

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

David Peters,
Petitioner,

No. CR-22-0306

Dated: June 28, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearances:

For Petitioner: David Peters (pro se)

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

A teacher transitioned from full-time work in one school year to part-time work in the next. A preponderance of the evidence favors the conclusion that he did not “resign” in between the two school years. He therefore retained his status as a member in service and is entitled to retirement credit for his part-time work.

DECISION

Petitioner David Peters appeals from a decision of the Massachusetts Teachers' Retirement System denying his application to retire for superannuation. At Mr. Peters's request, the appeal was submitted on the papers under standard rule 10(c).¹ I admit into evidence his exhibits marked 1-7 and MTRS's exhibits marked 1-10.

Findings of Fact

I find the following facts:

¹ In accordance with G.L. c. 30A, § 9, the “standard rules” in this context are the provisions of 801 C.M.R. § 1.01.

1. Mr. Peters began working as a full-time math teacher in August 2011. His employer was a charter school. He became a member of MTRS. Thereafter, he purchased retirement credit for a period of pre-membership work. (Pet'r Ex. 2; Resp. Ex. 8.)

2. In March 2020, Mr. Peters emailed an administrator at his school: “[A colleague] asked me to send you a note confirming that I will not be a full-time teacher . . . next year. My hope is to be a substitute or hold some other less-than-full-time role.” (Pet'r Ex. 1.)

3. Around the same time, Mr. Peters's school selected him to fill a new, part-time position as of the following school year. The position revolved around teaching and required a teacher's license. When the 2020 school year ended, Mr. Peters retained his school-issued laptop and email address. When the 2021 school year began, Mr. Peters continued to teach and to attend staff meetings. (Pet'r Ex. 2; Resp. Ex. 9.)

4. The record includes a letter on Mr. Peters's behalf from the executive director of his school. After describing the history of Mr. Peters's employment and emphasizing her commitment to integrity, the executive director writes that Mr. Peters's “teaching service . . . has been continuous since the day he first arrived on campus in 2011 to this very day.” (Pet'r Ex. 2.)

5. A written contract governing Mr. Peters's work in the 2021 school year was dated and signed in November 2020. The contract described Mr. Peters's position as “math intervention program coordinator for the [2021] school year.” It named his salary as “\$10,000, payable on a biweekly schedule through the end of the school year.” It stated that Mr. Peters would be working a total of 65 days that year. (Pet'r Ex. 3.)

6. A written contract governing Mr. Peters's work in the 2022 school year was dated in October 2021 and signed in December of that year. Paralleling the previous year's contract, it also described Mr. Peters's position as “math intervention program coordinator for the [2022]

school year.” It likewise named his salary as “\$10,000, payable on a biweekly schedule through June of 2022.” It also stated that Mr. Peters would be working 65 days. (Pet’r Ex. 5.)

7. A preponderance of the evidence favors the conclusion that Mr. Peters’s school employed him for the durations of the 2021 and 2022 school years. The school’s executive director explained that Mr. Peters’s contracts were prepared during October-December only on account of administrative delays. Each contract described its term as a “school year.” And the fact that the contracts provided for identical compensation amounts despite being finalized in different months suggests that they both covered identical time periods. (Pet’r Exs. 2, 3, 5.)

8. In March 2022, Mr. Peters applied to retire for superannuation. MTRS denied the application on the basis that Mr. Peters had not accumulated ten years of creditable service. Mr. Peters timely appealed. (Resp. Exs. 1-3, 8.)

Analysis

To retire for superannuation, Massachusetts public employees must “complete[] ten or more years of creditable service.” G.L. c. 32, § 5(1)(m). *Kaplan v. Contributory Ret. Appeal Bd.*, 51 Mass. App. Ct. 201, 205 (2001). The parties agree that Mr. Peters’s purchase of pre-membership service, plus his full-time work in 2011-2020, place him just shy of the ten-year threshold. They further agree that Mr. Peters crosses that threshold if, but only if, he is granted part-time credit for his part-time work in the school years 2021 and 2022.

“Any member in service shall . . . be credited with all service rendered by him as an employee in any governmental unit² after becoming a member of the system pertaining thereto.” G.L. c. 32, § 4(1)(a). A “member in service” is one “who is regularly employed in the

² All teachers are “deemed to be employed by the same governmental unit,” G.L. c. 32, § 1, i.e., a fictional unit conceived by the retirement law for this purpose.

performance of his duties.” *Id.* § 3(1)(a)(i). The related term “service” means “service as an employee . . . for which regular compensation is paid.” *Id.* § 1.

There is no dispute that Mr. Peters became a member in service of MTRS upon taking his full-time teaching job in 2011. “Once designated a member in service, the . . . member’s status as a member in service ‘shall continue’ until the occurrence of a statutorily specified event.” *Retirement Bd. of Stoneham v. Contributory Ret. Appeal Bd. (DeFelice)*, 476 Mass. 130, 133-35 (2016). The statutory events are specified in G.L. c. 32, § 3(1)(a)(i). They do *not* include a transition from full-time to part-time work. They *do* include a “resignation.” The parties agree that the linchpin of a “resignation” in this context is a “break” in or “interruption” of the member’s service. *Cf. Ohrenberger v. City of Boston*, 340 Mass. 22, 25 (1959).

The decisive question here is whether Mr. Peters “resigned” at the end of the 2020 school year. On balance, the answer is no.³ It is true that Mr. Peters’s March 2020 email “confirmed” that he would no longer teach full time, while expressing only a “hope” that he would remain at the school in a reduced role. But ultimately, “[t]here was never any interruption in his employment.” *Ohrenberger*, 340 Mass. at 25. No later than the end of the 2020 school year, the school formed an expectation that Mr. Peters would be back in the following fall. The school therefore left Mr. Peters’s email address active and his laptop in his possession. And despite the administrative delays that accompanied the execution of Mr. Peters’s subsequent contracts, he resumed teaching promptly upon the commencement of each pertinent school year. Mr. Peters’s service as a teacher thus remained unbroken.

³ There is therefore no need to decide what Mr. Peters entitlements might have been if he *had* resigned. *Cf.* 807 C.M.R. §§ 4.01.1, 4.02(2)(c).

Conclusion and Order

Mr. Peters was a member in service during the school years 2021 and 2022, is entitled to part-time retirement credit for his work in those years, and is consequently eligible to retire for superannuation. MTRS's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate