COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

RICHARD STANTON,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT

Respondent-Appellee.

CR-18-399

DECISION

Petitioner Richard Stanton appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), upholding the decision of respondent State Board of Retirement (SBR) to apply the anti-spiking provision in its computation of his retirement allowance. Because neither party wished to call any witnesses to this appeal, this matter was decided on the papers pursuant to 801 C.M.R. 1.01(10)(c). The DALA magistrate admitted exhibits, identified as A – K attached to Mr. Stanton's pre-hearing memorandum; 1-8 attached to SBR's pre-hearing memorandum; and S2-S5 attached to Mr. Stanton's Supplemental Memorandum. The magistrate's decision is dated August 20, 2021. Mr. Stanton filed a timely appeal to us.[1]

After considering the arguments presented by the parties and after a review of the record, we adopt the DALA magistrate's findings of fact 1 – 9 as our own and incorporate the DALA decision by reference. Although this is a challenging case, we agree with the DALA magistrate that the SBR properly applied the anti-spiking provision of G.L. c. 32, § 5(2)(f) in the calculation of Mr. Stanton's retirement allowance. We add the following comments to address the

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[1] SBR initially challenged the timeliness of Mr. Stanton's appeal, but subsequently retracted this argument. See DALA decision at *5.

arguments made by Mr. Stanton, who argues that he is not subject to the anti-spiking provision because he had undergone a bona fide change in position. Alternatively, Mr. Stanton argues that the anti-spiking provision of G.L. c. 32, § 5(2)(f), which was established under Chapter 176 of the Acts of 2011, applies to individuals who became members of the MSERS subsequent to its enactment on November 16, 2011, and because he was a member of MSERS prior to its enactment, it does not apply to him based on the protections afforded to him under Section 25(5), the contractual clause.

Discussion. Under G.L. c. 32, § 5(2)(f), the amount of regular compensation that exceeds the average of regular compensation received in the 2 preceding years by more than 10 percent is excluded in determining the average annual rate of regular compensation. This does not apply to an increase in the annual rate of regular compensation that results from an increase in hours of employment, from overtime wages, from a bona fide change in position or from modifications in salary or salary schedule negotiated for bargaining unit members under Chapter 150E. This provision is known as the "anti-spiking" provision, which seeks to prevent members preparing to retire from raising his or her earnings in the last few years to earn a larger pension than intended by the system.

In this instance, Mr. Stanton was employed in the capacity of Deputy Chancellor of Finance and Administration for the University of Massachusetts Medical School ("UMass"), which spanned from November 1977 until June 28, 2008 when he left his position for another position at Washington University. [2] In this senior position, he was involved in the medical school's finances, human resources, construction projects and intellectual-property licensing.[3] Mr. Stanton filed his retirement application as a deferred retiree with SBR on October 7, 2017 with an effective date of retirement of January 8, 2018.[4] In calculating his retirement allowance, the relevant years included 2006-2008. Mr. Stanton's compensation for 2006 exceeded his average annual compensation in the two preceding years by approximately 15%. For 2007, his compensation exceeded the average annual compensation in the two preceding years by 13%.[5] Based on these computations, SBR applied the anti-spiking provision of G.L. c. 32, § 5(2)(f) in

[2] Findings of Fact 1, 5; Exhibits A, E, G, I, J, 3.
[3] FF 2; Ex. C, D, E, F.
[4] FF 6; Ex. A, 3.
[5] FF 6, 7; Ex. A, 3, 6, 7.

the calculation of his retirement allowance. This resulted in downward adjustments to his average annual compensations for 2006 and 2007 by $5,000.[6] Based on SBR's calculations, Mr. Stanton was to receive a monthly retirement benefit of $12,950.10 beginning June 30, 2018.[7] Mr. Stanton disagreed with the calculation, asserting that he is entitled to a higher benefit.

