COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

LINDA PEREIRA,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT, FALL RIVER RETIREMENT SYSTEM

Respondents-Appellees.

CR-16-558

DECISION

Pursuant to G.L. c. 32, § 16(4), petitioner Linda Pereira has filed an objection to a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) holding that the State Board of Retirement (SBR) and the Fall River Retirement System (FRRS) correctly processed her retirement application under G.L. c. 32, § 5(2)(e). Ms. Pereira timely filed her objections with us.

Although this is a challenging case, after reviewing all the evidence in the record and considering the arguments by the parties, we agree with the DALA magistrate that the SBR and the FRRS correctly processed her retirement application under G.L. c. 32, § 5(2)(e). We incorporate the DALA magistrate's factual findings and decision as our own. We add the following comments to address the arguments made by Ms. Pereira, who argues that because she was a member of two retirement systems (SBR and FRRS), she is entitled under G.L. c. 32, § 3(7)(d), to have her service and salary in each system added together, resulting in retirement allowance higher than that from each individual position.

1. Under G.L. c. 32, § 5(2)(e), a person who has been a member of two retirement systems (*i.e.*, a dual member) and who, on or after January 1, 2010, has received regular compensation from two governmental units concurrently, shall, upon retirement, receive a superannuation retirement allowance that is equal to the sum of benefits calculated as though the

member were retiring solely from each system. Section 5(2)(e), however, includes an important exception—that it "shall not apply to any member who has vested in 2 or more systems as of January 1, 2010 …." G.L. c. 32, § 5(2)(e). And if a member qualifies for this exception by being vested[1] in two or more systems as of January 1, 2010, the calculation reverts to the formula set forth in G.L. c. 32, § 3(7)(d), which provides that the years of service from the two systems shall be combined, and if the years of concurrent service are used in the retirement allowance calculation then the salaries from the two systems would be combined, resulting in a retirement allowance for the member that is higher than that earned in either position individually.

In Ms. Pereira's case, there is no dispute that she was a member of two retirement systems as of January 1, 2010—the Massachusetts State Employees Retirement System (MSERS) for her almost 30 years of work, first for what is now the Department of Children and Families and later for the Bristol County District Attorney's Office, and the FRRS for her work as an elected official in Fall River. Given her almost 30 years of work, there is also no dispute that as of January 1, 2010, Ms. Pereira was vested in the MSERS. There is, however, a dispute about whether Ms. Pereira was vested in the FRRS as of January 1, 2010 (*i.e.*, that she had accrued 10 or more years of creditable service with FRRS), with the DALA magistrate upholding the determination that she had not.

Ms. Pereira's present challenge to that determination turns on two questions: (1) whether she can establish that she had accrued 10 years of creditable service in the FRRS as of January 1, 2010, and, if not, (2) whether the reason she cannot establish 10 years of creditable service in the FRRS as of January 1, 2010, is due to legislative interference with her contractual expectations in the retirement system in a manner that contravenes G.L. c. 32, § 25(5), and the associated case law.[2] We address these questions in turn below.

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[1] To be eligible for a retirement allowance, a member of a retirement system must complete the required number of creditable service years established in the retirement law. G.L. c. 32, §§ 5, 10. For most members, this means 10 years (or more) of service, such that if the member were to separate from service they would be entitled to a retirement allowance (at some point) under G.L. c. 32, § 10(3), and not simply a return of their accumulated total deductions pursuant to G.L. c. 32, § 5(1)(m). Completing the requisite amount of creditable service is commonly referred to as "vesting."

[2] The interference she cites is in St. 2009, c. 21, §§ 4, 13, 26, which amended certain rules for vesting and earning creditable service, discussed herein.

2. As the DALA magistrate's factual findings establish, *see* FF 1-17, Ms. Pereira cannot establish that her actual membership service in the FRRS amounted to 10 (or more) years of creditable service in the FRRS as of January 1, 2010. Rather, she has shown at most that her actual membership service in the FRRS amounted to nine years, nine months, and 11 days. *Id*.

To bump her creditable service with the FRRS over the 10-year vesting threshold, Ms. Pereira relies on two statutory provisions that, at one time, created preferential retirement rules for elected officials. The first of these provisions is the "year-for-a-day" rule formerly in G.L. c. 32, § 4(1)(a), which gave certain elected officials a full year of creditable service for each calendar year during which they served as an elected official (*i.e.*, if an elected official served from January 1 of one year through January 1 of the next year, they would be credited with two years of creditable service, one for the period between January 1 through December 31 during the first year and one for the one day served during the second year).[3] Meanwhile, the second provision is the now-repealed G.L. c. 32, § 10(2)(b), which previously permitted involuntarily terminated elected officials the opportunity to vest after six years of creditable service, much earlier than the typical 10 years of creditable service required for most members.[4] *See* G.L. c. 32, § 10 (10-year vesting provision).

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[3] In pertinent part, G.L. c. 32, § 4(1)(a), previously provided that "[a]ny member in service shall … be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; provided, that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official …."

[4] Prior to 2009, the special termination retirement provision in G.L. c. 32, § 10(2)(b), provided that:

> "Any member classified in Group 1 . . . who has completed six or more years of creditable service, *and who fails of nomination or re-election, or fails to become a candidate for nomination, re-election or election, or fails of reappointment, or is removed or discharged from his office or position without moral turpitude on his part, or accepts during, or prior to the expiration of a term for which he was elected appointment to an office of position the acceptance of which requires under the constitution of the commonwealth resignation from the general court, or any such member whose office or position is abolished* . . . [would have the right to a deferred retirement allowance at age 55 pursuant to G.L. c. 32, § 10(3)]. (Emphasis added).

The primary problem with Ms. Pereira's argument is that neither of these provisions were in effect on January 1, 2010. *See* St. 2009, c. 21, § 4 (repealing the "year-for-a-day" rule formerly in G.L. c. 32, § 4(1)(a)) & *id*. § 13 (repealing the six year vesting rule formerly in G.L. c. 32, § 10(2)(b)). And significantly, when the Legislature repealed these provisions, it made clear that the repeal applies "to all members of retirement systems who retire after July 1, 2009." *See* St. 2009, c. 21, § 26 ("Notwithdstanding any general or special law to the contrary and except as expressly provided otherwise, *this act shall apply to all members of retirement systems who retire after July 1, 2009*.") (emphasis added). Here there is no dispute that Ms. Pereira retired from FRRS after July 1, 2009.

We thus answer "no" to the first question presented, upholding the DALA magistrate's determination that Ms. Pereira cannot establish that she had accrued 10 years of creditable service in FRRS as of January 1, 2010.

3. We now turn to the second question presented—whether the reason Ms. Pereira cannot establish 10 years of creditable service in FRRS as of January 1, 2010, is due to legislative interference with her expectations in the retirement system in a manner that contravenes G.L. c. 32, § 25(5), and the associated case law. In her view, the two rules should continue to apply to her despite their repeal because she is entitled to retirement benefits at whatever level was in effect at the start of her employment without diminution. In making this argument, Ms. Pereira emphasizes her view that she had vested in FRRS before the Acts of 2009.

The standard for whether a modification to retirement benefits contravenes G.L. c. 32, § 25(5),[5] is set forth in *Opinion of the Justices*, 364 Mass. 847 (1973). In that decision, the

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As is clear from the statute's plain text, eligibility for the six-year vesting rule was contingent on an involuntary termination. *Id*.

[5] Section 25(5) provides:

> The provisions of sections one to twenty-eight, inclusive, and of corresponding provisions of earlier laws shall be deemed to establish and to have established membership in the retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits, and no amendments or alterations shall be made that will deprive any such member or any group of such members of their pension rights or benefits provided for thereunder, if such member or members have paid the stipulated contributions specified in said sections or corresponding provisions of earlier laws.

