. (*See DOC. 3, Exh. 5.*)

(b) Ms. Natale’s creditable service purchase application included two sections that had to be completed by her employer: Section 4, entitled “Additional Employment Information,” and Section 5, entitled “Statement and signature.” Per the preprinted instructions, both sections were “[t]o be completed by payroll official of governmental unit.” (*See DOC. 3, Exh. 2, at 2.*) Salem State College Benefits Coordinator Pamela Oppelt completed both of these sections on October 12, 2011, including the certification, at section 5, that the information provided was true and accurate to the best of her knowledge. At section 4(a) Ms. Oppelt checked the statement that “retirement contributions were made” based upon Ms. Natale’s service at the College, but after this statement someone (presumably Ms. Oppelt) wrote “03 OBRA only.” (*Id.*) At section 4(b), which asked “what was the member’s employment status during this service?” someone (also presumably Ms. Oppelt)

wrote “OBRA Funds Taken When OBRA Contractor” and crossed out “State Retirement Funds Taken When (illegible).” The crossing-out is consistent with Ms. Natale’s Salem State College W-2 Forms, which show no contribution to a contributory retirement system. The statement that “retirement funds” were taken (meaning from Ms. Natale’s summer session pay) was technically true, as the preprinted question did not specify that this phrase referred only to “contributory retirement system” contributions. The language “03 OBRA Only” is a statement of Ms. Natale’s status as a contractor during the summer sessions in question, and that she was paid for her service from the Commonwealth “03” subsidiary account. It also qualifies the affirmative answer to the question about “retirement contributions” as referring to Ms. Natale’s contributions to the Massachusetts Deferred Compensation 457 SMART Plan, which was a retirement savings account rather than a contributory retirement plan. (See Finding 8.) This was consistent with what Ms. Natale’s Salem State College W-2s showed starting in 1992 for “deferred compensation,” meaning nonelective contributions to a deferred compensation plan in lieu of contributions to Social Security that the federal OBRA 90 statute would have required otherwise after July 1991. (*Id.*)

(c) During the time in question, Salem State College considered all of its contract employees to be “03 employees.” (**DOC. 3, Exh. 6:** Ms. Oppelt’s 2011 Chart of Ms. Natale’s Salem State College summer session work from 1988 to August 2008, at unnumbered fourth page: note by Pamela Oppelt at the bottom of the chart.)³

³/ I note that Ms. Oppelt prepared her chart, including her note on the last page about contract employees being considered to be 03 employees at about the time she completed

(d) Ms. Natale's Salem State College W-2 Forms for her summer work starting in 1992 show contributions to the Massachusetts Deferred Compensation 457 SMART Plan, which was (and remains) an employment retirement savings plan, but not to Social Security (see Finding 8, and n. 2 above) or to the Commonwealth's State Employee Retirement system (see Findings 3 and 7).

12. On or about August 10, 2012, Natale filed with MTRS an application to purchase, for retirement credit purposes, up to four years of her summer session teaching service at Salem State College from July 1988 through August, 2008. **(DOC. 3, Exh. 2: Ms. Natale's service purchase application.)**

13. On September 9, 2014, MTRS denied Ms. Natale's creditable service purchase application. **(DOC. 3, Exh. 2.)**

Discussion

At issue here is whether MTRS's denial of Ms. Natale's creditable service purchase application was correct. For the reasons stated below, I conclude that it was, and affirm the creditable

sections 4 and 5 of Ms. Natale's creditable service purchase application as "the payroll official of the governmental unit" (Salem State College). She prepared the chart in response to a request by MTRS for information regarding Ms. Natale's Salem State College summer session service. (See **DOC. 3, Exh. 5:** Salem State College internal Emails dated October 18, 2013 re Ms. Natale's personnel history; spreadsheet printout listing payment to Ms. Natale for teaching during the college's 2004-08 summer programs; and Ms. Natale's Personnel History Card). This shows sufficiently that Ms. Oppelt had the apparent authority, and knowledge, to state that the College regarded its contract employees (including Ms. Natale) to be "03 employees." Her statement is therefore reliable on that point, and also with respect to the payment of the College's contract employees from the Commonwealth's 03 subsidiary account.

service purchase denial.

