

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Cynthia Sarapas,
Petitioner,

No. CR-19-616

Dated: September 16, 2022

v.

Plymouth County Retirement System,
Respondent.

Appearance for Petitioner:

Cynthia Sarapas (pro se)
62 Chadwick Road
Dennis, MA 02660

Appearance for Respondent:

Timothy J. Smyth, Esq.
58 N Street
Boston, MA 02127

Appearance for the Public Employee Retirement Administration Commission:

Felicia McGinniss, Esq.
5 Middlesex Avenue
Somerville, MA 02145

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner is not eligible to purchase pre-membership service because her pre-membership employer, a charter school, has not established a chapter 32 retirement system. The respondent retirement board was therefore correct to deny the petitioner's purchase request.

DECISION

Petitioner Cynthia Sarapas appeals from a decision of the Plymouth County Retirement System (board) denying her application to purchase credit for pre-membership service. The

appeal was submitted on the papers, 801 C.M.R. § 1.01(10)(c), and PERAC filed a brief. I admit into evidence exhibits marked A-G in DALA’s case file.¹

Findings of Fact

I find the following facts.

1. From 2003 to 2014, Ms. Sarapas worked at the Benjamin Franklin Classical Charter Public School in Franklin, MA. Her role there was “lunch coordinator/office assistant.” (Exhibits A-G.)

2. In 2014, Ms. Sarapas took a job with the Bridgewater Raynham Regional School District. She became a member of the Plymouth County Retirement System. (Exhibit G.)

3. In 2018, Ms. Sarapas applied to purchase credit for her pre-membership charter-school work. The board denied the application, and Ms. Sarapas timely appealed. (Exhibit G.)

Analysis

The length of a public employee’s creditable service is one of the variables that determines her retirement benefits. An employee ordinarily receives credit for her periods of work for Massachusetts governmental units while a member of Massachusetts retirement systems. G.L. c. 32, § 4(1)(a).

Specific sections of the retirement law permit employees to purchase credit for additional periods of work. Ms. Sarapas’s application and appeal appear to rely on a provision that authorizes purchases of service by:

Any member of any system who had rendered service as an employee of any governmental unit other than that by which he is presently employed,

¹ Exhibits A-E are attached to the board’s memorandum dated September 10, 2021. Exhibit F (originally marked A) is attached to the board’s amended memorandum dated September 27, 2021. Exhibit G (originally unmarked) is a compilation of documents attached to Ms. Sarapas’s letter dated August 2, 2021.

for any previous period during which the first governmental unit had no contributory retirement system . . . or in a position which was not subject to an existing retirement system . . . but which would be covered under the law now in effect

G.L. c. 32, § 3(5).

One of the requirements of this provision is that the employee’s prior service took place in a “governmental unit.” The board denied Ms. Sarapas’s application on the basis that a charter school is not a governmental unit. PERAC takes the same view. The board and PERAC also emphasize that Ms. Sarapas was not a teacher, and that the charter school statute makes teachers, not other employees, members of “the state teacher retirement system.” G.L. c. 71, § 89(y).

The views presented by the board and by PERAC are supported by persuasive precedents. *See Belanger v. MTRS*, No. CR-16-120 (DALA Feb. 08, 2019); *Flanagan v. MTRS*, No. CR-15-650 (DALA Aug. 11, 2017). The reasoning of these precedents is not airtight, however. *Belanger* emphasized that a charter school is a “body politic and corporate”—but so are many governmental units. *Compare* G.L. c. 32, § 1, *with* G.L. c. 121B, § 3; G.L. c. 161A, § 2; G.L. c. 23A App., § 1-3; G.L. c. 91 App., § 1-2. *Flanagan* relied on the statement in G.L. c. 71, § 89(y) that teachers, specifically, are within “the state teacher retirement system”; but that same statute also provides that “service in a charter school shall be creditable service,” *without* specifying that this rule is teacher-specific.

In any event, a separate obstacle dooms Ms. Sarapas’s appeal. The Appeals Court held recently that “a member of a retirement system who seeks to purchase pre-membership service from a different governmental unit . . . must demonstrate that the previous governmental unit has since established a G.L. c. 32 retirement system.” *Lydon v. Contributory Ret. Appeal Bd.*, 101 Mass. App. Ct. 365, 366 (2022). The reasoning behind this holding is that, under the pertinent statutory language, service may be purchased only if it “would be covered under the law now in

effect.” G.L. c. 32, § 3(5). As long as a prior employer continues to lack a chapter 32 retirement system, work for that employer would remain uncreditable under the law now in effect. *Lydon*, 101 Mass. App. Ct. at 368, 371.

It is undisputed that the charter school where Ms. Sarapas performed her pre-membership service still does not have a chapter 32 retirement system. Accordingly, *Lydon*’s holding bars her work at that school from being purchased under § 3(5).

Conclusion and Order

For the foregoing reasons, the board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate