RECENT CASES OF INTEREST

Kenneth J. Hill, Esq., Deputy Executive Director
Felicia McGinniss, Esq., Senior Associate General Counsel

PERAC Webinar | February 20, 2025

CASES OF INTEREST

Kenneth J. Hill, Esq.,
PERAC Deputy Executive Director

Recent Cases of Note – Part 1

RECENT CASES	
▪ *Rhude* ▪ *Favazza* ▪ *Conway* ▪ *Stuart* ▪ *Smith* ▪ *Dubuc*	▪ *Kephart* ▪ *Mercadante* ▪ *Town of Natick* ▪ *Pananos* ▪ *Rosemarie R.* ▪ *City of Methuen*

Rhude v. Barnstable County Retirement Board (1)

- **Case:** CR-22-0244 (DALA)
- **Decision Date:** Jan. 26, 2024
- **Facts:**
  - Captain of Fire Department. Accrued enough service to qualify for a unique, lifetime health insurance benefit.
  - Left that job and took a job as Chief in another town. In negotiating his contract, he and the town agreed that, if he could obtain health insurance from elsewhere, the town would pay him an additional amount of money. He asked and the retirement board confirmed that such additional money was regular compensation, and retirement deductions were taken from it.
  - Upon his retirement, he was informed that such payment was not regular compensation. He appealed to DALA.

Rhude v. Barnstable County Retirement Board (2)

- **In a Nutshell:** DALA determined the payment was not regular compensation under G.L. c. 32, Section 1 and 840 CMR 15.03(3), because it was neither "base salary" nor "other base compensation." It was an indirect payment for insurance premiums, which is specifically excluded from the definition of "wages." Further, it was not a payment for service to the town, it was not available to any other employee, and it was not guaranteed.
- Fact that retirement deductions were taken from it and that the parties agreed to the regular compensation status of the payment is irrelevant: regular compensation cannot include payments that are prohibited under Chapter 32 and 840 CMR 15.03.
- Appeal denied. Final decision.

Favazza v. Mass. Teachers Retirement System (1)

- **Case:** CR-21-150 (DALA)
- **Decision Date:** Jan. 12, 2024
- **Facts:**
  - Teacher. School district implemented new standards, and some parents were unhappy, and expressed their displeasure to her during meetings, and sometimes in public. Caused her stress and other health issues, but she did not file any incident reports.
  - Applied for ADR, citing a personal injury sustained, but did not specify particular incidents.
  - Medical Panel found her permanently incapacitated such as might be the natural and proximate result of her claimed workplace injuries. The Board denied the application, and she appealed.

Favazza v. Mass. Teachers Retirement System (2)

- **In a Nutshell:**
  - Any specific incidents that may have caused her disability were time-barred, because there were no incident reports and could not have occurred within the statutory two-year limitation period.
  - In addition, she did not establish that her "uncommon" workplace experiences were frequent enough to be seen collectively as a "constant" and "continual" hazard of her job, or that such experiences were "not common and necessary to all or a great many occupations."
- Appeal denied. Final decision.

Conway v. PERAC (1)

- **Case:** CR-22-0439 (DALA)
- **Decision Date:** Feb. 23, 2024
- **Facts:**
  - Firefighter granted ADR for a knee injury in 2001. In 2022, he requested a Comprehensive Medical Evaluation ("CME") because he wanted to return to work. Doctor determined that, although the knee may no longer be disabling, he was unable to return to duty because he had a different, automatically disqualifying condition. He appealed.
  - At hearing, he testified that he wanted to "return to work," so he could retire for superannuation, and no longer have earnings limitations of Section 91A.

Conway v. PERAC (2)

- **In a Nutshell:**
  - While the appeal was pending, he turned age 65, which is the maximum age of retirement for a firefighter.
  - PERAC notified DALA that he could not legally work as a firefighter, so he couldn't be returned to work as a firefighter.
- DALA agreed and dismissed the appeal as moot. Notwithstanding the mootness, DALA found no error of law in the doctor's determination that he did indeed have an automatically disqualifying condition, so the appeal would have been denied. Final decision.

Stuart v. Mass. Teachers Retirement System (1)

- **Case:** CR-19-0555 (DALA)
- **Decision Date:** Oct. 11, 2024
- **Facts:**
  - Member was a teacher in multiple school systems, over varied periods of time, from 1978-2019.
  - Pursuant to CBA, teachers would receive longevity payments after certain years of service. Payments made "because of the employee's length of service" (longevity pay) are included in the definition of "wages" at 840 CMR 15.03(3)(b).
  - A dispute arose over these payments, and the district and the union negotiated a settlement agreement.