1. Contributions to Public Employee Retirement Systems and Creditable Service, Generally

Commonwealth employees are generally eligible for membership in one of the public employee contributory retirement systems, and are required to contribute to the retirement system to which they belong via payroll deductions. Upon retirement, assuming that she has accumulated sufficient “creditable service,” a retired public employee retirement system member would receive a monthly retirement allowance based upon creditable service for the duration of her employment in public service. *See Young v. Contributory Retirement Appeal Board*, 486 Mass. 1, 3, 154 N.E.3d 884, 886 (2020), *citing* M.G. L. c. 32, §§ 1, 3(2)(a) (x), 4(1)(a), 5, 10 and 22 (1) (b); *Plymouth Retirement Bd. v. Contributory Retirement App. Bd.*, 483 Mass. 600, 601, 135 N.E.3d 702, 703 (2019), *Retirement Bd. of Stoneham v. Contributory Retirement Appeal Bd.*, 476 Mass. 130, 132, 65 N.E.3d 650, 653 (2016), and *Massachusetts Teachers' Retirement System v. Contributory Retirement App. Bd.*, 466 Mass. 292, 294-95, 994 N.E.2d 355, 357 (2013).

As Commonwealth employees, full-time Salem State College faculty eligible to belong to a public employee contributory retirement system were members of the Massachusetts State Employees' Retirement System. Ms. Natale would have been able to join that system if she had been employed full-time by the College, rather than as a part-time contract employee. However, she was never employed by the College full-time, or under a contract that did not expire at the end of a summer. Since becoming a full-time Revere Public Schools teacher in 1991, Ms. Natale has

belonged to MTRS and contributed to that retirement system via regular payroll deductions every week for 52 weeks per year, starting on September 1, 2001.

Creditable service for public employee retirement system members—one of the factors taken into account in computing a retiring or retired member's retirement allowance—is categorized as either "membership service" or "nonmembership service." Generally, membership service is service that was performed when the employee was required to be a public employee retirement system member and made contributions to that system via payroll deductions. Nonmembership service is service that did not require retirement system membership but was eligible to be purchased for retirement credit. *See Spencer v. State Bd. of Retirement*, Docket No. CR-27-2022, Decision at 25-26 (Mass. Div. of Admin. Law App., May 27, 2022). Here, Ms. Natale's membership service was rendered as a Revere Public Schools teacher, and retirement contributions to her retirement system (MTRS) were withheld from all of her weekly paychecks starting on September 1, 2001. Ms. Natale sought to purchase her nonmembership service as a Salem State College summer session contract employee for retirement credit.

2. Purchase of Service in Another Government Unit by an "Employee" for Retirement Credit

Under M.G.L. c. 32, § 4(1)(s), a contract employee (as opposed to a regular employee) of the Commonwealth who later became a regular State employee may purchase up to four years of the prior contract employment for retirement credit. *Young*; 486 Mass. at 4, 154 N.E.3d at 887. Per M.G.L. c. 32, § 3(5), a member of any of the Commonwealth's public employee retirement systems

who had rendered service as an employee of any governmental unit other than the one that employees her presently may purchase such service for retirement credit.

The Commonwealth's retirement statute, M.G.L. c. 32, limits which type of prior public service can be purchased for retirement credit. One such limit relates to how the prior contract service that a regular Commonwealth employee seeks to purchase was paid; in turn, that determines whether the prior service was rendered by an "employee" for retirement credit purposes. M.G.L. c. 32, § 1 defines "employee" of the Commonwealth, or any of its political subdivisions, as excluding "any person whose compensation for service rendered to the commonwealth is derived from the subsidiary account 03 of the appropriation of any department, agency, board or commission of the commonwealth"

Stated another way, if a public retirement system member was paid for prior contract service out of the Commonwealth's 03 subsidiary account, that service was not service as an employee and, as a result, the member cannot purchase any of it for retirement credit, per the definition of "employee" recited by M.G.L. c. 32, § 1. *See Harris v. Boston Retirement System*, Docket No. CR-16-487, Decision (Mass. Div. of Admin. Law App., Jul. 13, 2018); *Strauss v. Teachers' Retirement System*, Docket No. CR-07-488, Decision (Mass. Div. of Admin. Law App., Mar. 12, 2008).⁴