Supreme Judicial Court held that the government may not deprive members of the "core of … reasonable expectations" that they had when they entered the retirement system. *Op. of the Justices*, 364 Mass. at 862; *see State Bd. of Ret. v. Woodward*, 446 Mass. 698, 706-07 (2006) (Section 25(5) "create[es] something less than a full contractual relationship, but one that protects the core of a member's reasonable expectations of vested pension rights against the gratuity theory of government pensions that was utilized successfully in the mid-1950's in avoidance of claims of impairment of contract under the State and Federal Constitutions) (internal quotations omitted). Such an action is "presumptively invalid … unless saved by the [Commonwealth's] reserved police powers." *Op. of the Justices*, 364 Mass. at 864. *See id*. at 862 (permitting "subtractions [from the core of reasonable expectations that] can claim certain practical justifications."); *see also Herrick v. Essex Reg'l Ret. Bd.*, 465 Mass. 801, 806 (2013) (same). And even then, any such modification "must be reasonable and bear some material relationship to the theory of a pension system and its successful operation." *Madden v. Contributory Ret. App. Bd.*, 431 Mass. 697, 701 (2000).

Our application of this two-part balancing test follows.

4. We consider first whether Chapter 21 of the Acts of 2009 interfered with Ms. Pereira's reasonable expectations in the retirement system. We find that as applied to her, the repeal of "year-for-a-day" rule once in G.L. c. 32, § 4(1)(a), amounted to interference, while the repeal of the six-year vesting rule for elected officials once in G.L. c. 32, § 10(2)(b), did not.

The repeal of the "year-for-a-day" rule once in G.L. c. 32, § 4(1)(a), amounted to an interference with Ms. Pereira's reasonable expectations in the retirement system because but for the repeal, Ms. Pereira would have received five full years of creditable service for her service in the FRRS between March 1, 1992 and January 1, 1996, instead of creditable service for the amount of time she actually worked (three years, 10 months, and one day). This additional time would have satisfied the 10-year requirement to be eligible for a retirement allowance from FRRS. And the additional creditable time would have translated into real dollars as part of her ultimate retirement benefit calculation. In *Madden*, the SJC held that a reduction like this interferes with a member's expectations in the retirement system. 431 Mass. at 701 (Member "can claim a more general contractual expectation that all retirement regulations in effect when

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G.L c. 32, § 25(5).

she entered the system would be applied to her in accord with the law," even if they, in operation, allowed a full year of credit for part-time-service.").[6] As such, we must consider whether the Legislature's reason for repealing the "year-for-a-day" rule bore a reasonable and material relationship to the theory of the pension system and its successful operation, or is otherwise a manifestation of the state's "police powers." *Id*.

In contrast, we reach the opposite result as to the six-year vesting rule, but only as applied to Ms. Pereira. By its plain terms the now-repealed six year vesting rule applied only to elected officials whose service ended *involuntarily* after they had accrued six years of service as an elected official. Here there is no evidence that Ms. Pereira's service as an elected official ever ended involuntarily, that is, she ran for office but was unsuccessful because she "fail[ed] of nomination or re-election." Rather, she chose not to seek renomination or stand for reelection. *See* FF 6, 10-11, 13. In other words, even if the statute had not been repealed, the six-year vesting rule still would not apply to her; she instead was governed by the 10-year rule that applied to all other FRRS members. *See* G.L. c. 32, §§ 5(1)(m) & 10(2)(b½). Thus, she cannot

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[6] In so holding, we note that some circumstances unique to Ms. Pereira's claim diminish the overall strength of her argument that the Acts of 2009 interfered with her core of reasonable retirement expectations. For instance, when we look specifically at Ms. Pereira's situation we find it significant that she did not file her retirement applications with the MSERS and the FRRS until December 31, 2016. This seven-plus year delay suggests the possibility that Ms. Pereira made a conscious choice at the time to forgo the benefits that would have been available to her had she retired on or before July 1, 2009, and to instead continue to obtain the benefits of employment with the Commonwealth. Where a member makes such a conscious choice, CRAB looks more skeptically at the reasonableness of a subsequent claim that they should be allowed to exercise these now-repealed preferential retirement provisions years after the fact. *See Madden*, 431 Mass. at 703-04 ("[Board] can, consistent with [member's] contractual expectations, prorate her part-time service worked after the promulgation of [regulation permitting prorating of part-time teaching service].").

Similarly, we also find the absence of actuarial evidence regarding the actual size of the retirement allowance reduction to be another factor that diminishes the overall reasonableness of an interference claim. Given that Ms. Pereira worked for the Commonwealth for more than seven years after July 1, 2009, it is not implausible that the retirement allowance that she began receiving from the MSERS after her retirement in 2016 is greater than the allowance she would have received in 2009 had she chosen to retire on or before July 1, 2009.

establish the degree of interference necessary to warrant further analysis under G.L. c. 32, § 25(5).[7]

5. Having found that repeal of the "year-for-a-day" rule amounted to an interference with Ms. Pereira's reasonable expectations in the retirement system, we turn to whether the Legislature's reason for repealing the "year-for-a-day" rule bore a reasonable and material relationship to the theory of the pension system and its successful operation or was otherwise a permissible exercise of its reserved police powers. *Id*. We find that it did, for five reasons.[8]

First, we find it significant that Chapter 21 of the Acts of 2009 was aimed at the continued successful operation of the pension system. *See Op. of the Justices*, 364 Mass. 847, 862 (Where there is interference, "[a]ttention should then center on the nature of these justifications in the light of the problems of financing and administrering these massive plans under changing conditions."). Here, the Legislature's June 2009 actions occurred during an unprecedented "global economic downturn that became known as the Great Recession." *Comm'r of Admin. & Fin. v. Commonwealth Emp't Rels. Bd.*, 477 Mass. 92, 92 (2017). That same month, Governor Deval Patrick reported to the Legislature that "there would be about $1.5 billion less in revenue [for fiscal year 2010] compared with earlier projections because Massachusetts continued to experience the effects of a global economic downturn unseen since the Great Depression." *Id*. at 93-94.[9] Leslie Kirwan, the Commonwealth's Secretary of Administrative and Finance, told the Legislature in a message later that month accompanying the Governor's revised budget for fiscal year 2010, that this shortfall necessitated measures to raise revenue paired with "hard choices" and "sacrifices from many citizens, organizations, and local government partners that count on the state for support." *See* Leslie Kirwan, "Message from the

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[7] If Ms. Pereira had met the criteria of the six-year vesting rule for elected officials once in G.L. c. 32, § 10(2)(b), we would find that the repeal amounts to an interference necessary to warrant further analysis under G.L. c. 32, § 25(5).

[8] Had Ms. Pereira established that the repeal of of the six-year vesting rule for elected officials once in G.L. c. 32, § 10(2)(b), amounted to an interference with her expectations in the retirement system, we would rely on the same reasons set forth herein to find that the repeal bore a reasonable and material relationship to the theory of the pension system and its successful operation.

[9] Governor Patrick's letter is available at https://rb.gy/je6oe.

Secretary of Administration and Finance" (June 22, 2009) (Kirwan Message).[10] *See also* Deveal Patrick, "Message from Governor Patrick to the Honorable Senate and House of Representatives" (June 4, 2009) (Due to revenue shortfall, "every family, community and citizen across the Commonwealth will feel the impact of the fiscal crisis."). Among these "difficult choices" were "transportation reform, pension reform, and ethics and lobbying reform," all bills the Governor hoped could be enacted by June 30, 2009. Kirwan Message.

The Great Recession hit the Commonwealth's contributory retirement systems particularly hard. In a 2009 report, PERAC stated that public pension systems in Massachusetts had, since 2008, experienced "the most severe losses in the history of these systems." Public Employee Retirement Administration Commission, "State of the Pension System, 2009" at 1 (PERAC Report). This increased the unfunded actuarial liability for the State Retirement System from $2.4 billion in January 2008 to $6.7 billion in January 2009. *See* PERAC Pension News No. 23, March 2010 at 2.[11] This delayed the systems' progress towards full funding and, as a result, required an increase "in the level of public resources that must be used to pay pension costs." PERAC Report at 1, 13. *See also* State House New Service, "State Capitol Briefs – Monday, May 18, 2009" (May 18, 2009) (discussing report by Standard & Poor's Rating Service citing "significant unfunded pension liability" as one of the restraints on the Commonwealth's credit rating).[12] In other words, just as public finances were in their most vulnerable situation in generations, public pension systems across the Commonwealth required greater commitment of

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[10] Secretary Kirwan's letter is available at https://rb.gy/xjlxz.

[11] Available at https://rb.gy/quilj.