Stuart v. Mass. Teachers Retirement System (2)

- **In a Nutshell:** The settlement agreement provided that, if a teacher retired during a specific school year, that said teacher would be entitled to the payment. Board determined that the payment therefore was an early retirement incentive that does not count as regular compensation. Member appealed.
- DALA agreed with the Board. Such payment was contingent upon her retirement, which is specifically excluded from regular compensation for the purposes of calculating a retirement allowance.
- Appeal denied. Further appeal pending at CRAB.

Smith v. Springfield Retirement Board (1)

- **Case:** CR-20-0163 (DALA)
- **Decision Date:** Oct. 4, 2024
- **Facts:**
  - Firefighter. Attended morning roll-call and volunteered for "snow call" responsible for clearing driveway and sidewalk of snow and ice.
  - Left station and walked toward his personal vehicle to retrieve a pair of insulated work gloves. Slipped on ice and injured back and neck.
  - Employer filed for Involuntary Accidental or Ordinary Disability. Board did not think he was "in the performance of his duties" when he injured himself and denied ADR. Appealed to DALA.

Smith v. Springfield Retirement Board (2)

- **In a Nutshell:** Relevant case law addressing whether injuries that occur while traveling from one place to another are "in the performance of one's duties." Well-settled that must be traveling from a work obligation to another work obligation. Board did not believe that traveling to his personal vehicle was a work obligation but, rather, a personal preference detour.
- DALA determined that the evidence supports that he was in the performance of his duties, as clearing snow and ice was a job duty and using gloves to accomplish the task was a sensible choice to accomplish that task. The retirement law does not disqualify an ADR applicant because he was using his personal equipment.
- DALA remanded to the medical panel to opine on the issue of causation. Further appeal pending at CRAB.

Dubuc v. Attleboro Retirement Board (1)

- **Case:** CR-21-0687 (DALA)
- **Decision Date:** Oct. 4, 2024
- **Facts:**
  - Firefighter, starting in 1986. In 2011, while fighting a fire, he had trouble breathing and needed medical attention. Diagnosed with asthma. Applied for ADR under the Lung Presumption and was granted it.
  - Pursuant to Section 8, he was given a CME and evaluated to see if he could return to work. During that CME, evidence of high blood pressure was recorded. Eventually, In 2017, he was cleared to return to work.
  - In 2020, while battling a fire he became ill and sought medical attention for high blood pressure. Soon thereafter, he applied for ADR under the Heart Presumption. The medical panel found him permanently unable to perform his job duties under the Heart Law. The Board denied the application, however.

Dubuc v. Attleboro Retirement Board (2)

- **In a Nutshell:** Board determined that he had pre-existing high blood pressure prior to his return to work in 2017, which precluded the use of the Heart Law presumption. The member appealed.
- DALA ruled that the existence of high blood pressure in his re-employment physical in 2017 meant that the presumption no longer applied to him. However, DALA ruled that he could pursue ADR under a theory that the 2020 incident aggravated his high blood pressure to the point that he became incapacitated.
- DALA remanded this case back to the retirement board to convene a new medical panel to consider the application without benefit of the Heart Law Presumption but, rather, as a Section 7 ADR wherein he will have to prove causation.
- Further appeal pending at CRAB.

Kephart v. Revere Retirement Board (1)

- **Case:** CR-23-0455 (DALA)
- **Decision Date:** Nov. 15, 2024
- **Facts:**
  - Police Officer, responding to a domestic disturbance call. Enroute, she was Involved in a car accident, which resulted in head trauma. At the time of the accident, PO was not wearing her seatbelt. Department policy mandated seatbelt use generally but permitted Officers to remove it "just prior" to arriving at a scene.
  - She applied for ADR, and the majority of the medical panel found her permanently incapable of performing her job duties, as a natural and proximate result of the injuries she sustained.
  - Board denied the application, finding that her failure to wear her seatbelt was "serious and willful misconduct."