The magistrate concluded that Mr. Stanton did not undergo a bona fide change in position, and therefore, he did not fall within the exceptions of Section 5(2)(f). [8] Mr. Stanton argues to the contrary that he did, in fact, undergo a bona fide change in position, and is therefore, exempt from the application of the anti-spiking provision in the calculation of his retirement allowance.[9]

G.L. c. 32, § 5(2)(f) was enacted on November 16, 2011 as a mechanism by which to curtail "spiking" – that is to artificially increase a member's salary disproportionately in the final years prior to retirement in order to receive a higher retirement allowance. Using a mathematical calculation to determine whether the regular compensation for any year violates this provision, the retirement board calculates the percentage increase of that year from the average of the regular compensation from the previous two years. G.L. c. 32, § 5(2). Here, SBR correctly recorded Mr. Stanton's annual salaries, correctly calculated the average salaries of the various years in question, and correctly calculated that Mr. Stanton's salary in his last year of employment exceeded the average salary of the previous two years by more than ten percent.[10] Because Mr. Stanton's increases in compensation for the years in question failed to qualify as an exception, SBR applied the anti-spiking provision in the calculation of his retirement allowance. *Id*.

Bona fide change in position exception

Mr. Stanton argues that he is exempt from the application of the anti-spiking provision in § 5(2)(f) because he had a bona fide change in position. He stated that the raises he received in 2006 and 2007 were not done in contemplation of retiring but was meant to maintain his employment with UMass through 2012. Mr. Stanton asserted that during the periods in question, he was asked to take on additional duties that changed his position. Those duties were part of the

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[6] FF 7; Ex. A, 6, 7.
[7] Ex. 7.
[8] DALA decision at *5-6.
[9] Petitioner Memorandum at * 4-6.
[10] FF 7, 8; Ex. A, 6, 7, B, C.

change in leadership and the goals and direction of UMass to make the medical school competitive.[11]

Our review of the record demonstrates that there is insufficient evidence to establish that Mr. Stanton had a bona fide change in position. There is no doubt that the tasks undertaken by Mr. Stanton benefited UMass considerably. We, nevertheless, agree with and defer to the magistrate's determination, that Mr. Stanton did not have a bona fide change in position. *Vinal v. Contributory Retirement Appeal Bd*., 13 Mass. App. Ct., 85, 99-100 (1982). We incorporate that aspect of the DALA decision.[12] There is no indication that Mr. Stanton was not deserving of his pay raises. However, the anti-spiking provision makes no exception for even deserved raises that are not explicitly excluded from § 5(2)(f)'s reach. Section 5(2)(f) deals in broad categories, declining to inquire into an individual member's subjective intentions and personal history in the interest of administrability. See *DeGiacomo v. State Board Retirement*, CR-20-116 at *7.

While Mr. Stanton argues that his leading role in taking on projects to improve the fiscal outlook and reputation of UMass was a bona fide change in position, we disagree. The work Mr. Stanton performed in the expansion and oversight of the Massachusetts Biologics Laboratories (MBL), the acquisition and revenue expansion goals with the Worcester City Campus Corporation, and the agreement with the Serum Institute of India in developing the rabies vaccine for use in humans were all within his role as Deputy Chancellor of Administration and Finance. This role involved taking actions to make UMass more profitable, and elevate the school's status, to ultimately attract quality students and personnel and elevate the school's ranking among medical schools. The magistrate described that, rather than a change in position, what Mr. Stanton "experienced, instead, was a productive stretch in an already top-level position"[13] and that the projects he oversaw "were well within the 'sphere' of Mr. Stanton's preexisting role."[14] While Mr. Stanton went to great lengths to make these programs successful, we agree with the magistrate and conclude that these duties did not constitute a bona fide change in position.

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[11] See FN 8.
[12] DALA decision at *5-6.
[13] DALA decision at 5.
[14] DALA decision at *6.

Mr. Stanton also argued that assisting the President with the administration and financial obligations of UMass after the Chancellor decided to stepdown from his position and searching for his replacement to be a bona fide change in position. We do not deem taking on these temporary duties during UMass's transition period of new leadership and assisting with the administration and financial obligations of UMass during the Chancellor's absence to be a bona fide change in position. Furthermore, the memorandum from Chancellor Lazare requesting the approval of Mr. Stanton's raises to ensure a five-year employment contract did not describe a bona fide change in position. Ensuring Mr. Stanton's employment in the interest of providing new campus leadership the stable organization needed to manage early executive challenges with Chancellor Lazare's decision to step down[15] does not qualify for the bona fide change in position exception.