[12] This funding shortfall caused the Legislature to reduce the amount transferred to the Commonwealth's Pension Liability Fund by more than $20 million for fiscal year 2009 and to extend the deadline for the state system's full funding from June 30, 2023, to June 30, 2025. St. 2009, c. 27, § 23; St. 2008, c. 377, § 1. It also prompted the Legislature to extend the deadline by which local retirement systems were to attain full funding (*i.e.*, reduce the system's "unfunded actuarial liability" to zero) from 2028 to 2030. *See* St. 2009, c. 21, § 18, amending G.L. c. 32, § 22D. (And in 2011, as the Great Recession continued, the Legislature further extended the date for eliminating the unfunded laiblity in the state system to 2040. St. 2011, c. 68, § 45.)

public resources to fund the existing level of benefits.[13] This is just the sort of situation the SJC was referring to in *Opinion of the Justices* when it explained that although "the maintenance of a retirement plan is heavily burdening a governmental unit has not itself been permitted to serve as justification for scaling down of benefits … *no case presenting proof of a catastrophic condition of public finances has been put*." 364 Mass. at 864 (emphasis added). *See id*. at 863 n.18 (Police power can be used to "overrid[e] the precise terms of a retirement plan in order to achieve actuarial soundness or the like."). Seen in this light, it simply became untenable for the Legislature to continue to grant a year's worth of creditable service for an individual's contribution of as little as one-day's worth of a retirement deduction.

Second, we find it significant that in this time of severe fiscal crisis the Legislature, when enacting Chapter 21 of the Acts of 2009, adhered to the core expectations that a member is entitled to creditable service for time actually served and funds actually contributed to the retirement system. *See Op. of the Justices*, 364 Mass. at 853-54 ("digest[ing]" "[t]he arrangements concerning retirement for superannuation"); *Rosing v. Tchrs.' Ret. Syst*., 458 Mass. 283, 285 (2010) ("[P]ublic employees in the Commonwealth … earn a retirement benefit in exchange for their services."). Credit for time served and individual contribution are two of the three core characteristics of a Chapter 32 retirement system; the third being public funding of the employer's share of the retirement allowance. *See Op. of the Justices*, 364 Mass. at 854-55. The preferential provisions like the "year-for-a-day" rule repealed by Chapter 21, which awarded elected officials service for time they did not actually work *and* permitted them to do so in a manner that did not require a concomintant member contribution to the system (*i.e.*, a member

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[13] Massachusetts was far from the only state facing falling pension fund asset values. According to a December 2018 report from the National Association of State Retirement Administrators, "[t]he global stock market crash sharply reduced state and local pension fund asset values, from $3.15 trillion at the end of 2007 to $2.17 trillion in March 2009[.]" Brainard & Brown, Spotlight on Significant Reports to State Retirement Systems, National Association of State Retirement Administrators, December 2018 (available at https://rb.gy/z3u8z) at 1 (NASRA Report). This substantial loss in value "increased" pension costs, hitting "state and local governments right as the economic recession began to severely lower their revenues." *Id*.

And Massachusetts was far from the only state that enacted pension reform in response to the Great Recession. NASRA Report at 1. Indeed, according to the report, "nearly every state [had] passed meaningful reform" since 2009, with many states making substantial changes during the Great Recession (*i.e.*, between 2009 and 2011). *Id*. at 1, 2.