Kephart v. Revere Retirement Board (2)

- **Case law:** no per se rule. Rather, failure to wear a seatbelt when mandated *can* be serious misconduct, but the circumstances surrounding the failure to wear the seatbelt must be examined to determine ***if it was willful***.
- Here, evidence suggests that the member complied with the Department's policy allowing her to remove her seat belt "just prior" to arriving at the scene, as the scene was in view, she was very familiar with the area, and such action was consistent with her experience. Further, the Department did not cite or discipline her for removing her seat belt.
- The Board's concern appeared to center on the fact that it doubted the seriousness of the accident or her claimed subjective injuries. In such situations, the Board must show deference to the medical experts.
- Appeal denied. Final decision.

Mercadante v. State Retirement Board and PERAC (1)

- **Case:** CR-17-887 (CRAB)
- **Decision Date:** Dec. 17, 2024
- **Facts:**
  - Trial Court Officer. Claimed that she injured her hip/back while opening a heavy door at work. She applied for ADR, and was examined by three doctors, 2 of whom determined that she was not incapacitated from performing her job duties.
  - Before the Board could deny her application, she alleged that one of the doctors performed an inadequate and inappropriate examination and should be replaced. PERAC investigated and determined that the examination was appropriate and legally sufficient: no valid reason to replace the doctor.
  - Board denied her application and she appealed to DALA.

Mercadante v. State Retirement Board and PERAC (2)

- **In a Nutshell:** To replace a doctor, must prove that the doctor employed an erroneous standard or lacked knowledge of the applicant's injury or job duties. The member failed to prove that or meet her burden of proving that she was denied a proper medical panel evaluation.
- Moreover, both DALA and CRAB found that the substantial evidence in the record failed to demonstrate that she sustained a disabling injury as a result of the claimed work incident.
- Appeal denied. Final decision.

Town of Natick v. Natick Retirement Board (1)

- **Case:** CR-23-0468 (DALA)
- **Decision Date:** Jan. 17, 2025
- **Facts:**
  - Police Officer. While off-duty, committed assault and battery on a civilian co-worker.
  - Pled guilty. Retired for superannuation. Board held a hearing to determine whether his pension should be forfeited, pursuant to Section 15. Concluded that it should not be forfeited.
  - His employer, the Town of Natick, appealed to DALA.

Town of Natick v. Natick Retirement Board (2)

- **In a Nutshell:**
  - The Town had standing to appeal, and DALA was the proper venue.
  - Regarding forfeiture, Section 15 requires a conviction of a "criminal offense involving violation of the laws applicable to his office or position."
  - Must be a "direct link" between the criminal offense and the member's offense and his position, which may be either "factual" or "legal." To establish a "factual link," there must be a direct factual connection between the crime and the member's position.
- Here, no factual or legal link. He was out of uniform, off-duty, off-premises, and there was no evidence that he used his position to further his actions.
- Appeal denied. Further appeal pending at CRAB.

Pananos v. CRAB, and MTRS (1)

- **Case:** 2484CV00175 (Superior Court)
- **Decision Date:** Feb. 3, 2025
- **Facts:**
  - Teacher from 1979-1996. Alleged that he stole thousands of dollars from ticket revenue from high school sporting events. Terminated from employment and convicted of larceny. His membership in MTRS was forfeited, he acknowledged the termination of his rights and privileges under Chapter 32, and he received a return of his retirement contributions.
  - In 2005, he started working as teacher at a public high school. He was made a member of MTRS and contributed retirement deductions until it was discovered in 2016.
  - MTRS rescinded his membership and informed him that he was not entitled to a retirement benefit. He appealed to DALA.

Pananos v. CRAB & MTRS (2)

- **In a Nutshell:**
  - Two arguments on appeal: (1) MTRS was negligent and their misleading actions in failing to notify him of his ineligibility was unfair; and (2) the determination of pension ineligibility constituted an excessive fine that is prohibited by the 8th Amendment.
  - Superior Court agreed with MTRS, DALA and CRAB: forfeiture statute language is clear that "in no event" shall a member convicted of a crime applicable to his position be entitled to a retirement allowance.
  - The fact that he subsequently was made a member and that retirement deductions were taken from his pay constituted administrative errors, and didn't give him a statutory right to a retirement allowance.
- Regarding the 8th Amendment, it was not applicable: MTRS's action in 2016 was not a forfeiture, as he had no right to the pension allowance. He forfeited such right back in 1997.
- Appeal denied. (Still within limitations period to appeal to Appeals Court).

Rosemarie R. v. Amesbury Retirement Board (1)

- **Case:** CR-22-0590 (DALA)
- **Decision Date:** June 14, 2024
- **Facts:**
  - Member worked as a special education paraprofessional in an elementary school.
  - She was injured when a young special education student became agitated and slammed the back of his head into her face. Immediate pain. Taken to Emergency Room and diagnosed with a concussion. She continued to have symptoms and was diagnosed with post-concussion disorder, cognitive disturbance, and post-traumatic headache. Consulted with several doctors and tried numerous treatments and therapy with no reported success.
  - She applied for ADR and was examined by a three-member medical panel, who unanimously found that she was permanently incapacitated and that such incapacity was the natural and proximate result of the workplace incident. The Board sought clarification, and all three panelists reiterated their respective diagnoses.
  - Thereafter, the Board denied her application, because "the Board simply does not believe [the member's] symptoms are genuine," as there was "no objective evidence of any neurological impairment." The member appealed to DALA.

Rosemarie R. v. Amesbury Retirement Board (2)

- **In a Nutshell:**
  - DALA noted that the point of sending applicants to a medical panel is to vest in the panel the responsibility for determining medical questions which are beyond the common knowledge and experiences of the members of a local retirement board.
  - It is the panelists who are best situated to assess whether a member's subjective complaints ring true and reflect genuine incapacity, and they who can competently compare the member's complaints to her history, her treatment, her physical examinations, the medical literature, and the innumerable other patients they have seen.
- The retirement law calls on a retirement board to resolve medical questions based on the panel's expert input, not the board's own instincts. DALA determined that the member was entitled to retire for ADR and reversed the Board's denial.
- Further appeal pending at CRAB.

City of Methuen v. Methuen Retirement Board and Hardacre (1)

- **Case:** CR-23-0420 (DALA)
- **Decision Date:** June 14, 2024
- **Relevant Facts and History:**
  - Member applied for superannuation retirement. His employer, the City of Methuen opposed it. The Methuen Retirement Board granted the application and the City appealed it.
  - For disability applications, the employer is a party to the application and thus has standing to appeal. See 840 CMR 10.05(2) and 10.13(1)(c). For superannuation applications, there is nothing explicit in the regulations or in Chapter 32.
  - Did the City have standing to appeal this decision of the Board?

City of Methuen v. Methuen Retirement Board and Hardacre (2)

- **In a Nutshell:**
  - Section 16(4) allows "any person" who is "aggrieved" by an action or a decision of a retirement board to appeal.
  - City is a "person," which is defined to include "all political subdivisions of the commonwealth." G.L. c. 30A, Section 1(4).
  - To be "aggrieved," one must show aggrievement in a "legal sense" and that "substantial rights have been prejudiced." City argued that it was "aggrieved" because it will suffer a pecuniary interest in that it is obligated to fund the Board under G.L. c. 32, Section 22(7)(c) and (d).
- DALA determined that the City's argument was unavailing, as it failed to show evidence that it had to or will have to fund the member's superannuation and, therefore, failed to prove prejudice of any substantial right. Case dismissed.
- In non-disability retirement cases, a government employer can appeal a retirement board's decision if the employer is aggrieved in a legal sense and can show that its substantial rights have been prejudiced.
- Further appeal pending at CRAB.

QUESTIONS??

CASES OF INTEREST

Felicia McGinniss, Esq.

PERAC Senior Associate General Counsel

Recent Cases of Note – Part 2

RECENT CASES	
▪ *MacAleese* ▪ *Honan* ▪ *Ortiz* ▪ *Morais et. al.* ▪ *Cali* ▪ *Kane*	▪ *Covino* ▪ *Goulet* ▪ *Sorrentino* ▪ *McDonald* ▪ *Celona* ▪ *Ryan*

MacAleese v. Braintree Retirement Board (1)

- **Case No.:** CR-21-0134 (DALA)
- **Decision Date:** Mar. 15, 2024
- **Facts:**
  - Ms. MacAleese worked for the Police Department from 1987-2021. From 2017-2020, she served as an Interim Deputy Chief and, while in the position, applied for appointment as a permanent Deputy Chief. In 2020 she was notified that she would not be appointed and would be returned to her position as a Lieutenant.
  - She filed a grievance, alleging that the decision violated the non-discrimination clause of the CBA. In 2021, a settlement agreement was reached where the grievance would be dismissed, she would retire, and the Town would pay her $63,136.63.
  - The Board determined that the payment from the settlement agreement was not regular compensation. Ms. MacAleese appealed.