⁴/ *Young (supra*, at 11) discussed the nature and history of the Commonwealth's 03 subsidiary account in holding that a state agency had authority (with limitations not applicable here) to pay contract workers from that account or its derivative accounts, and to determine that such employees were not, and would not be paid as, regular employees. The Supreme Judicial Court explained, in pertinent part, that:

In 1947, the Legislature decreed that "[a]ppropriations by the general court, and any allotments by the governor, shall be

Another limit on creditable service purchases appears at M.G.L. c. 32, § 4(1)(a)—a public employee retirement system member cannot be credited with more than one year of creditable service rendered during any calendar year. Ms. Natale has been (or upon retiring will be) credited for retirement purposes fully, since September 1, 2001, for her service as a Revere Public Schools

expended only in the amounts prescribed in the subsidiary accounts ... established by ... the joint committee on ways and means.” See St. 1947, c. 636, § 2 (amending (amending G. L. c. 29, § 27) ... [and] expenditure code handbook establishing the accounts titled 01, 02 and 03. See Object Code Numbers and Subsidiary Accounts for Budget Control, approved approved by the House Committee on Ways and Means 3 (rev. June 1, 1949) . . . The 03 account was delineated as the proper source of payment for “[a]ll services ... rendered by non-employees except contractual services classified under other subsidiary accounts.” *Id.*

In 1990, the comptroller issued a new expenditure classification handbook. See Office of the Comptroller, Expenditure Classification Handbook (Feb. 1990) (1990 Expenditure Handbook). Instead of the previous numerical accounts, the new handbook used a series of subsidiary accounts designated by letters [CC, HH, JJ, and NN] (“compare” citation omitted) . . . [A] 1990 memorandum from the comptroller . . . indicates that workers who previously had been paid from the 03 account were being divided into those four new groups. In addition, the comptroller's publications consistently have stated that contract employees are not eligible for membership in the retirement system. See 2014 Expenditure Handbook, supra at 27; 1990 Expenditure Handbook, supra at 4 (“individuals who are employed on a temporary basis through contracts ... are not eligible for benefits”).

Young; 486 Mass. at 7-8; 154 N.E.3d at 889-90. The record here does not show which (if any) subsidiary account letters might have been used after 1990 to designate Ms. Natale's Salem State College contract payments, but this omission is legally insignificant. Per *Young*, the executive branch derived these lettered accounts from the 03 subsidiary account, and intended that payment from the 03 subsidiary account or from a lettered account derived from it be “treated equivalently.” See *Young*; 486 Mass. at 8; 154 N.E.3d at 890.

teacher. (Finding 4.) She could not have received a full year of credit for her public school teaching service in 2001 because during that year, she was not employed as a Revere Public Schools teacher for a full year; however, she received 52 weeks of retirement credit (a full year, in other words) for creditable service rendered in that position from 2002 through 2008 (and in subsequent years as well). As a result, Ms. Natale cannot purchase service for teaching at Salem State College during the summers of 2002-08, even if she were not paid for that service from the Commonwealth's 03 subsidiary account, because the purchase would give her more than a year of creditable service for each of those years, which M.G.L. c. 32, § 4(1)(a) does not allow.

3. Whether Ms. Natale May Purchase Her Prior Salem State College Summer Session Contract Service for Retirement Credit

In resolving this issue, what proves determinative is that between 1988 and 2008, Ms. Natale worked during Salem State College's summer sessions as a temporary employee under contract, and was paid from the Commonwealth's 03 subsidiary account.

Ms. Natale's Commonwealth Personnel History Card is the key evidence that she was paid for her College summer session service from this 03 account. The Personnel History Card's printed title, which includes the words "Commonwealth of Massachusetts" at the top, is some evidence that it was a government form used in the regular course of personnel-related business by Salem State College (specifically, by its personnel or payroll office) during the years in question. So, too, is the Form Number preprinted at the top left corner of this document. The information entered on this document is confined to Ms. Natale's work as a Commonwealth employee during the College's

summer session, It does not include her full-time work as a Revere Public Schools teacher, which was work performed for that municipal school system rather than for the Commonwealth of Massachusetts. It records her employee status for payroll purpose as “03” for all of her Salem State College summer session work. (*See* Finding 5, 7 and 11(a).)