The magistrate distinguished this matter with that in *Furst v. State Bd. of Retirement*, CR-14-521 (DALA., June 29, 2018), where Furst (formerly Associate Dean of Academic Affairs) was promoted to the position of Senior Associate Vice President for Academic Affairs. Thereafter, her salary increased by 12.64% from the average compensation of the previous two years. The Chief Administrative Magistrate noted that although the title did not appear on Ms. Furst's paycheck, because it was a new position, the employer acknowledged the change of her working title. He found that Ms. Furst's increase in job duties, including her oversight of the college library and her involvement with the compass program and the plans for a new building, sufficient to constitute a bona fide change in position. Thus, Furst's pay increase fell under the bona fide change in position exception.

In contrast to *Furst*, Mr. Stanton's title of Deputy Chancellor for Finance and Administration remained the same. The oversight of the MBL, the acquisition and revenue expansion of the Worcester City Campus Corporation and working with the Serum Institute of India to develop the rabies vaccine did not change his essential duties or functions as Deputy Chancellor for Finance and Administration. He undertook these duties to expand and make programs profitable at UMass. As the DALA decision indicated, Mr. Stanton had a productive stretch and by 2003, he was already the Chancellor's "strategic right arm," who was "immersed in the medical school's most important administrative projects." While Mr. Stanton's duties

[15] Exhibit E.

were significant, they were mere extensions of his position and therefore, were not a bona fide change in position.

Contract Clause protection of § 25(5)

Because we determined that Mr. Stanton does not meet an exception under Section 5(2)(f), Mr. Stanton's present challenge turns on whether the reason underlying the application of the anti-spiking provision resulting in a reduction in his retirement allowance is due to legislative interference with his contractual expectations in the retirement system in a manner that contravenes G.L. c. 32, § 25(5), and the associated case law.[16] We address this question below.

The primary problem with Mr. Stanton's argument is that the anti-spiking provision was in effect at the time he filed his retirement application. *See* St. 2011, c. 176, § 18 (adding section (f) to Section 5(2)). And significantly, when the Legislature added this section, it explicitly stated that it "shall apply only to members retiring on or after April 2, 2012." *See* St. 2011, c. 176, § 65 ("Section 18, 31, and 49 shall apply only to members retiring on or after April 2, 2012") (emphasis added). Here, there is no dispute Mr. Stanton retired from MSERS after April 2, 2012.[17]

We now turn to the question presented-whether the application of the anti-spiking provision resulting in a reduction in Mr. Stanton's retirement allowance is due to legislative interference with his contractual expectations in the retirement system in a manner that contravenes G.L. c. 32, § 25(5), and the associated case law. From his perspective, the anti-spiking provision of Section 5(2)(f) should not apply in calculating his retirement allowance because he is entitled to retirement benefits at whatever level was in effect at the start of his employment without diminution. In making this argument, Mr. Stanton emphasizes his view that he had vested in MSERS before the Acts of 2011 was enacted.

For the underlying reasons discussed in *Pereira v. State Bd. of Retirement and Fall River Retirement Syst*., CR-16-558 *7-15 (CRAB June 2023), we agree with the magistrate that SBR

[16] The interference he cites is in St. 2011, c. 176, § 18, which added the anti-spiking provision, discussed herein.

[17] Mr. Stanton filed his application for retirement on October 7, 2017 with an effective retirement date of January 8, 2018. Ex. A, 3; FF 6.

properly applied the anti-spiking provision in calculating Mr. Stanton's retirement allowance.[18] We incorporate by reference our discussion in *Perreira* at *7-15.

