

## COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Charles Ogwuru,**  
Petitioner

v.

Docket No.: CR-23-0587

Date Issued: February 6, 2026

**State Board of Retirement,**  
Respondent

### **Appearance for Petitioner:**

Godson A. Anosike, Esq.

### **Appearance for Respondent:**

Yande Lombe, Esq.

### **Administrative Magistrate:**

Kenneth J. Forton

### **SUMMARY OF DECISION**

Petitioner, a retired DYS worker, was charged with three misdemeanors unrelated to his work duties. He was suspended without pay. Once his criminal charges were dismissed, he was reinstated at DYS and received back pay for the period of his suspension. He was not suspended under G.L. c. 30, § 59, which allows suspension when the employee is under indictment for misconduct in office and entitles members to service credit if their charges are dismissed, they return to work, and receive back pay for the period of the suspension. Nevertheless, under the principles enunciated in *Tarlow v. Teachers' Ret. Sys.*, CR-10-793 (Contributory Ret. App. Bd. Nov. 26, 2013), and State Board of Retirement policy, Mr. Ogwuru is entitled to service credit because he received back pay that was meant to make him whole for a period when he should have remained regularly employed.

**DECISION**

Petitioner Charles Ogwuru timely appeals, under G.L. c. 32, § 16(4), the decision of Respondent State Board of Retirement to deny him service credit for a two-year period when he was suspended without pay. On December 28, 2023, the Division of Administrative Law Appeals (DALA) ordered the parties to file a joint pre-hearing memorandum and any supporting exhibits. On November 14, 2024, the parties filed their pre-hearing memorandum with 11 agreed upon exhibits. Mr. Ogwuru also submitted one additional proposed exhibit.

I held and digitally recorded an evidentiary hearing on October 7, 2025. Only Mr. Ogwuru testified. I admitted the 12 proposed exhibits into evidence. (Exs. 1-12.) The parties made oral closing arguments, whereupon the administrative record closed.

**FINDINGS OF FACT**

Based on the testimony and exhibits in the administrative record, I make the following findings of fact:

1. Charles Ogwuru entered state service on November 29, 1986, and worked until January 9, 1992. He worked for the Department of Youth Services (DYS) as a group worker at a secure facility. (Stipulation; Testimony.)
2. When he left state service he took a refund of his retirement contributions. This terminated his membership in the retirement system. (Stipulation; Testimony.)

3. Mr. Ogwuru returned to DYS on September 12, 1994, as a case worker coordinating program placements for juveniles. He worked out of one of DYS's regional offices. He was not a civil service employee. (Stipulation; Testimony.)

4. Mr. Ogwuru eventually bought back service credit for the 1986 to 1992 period. (Testimony.)

5. On January 10, 1996, Mr. Ogwuru was charged in East Boston District Court with uttering counterfeit bills under G.L. c. 267, § 10; possession of counterfeit bills or notes under G.L. c. 267, § 12; and common law conspiracy. These misdemeanor charges were not related to his employment at DYS. (Testimony; Ex. 5.)

6. He reported his criminal charges to his supervisor, Michelle Phillips. She reported them to the Area Director, Peter Forbes. Mr. Forbes suspended Mr. Ogwuru without pay soon after he was informed of the criminal charges. Mr. Forbes told Mr. Ogwuru that he should resolve his case as soon as possible so that he could return to work. Mr. Forbes told Mr. Ogwuru that if his charges were dismissed he would receive back pay for the period of his suspension. There is no documentary evidence of the suspension. (Testimony.)

7. At the time of his suspension, Mr. Ogwuru earned an annual salary of between \$30,000.00 and \$35,000.00. (Testimony.)

8. Mr. Ogwuru tried to resolve his criminal charges as quickly as possible. His attorney told him that he could get him a plea agreement under which he would have to serve a few months of probation, but Mr. Ogwuru would not plead. His

attorney told him that dismissal would take considerably longer. It turned out it took about a year and a half. (Testimony.)

9. On July 25, 1997, all of Mr. Ogwuru's criminal charges were dismissed for lack of prosecution. (Ex. 5.)

10. Mr. Ogwuru showed his docket sheets to Mr. Forbes, who told him to report back to work. He came back to work at DYS on or about August 4, 1997. There is no documentary evidence of the terms of his return to work. (Exs. 5, 6.)

11. In August 1997, Mr. Ogwuru received a lump sum payment of \$48,558.13. I conclude that this amount represents full back pay because it is the same amount as Mr. Ogwuru would have received if he had not been suspended and there is no other explanation why DYS would pay him that much money right after he returned to work after his suspension ended. (Testimony; Exs. 6, 13.)