The handwritten entries on Ms. Natale’s Salem State College Personnel History Card concern her work at the College during many, but not all, of the years in question. The “Date of Entry” at the top right of this record is “08/02/90,” which explains why it includes no entries for Ms. Natale’s Salem State College summer session work in 1988 and 1989. There are no entries for her 1991-96 summer session work. There is an entry for her 1997 summer session work, followed by a time interval notation—quotation marks on each of two following lines, with the last one followed by “05,” showing (absent any contrary assertion) that the 1997 summer session work description was the same for 1996-2005. This notation is followed by entries on separate lines of the Personnel History Card for Ms. Natale’s summer session work in 2006, 2007 and 2008.

Absent any entry on the Personnel History Card showing a change in Ms. Natale’s status as an “03” employee, the notation at the top right of this record “STATUS 03,” is read properly as carrying forward to each entry for Ms. Natale’s Salem State College summer session work in 1990-91, 1997-2005, and 2006-08. There is no evidence in the record that Ms. Natale’s “O3” employee status changed during years for which there is no specific data entry on her Personnel History Card..

Other documents in the record show, or allow a reasonable inference, that Ms. Natale was paid for her summer session work at Salem State College from the Commonwealth’s 03 subsidiary account.

In completing the employer information sections of Ms. Natale's creditable service application in October 2011, Salem State College Benefits Coordinator Pamela Oppelt placed a check-mark next to "Yes" in response to the preprinted inquiry whether there "[w]ere any retirement contributions made based upon" the service Ms. Natale sought to purchase. Next to this is a handwritten notation that reads "03 OBRA only." A handwritten notation that follows reads "OBRA Funds Taken When '03' Contractor," with a line drawn through another notation that had read "State Retirement Funds Taken When (illegible)." I read these notations as referring to Ms. Natale's contributions starting in 1992 to the Massachusetts Deferred Compensation 547 SMART Plan per the requirements of the federal OBRA 90 statute. The Massachusetts SMART Plan was (and remains) an employee savings plan, rather than a public employee contributory retirement plan, to which Ms. Natale contributed from her earnings as a contract employee of Salem State College during the 1992-2008 summer sessions. Ms. Natale's Salem State College W-2 Forms show this to have been the case, including which box numbers on the W-2 Forms show "deferred compensation" starting in 1992. (*See* Findings 3, 7, 8 and 11, and n.2.) Also supporting this conclusion is the fact that, after July 1991, part-time Commonwealth contract employees were required, by the federal OBRA 90 statute, to contribute to the SMART Plan in lieu of Social Security contributions. Ms. Natale's Salem State College W-2 Forms for 1992 and subsequent years show no contributions to Social Security or to a contributory retirement plan. (*Id.*)

If there was a case to be made that Ms. Natale was paid from a non-03 subsidiary account or was not a contract employee, it was for Ms. Natale to make it. *See Harris v. Boston Retirement System*; Decision at 5. She has not done so. She asserts only that the contracts she signed each year

“did not state where [her] compensation was coming from or that it would affect [her] retirement,” and that if she had been informed before signing the contracts “that her teaching position would not count” toward her retirement” she “would have pursued other options to teach.” (*DOC. 4(k)*) (Response of Janice Natale to Order re Further Proceedings, dated Sept. 18, 2018.)

These assertions are not determinative of Ms. Natale’s employment status for payroll or retirement credit purposes, and they are not supported by her summer session contracts, pay stubs or related Salem State College W-2 Forms. None of the contracts Ms. Natale signed for her summer session work stated that she would receive, or would be entitled to, anything other than the stated compensation. None of the pay stubs or W-2 Forms in the record show any deductions from Ms. Natale’s summer session pay for contributions to a public employee contributory retirement system, or anything else suggesting that she was a Commonwealth employee within the definition recited by M.G.L. c. 32, § 1. As noted above, Ms. Natale’s W-2 Forms showed, stating in 1992, her contributions to the Massachusetts Deferred Compensation 457 SMART Plan contributions which, per the federal OBRA 1990 statute, were compulsory after July 1991 in lieu of Social Security contributions. Contributions to the SMART Plan were to a tax-deferred retirement savings account, not to a public employee contributory retirement plan. The SMART Plan contributions show, as a result, that Ms. Natale performed her Salem State College summer session work as a part-time contract employee.

The parties’ filings on which I decide this appeal suffice to show that Ms. Natale was a contract employee during the Salem State College summer sessions between 1988 and 2008 who was paid for her work from the Commonwealth’s 03 subsidiary account. Even if the evidence were

regarded as insufficiently certain on this point, Ms. Natale did not show she was paid from any other type of account and was, for that reason, eligible to purchase her summer session service for retirement credit as service rendered by her as a regular Commonwealth employee.

Based upon the documents the parties filed, I conclude that Ms. Natale was not “regularly and permanently” employed at the College during any of the summers in question. Her summer session contracts terminated at the end of each summer session. There is no evidence that she was paid for her summer session work from any Commonwealth payroll account other than the 03 subsidiary account. Having been a contract employee paid from that account, and having never become a member of the State Employee Retirement System, Ms. Natale’s Salem College summer session service was not rendered by her as an “employee” of Salem State College, as “employee” is defined for retirement purposes at M.G.L. c. 32, § 1. Therefore, she cannot purchase this service for retirement credit.

Disposition

For the reasons set forth above, the denial by MTRS of Ms. Natale’s application to purchase four years of her service teaching summer session courses at Salem State College between 1988 and 2008 as creditable service for retirement purposes is *affirmed*.

SO ORDERED.

Notice of Appeal Rights

This is the Final Decision of the Division of Administrative Law Appeals (DALA) in this

matter. It may be appealed to the Contributory Retirement Appeal Board (CRAB) no later than fifteen (15) days following the date of the DALA Decision.

M.G.L. c. 32, § 16(4) provides in pertinent part that a retirement appeal decision such as this 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, Esq., 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 St., 4th floor, Malden, MA 02148, and to the other party or parties involved in the case.

Proceedings before CRAB are governed by CRAB Standing Orders, which may be found at: <https://www.mass.gov/how-to/file-a-public-employment-retirement-appeal>. Pursuant to CRAB Standing Order 2008-1, para. 4.a(2), the notice of appeal must include (a) the date of this 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 objection 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, paragraph 4.a(3), within forty days following the date of the DALA decision, the appellant (the party who filed the Notice of Objection to the DALA Decision) must supplement the Notice of Objection by filing with the Chair of CRAB three copies each, and by 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.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: March 31, 2023

[Appendix to Decision follows on next page]

APPENDIX TO DECISION

The parties' written submissions upon which this appeal is decided are:

DOC. 1: Appeal by Janice A. Natale, dated September. 28, 2014 (from MTRS's decision, dated September 17, 2014, denying her application to purchase, as creditable service for retirement purposes, her teaching as a visiting lecturer at Salem State College/University during the summer semesters of 1998-2008.

Attachment: copy of MTRS's decision, dated September 17, 2014, denying her application to purchase prior service as creditable service for retirement purposes.

Exhibits to the Appeal

Exh. A: Ms. Natale's service purchase application dated October 12, 2011;

Exh. B: MTRS's instructions and application form re purchasing creditable service for other Massachusetts public service, dated June 13, 2011, with Ms. Natale's answers to questions included in this form; and

Exh. C: Ms. Natale's undated table showing information including the summer semester courses she taught at Salem State College/University, her compensation for teaching them, and the course credit hours, during the summers of 1998-2008.

DOC. 2: Ms. Natale's Prehearing Memorandum, dated November 19, 2017, and attached Exhibits.

Contents:

Memorandum comprising "Cover letter" dated Nov, 19, 2017, asserting arguments in support of Ms. Natale's creditable service buyback application and related appeal; and filing dated Nov, 29, 2017, asserting supporting arguments and reasons for late submission

of prehearing materials.

Exhibits:

Exh. A: First two pages of Ms. Natale's October 12, 2011 application to purchase, as creditable service for retirement purposes, her teaching as a visiting lecturer at Salem State College/University during the summer semesters of 1988-2008.

Exh. B: MTRS Instruction Form for Application to Purchase Creditable Service for Other Massachusetts Public Service, dated Jun. 13, 2011.

Exh. C: Ms. Natale's undated table showing information regarding her work during Salem State College summer sessions between 1988 and 2008, including the dates during each summer session that she worked, her compensation, the courses she taught and hours taught per course, credit hours for the course (if any), and Ms. Natale's title or position during each summer session.

DOC. 3: MTRS's Prehearing Memorandum and attached Exhibits, dated Jan. 29, 2018.

Memorandum dated January 29, 2018.