In *Perreira*, we discussed the standard for whether a modification to retirement benefits contravenes G.L. c. 32, § 25(5),[19] is set forth in *Opinion of the Justices*, 364 Mass. 847 (1973). In that decision, the Supreme Judicial Court held that the government may not deprive members of the "core of … reasonable expectations" that they had when they entered the retirement system. *Op. of the Justices*, 364 Mass. at 862; *see State Bd. of Ret. v. Woodward*, 446 Mass. 698, 706-07 (2006) (Section 25(5) "create[es] something less than a full contractual relationship, but one that protects the core of a member's reasonable expectations of vested pension rights against the gratuity theory of government pensions that was utilized successfully in the mid-1950's in avoidance of claims of impairment of contract under the State and Federal Constitutions) (internal quotations omitted). We deemed in *Perreira* that such an action is "presumptively invalid … unless saved by the [Commonwealth's] reserved police powers." *Op. of the Justices*, 364 Mass. at 864. *See id*. at 862 (permitting "subtractions [from the core of reasonable expectations that] can claim certain practical justifications."); *see also Herrick v. Essex Reg'l Ret. Bd.*, 465 Mass. 801, 806 (2013) (same). And even then, any such modification "must be reasonable and bear some material relationship to the theory of a pension system and its successful operation." *Madden v. Contributory Ret. App. Bd.*, 431 Mass. 697, 701 (2000). We applied a balancing test in *Perreira*, which we also apply here.

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[18] See *Pereira* at * 4-5 and 9.

[19] Section 25(5) provides:

> The provisions of sections one to twenty-eight, inclusive, and of corresponding provisions of earlier laws shall be deemed to establish and to have established membership in the retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits, and no amendments or alterations shall be made that will deprive any such member or any group of such members of their pension rights or benefits provided for thereunder, if such member or members have paid the stipulated contributions specified in said sections or corresponding provisions of earlier laws.

G.L c. 32, § 25(5).

1. We consider first whether Chapter 176 of the Acts of 2011 interfered with Mr. Stanton's reasonable expectations in the retirement system. We find that as applied to him, the addition of the anti-spiking provision, § 5(2)(f), amounted to interference.

The anti-spiking provision amounted to an interference with Mr. Stanton's reasonable expectations in the retirement system because but for the enactment of this provision, there would not have been downward adjustments to his average annual compensations for 2006 and 2007 for the purpose of calculating his retirement allowance.[20] Thus, Mr. Stanton's retirement allowance would have been higher had the anti-spiking provision not been applied in his circumstance. In *Madden*, the SJC held that a reduction like this interferes with a member's expectations in the retirement system. 431 Mass. at 701 (Member "can claim a more general contractual expectation that all retirement regulations in effect when she entered the system would be applied to her in accord with the law," even if they, in operation, allowed a full year of credit for part-time-service.").[21] As such, we must consider whether the Legislature's reason for enacting the anti-spiking provision bore a reasonable and material relationship to the theory of the pension system and its successful operation, or is otherwise a manifestation of the state's "police powers." *Id*.

2. Having found that the enactment of the anti-spiking provision amounted to interference with Mr. Stanton's reasonable expectations in the retirement system, we turn to whether the Legislature's reason for enacting the anti-spiking provision bore a reasonable and material

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[20] FF 6, 7, 8; Ex. A 3, 6, 7.

[21] In so holding, we note that some circumstances unique to Mr. Stanton's claim diminish the overall strength of his argument that the Acts of 2011 interfered with his core of reasonable retirement expectations. For instance, when we look specifically at Mr. Stanton's situation, we find it significant that he did not file his retirement application with the MSERS until October 7, 2017 with an effective date of retirement of January 8, 2018. FF 6; Ex. A, 3. This five-plus year delay suggests the possibility that Mr. Stanton made a conscious choice at the time to forgo the benefits that would have been available to him had he retired before April 2, 2012, and to instead, continue as a deferred retiree. Where a member makes such a conscious choice, CRAB looks more skeptically at the reasonableness of a subsequent claim that they should not be subject to retirement provisions years after they have been enacted. *See Madden*, 431 Mass. at 703-04 ("[Board] can, consistent with [member's] contractual expectations, prorate her part-time service worked after the promulgation of [regulation permitting prorating of part-time teaching service].").

relationship to the theory of the pension system and its successful operation or was otherwise a permissible exercise of its reserved police powers. *Id.* We find that it did, for reasons similarly discussed in *Perreira*, which we incorporate here by reference. *Perreira*, CR-16-558, at *7-11.

