

Commonwealth of Massachusetts
Contributory Retirement Appeal Board

Richard Shailor,
Petitioner-Appellant v.
Bristol County Retirement Board and
Essex Regional Retirement Board,
Respondents-Appellees.

CR-20-343

DECISION

Respondent Essex Regional Retirement Board (“ERRB”) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (“DALA”), reversing ERRB’s decision to deny Petitioner Richard Shailor’s request to purchase creditable service for his work as a reserve police officer.¹ The magistrate held a hearing on January 20, 2023, and admitted seventeen exhibits. The DALA decision is dated March 10, 2023. ERRB filed a timely appeal to us.

After considering the arguments presented by the parties and after a review of the evidence, we adopt the magistrate’s Findings of Fact 1-19 as our own and incorporate the DALA decision by reference. We affirm the DALA decision stated in the Conclusions of Law. Mr. Shailor, a current member of Bristol County Retirement System (“BCRS”), is entitled to credit for prior service as a reserve police officer that was performed in a different system pursuant to G.L. c. 32, § 3(5). Further, where he is purchasing credit for service as a reserve police officer under § 3(5), he is also entitled to enhanced credit pursuant to G.L. c. 32, § 4(2)(b) for this same service. *See Ryan v. Woburn Retirement Bd., et. al.*, CR-14-394 (DALA Nov. 25, 2016, *aff’d* CRAB July 23, 2018) (petitioner is entitled to enhanced credit

¹ Bristol County Retirement System also filed a Notice of Objection to the DALA decision on March 20, 2023, but withdrew its objection on March 29, 2023.

under § 4(2)(b) for his prior service as a reserve police officer that was performed in a different town but remanded the matter for reasons unrelated to this holding).

Background. Mr. Shailor is currently employed as a Sergeant with the Rehoboth Police Department within Bristol County.² Prior to this service in November 1993,³ Mr. Shailor served as a reserve police officer in the Town of Rowley within Essex County.⁴ In January 1997, Mr. Shailor began working full time in Rowley and became a member of the ERRB. A few months later, he became a full-time police officer in the Town of Rehoboth and enrolled as a member of the BCRB. Upon enrollment, he listed his prior employment with the Town of Wenham from December 1990 to October 1992 and with the Town of Rowley from October 1992 to April 1997.⁵ While BCRB and ERRB initiated communications in September 2001 regarding Mr. Shailor's prior employments, it was not until February 2019 that ERRB and BCRB discussed accepting liability for Mr. Shailor's prior service as a reserve police officer pursuant to § 3(8)(c).⁶ In April 2019, ERRB agreed to accept liability for Mr. Shailor's four years and four months of reserve police service rendered from September 28, 1992, to January 30, 1997, reserving the right to change its decision pending the outcome of the "*Gomes*" case.⁷ Following the decision in *Plymouth Ret. Bd. v. Contributory Ret. App. Bd.*, 483 Mass. 600 (2019), ERRB rescinded its prior acceptance of liability on July 27, 2020.⁸ Mr. Shailor then filed a timely appeal.⁹

² Joint Pre-Hearing Memorandum.

³ The DALA decision noted some inconsistencies regarding dates of service for Mr. Shailor's various employments. See FN 4 of the DALA decision at p.3.

⁴ Exhibits 9, 15.

⁵ Ex. 1, FF 12.

⁶ Ex. 8; FF 15.

⁷ The "*Gomes*" case refers to the case decided by the Supreme Judicial Court ("SJC") in *Plymouth Ret. Bd. v. Contributory Ret. App. Bd.*, 483 Mass. 600 (2019). Ex. 10.

⁸ ERRB contends that, during Mr. Shailor's employment with Rowley, he "was not eligible for membership, did not remit contributions, and was not wrongfully excluded during the period." Exhibit 11.

⁹ Finding of Fact 19 Respondent Exhibit 14.

Discussion. Credit for prior reserve police officer service is addressed in §§ 3(5), 4(2)(b), and 4(2)(c). At the center is § 4(2)(b),¹⁰ which serves as a “measurement scheme” offering “enhanced” credit for prior reserve police office service. Section 4(2)(c) governs the purchase of prior service from the same system to which the member presently belongs, while § 3(5) governs the purchase of prior service from a “governmental unit other than that by which he is presently employed.”¹¹ Among the persons eligible for credit under § 3(5) are “any member of any system who rendered service in any governmental unit other than that by which he is presently employed, in a temporary, provisional, or substitute position and who was excluded from membership by the rules of any board.” G.L. c. 32, § 3(5).¹²

The issue in this matter is whether Mr. Shailor is entitled to credit for his prior service as a reserve police officer for the Town of Rowley from November 1993 to January 1997,¹³ which

¹⁰ M.G.L. c. 32, § 4(2)(b) states in pertinent parts: “provided, further, that the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment...”