would receive a year of service for as little as a single day's financial contribution to their retirement system), are far removed from these core characterstics. Indeed, the "year-for-a-day" rule and the six-year vesting rule were among the preferential rules characterized "as some of the most egregious abuses in the Massachusetts Contributory Retirement Systems" when the Special Commission to Study the Massachusetts Contributory Retirement Systems, which had been studying the Commonwealth's pension problems under St. 2008, c. 182, § 111, and, subsequently, St. 2009, c. 21, § 22, submitted its October 2009 report discussing additional possibilities for pension reform. October 2009 Report at 2, 5-6, 18 (explaining that these reforms "would otherwise have been part of this Commission's charge"). And the Legislature and the Governor were aware that "paying excessive benefits to [claimants like these]" was "put[ting] strain on the system in making the payments due to others," *see Madden*, 431 Mass. at 704 (quoting *Mass. Tchrs. Assn'n v. Tchrs.' Ret. Bd.*, 383 Mass. 345, 348-49 (1981)), a concern that was particularly poignant at the time. *See* State House News Service, "State Capitol Briefs (Afternoon Edition), June 16, 2009 (Governor Patrick during signing statement press conference: "With the signing of this pension reform bill, we put an end to the loopholes and special perks that have benefited the well-connected for too long"; House Speak Robert DeLeo meanwhile described the Act as a "giant step" that "tackled … perks which have been entrenched in the system here … for decades."); Worcester Regional Research Bureau, "Massachusetts Pension Reform: What was accomplished? What remains to be done?" Report 09-01 Supplement, July 9, 2009 at 1[14] (summarizing Boston Globe coverage of the 2009 pension reform efforts, including the Globe's finding that since 1991, 52 retired legislators had gained a full year for only one day of service, an average annual increase of $16,350 each).[15] Given all this, we find that the

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[14] Available at https://rb.gy/p0mb8.

[15] Other provisions eliminated or modified in Chapter 21 of the Acts of 2009 were ones that were similarly detached from the core objections of the pension system (*i.e.*, provisions that allowed late career boosts to regular compensation, *see* St. 2009, c. 21, §§ 2-3; that concerned employees who are disabled while in temporary or acting positions, *id*. § 8; and that provided a full-year of creditable service for a part-time town official, *id*. at § 5).

By way of comparison, we look to actions other states took at the time. The NASRA report's overview of the "most common types" of pension reform since 2009 highlights the significant and more aggressive types of changes states implemented to maintain the integrity of their pension systems in the aftermath of the Great Recession. *See* NASRA Report at 2-4

preferential provisions repealed in Chapter 21 of the Acts of 2009 fall far enough on the periphery of the core of reasonable retirement expectations that modifications that left elected officials on equal footing with the vast majority of members were permissible under these unprecedented fiscal circumstances. *See Stoneham Ret. Bd. v. Pub. Emp. Ret. Admin. Comm'n*, CR-12-548 (CRAB May 2019) (purpose of the repeal was to limit elected officials' creditable service to those portions of the year in which they served in office and to treat elected officials in the same manner as other public employees). *See also Dullea v. Mass. Bay Transp. Auth.*, 12 Mass. App. Ct. 82, 95 (1981) ("[T]he entitlements of both parties are subject to reasonable limitations," and the "employee may not insist that his expectations be fulfilled unless they are premised on an adequate period of service *and* practically justified in the circumstances.") (emphasis added).[16]

Third, given the severity of the fiscal crisis and the remedial nature of the reforms being enacted, we find it significant that the Legislature (a) declared that the Act would take effect

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(common changes included increased employee contribution rates, benefits reductions in a variety of forms, reduced COLA benefits, requiring employees to work longer to vest and to begin drawing benefits).

[16] Although the "year-for-a-day" rule is technically a superannuation benefit, we find it significant that the preferential provision has characteristics similar to the types of non-superannuation benefits not entitled to protection under G.L. c. 32, § 25(5). *See Smolinski v. Boston Ret. Bd.*, 346 Mass. 210, 212 (1963) ("We hold that the specification '*retired for superannuation*' [in G.L. c. 32 § 25(5)] controls the generality of the prior words: 'shall be deemed to establish and to have established membership in the retirement system as a contractual relationship.") (emphasis added). For instance, getting one year of service for working a single day bears some similarity to the preferential accidental death benefit in G.L. c. 32, § 9, which serves the laudable purpose of protecting the member's beneficiaries in the event of the member's untimely death while on the job. *See Robinson v. Tchrs.' Ret. Bd.*, 414 Mass. 340, 342 (1993). Yet accidental death benefits are not covered by G.L. c. 32, § 25(5). *Id*. Nor does Section 25(5) extend to changes to accidental disability benefits. *Smolinksi*, 346 Mass. at 211-12. Similarly, claiming an entitlement to creditable service for a period where service was never performed shares traits with the job-security claim the SJC rejected in *McCarthy v. Sheriff of Suffolk Cty.*—that a statute reducing court officers' mandatory retirement age from 70 to 65 impaired their pension rights in violation of G.L. c. 32, § 25(5). 366 Mass. 779, 781-84 (1966) (Section "25(5) was intended to create pension security, not job security."). *See also Prudential Comm. of Centerville-Osterville-Marstons Mills Fire Dist. v. Barnstable Cty. Ret. Ass'n*, 50 Mass. App. Ct. 907, 907 (2000) (the repeal of the pre-termination notice and hearing provisions in G.L. c. 32, § 16(2), fall outside of G.L. c. 32, § 25(5)); *Dupont v. Comm'rs of Essex Cty.*, 46 Mass. App. Ct. 235, 237, 239-40 n.10 (1999) (similar).