12. All regular taxes and other deductions were taken, as were \$3,884.65 in retirement contributions at a rate of exactly 8%.<sup>1</sup> (Testimony; Ex. 6, 13.)

13. Mr. Ogwuru was not required to seek a settlement agreement with DYS because DYS granted him full back pay without filing a lawsuit or grievance.

(Testimony.)

14. Mr. Ogwuru continued to work without interruption until July 29, 2022, when he retired from state service with 26 years, 4 months, 4 days of service. The

---

<sup>1</sup> Members who entered service between January 1, 1984 and June 30, 1996 are required to contribute 8% of their regular compensation to their retirement systems. G.L. c. 32, § 22(1)(b)(iii).

Board did not award creditable service to Mr. Ogwuru for the period of his suspension.  
(Stipulation.)

15. Mr. Ogwuru requested that the Board award him creditable service for the period of his suspension. The Board researched the question. First, it asked the Comptroller for information, including a settlement agreement relating to the suspension; it had none. The Comptroller did, however, confirm the \$48,558.13 payment to Mr. Ogwuru and the deduction of \$3,884.65 paid to the Board. The Board next asked DYS for a settlement agreement and any breakdown of how any back pay was determined. The Board also asked DYS why the \$3,884.65 payment was remitted to the Board. DYS did not confirm that there was a settlement agreement or that Mr. Ogwuru was awarded back pay. The Board informed Mr. Ogwuru that it could not adjust his creditable service without a settlement agreement. (Testimony; Exs. 6, 12.)

16. By letter dated September 5, 2023, Mr. Ogwuru, through counsel, made a final request that the Board award him creditable service for the period of his suspension and re-calculate his retirement allowance based on the new total.  
(Stipulation; Ex. 9.)

17. By letter dated November 6, 2023, the Board denied Mr. Ogwuru's request to process the adjustment to his creditable service calculation. (Ex. 8.)

18. By letter dated November 16, 2023, Mr. Ogwuru appealed the Board's determination. (Ex. 10.)

**CONCLUSION AND ORDER**

Mr. Ogwuru seeks to have the Board treat as creditable service a period from January 1996 to July 1997 during which he was on an unpaid suspension. He was suspended because he was charged with three misdemeanors. His supervisor suspended him without pay pending the outcome of the charges. The record does not explain under what authority his supervisor suspended Mr. Ogwuru. But as soon as the criminal charges were dismissed, his supervisor told him to return to his job, which he did. He promptly received full back pay from which retirement deductions were taken. He continued to work for DYS for the rest of his career until his retirement in 2022.

Mr. Ogwuru seeks service credit for a period during which he was still employed by DYS. When members are employed by governmental units, they receive membership service, which requires that members be “regularly employed in the performance of [their] duties.” G.L. c. 32, § 3(1)(a)(i); *see also* G.L. c. 32, § 1. However there are instances of suspension or wrongful termination, during which a member is not regularly employed, yet is still entitled to service credit.

There is no question that members are entitled to creditable service that is provided for in a judgment along with back pay and other benefits. *Ballotte v. City of Worcester*, 51 Mass. App. Ct. 728, 734-35 (2001); *Tarlow v. Teachers’ Ret. Sys.*, CR-10-793 (Contributory Ret. App. Bd. Nov. 26, 2013). There is no judgment in Mr. Ogwuru’s case.

However, the Board follows a policy of also recognizing service credit for periods covered by back pay provided for in settlement agreements. The Contributory

Retirement Appeal Board (CRAB) sanctioned this practice in *Tarlow v. Teachers' Retirement System*, supra. There, a retirement board refused to recognize creditable service for a period of back pay provided under a settlement agreement between the employer and the employee. DALA's then chief magistrate affirmed the retirement board's decision, see *Tarlow v. Teachers' Ret. Sys.*, CR-10-793 (Div. Admin. L. App. Aug. 31, 2012), but CRAB saw things differently. CRAB noted that a "back pay [court] award, in effect, recognizes that the employee should have continued to be 'regularly employed' and so the employee receives pay and benefits as if she had been so employed." *Tarlow*, at \*4. The same rationale, CRAB explained, applies to back pay provided for in settlement agreements. *Id.* "Where the purpose of the [settlement agreement] is to make the employee whole, the retirement system may award creditable service upon the payment of retirement contributions, as the employee is treated as if he or she was regularly employed and earning membership service." *Id.*

Thus, the Board has been willing to grant service credit if Mr. Ogwuru produces a settlement agreement that characterizes the large, lump sum payment he received upon his return to work as "back pay." The Board made reasonable efforts to locate a settlement agreement, but neither DYS nor Mr. Ogwuru could produce one. The Board now insists that it cannot determine whether the lump sum payment was back wages because DYS cannot confirm whether that was the case.