¹¹ *Briggs* concerned the interpretation of §4(2)(b) only because Mr. Briggs’ prior call firefighter service had been conducted in the same system of which he was currently a member under §4(2)(c), while Mr. Shailor’s service concerns the application of §3(5) to §4 due to his prior service in a different system than the system to which he currently belongs. *Briggs v. Worcester Reg. Ret. Sys.*, CR-20-384 (CRAB 2023).

¹² See *Shailor v. Bristol County Ret. Bd. and Essex Reg. Ret. Sys.*, CR-20-0343 (DALA March 10, 2023).

¹³ This period of prior permanent-intermittent police officer (PIPO) nonmembership service in Rowley occurred before the case of *MacAloney v. Worcester Regional Retirement Board & PERAC*, CR-11-19 (CRAB decision June 21, 2013, no further appeal taken). *MacAloney* required, for the first time, a payment by a member of services as a PIPO (or call firefighter) in order to be awarded the special augmented grant of service under G.L. c. 32, § 4(2)(b). See also PERAC Memo #11/2020 and #38/2020. Since Mr. Shailor’s service in Rowley predated *MacAloney*, liability for this service falls to Essex because that is where the service was performed. Essex should have credited Mr. Shailor with creditable service for his 1993 to 1997 service when he first established membership in Essex without requiring him to make a request to purchase it because the then-current understanding of the § 4(2)(b) five-year credit was that the credit did not require payment. *Ryan v. Woburn Retirement Bd. and Wakefield Retirement Bd.*, CR-14-394 (DALA after remand Mar. 19, 2021). The law on paying for the five-year credit changed with the SJC decision in the *Gomes* decision. The SJC held that the recipients of the five-year credit under § 4(2)(b) must pay retirement contributions for it based on the hours that they worked. If the recipient was merely on the list, as required by § 4(2)(b),

was performed in a different retirement system than from which he currently belongs, and whether he is entitled to the enhanced credit available for service as a reserve police officer pursuant to G.L. c. 32, § 4(2)(b). The magistrate determined that he was entitled to purchase his prior service as a reserve police officer for the Town of Rowley and that he was also entitled to the enhanced credit. He reasoned that Mr. Shailor's prior service as a reserve police officer qualifies as a "substitute, temporary, or provisional" position, allowing him such credit pursuant to § 3(5).¹⁴ He also concluded that Mr. Shailor is permitted enhanced credit for his prior reserve police officer service pursuant to § 4(2)(b) because once Mr. Shailor pays for his prior service, he is entitled to the same credit for such previous work as if such service was rendered by him in the same system to which he currently belongs.¹⁵

We agree with the magistrate that because his reserved police officer service was prior nonmembership service for a system other than the system he currently belongs, Mr. Shailor's eligibility to purchase and receive such credit stems from § 3(5) because a reserve police officer qualifies as a "temporary, provisional, or substitute position." We adopt and incorporate the magistrate's reasoning at pages 7-10 in reaching this conclusion.

1. *Purchase of prior nonmembership service from a different system.*

but did not work, then the recipient is not required to pay for the credit. *Plymouth Ret. Bd. v. Contributory Ret. App. Bd.*, 483 Mass. 600 (2019).

¹⁴ G.L. c.32, § 3(5) states in pertinent part: "...any member of any system who rendered service in any governmental unit other than that by which he is presently employed, in a temporary, provisional, or substitute position and who was excluded from membership by the rules of any board, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof, as he may elect, in no event aggregating more than twenty years, had such service been rendered in the governmental unit by which he is presently employed and in a position subject to the provisions of this chapter, or to corresponding provisions of earlier laws..."

¹⁵ G.L. c.32, § 3(5) states in pertinent part: "Upon the completion of such payments such member shall receive the same credit for such period of his previous intrastate service or portion thereof elected as would have been allowed if such service had been rendered by him in the governmental unit by which he is presently employed."

Mr. Shailor is seeking to purchase credit for prior nonmembership service rendered in a different system than which he currently belongs as noted in § 4(2)(a).¹⁶ His eligibility to purchase such prior service is governed by § 3(5). Persons eligible to purchase prior creditable service pursuant to § 3(5) include “any member of a system who rendered service in any governmental unit other than that by which he is presently employed, in a temporary, provisional, or substitute position and who was excluded from membership by the rules of any board[.]” Thus, the magistrate noted that for Mr. Shailor to purchase his prior Rowley service, § 3(5) requires that his work as a reserve police officer be a “temporary, provisional, or substitute position.” We agree that it does.