MacAleese v. Braintree Retirement Board (2)

- **In a Nutshell:** DALA held that the payment from the settlement agreement does not constitute regular compensation as it was made in exchange for Ms. MacAleese's promise to retire.
- G.L. c. 32, s. 1 provides that regular compensation is compensation received exclusively as wages. Wages are the base salary or other base compensation received by the employee. Wages are not to include payments for termination, severance, or dismissal.
- Even though the settlement agreement characterized the payment as retirement eligible, the Board is not bound by that determination if it violates Chapter 32.
- The payment was made only to resolve the discrimination grievance. Additionally, it was made "as a result of the employer having knowledge of the member's retirement."
- Ms. MacAleese has appealed the decision to CRAB.

Honan v. State Board of Retirement (1)

- **Case No.:** CR-23-0606 (DALA)
- **Decision Date:** Sept. 13, 2024
- **Facts:**
  - Mr. Honan worked as a Court Officer and was assaulted by a prisoner in 2005.
  - As a result of this assault, he was out of work on Workers' Compensation from 2005-2010. Mr. Honan was paid under both Sections 34 (total incapacity) and 35 (partial incapacity) of Chapter 152. He also received certain amounts of "supplemental pay" from his employer.
  - Mr. Honan retired in 2023, and in the calculation of his retirement allowance, the Board did not attribute creditable service to the time he was paid under Section 35. Mr. Honan appealed.

Honan v. State Board of Retirement (2)

- **In a Nutshell:** DALA determined that the Mr. Honan is **not** entitled to creditable service during the time he received Workers' Compensation for partial incapacity under Section 35.
- G.L. c. 32, s. 14(1) provides that an employee who receives Workers' Compensation for total incapacity shall receive creditable service during that time. Total incapacity benefits are paid out under Section 34 of Chapter 152.
- Chapter 32 does not provide for creditable service during periods of Workers' Compensation paid under Section 35 for partial incapacity.
- Mr. Honan has appealed the decision to CRAB.

Ortiz v. PERAC & Cambridge Retirement Board (1)

- **Case No.:** CR-23-0481 (DALA)
- **Decision Date:** Sept. 20, 2024
- **Facts:**
  - Mr. Ortiz began working for the Cambridge Fire Department in 2000, and in 2004 began working as a security guard with Cambridge Health Alliance. His last day of work with both positions was in May 2021. He was suffering from coronary artery disease and so he took sick and vacation time in his security guard position and was placed on Section 111F for his firefighter position.
  - In 2022, he applied to retire for accidental disability under the Heart Law Presumption. He was approved with a retirement date of April 13, 2023, the end of his Section 111F payments. His last year of Section 111F pay formed PERAC's calculation of his retirement allowance. Mr. Ortiz appealed PERAC's calculation as he believed it should include the pay from his second position.

Ortiz v. PERAC & Cambridge Retirement Board (2)

- **In a Nutshell:** DALA concluded that Mr. Ortiz's accidental disability retirement allowance under the Heart Law presumption should be calculated using his last day of work as "the date…[the disabling] hazard was undergone."
- Prior case law allowed the use of the hazard theory to be calculated under G.L. c. 32, s. 7(2)(a)(ii) using "the date…[the] hazard was undergone," which means the last date of the hazard.
- DALA found that in Heart Law cases, "the date…[the] hazard was undergone," means the employee's last day at his or her stress-intensive job. This means that Mr. Ortiz can use the combined income for both of his positions to calculate his accidental disability retirement allowance.
- PERAC has appealed the decision to CRAB.

Morais, et. al. v. New Bedford Retirement Board (1)

- **Case Nos.:** CR-24-0109, CR-24-0161, CR-22-0400 (DALA)
- **Decision Date:** Jan. 24, 2025
- **Facts:**
  - Mr. Coderre applied for accidental disability retirement benefits in 2021. While his application was pending, he applied for superannuation retirement to avoid being terminated for possible "moral turpitude." Mr. Coderre's employer rejected his retirement, held a termination hearing, and terminated him for allegedly faking his injuries.
  - Mr. Coderre appealed the dismissal, and the Civil Service Commission reversed the termination and "reinstated" him. While that appeal was pending, the retirement board approved his superannuation application.
  - After being reinstated, Mr. Coderre died. His ex-wife and current wife submitted competing claims for benefits.