immediately, *see* St. 2009, c. 21 ("The deferred operation of this act would tend to defeat its purpose, which is to reform pension laws for public employees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of public convenience."), and, more significantly, (b) included in the Act a conscious policy choice on which system participants would be subject to the various pension reforms, *see id*. at § 26 ("Notwithstanding any general or special law to the contrary and except as expressly provided otherwise, this act shall apply to all members of retirement systems who retire after July 1, 2009."). *See also* State House News Service, "State Capitol Briefs (Afternoon Edition) – Friday, May 8, 2009" (May 18, 2009) (quoting from a letter from Governor Patrick to the Legislature, which indicated his preference for the Senate's version of the pension reform bill applying the reforms to those currently employeed because "[w]ithout this provision, the benefits of these essential reforms will be delayed for a generation, and public confidence in our retirement systems will suffer accordingly."). We also find it significant that in exercising its reserved police powers and making this difficult policy decision about who would be subject to the Act, the Legislature used language that expressly demonstrates an intent that Chapter 21 of the Acts of 2009 should supercede all other laws to contrary. St. 2009, c. 21, § 26. Indeed, as the SJC explained in *Camargo's Case*, this is "the standard language [the Legislature] usually includes whenever it intends to displace or supersede related provisions in all other statutes[.]" 479 Mass. 492, 498 (2018).[17] Given the foregoing, we find that this language demonstrates that the Legislature had weighed the competing options and determined, in this instance, that the circumstances warranted superseding the provisions of G.L. c. 32, § 25(5), to repeal certain abusive retirement preferences, at least as to individuals who had yet to retire.[18] *See Madden*, 431 Mass. at 702-03

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[17] *See also Beacon S. Station Assocs. v. Assessors of Boston*, 85 Mass. App. Ct. 301, 306 (2014) (the "notwithstanding any general or special law to the contrary" language is used by the Legislature to displace inconsistent statutes"); *Mosey Café, Inc. v. Licensing Bd. of Boston*, 338 Mass. 199, 203-04 (1958) (similar language "shows legislative intent to displace prior inconsistent legislation").

[18] To be clear, we do not find that the Legislature's use of this language *alone* warrants a determination that the Legislature's reason for repealing the "year-for-a-day" rule bore a reasonable and material relationship to the theory of the pension system and its successful operation. But we do find it a significant indication that the Legislature recognized the interference its actions might cause and expressly weighed them as part of its response to these unprecedented circumstances.

("The existence of vested contractual rights *does not preclude reasonable modifications of the pension plan prior to the employees' retirement*. Reasonable modifications are often necessary … to maintain the integrity of the system in order to carry out its beneficent purpose.") (internal quotation omitted) (emphasis added); *Op. of the Justices*, 364 Mass. at 863 ("[I]t is basic that the state reserves police powers that may in particular predicaments enable it to alter or abrogate even conventional contractual rights."); *see also Kern v. City of Long Beach*, 29 Cal. 2d 848, 855 (1947) (quoted approvingly in *Op. of the Justices*, 364 Mass. at 863 n. 17) ("[A]n employee may acquire a vested contractual right to a pension but that right is not rigidly fixed by the specific terms of the legislation in effect during any particular period in which he serves. *The statutory language is subject to the implied qualification that the governing body may make modifications and changes in the system.* The employee does not have a right to any fixed or definite benefits, but only to a substantial or reasonable pension. There is no inconsistency therefore in holding that he has a vested right to a pension but that the amount, terms, and conditions of the benefits may be altered.") (emphasis added).