ERRB takes a different position, arguing that § 3(5) does not permit a permanent-intermittent police officer to purchase and receive credit for such service because a permanent-intermittent police officer does not qualify as a substitute position based on the plain language of the statute. Because he is not eligible to purchase or receive such credit under § 3(5), the enhanced credit pursuant to § 4(2)(b) is not available to him. ERRB asserts that the analysis CRAB used in *Santos v. Massachusetts Ret. Sys.*, CR-04-70 (CRAB Mar. 6, 2006), to exclude the purchase of creditable service for part-time teacher service under § 3(5), supports its position that the reserve police officer position is not a substitute position and therefore, is not eligible for credit under § 3(5).¹⁷ This argument is not compelling for the reasons discussed by the magistrate at pages 9 to the top of page 10. We agree with the magistrate that *Santos* is not applicable here because in *Santos*, the petitioner’s part-time employment on the school farm as a student was clearly not a “temporary, provisional, or substitute position.” Where the petitioner in *Santos* had a set part-time schedule, a reserve or “permanent-intermittent” police officer is a “substitute position” because a reserve police officer “substitutes” or fills in for permanent police officers only when they are unavailable. Reserve police officers, such as Mr. Shailor, hold the same responsibilities as the permanent

¹⁶ 4(2)(a) in pertinent part states: “Each such person shall also so file a detailed statement of any other service rendered by him as an employee prior to the date of his becoming a member for which he may claim credit as provided for in subdivisions (3) to (8) inclusive, of section three, or in paragraph (c) of this subdivision.”

¹⁷ ERRB argues that the “common and approved usage of the word ‘substitute’ as it relates to employment is ‘substitute teacher’” and that there has never been reference to a substitute police officer or substitute firefighter in the employment context. Appellant Memorandum of Objection at 10.

officers for whom they are filling in for but have no set hours or schedule beyond the time they fill in for permanent officers. The magistrate explained that *Santos* represents “at most . . . the proposition that part-time teachers are not eligible to purchase prior service from a different system.”¹⁸

We also agree with the magistrate that *Soojian v. Worcester Ret. Bd*, CR-05-876 (DALA Nov. 5, 1996) is more applicable to this matter and incorporate that discussion at page 10. A member is eligible under § 3(5) to purchase prior reserve or “permanent-intermittent” police officer service performed for a different system. The magistrate reasoned that “a permanent-intermittent police officer is a ‘substitute’ position: permanent-intermittent police officers substitute for permanent police officers who are unavailable due to sickness, vacation, or other leave.” *Id.* at 4. ERRB argues to the contrary that *Soojian* does not apply here to allow Mr. Shailor to purchase his prior reserve police officer service pursuant to § 3(5) because the magistrate failed to define “substitute.” ERRB contends that Mr. Shailor’s service as a permanent-intermittent police officer does not qualify as a “substitute” position under § 3(5), yet it does not offer a definition for “substitute.” Nevertheless, CRAB has permitted the purchase of prior nonmembership permanent-intermittent police officer service rendered in a system other than the system to which the member belongs through § 3(5).¹⁹ We see no reason to depart from this position. Accordingly, the magistrate correctly determined that Mr. Shailor is able to purchase credit for his prior service as a reserve police officer with Rowley under § 3(5).

2. *Enhanced credit under § 4(2)(b).*

In further support of its position, ERRB contends that the SJC in *Gomes* explained that § 4(2)(b) is a measurement scheme and that § 4(2)(c) – and only § 4(2)(c) - directs how § 4(2)(b) service is to be purchased. ERRB explained that the SJC in *Gomes* noted that the Legislature constructed section (c) to work together with section (b). Section (b) is silent regarding the payment of creditable service because it is only meant to be a measurement scheme. ERRB reasons that section (c) instructs on the payment, and since it only provides for the purchase of nonmembership service from the same system to which the member

¹⁸ DALA at 9.

¹⁹ *Ryan v. Woburn Ret. Bd., et al.*, CR-14-394 (CRAB July 2018); *Gomes v. Plymouth Ret. Syst. & PERAC*, CR-14-127, at *9 (DALA Feb. 5, 2016), *aff’d* (CRAB Nov. 18, 2016).

currently belongs, the enhanced benefit under section (b) would only be available for nonmembership service performed in the same system the member currently belongs. Accordingly, Mr. Shailor would not be entitled to the enhanced benefit.

Coincidentally, ERRB argues that since § 4(2)(b) only applies to prior non-membership service when rendered in the same retirement system, Mr. Shailor could only purchase for credit his prior reserve police officer time in Rowley when he was a member of ERRB. Once he left ERRB and became a member of BCRB, ERRB argues that Mr. Shailor was no longer eligible to purchase that time since he was no longer a member of the system in which the reserve police officer service was performed. Because § 4(2)(b) must be read in conjunction with § 4(2)(b) and § 4(2)(c) directs payment for permanent-intermittent police officer service rendered in the same system to which the member currently belongs, Mr. Shailor is not permitted the enhanced credit under § 4(2)(b) for his reserve police officer service in Rowley. We find that ERRB's application of the *Gomes* decision is flawed. Where *Gomes* involved whether payment for the prior permanent-intermittent police officer service performed for the same retirement system was required, this matter involves whether credit is permitted for prior nonmembership service for a system other than the one the police officer is currently a member. Therefore, relying on *Gomes* to deny Mr. Shailor credit for his prior reserve police officer service in Rowley would be improper.

Also, the plain language of § 4(2)(b) does not support ERRB's position. Section 4(2)(b) entitles reserve police officers to full-time creditable service for up to five years of service as a reserve officer. Permanent-intermittent or call firefighters, on the other hand, are entitled to five years of full-time service only if they are subsequently appointed permanent members of the fire department. In the plain language of the statute, there is no similar limitation on creditable service for reserve police officers. "[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." *Commonwealth v. Hatch*, 438 Mass. 618, 622 (2003) (quoting *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001)). "We interpret the language of the statute 'in accordance with its plain meaning, and if the language is clear and unambiguous, it is conclusive as to the intent of the legislature,'" *New England Auto Max, Inc. v. Hanley*, 494 Mass. 87, 91 (2024) (Statutes are to be interpreted in accordance with their plain words). Had the Legislature wanted to limit the enhanced benefit to where the police

officer becomes a permanent member of the same department the reserve police officer service was performed, it would have so specified as it did for reserve fire fighter service.²⁰ Cf. *Commonwealth v. Nascimento*, 479 Mass. 681, 684, 98 N.E.3d 188 (2018) (“The Legislature’s silence on a subject cannot be ignored,” especially where it had opportunity to add language at issue [citation omitted]).

CRAB has held that members are permitted enhanced credit under § 4(2)(b) without requiring that the police officer become a permanent member of the department in which the prior nonmembership service was performed. In *Ryan v. Woburn Ret. Bd., et al.*, we held that petitioner, a member of the Wakefield Retirement System, was entitled to purchase five years of creditable service under § 4(2)(b) for his service as a reserve police officer in Woburn. CR-14-394 (CRAB July 23, 2018) *1. We concluded that the plain words of G.L. c. 32, § 4(2)(b) do not limit the availability of up to five years' full-time credit for time when a reserve police officer "was on his respective list and was eligible for assignment to duty" to cases where the reserve officer later became a permanent member of the same department. *Id.* We continue to apply this proposition here. The Legislature, which is presumed to be aware of CRAB's interpretation of the statute, has not amended this provision to reflect otherwise.²¹ In fact, a reading of the statutory amendments to § 4(2)(b) evinces this conclusion.

After first enacting the benefit for reserve police officers in 1964, the Legislature amended that section five times.²² Each time the Legislature amended the statute, it did not

²⁰Section 4(2)(b) also states in pertinent part: “provided, however, that such service as a permanent-intermittent or call fire fighter shall be credited only if such fire fighter was later appointed as a permanent member of the fire department.”

²¹ See *Rosing v. Teachers' Ret. Syst.*, 458 Mass. 283, 294 (“Mindful of [CRAB’s] long-standing interpretation of [the provision of c. 32 at issue], we conclude that any change in interpretation is for the Legislature to address.”).

²² In 1964, the Legislature created a special benefit for certain public safety part-time workers. Chapter 125 of the Acts of 1964 granted reserve police officers and reserve firefighters up to five years of full-time creditable service for their part-time reserve duty, regardless of the local retirement board's part-time service regulations or policies. Later in 1964, the Legislature added call firefighters to the list of positions entitled to the full-time benefit, but at the same time adding the limitation that call firefighters were entitled to the service "only if such call firefighter was later appointed as a permanent member of the fire department." Acts 1964, c. 738. The Legislature did not make reserve police officers and reserve fire fighters subject to that limitation. *Id.* In 1965, the Legislature again amended the list of those entitled to the full-time service by adding permanent-intermittent police officers. Acts 1965, c. 73.

require reserve police officers to take a full-time position within the same department. This legislative history supports the conclusion that the Legislature intended to provide the five years of full-time creditable service to reserve police officers without requiring their subsequent appointment to a full-time position in the police department.