First, we find it significant that Chapter 176 of the Acts of 2011 was aimed at the continued successful operation of the pension system. *See Op. of the Justices*, 364 Mass. 847, 862 (Where there is interference, "[a]ttention should then center on the nature of these justifications in the light of the problems of financing and administering these massive plans under changing conditions."). Chapter 176 of the Acts of 2011 was part of "[t]he Governor's Phase Two pension reform legislation proposing additional systemic reforms necessary to ensure the sustainability and credibility of [our] pension system." FY 2011 House 2 Budget Recommendation: Issues in Brief.[22]

In January 2011, Massachusetts, along with many other states, was confronted with escalating pension costs, which was a major burden on the budget. Massachusetts was facing $20 billion in unfunded costs.[23] Even after initiating pension reforms in 2009, the State Retirement System still had unfunded actuarial liability in 2010 of $5.843 billion and $4.998 billion in 2011. *See* PERAC Pension News No. 31, August 2012 at 3. As we deemed in *Perreira,* this issue was the situation the SJC was referring to in *Opinion of the Justices* when it explained that although "the maintenance of a retirement plan is heavily burdening a governmental unit has not itself been permitted to serve as justification for scaling down of benefits … *no case presenting proof of a catastrophic condition of public finances has been put*." 364 Mass. at 864 (emphasis added). *See id*. at 863 n.18 (Police power can be used to "overrid[e] the precise terms of a retirement plan in order to achieve actuarial soundness or the like.").

Second, as in *Perreira*, we find significant that in this time of severe fiscal crisis the Legislature, when enacting Chapter 176 of the Acts of 2011, adhered to the core expectation that pensionable earnings should not be increased in the last years of employment to earn a larger pension than intended. *See Op. of the Justices*, 364 Mass. at 853-54 ("digest[ing]" "[t]he arrangements concerning retirement for superannuation"); *Rosing v. Tchrs.' Ret. Syst*., 458 Mass.

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[22] The Budget Navigation Guide for FY 2011 can be found at: https://budget.digital.mass.gov/bb/h1/fy11h1/prnt_11/exec_11/pbudbrief5.htm.htm.

[23] "Patrick proposal would reshape public pension," The Boston Globe, Michael Levenson, Jan. 19, 2011.

283, 285 (2010) ("[P]ublic employees in the Commonwealth … earn a retirement benefit in exchange for their services."). Credit for time served and individual contribution are two of the three core characteristics of a Chapter 32 retirement system; the third being public funding of the employer's share of the retirement allowance. *See Op. of the Justices*, 364 Mass. at 854-55. A pension plan that bases benefits on only a few years of earnings generates a strong incentive for workers to raise earnings in those last years to earn a larger pension than intended by the system. Just as in the reforms undertaken in 2009, this plan as a whole aimed at "fundamentally chang[ing] retirement benefits for thousands of future teachers, police officers, firefighters, and other public workers, in an attempt to save $5 billion over the next 30 years." (Michael Levenson, *Patrick proposal would reshape public pensions*, The Boston Globe, January 19, 2011 at B1). This reform was aimed at closing a projected $1.5 billion budget gap the state was facing by allowing Massachusetts until 2040, instead of 2025, to pay off its long-term pension debt. This delay of 15 years would help the state avoid a $1 billion payment to the pension system that would have come due in July. *Id*.