Morais, et. al. v. New Bedford Retirement Board (2)

- **In a Nutshell:** DALA found that Mr. Coderre retired prior to his death, and so his ex-wife is entitled to the Option C retirement benefits, and his current wife is not entitled to Option D benefits.
- G.L. c. 32, s. 10(1) requires that a member must be discharged from his position "without moral turpitude on his part."
- DALA relied on the findings of the Civil Service Commission that there was no moral turpitude, and he was "reinstated to his position without loss of compensation or other benefits." This determination just meant that he was not terminated, not that he was "unretired."
- G.L. c. 32, s. 12(2)(d) only provides survivor benefits for members who pass away before being retired. Mr. Coderre was retired and had chosen Option C benefits. Therefore, no Option D benefits can be paid.
- Final decision of CRAB.

Cali v. Winthrop Retirement Board (1)

- **Case No.:** CR-21-0664 (DALA)
- **Decision Date:** Mar. 29, 2023
- **Facts:**
  - Mr. Cali retired in December 2010 under a superannuation retirement from the Winthrop School System as a Senior Custodian. From 2011-2019, he returned to work in the same system as a custodian.
  - The Board determined that Mr. Cali had excess hours and earnings in 2011, 2013, 2015-2017, and 2019, resulting in a refund of $36,000 due to the Board. Mr. Cali appealed.

Cali v. Winthrop Retirement Board (2)

- **In a Nutshell:** DALA held that the Board properly required Mr. Cali to repay amounts he earned in excess of the hours and earnings limitations of G.L. c. 32, s. 91(b).
- G.L. c. 32, s. 91(b) provides that retirees are limited to 960 hours (now 1,200) and cannot work more than the current salary of the position retired from minus their pension.
- In 2011, 2013, 2015-2017, and 2019, Mr. Cali exceeded the statutory cap of 960 hours. The Board correctly multiplied Mr. Cali's hourly rate by the number of hours above 960.
- Additionally, the Section 91(b) limitations are hours **OR** earnings. Even if you satisfy the cap on total earnings, you can still exceed the cap on hours.
- Final decision of CRAB.

Kane v. Wellesley Retirement Board & PERAC (1)

- **Case No.:** CR-23-0508 (DALA)
- **Decision Date:** Nov. 29, 2024
- **Facts:**
  - Mr. Kane is a disability retiree who was determined to be an excess earner for calendar year 2022 pursuant to G.L. c. 32, s. 91A.
  - As a result, the Board withheld his full retirement allowance as security to repay the excess earnings. The Board also continued to withhold child support payments pursuant to G.L. c. 32, s. 19, but had stopped withholding health insurance premiums.
  - Mr. Kane appealed the above actions of the Board.

Kane v. Wellesley Retirement Board & PERAC (2)

- **In a Nutshell:** DALA found that the Board did not err in withholding Mr. Kane's full retirement allowance as security for excess earnings under G.L. c. 32, s. 91A. Additionally, the Board must collect statutorily mandated deductions for child support.
- Section 91A specifically gives retirement boards the option to withhold the entire retirement allowance until the excess earnings are refunded.
- G.L. c. 32, s. 19 requires retirement boards to withhold child support payments from a retirement allowance. There are, however, no such requirements to continue to withhold health insurance premiums.
- PERAC was a necessary party as it is the agency that oversees the retirement systems and administers/monitors the excess earnings program under Section 91A.
- Final decision of CRAB.

Covino v. Massport (1)

- **Case No.:** CR-23-0496 (DALA)
- **Decision Date:** Dec. 20, 2024
- **Facts:**
  - Mr. Covino was employed as an EMT with the City of Boston from 1984 to 2011 and was a member of the Boston Retirement System. From 2000-2005, 2005-2006, and 2006-2011, he also worked in positions that granted him membership in other retirement systems. In 2011, Mr. Covino left his position in Boston and from 2011-2023 he continued to work and be a member in the Massport Retirement System.
  - He retired in 2023, and Massport determined that Mr. Covino was entitled to a single retirement allowance from the System. Mr. Covino appealed that determination.

Covino v. Massport (2)

- **In a Nutshell:** DALA held that Mr. Covino is not a dual member under G.L. c. 32, s. 5(2)(e) because he only worked for one governmental unit during his last five years of public service. He is entitled to only a retirement allowance from Massport.
- G.L. c. 32, s. 5(2)(e) provides that if a member is a member of multiple retirement systems, **within the last five years of service**, they are to be considered a dual member and will receive a retirement allowance from each system.
- Mr. Covino stopped being considered a dual member in 2011 when he ceased working in Boston, which is more than five years prior to retirement.
- Mr. Covino has appealed the decision to CRAB.