Moreover, we rely on the intent of the Legislature in applying creditable service to certain reserve or permanent-intermittent public safety employees reflected in § 4(2)(b), which we detailed in *MacAloney* and affirmed in *Briggs*. As we stated in *MacAloney*, “in enacting § 4(2)(b), the Legislature intended that certain public safety employees “receive more than actual service rendered in light of the hazardous nature of their work and the time during which they may be available for work but not actually called out.”²³ This policymaking is within the purview of the Legislature. *Lydon v. Contributory Ret. Appeal Bd.*, 101 Mass.App.Ct. 365 (2022) (There is no indication of Legislature objecting to CRAB’s interpretation of section 3(5) in denying petitioner’s request to purchase service credit with MassDevelopment consistent with the statute’s purpose of putting government employees on equal footing). Mr. Shailor’s case is treated no differently under these circumstances.

Accordingly, looking at the text of § 3(5), a member of a retirement system who purchases credit for prior service “shall receive the same credit for such period of his previous intrastate service or portion thereof elected as would have been allowed if such service had

The Legislature did not subject permanent-intermittent police officers to the limitation either. *Id.* In 1966, the Legislature rewrote § 4(2)(b). The list of members entitled to full-time service now included five positions: reserve or permanent intermittent police officers and reserve, permanent-intermittent and call fire fighters. As before, call firefighters, and now permanent intermittent firefighters had to have been appointed permanent members of the fire department to be entitled to retirement credit for full-time service. Reserve or permanent-intermittent police officers and reserve fire fighters did not need a full-time appointment. Acts 1966, c. 509, § 1. This part of the statute remained undisturbed for more than twenty years. In 1988, the Legislature enacted an additional opt-in provision that entitles reserve or permanent-intermittent police officers and reserve, permanent-intermittent and call fire fighters to one day of full-time creditable service for each day subsequent to the five years of full-time service that the member was assigned to and performed duty. G.L. c. 32, § 4(2)(b) (third sentence); Acts 1988, c. 172. This 1988 benefit similarly excludes permanent-intermittent and call fire fighters if they are not later appointed as permanent members of their departments. *Id.* Lastly, in 1995, the Legislature enacted another opt-in provision, G.L. c. 32, § 4(2)(b-1/2), which credits permanent-intermittent and call fire fighters - the positions subject to the limitation - with all of the benefits provided for in § 4(2)(b) without later having to be appointed as permanent members of their departments. Acts 1995, c. 171, § 1.

²³ *MacAloney v. Worcester Reg. Ret. Sys.*, et al., CR-11-0219 (CRAB, June 21, 2013).

been rendered by him in the governmental unit by which he is presently employed.” G.L. c. 32, § 3(5). Because we agree with the magistrate, as discussed above, that his permanent-intermittent police officer service qualifies as a “substitute position” pursuant to § 3(5), Mr. Shailor is permitted the same credit as if such service had been rendered by him in the governmental unit by which he is presently employed upon payment of such credit. Thus, once he purchases the credit for such service, we look to determine the credit Mr. Shailor would be entitled to had his prior service been with BCRB, where he is presently a member. The DALA magistrate noted that applying this here, the amount of Mr. Shailor’s credit is determined by § 4(2)(b). This provision allows up to five years of credit for reserve police officers. Applying this reasoning, the magistrate determined, and we agree, that Mr. Shailor is entitled to that enhanced credit here.²⁴

Conclusion. The DALA decision is affirmed. Mr. Shailor is entitled to purchase creditable service for his prior service as a permanent-intermittent police officer service rendered in Rowley pursuant to § 3(5) and is entitled to the enhanced benefit under § 4(2)(b)’s measurement scheme. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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²⁴ Indeed, the DALA magistrate noted that it would be “odd that the Legislature gave reserve police officers an enhanced credit only when they purchased prior service from the same system for which they presently work but denied then any credit when they delayed seeking to purchase that prior service until after they begin working in a different system. DALA decision. *Shailor v. Bristol County Ret. Bd. and Essex Reg. Ret. Sys.*, CR-20-0343 at 6, (DALA March 10, 2023).

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Date: February 5, 2025