"The governor's plan, in addition to changing future employee benefits, would immediately close what he said were several loopholes." *Id*. One of them, known as "spiking," involved employees nearing retirement who are suddenly given a new job title with a dramatic boost in salary. "Under Patrick's plan, they would have to prove that their promotions were warranted." *Id*. PERAC reinforced support for this legislation, stating that it would "strengthen our pension laws, protect the defined benefit plan for public employees, and save public money. The extension of our pension funding schedule to 2040 in FY12 budget makes these adjustments, worth over $5 billion in savings, both necessary and reasonable." *See* PERAC Pension News#29, February 2012 at 5. *See also* FY2011 House 2 Budget Recommendation: Issues in Brief ("Providing for a fair, fiscally sustainable and publicly credible pension system for public employees is in the best interests of the Commonwealth, taxpayers and public employees. Reform legislation proposes additional systemic reforms necessary to ensure the sustainability and credibility of our pension system"). Given all of this, we find the enactment of the anti-spiking provision in Chapter 176 of the Acts of 2011 falls far enough on the periphery of the core retirement expectations that modifications discouraging artificially padding compensation in the years leading up to retirement to increase one's retirement benefit were permissible under these unprecedented fiscal circumstances. *See Perreira*, *supra*.

Third, given the severity of the fiscal crisis and the remedial nature of the reforms being enacted, we also find it significant here that the Legislature made a conscious policy choice on which system participants would be subject to the various pension reforms and declared that the Act would be applied to "members retiring on or after April 2, 2012." *See* Ste. 2011, c. 176 at § 65 ("Section 18, 31 and 49 shall apply only to members retiring on or after April 2, 2012."). In exercising its police powers, we also find it significant that while drafting the Acts of 2011, this policy choice was deemed to "*apply to existing employees*" as noted in the FY2011 House 2 Budget Recommendation: Issues in Brief.[24] The portion introducing the limit on annual increases on retirement earnings as part of the anti-spiking provision reflected: "*This change would apply to existing employees*." Accordingly, we find that the Legislature had weighed the competing options and determined, in this instance, that the circumstances warranted superseding the provisions of G.L. c. 32, § 25(5), to reduce the incentive for workers to raise earnings in years just prior to their retirement to earn a larger retirement benefit than intended by the system, at least to individuals who had yet to retire, in light of the unprecedented economic circumstances of the Commonwealth at the time. *See Madden*, 431 Mass. at 702-03 ("The existence of vested contractual rights *does not preclude reasonable modifications of the pension plan prior to the employees' retirement*. Reasonable modifications are often necessary … to maintain the integrity of the system in order to carry out its beneficent purpose.") (internal quotation omitted) (emphasis added); *Op. of the Justices*, 364 Mass. at 863 ("[I]t is basic that the state reserves police powers that may in particular predicaments enable it to alter or abrogate even conventional contractual rights."); *see also Kern v. City of Long Beach*, 29 Cal. 2d 848, 855 (1947) (quoted approvingly in *Op. of the Justices*, 364 Mass. at 863 n. 17) ("[A]n employee may acquire a vested contractual right to a pension but that right is not rigidly fixed by the specific terms of the legislation in effect during any particular period in which he serves. *The statutory language is subject to the implied qualification that the governing body may make modifications and changes in the system.* The employee does not have a right to any fixed or definite benefits, but only to a substantial or reasonable pension. There is no inconsistency therefore in holding that he has a vested right to a pension but that the amount, terms, and conditions of the benefits may be altered.") (emphasis added).

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[24] *See* FN 26.

Furthermore, subsequent to the enactment of Chapter 176 of the Acts of 2011, PERAC in providing guidance on the anti-spiking provisions in its Memorandum of June 21, 2012, stated that it is "applicable to anyone retiring on or after April 2, 2012."[25] "The interpretation of a statute by the agency charged with primary responsibility for administering it is entitled to substantial deference." *Moore v. Boston Retirement Bd.*, CR-12-73, at *9 (DALA Oct. 9, 2015) (citing *Alves 's Case*, 451 Mass. 171, 173 (2008)). The Appeals Court in *Barnstable Cty. Ret. Bd. v. Contributory Retirement Appeal Bd.*, 43 Mass. App. Ct. 341, 345 (1997), explained that "PERA ha[s] considerable leeway in interpreting a statute it is charged with enforcing." PERAC's memorandum is an "interpretive" rule and is entitled to persuasive weight. *See Grimes v. Malden Retirement Bd*., CR-15-5 (CRAB Nov. 2016) (*quoting Skidmore v. Swift & Co*., 323 U.S. 134, 140 (1944).

