

CASES OF INTEREST



RECENT CASES OF INTEREST

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RECENT CASES OF INTEREST 2023

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| <ul style="list-style-type: none">▪ <i>Tuminelli</i>▪ <i>Crichton</i>▪ <i>Wakefield Retirement Board</i>▪ <i>Robbins</i>▪ <i>Roy</i>▪ <i>Robinson</i>▪ <i>McDonald</i>▪ <i>DeForitis</i>▪ <i>Briley</i>▪ <i>Pereira</i>▪ <i>Stanton</i>▪ <i>Willette & Heuston</i> | <ul style="list-style-type: none">▪ <i>Hollenbach</i>▪ <i>McHugh</i>▪ <i>Christopher C.</i>▪ <i>Cohen & Vaccari</i>▪ <i>Vonnegut</i>▪ <i>Habib & Stoff</i>▪ <i>Revere Retirement Board</i>▪ <i>Walsh</i>▪ <i>Parkka</i>▪ <i>Mystic Valley Regional Charter School (Kravitz)</i> |
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CASES OF INTEREST

Kenneth Hill, Esq.
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NOTES:

Tuminelli v. Somerville Retirement Board

- **Case No.:** CR-21-0335 (DALA)
- **Decision Date:** November 10, 2023
- **In a Nutshell:** A member who had been injured while working for one retirement system and who later went to work for a second retirement system, may apply for accidental disability retirement from the latter system.
- Section 7(5) provides: “In the event of a retirement where the injury was sustained in a governmental unit other than that by which the member is presently employed, the proration of the pension portion of the retirement allowance shall be computed by the actuary.”
- Appealed to CRAB.

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Crichton v. State Board of Retirement & PERAC

- **Case No.:** CR-21-0548 (DALA)
- **Decision Date:** September 15, 2023
- **In a Nutshell:** CO filed an application under the Heart Law following an aortic dissection. His pre-employment physical noted that he suffered from hypertension. The member argued that the aortic dissection was unrelated to the hypertension, and because the aortic dissection was not present prior to his employment, he should be entitled to the presumption.
- A finding of hypertension on a pre-employment physical renders the Section 94 presumption inoperable. Member could have chosen to file for accidental disability retirement pursuant to Section 7 but declined.
- Appealed to CRAB.

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NOTES:

Wakefield Retirement Board v. Mass. Teachers Retirement Board

- **Case No.:** CR-22-573 (DALA)
- **Decision Date:** October 20, 2023
- **In a Nutshell:** The retirement system from which a member retires is responsible for disbursing the retirement allowance. Section 3(8)(c) permits that retirement system to seek proportional reimbursement from any previous retirement system that member may have belonged.
- Here, two former members of the Wakefield Retirement System (WRS), retired from Teachers Retirement System (MTRS). More than 20 years after their retirement, MTRS sought 3(8)(c) reimbursement. WRS paid it, then sought partial refund, arguing that MTRS was only owed 6 years' worth of payments pursuant to the Statute of Limitations.
- Although the 6-year Statute of Limitations is enforceable, the fact that WRS paid the entire debt does not provide WRS with a legal right to “unwind” that transaction.
- Final decision.

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Robbins v. State Board of Retirement

- **Case No.:** CR-20-0344 (DALA)
- **Decision Date:** March 31, 2023
- **In a Nutshell:** Member listed his partner as his sole beneficiary under Option B but did not include the “proportion of benefits.” Relationship ended in 2019, but member did not change his beneficiary. Upon his death, the member’s family argued that his intent was not to provide the ex-partner with his retirement account.
- Board determined that the form was invalid, because it did not include the proportion of benefits, and awarded benefit to estate.
- DALA concluded that the form was valid as it was properly signed and witnessed and provides ample evidence of intent. The fact that only one beneficiary was named makes a designation of proportions superfluous.
- Final decision.

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NOTES:

Roy v. State Board of Retirement

- **Case No.:** CR-20-0302 (DALA)
- **Decision Date:** March 31, 2023
- **In a Nutshell:** Member left service and received a refund of her total deductions in 2004. Notified that she would not get credit for such service unless she paid back the withdrawn funds with “regular interest.”
- Returned to service. In 2019, sought to buy back her prior service. Several years prior, in 2011, the Legislature amended the statute so that any service purchase not completed before April 2, 2013, would be subject to “actuarially assumed interest,” which is higher than regular interest.
- Member appealed application of the higher interest rate, but the statute is unambiguous and DALA lacks the power to create equitable remedies.
- Final decision.

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Robinson v. State Board of Retirement

- **Case No.:** CR-21-0235 (DALA)
- **Decision Date:** May 5, 2023
- **In a Nutshell:** Dispatcher requested placement in Group 2, as a “police signal operator” or “signal maintenance repairman.”
- Long line of cases holding that the duties and hazards associated with those positions are “traffic problems, live electrical current, inclement weather, gases, installation of overhead and underground cables, rodding sections of conduit, cable splicing, and the maintenance and installation of police and fire boxes.” A dispatcher is not exposed to such hazards.
- Dispatcher cited different hazards she has experienced, but DALA was unmoved as the cited hazards were at most occasional duties.
- Final decision.

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NOTES:

McDonald v. Norfolk County Retirement Board

- **Case No.:** CR-20-0403 (DALA)
- **Decision Date:** November 3, 2023
- **In a Nutshell:** It was not inappropriate for the retirement board to deny an application for accidental death benefits under Section 9 without convening a medical panel because Section 9 does not provide for medical panels in death benefit cases, and because the subject death was not the proximate result of the injury sustained.
- “Proximate cause is that which in a continuous sequence, unbroken by any new cause, produces an event and without which the event would not have occurred.”
- Final decision.

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DeForitis v. Taunton Retirement Board

- **Case No.:** CR-19-052 (DALA)
- **Decision Date:** June 16, 2023
- **In a Nutshell:** Section 12(2)(d) permits a spouse to elect to receive the benefit, even if the spouse was not named the Section 12(2)(d) beneficiary. However, the member must have 2 years of creditable service, must leave a spouse to whom married for over 1 year, and must have been living together or, if living apart, for “justifiable cause.”
- Wife is not entitled to a benefit under Section 12(2)(d) because the couple was living apart and there was no “justifiable cause.” Rather, the couple was living apart by “mutual consent,” which does not satisfy the statutory requirements.
- Final decision.

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NOTES:

Briley v. PERAC

- **Case No.:** CR-20-0244 (DALA)
- **Decision Date:** June 2, 2023
- **In a Nutshell:** At time of death, Section 100 provided a benefit for a police officer killed in the line of duty “and as the result of an assault on his person or as a result of an accident involving a police department vehicle...”
- Widow of deceased police officer was not entitled to benefits under Section 100 because he did not die as the result of an assault, as required by the statute.
- His participation in a self-defense training class prior to his death did not constitute an “assault” and, therefore, his widow was not entitled to a Section 100 benefit. (Section 100 recently expanded to include a police officer killed at the “scene of an emergency”).
- Final decision.

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Pereira v. State Board of Retirement & Fall River Retirement Board

- **Case No.:** CR-16-0558 (CRAB)
- **Decision Date:** June 8, 2023
- **In a Nutshell:** Member argued that the inclusion of the dual member provision of Section 5(2)(e) and the repeal of the “year-for-a-day” provision in Section 4(1)(a) should not apply to her, because the contract clause of Section 25(5) prohibits application of the pension reform provisions of Chapter 176 of the Acts of 2011. She essentially argued that the Legislative changes interfered with her reasonable expectations when she joined the retirement system.
- CRAB affirmed the application of the dual member provision and the repeal of the “year-for-a-day” provision, because the Legislature’s reason for enacting the changes bore a reasonable and material relationship to the successful operation of the pension system.
- Final decision.

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NOTES:

Stanton v. State Board of Retirement

- **Case No.:** CR-18-0399 (CRAB)
- **Decision Date:** October 11, 2023
- **In a Nutshell:** Member argued that the anti-spiking provision of Section 5(2)(f) should not apply, because there was a bona fide change in position, and because the contract clause of Section 25(5) prohibits application of the pension reform provisions of Chapter 176 of the Acts of 2011. He essentially argued that the Legislative changes interfered with his reasonable expectations when he joined the retirement system.
- CRAB affirmed the application of the anti-spiking provision, because there was no bona fide change in employment, and because the Legislature’s reason for enacting the anti-spiking provision bore a reasonable and material relationship to the successful operation of the pension system.
- Appealed to Superior Court.