Goulet v. State Board of Retirement (1)

- **Case No.:** CR-22-0151 (DALA)
- **Decision Date:** Mar. 24, 2024
- **Facts:**
  - Mr. Goulet worked for the Northern Essex Community College as a custodian. In response to the COVID-19 pandemic, the MA Community College System required employees to provide proof of full vaccination status. The policy allowed for reasonable accommodations and the ability to request exemption for medical or religious reasons.
  - In October 2021, Mr. Goulet requested an accommodation from vaccination based on his Christianity. His request was denied and in January 2022 he was sent a termination letter. Mr. Goulet applied for a termination retirement allowance under G.L. c. 32, s. 10(2), and the Board denied. Mr. Goulet appealed.

Goulet v. State Board of Retirement (2)

- **In a Nutshell:** DALA concluded that Mr. Goulet was not discharged for a "violation" of an applicable law, rule, or regulation and is entitled to a termination retirement allowance.
- G.L. c. 32, s.10(2)(c) prevents a termination retirement allowance from being awarded if the member is found to have violated an applicable law, rule, or regulation of their position.
- Prior CRAB and Appeals Court decision required "willful misconduct" be shown that resulted in the termination. *Revere Retirement Board v. CRAB*, 48 Mass. App. Ct. 1104 (1999).
- Mr. Goulet did not engage in any wrongdoings as his decision not to comply with vaccination stemmed from a religious belief, and "the freedom to refuse medical interventions even in such circumstances is of a constitutional dimension."
- The Board has appealed the decision to CRAB.

Sorrentino v. State Board of Retirement (1)

- **Case No.:** CR-19-0118 (CRAB)
- **Decision Date:** Aug. 30, 2024
- **Facts:**
  - Mr. Sorrentino worked for the Department of Public Health from 1980-1990 and, from 1990-1997, he worked for the Massachusetts Health Research Institute ("MHRI"). At the time he left the DPH, he withdrew his accumulated total deductions.
  - In 1997, Mr. Sorrentino again became a member of the State Retirement System, but it was for less than a year. In 2006, Mr. Sorrentino attempted to buy back his MHRI service under G.L. c. 32, s. 4(1)(s). The Board denied his request to purchase the service because he was not a member of the System. Mr. Sorrentino did not appeal that determination.
  - In 2018, Mr. Sorrentino applied for a superannuation retirement allowance, which was denied by the Board because he did not work for at least two consecutive years after having terminated his membership. Mr. Sorrentino appealed.

Sorrentino v. State Board of Retirement (2)

- During the DALA proceedings, Mr. Sorrentino requested that Magistrate Bresler recuse himself, believing that he had shown some sort of bias. The Magistrate rejected the request as groundless.
- DALA concluded that Mr. Sorrentino was not entitled to a superannuation retirement allowance because he did not meet the requirements of G.L. c. 32, s. 3(6)(e).
- Section 3(6)(e) requires a member, who is reinstated or who re-enters active service, to remain in active service for at least two years to be eligible for a superannuation retirement allowance.
- Mr. Sorrentino appealed the decision to CRAB.

Sorrentino v. State Board of Retirement (3)

- **In a Nutshell:** CRAB affirmed the DALA Magistrate's decision that Mr. Sorrentino was not eligible for a superannuation retirement allowance because he did not work for two years pursuant to G.L. c. 32, s. 3(6)(e).
- MHRI was not considered to be "state service" as it is a private non-profit, and so there was no continuous period of state service making him eligible for a superannuation retirement benefit.
- Mr. Sorrentino was not entitled to purchase service from his time at MHRI because when he applied, he was not an active member of the State Retirement System.
- CRAB also held that the Magistrate did not show bias towards Mr. Sorrentino and so he was not required to recuse himself.
- Mr. Sorrentino has appealed the decision to Superior Court.

McDonald v. North Attleboro Retirement Board (1)

- **Case No.:** CR-22-0500 (DALA)
- **Decision Date:** Dec. 20, 2024
- **Facts:**
  - Mr. McDonald's wife was a member of the North Attleboro Retirement System who passed away in July 2022. In 2020, she had filled out an Option D form and listed Mr. McDonald as the beneficiary.
  - When she passed away, the Board notified Mr. McDonald of his right to apply for Option D benefits, and he submitted an application. At the time of the member's passing, she and Mr. McDonald were living apart.
  - The Board denied Mr. McDonald's Option D benefits because he and his wife were not "living apart for justifiable cause." Mr. McDonald appealed.

McDonald v. North Attleboro Retirement Board (2)

- **In a Nutshell:** DALA found that Mr. McDonald is an eligible Option D beneficiary as he was specifically designated on a valid form filed with the Board.
- G.L. c. 32, s. 12(2)(d) provides for an annual allowance for a beneficiary of a member who passes away while in service. An active member must select an option D beneficiary from eligible relatives – spouse, former spouse who has not remarried, child, parent, or sibling.
- Section 12(2)(d) also allows a non-nominated spouse to **elect** to receive an Option D allowance if (1) the member has at least 2 years of creditable service, (2) married to the spouse for at least 1 year, and (3) living together at time of death or living apart for justifiable cause.
- Mr. McDonald was affirmatively nominated as an Option D beneficiary, so he had no ability to elect. Since he was properly nominated, he does not need to prove that he and his wife were living apart for "justifiable cause."
- The Board has appealed the decision to CRAB.

Celona v. MTRS & PERAC (1)

- **Case No.:** CR-23-0395 (DALA)
- **Decision Date:** Oct. 25, 2024
- **Facts:**
  - Ms. Celona worked as the Finance Director at the Atlantis Charter School. In 2021, because of the COVID-19 pandemic, the school withheld pay raises. In 2022 and 2023, the school granted raises to all staff members. All annual raises were generally between 9% and 11%. Ms. Celona's was 10% in 2022 and 10.5% in 2023. The raises were given to all staff based on comparisons to other school salaries, retention, and recognition of work during the pandemic.
  - Ms. Celona retired in April 2023, and because of her two raises, she triggered the anti-spiking section of G.L. c. 32, s. 5(2)(f) because her 2023 salary exceed her salaries in the two preceding years by more than 10%. Ms. Celona appealed that determination.

Celona v. MTRS & PERAC (2)

- **In a Nutshell:** DALA held that Ms. Celona's increase in wages was rooted in generalized, group-oriented considerations and meets the new anti-spiking exemption of a salary increase "from an employer's systemic wage adjustments."
- The anti-spiking statute, G.L. c. 32, s. 5(2)(f), provides for retirement allowances to be adjusted if any pay amount exceeds the average of regular compensation received in the two preceding years by more than 10%. There are, however, exceptions.
- PERAC Memo #12 of 2024 was instructive that the increases need to apply across an employer or segment of the employer, and that they cannot be isolated or a signal occurrence. The salary increases in question were done across the board for systemic reasons to retain employees and match salaries in other nearby schools.
- MTRS has appealed the decision to CRAB.

Ryan v. Wakefield Retirement Board (1)

- **Case No.:** CR-21-0230
- **Decision Date:** Jan. 12, 2024
- **Facts:**
  - In 2012, Mr. Ryan was appointed a full time Police Officer for the Town of Wakefield. He had previously served as a reserve police officer for Woburn between 2002-2012. Pursuant to G.L. c. 32, s. 4(2)(b), he received five years of creditable service for that reserve police officer service. He then received one month of "day for a day" credit for his time beyond five years.
  - Mr. Ryan also had other reserve police officer service in 2001 with the Town of Boxborough. Information could not be provided by the Town as to his exact hire date, the date last worked, and his hourly wage.
  - In May 2021, the Board denied the request to purchase his reserve police officer service from Boxborough because there was no clear evidence regarding this employment. Mr. Ryan appealed.

Ryan v. Wakefield Retirement Board (2)

- **In a Nutshell:** DALA determined that Mr. Ryan is not entitled to enhanced credit for his service as a reserve police officer because he was unable to produce original documentation of his hours worked or wages earned pursuant to G.L. c. 32, s. 3(5). He is also not entitled to more than five years of enhanced credit because he already received that under G.L. c. 32, s. 4(2)(b).
- Section 4(2)(b) allows the enhanced five years of service for reserve or permanent-intermittent police officers or reserve, permanent-intermittent or call fire fighters who were on their respective list and eligible for assignment to duty subsequent to their appointment. Section 4(2)(b) provides the **five years in total** for eligible police officers and firefighters, not five years for system they may have performed this service.
- Not eligible for "day for a day" credit because the Board did not adopt that portion of this statute until later, after he served in Boxborough and after he requested to purchase the service.
- Absent original documentation, the Board has discretion to deny credit for failing to provide sufficient evidence under Section 3(5).
- Final decision of CRAB.

QUESTIONS?