Exhibits:

Exh. 1. MTRS denial of Ms. Natale's request to purchase creditable service, dated Sept. 9, 2014.

Exh. 2. Ms. Natale's application to purchase past public service for retirement credit (summer session classes in each of two sessions taught during the summer of 1999 and then during the summers of 2002-2008), stamped as having been received by MTRS on Aug. 10,

2012, with “additional employment information” to be completed by “payroll official of governmental unit” signed by Pamela Oppelt, Staff Assistant/Payroll Officer, dated Oct. 12, 2011); and attached chart prepared by Ms. Natale (undated) showing dates of summer session she taught at Salem State College from 1988 through 2008; amount she was paid per course or week; the courses and hours she taught; the number of credits of each credit course she taught; and her title during the summer session.)

Exh. 3. Emails dated January 29, 2018 between James O’Leary, Esq., MTRS Deputy General Counsel, and Christopher V. Delisi, MTRS Service Coordinator, Service Credit Administration, re credit for retirement contributions made by Ms. Natale from and including 2001, and credit for full years of creditable service during that time period).

Exh. 4: Computer printout from MTRS Benefits System (MYTARS) showing Ms. Natale’s retirement contributions to her MTRS member retirement account from August 1, 2001 through March 1, 2010.

Exh. 5: Salem State College internal Emails dated October 18, 2013 re Ms. Natale’s personnel history; spreadsheet printout listing payment to Ms. Natale for teaching during the college’s 2004-08 summer programs; and Ms. Natale’s personnel history card.)

Exh. 6: Various documents related to Ms. Natale’s Salem State College summer session work for the period 1988-2008, including: Chart prepared by Salem State College payroll officer Pamela Oppelt in 2011, summarizing Ms. Natale’s “Other Massachusetts Public Service” from Summer 1988 through August 9, 2008 (showing for each year, among other things, the dates of Ms. Natale’s service during the 1988-2008 Salem State College

summer sessions, the positions she held, the courses she taught, the hours she worked; and her compensation; Ms. Natale's Commonwealth of Massachusetts Personnel History Card; Salem State College contracts for Ms. Natale's summer session work; several advices of payment (paystubs) issued by Salem State College to Ms. Natale in 2004-07; and other documents related to Ms. Natale's work at Salem State College during summer sessions from 1988-2008).

DOC. 4: Notices and orders issued in this appeal, and related motions by the parties.

(a) DALA Notice of Receipt of Appeal, dated Oct. 1, 2014,

(b) Prehearing Order dated Nov. 4, 2015.

(c) Order to Show Cause dated Sept. 27, 2017 re overdue but unfiled Prehearing Memorandum.

(d) Letter, MTRS to DALA Chief Administrative Magistrate Edward B. McGrath re request that Ms. Natale be ordered to serve her Prehearing Memorandum and Exhibits upon Respondent MTRS.

(e) Assented-to Motion to Enlarge Time for MTRS to file its Prehearing Memorandum of Law, dated Dec, 14, 2017, endorsed as So-Ordered Dec, 21, 2017.

(f) Email from Janice Natale to DALA Chief Magistrate Edward B. McGrath re MTRS's request for extension of time to file Prehearing Memorandum, dated Jan. 25, 2018.

(g) Respondent MTRS's motion for an additional extension of time (one week) to file its Prehearing Memorandum, dated Jan. 22, 2018, with endorsed Order allowing the motion dated Feb,

17, 2018.

(h) Notice of Hearing dated Jun. 5, 2018.

(i) Request by Janice Natale to reconsider scheduling of hearing for September 18, 2018 in view of her health issues, and requesting decision on documents filed, dated Sept. 11, 2018.

(j) Order re Further Proceedings dated Sept. 14, 2018.

(k) Response of Janice Natale to Order re Further Proceedings, dated Sept. 18, 2018 (states that Ms. Natal has no additional exhibits to submit, or any witnesses; and states her position on appeal).

(l) Response of MTRS to Order re Further Proceedings, dated Sept. 27, 2018 (states that MTRS does not object to decision on parties' submissions, and will rely on its prehearing memorandum dated Jan. 29, 2018, along with its proposed Exhibits 1-6).

(m) Order re Decision on Written Submissions, dated Oct. 5, 2018.

(n) Notice of appearance of Ashley Freeman, Esq., Senior Legal Counsel, for MTRS.

--There are no further documents--