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Willette & Heuston v. Somerville Retirement Board & PERAC

- **Case Nos.:** CR-20-282 & CR-20-381 (CRAB)
- **Decision Date:** November 16, 2023
- **In a Nutshell:** City conducted a review of compensation for certain city employees, which resulted in the passage of ordinances that raised the Petitioners’ respective salaries. At retirement, both tripped the anti-spiking provision of Section 5(2)(f).
- CRAB determined that the ordinances satisfied the exception for salary increases “specified by law.” Thus, the anti-spiking provision was not applicable to either Petitioner.
- Final decision. (Companion case: *White v. Somerville Ret. Bd.*, CR-22-0095)

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NOTES:

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John Hollenbach v. State Board of Retirement

- Case No.: CR-20-0457 (DALA)
- Decision Date: January 27, 2023
- In a Nutshell: To purchase prior military service, a member must meet the definition of “veteran” as found in G.L. c. 4, § 7, ¶ 43, which requires an honorable discharge.
- Final decision of CRAB.

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NOTES:

Michael D. McHugh v. State Board of Retirement

- **Case No.:** CR-22-0605 (DALA)
- **Decision Date:** May 5, 2023
- **In a Nutshell:** Petitioner's increase in salary did not meet any exception to the anti-spiking provision of G.L. c. 32, § 5(2)(f) and so his regular compensation must be reduced when calculating his retirement allowance.
- Mr. McHugh appealed to CRAB.

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Christopher C. v. Boston Retirement Board

- **Case Nos.:** CR-19-342 & CR-19-343 (DALA)
- **Decision Date:** May 5, 2023
- **In a Nutshell:** Former Special Education Teacher is entitled to accidental disability retirement as his preexisting cardiac issues were aggravated to the point of disability by stressful schoolhouse incidents.
- Boston Retirement Board appealed to CRAB.

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NOTES:

Mark Cohen & James Vaccari v. State Board of Retirement

- Case Nos.: CR-21-0142 & CR-21-0269 (DALA)
- Decision Date: July 14, 2023
- In a Nutshell: The Petitioners' stipends of \$75/week for commuting longer than 75 miles to work is regular compensation as they performed services for the department during their commute, such as wearing a uniform and being required to respond to accidents.
- State Board of Retirement appealed to CRAB.

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Patricia Vonnegut v. Mass. Teachers Retirement Board

- Case No.: CR-14-0441 (CRAB)
- Decision Date: September 28, 2023
- In a Nutshell: Ms. Vonnegut's stipends for administering the Early Childhood Extension summer program were regular compensation as it was a core duty of her role as the program Coordinator, not an additional service.
- Timeframe to appeal is still open.

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NOTES:

Farajallah Habib & Jeffrey S. Stoff v. CRAB & State Board of Retirement

- **Case No.:** 1984CV02652 (Superior Court)
- **Decision Date:** July 20, 2023
- **In a Nutshell:** Plaintiffs' supplemental pay received from the UMass Medical School Trust Fund is not regular compensation because the Trust Fund's enabling legislation, G.L. c. 733, § 6, specifically excluded those payments from being regular compensation for retirement purposes.
- Several Plaintiffs appealed to Appeals Court.

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Revere Retirement Board v. PERAC

- **Case Nos.:** CR-21-0159 & CR-23-0521 (DALA)
- **Decision Date:** November 3, 2023
- **In a Nutshell:** A member whose retirement is governed by the dual member provision of G.L. c. 32, § 5(2)(e) may elect different retirement options from each system.
- Final decision of CRAB.

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NOTES:

Janet S. Walsh & PERAC v. Reading Retirement Board

- Case No.: CR-21-0135 (DALA)
- Decision Date: July 14, 2023
- In a Nutshell: Petitioner's date of reentry into membership and reinstatement to service should be the day she waived her retirement benefits pursuant to G.L. c. 32, § 105 by signing and submitting the *Application for Reinstatement to Service*.
- Final decision of CRAB.

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PERAC v. Daniel Parkka & Barnstable County Retirement Board

- Case Nos.: CR-17-394 & CR-21-0155 (CRAB)
- Decision Date: October 11, 2023
- In a Nutshell: Mr. Parkka's "earnings from earned income" should not include a 50/50 split of the business profits, pursuant to PERAC Policy 19-002, as his W2 wages properly compensated him for his work at the family business. Thus, he did not exceed his earnings limitations under G.L. c. 32, § 91A.
- Final decision of CRAB.

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NOTES:

Mystic Valley Reg. Charter School (Robert Kravitz) v. State Board of Retirement & PERAC

- Case No.: CR-20-0243 (CRAB)
- Decision Date: September 8, 2023
- In a Nutshell: Petitioner is not eligible for membership in the State Retirement System because he is a non-teaching employee of the charter school. Additionally, charter schools cannot utilize G.L. c. 32, § 28(4) to establish their own retirement system under Chapter 32.
- Mystic Valley Reg. Charter School appealed to Superior Court.

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NOTES:

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