Fourth, we find it significant that the Legislature provided members an opportunity to preserve the retirement benefits they held prior to the enactment of Chapter 176 of the Acts of 2011. While the Acts of 2011 was enacted on November 16, 2011, any member who wished to prospectively preserve his or her retirement benefits impacted by the Acts of 2011 had until April 1, 2012, more than four months, to retire. PERAC reinforced this point in its note of December 8, 2011, that the anti-spiking provision applies to any member retiring on or after April 2, 2012. PERAC Memorandum #36, 2011 ("This section applies to any member retiring on or after April 2, 2012."). *See also* PERAC Pension News, No. 28, October 2011 at 3 (Senate bill No. 2018 "Provides anti-spiking provisions for all employees after 1/1/12.").[26] PERAC followed this memorandum with a memorandum on June 21, 2012, providing substantive guidance specifically on the application of the anti-spiking provision along with several examples. *See* PERAC Memorandum #38, 2012. We recognize that four months, for some, is a

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[25] "On November 18, 2011 Governor Patrick signed Chapter 176 of the Acts of 2011 into law, reforming and modernizing the pension laws for public employees in the Commonwealth. Sections 14 and 18 of this law establish anti-spiking provisions relating to a member's regular compensation and potentially limit the amount of regular compensation that can be used in calculating his or her retirement allowance. *These two sections are applicable to anyone retiring on or after April 2, 2012*." (PERAC Memorandum #38, June 21, 2012).

[26] Senate bill No. 02018 can be found at: http://www.malegislature/gov/Bills/BillHtml/17360?generalCourtId_1.

short timeframe to make decisions regarding retirement. Nevertheless, any assessment of the length of time must be considered in conjunction with the circumstances surrounding the Legislature's decision, which included, for this matter, incentives to realize a larger pension than intended, the ongoing unprecedented fiscal crisis, and the Legislature's looming financial responsibilities for the fiscal year.

Lastly, as in *Perreira*, Mr. Stanton is essentially asking us to use G.L. c. 32, § 25(5), to second-guess an extremely difficult policy decision the Legislature made 12 years ago during a time of unprecedented fiscal crisis. For the same reasons that we discussed in *Perreira* at *14, we believe that CRAB should use special caution under these circumstances. As we noted in *Perreira*, special caution should be used in situations where (a) the legislative action potentially applied to numerous individuals, (b) undoing that action would pose substantial administrative and fiscal consequences for retirement boards across the Commonwealth, and (c) individuals like Mr. Stanton could have filed a lawsuit contemporaneous with the passage of Chapter 176 of the Acts of 2011. *See*, *e.g.*, *Perreira v. State Bd. of Retirement and Fall River Retirement Syst.,* CR-16-558 at *14 (CRAB June 8, 2023).

With respect Mr. Stanton's constitutional claims, DALA (and CRAB) lack authority to provide equitable relief in contravention to the retirement laws. See, e.g., *Early v. State Bd. of Ret*., 420 Mass. 836 (1995) (Board had no authority to expand meaning of "member" in G.L. c. 32, § 1, as directed to by judicial order in divorce proceeding); *Petrillo v. Public Employee Ret. Admin*., CR-92-731, Decision on Reconsideration (Contributory Ret. App. Bd., Oct. 22, 1993) (CRAB has no authority to employ equitable remedy in face of specific contrary statutory language).

In sum, because the Legislature had ample justification for its actions, with its opinion buttressed by considerable awareness of, and investigation into, the facts, we find that the Legislature's multifaceted means of solving an unprecedented policy matter in 2011 is entitled to considerable respect from CRAB. *See Op. of the Justices*, 364 Mass. at 864-65 ("[T]he Legislature's opinion that justification does in fact exist for the modification of a plan is entitled to judicial respect; especially so if that opinion is buttressed by prior formal investigation of the facts."). While we do not decide in this decision that all legislative reforms adopted in 2011 will outweigh a member's reasonable expectations under Section 25(5), we find that, given the

considerations we have discussed herein, the circumstances excuse the interference with Mr. Stanton's reasonable retirement expectations in this case.

Conclusion. The DALA decision is affirmed.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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