Fourth, we find it significant that the Legislature provided members an opportunity to preserve the preferential retirement benefits repealed in Chapter 21 of the Acts of 2009. Because the repeal was not effective until July 1, 2009, any member who wished to prospectively preserve any preferential retirement benefits repealed in Chapter 21 of the Acts of 2009 had 30 days from the Legislature's June 2, 2009, passage of the Act, *see* St. 2009, c. 21, and 15 days from the Governor's approval of the Act to retire, *see* State House News Service, "State Capitol Briefs (Afternoon Edition), June 16, 2009.[19] A June 22, 2009 notice from the Public Employee Retirement Administration Commission (PERAC) (Memorandum #24/2009) confirmed this point, explaining that under Chapter 21 of the Acts of 2009 (a) an elected official retiring on or before July 1, 2009 would receive a full year of credit for any year in which the individual served for less than a full year and (b) that the same official retiring after July 1, 2009, would be credited with the time actually served regardless of when the service took place. And while we

[19] In addition to providing individuals an opportunity to retire on or before July 1, 2009, we find that the July 1, 2009, dividing line demonstrates the Legislature's desire to preserve the most settled of retirement expectations—the status quo of the retirement benefits of individuals who had already retired.

recognize that 30 days may, for some, be too short of a period to make a decision about retirement, any assessment of the length of time must be considered in conjunction with the circumstances surrounding the Legislature's decision (here, the preferential nature of the provisions, the ongoing unprecedented fiscal crisis, and the Legislature's looming financial responsibilities for the approaching fiscal year).

Finally, we find it significant that Ms. Pereira, at bottom, is asking us to use G.L. c. 32, § 25(5), to second-guess an extremely difficult policy decision the Legislature made 14 years ago during a time of unprecedented fiscal crisis. While the application of G.L. c. 32, § 25(5), is certainly within CRAB's primary jurisdiction, *see* G.L. c. 32, § 16(4); *Ret. Bd. of Stoneham v. Mass. Tchrs.' Ret. Sys.*, 99 Mass. App. Ct. 1111, *3 (2021) ("CRAB has the authority to address questions of law pertaining to the application of [G.L. c. 32]."), it is CRAB's duty to effectuate the Legislature's intent in enacting the provisions of chapter 32, and that is especially so when CRAB is presented with two legislative enactments in apparent tension with one another. To that end, Ms. Pereira's suggestion that the statute affords CRAB (and, by extension, reviewing courts) the authority to effectively unwind difficult and reasoned legislative judgments many years after the fact calls for special caution. This is particularly true where (a) the legislative action potentially applied to numerous individuals, (b) undoing that action would pose substantial administrative and fiscal consequences for retirement boards across the Commonwealth, and (c) individuals like Ms. Pereira could have filed a lawsuit contemporaneous with the passage of Chapter 21 of the Acts of 2009. *See*, *e.g.*, *Local 589 of the Amalgamated Transit Union v. Mass.*, Suffolk Superior Court 0984CV03954 (action challenging St. 2009, c. 25, §§ 140 & 146, which, as part of the Commonwealth's transportation reform, transitioned the health insurance of MBTA employees and retirees to the GIC and made prospective changes to certain early retirement provisions to bring it into alignment with the Commonwealth's retirement system).

In sum, because the Legislature had ample justification for its actions, with its opinion buttressed by considerable awareness of, and investigation into, the facts, we find that the Legislature's multifaceted means of solving an unprecedented policy matter in 2009 is entitled to considerable respect from CRAB. *See Op. of the Justices*, 364 Mass. at 864-65 ("[T]he Legislature's opinion that justification does in fact exist for the modification of a plan is entitled to judicial respect; especially so if that opinion is buttressed by prior formal investigation of the

facts.”). While we do not decide in this decision that all legislative reforms adopted in 2009 will outweigh a member’s reasonable expectations under Section 25(5), we find that, given the considerations we have discussed herein, the circumstances excuse the interference with Ms. Pereira’s reasonable retirement expectations in this case.

Conclusion. The DALA decision is affirmed.

SO ORDERED.

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Date: June 8, 2023