Mr. Ogwuru explains that there is no settlement agreement because he did not file a grievance or lawsuit that would have resulted in a settlement agreement (or judgment) awarding back pay. Instead, he maintains that DYS told him that he was

receiving back pay for the period of his suspension because all his criminal charges were dismissed. He theorizes that no settlement agreement was required for DYS to pay him back because G.L. c. 30, § 59 required DYS to pay him by operation of law.

G.L. c. 30, § 59 provides in relevant part:

An . . . employee of the commonwealth . . . may, during any period such . . . employee is under indictment for misconduct in such . . . employment . . . be suspended by [his appointing] authority . . . .

Any person so suspended shall not receive any compensation or salary during the period of such suspension. . . .

. . .

If the criminal proceedings against the person suspended are terminated without a finding or verdict of guilty on any of the charges on which he was indicted, his suspension shall be forthwith removed, and *he shall receive all compensation or salary due him for the period of his suspension*, and the time of his suspension shall count in determining sick leave, vacation, seniority and other rights, and *shall be counted as creditable service for purposes of retirement*.

(Emphasis added.) Mr. Ogwuru claims that he was suspended under the authority granted by this section, served his suspension without pay, and then, because his criminal charges were dismissed, his suspension was “forthwith removed,” and he received “all compensation or salary due him for the period of his suspension.” *Id.* Therefore, according to § 59, he is entitled to count the period of his suspension as “creditable service for the purposes of retirement.”

What happened to Mr. Ogwuru appears consistent with the powers granted a government employer under this statute and the remedies an employee has after being cleared of the charges. But there are a few facts that make it unlikely that DYS suspended Mr. Ogwuru pursuant to § 59. First, Mr. Ogwuru was not under indictment;

he was simply charged with misdemeanors in the district court department of the trial court. He does not dispute this. Second, the charges had nothing to do with his employment. He does not dispute this either. Finally, Mr. Ogwuru was not a civil service employee and was thus had no appointing authority. Consequently, I conclude that it is highly unlikely that Mr. Ogwuru was suspended and received back pay pursuant to § 59.<sup>2</sup>

But the purpose of the Board requiring Mr. Ogwuru to produce a settlement agreement was simply to explain that the large, lump sum payment he received after his suspension without pay was back pay that “in effect, recognizes that the employee should have continued to be ‘regularly employed’ and so the employee receives pay and benefits as if [he] had been so employed.” *Tarlow*, at \*4. A preponderance of the evidence, even without a settlement agreement, supports that conclusion.

Mr. Ogwuru was suspended without pay for nearly a year and a half because he was charged with three misdemeanors. He was told that he could come back to work if the charges were dismissed. He did just that. And then, because he received a lump sum payment that roughly reflects his salary for the period of his unpaid suspension, I infer that DYS sought to make Mr. Ogwuru whole. *See Tarlow*, *supra*, at \*4. It is obvious that, under whatever policy or rule he was suspended, DYS believed that he was entitled

---

<sup>2</sup> Of course, nearly thirty years after the fact, it is not hard to believe that DYS cannot explain the suspension. But, given the circumstances, it is likely that he was suspended under some department personnel rules or disciplinary regulations. *See, e.g., Perez v. Dep't of State Police*, 491 Mass. 474, 482-83 (2023) (State Police had several choices under which it could suspend a state trooper without pay, including G.L. c. 30, § 59).

to the back pay that he received. There is no other explanation that makes any sense. The Board certainly hasn't advanced any alternative theory for what occurred, perhaps because given the circumstances there is no other plausible explanation.

It is understandable that the Board is cautious about awards of service credit during periods when a member was not working. These situations are exceptions, not the rule. But the Board follows a policy of awarding service credit when a member receives back pay that is meant to make the member whole and makes the appropriate retirement contributions. That is what happened in Mr. Ogwuru's case. He is entitled to receive a "proportional award[] of creditable service in conjunction with [his] back pay." *Tarlow, supra*, at \*5.

For the above-stated reasons, Mr. Ogwuru is entitled to service credit for the period of his unpaid suspension for which he received back pay and made the appropriate retirement contributions. The Board's decision is therefore reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

---

Kenneth J. Forton  
Administrative Magistrate

DATED: February 6, 2026