

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Cynthia Thomas,
Petitioner,

Docket No.: CR-25-0233

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Cynthia Thomas (pro se)

For Respondent: Marko Samardzic, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a state employee, was not entitled to purchase retirement credit for a period of part-time, pre-membership work in a municipality: General Laws c. 32, § 3(5), authorizes purchases of credit for work in another governmental unit, but only if the work was performed on a full-time basis; General Laws c. 32, § 4(2)(c), authorizes purchases of credit for some part-time work, but only if the work was performed in the same governmental unit where the member currently serves.

DECISION

Petitioner Cynthia Thomas appeals from a decision of the State Board of Retirement (board) denying her application to purchase retirement credit for a period of non-membership service. The appeal was submitted on the papers without objection. I admit into evidence Ms. Thomas's exhibit 1 and the board's exhibits 1-7.

Findings of Fact

The following facts are not in dispute.

1. From May 2006 to May 2007, Ms. Thomas served as a member of the New Bedford zoning board of appeal. She was appointed to the position by the mayor. She received

a sum of \$20 from the city for every board meeting she attended. The board held approximately two meetings per month, sometimes fewer. (Petitioner exhibit 1; board exhibits 1, 2, 5.)

2. In 2014, Ms. Thomas became an employee of the Commonwealth and a member of the retirement system administered by the board. In 2018, she applied to purchase retirement credit for her work in New Bedford. After proceedings not pertinent here,¹ the board denied the application. Ms. Thomas timely appealed. (Board exhibit 7.)

Analysis

The retirement benefits of a Massachusetts public employee depend in part on the length of the employee's "creditable service." G.L. c. 32, § 5(2). An employee is ordinarily credited with the periods during which she worked for Massachusetts governmental units while belonging to Massachusetts retirement systems. *See id.* § 4(1)(a).

Assorted provisions of the retirement law allow employees to "purchase" credit for additional periods of work. Ms. Thomas does not identify the specific provision that she views as the basis for her application.

The board's arguments focus sensibly on G.L. c. 32, §§ 3(5) and 4(2)(c). Neither section authorizes a purchase in Ms. Thomas's circumstances. Section 3(5) relates in pertinent part to a member "who rendered service in any governmental unit other than that by which [he or she] is presently employed." The type of service covered by that section is "temporary, provisional, or substitute" work. *Id.* The problem for Ms. Thomas is that the statute "makes no reference

¹ *See Thomas v. State Bd. of Ret.*, No. CR-24-0277 (Div. Admin. Law App. May 13, 2024).

to ‘part-time’ service.” *Santos v. Massachusetts Teachers’ Retirement System*, No. CR-04-70, at *2 (Contributory Ret. App. Bd. Mar. 6, 2006). See *Tremblay v. Leominster Ret. Bd.*, No. CR-07-685 (Contributory Ret. App. Bd. May 19, 2011). Ms. Thomas’s attendance at one or two board meetings per month was no more than “part time” in scope. Cf. 941 C.M.R. § 2.03(2).

Section 4(2)(c) does cover “part-time” work, but it presents a different insurmountable hurdle: under controlling case law, that section applies “only to previous periods of [work] . . . in the same governmental unit.” *Santos, supra*, at *3. See *Jette v. Norfolk Cty. Ret. Bd.*, CR-14-720, 2017 WL 11905817, at *3 n.30 (Contributory Ret. App. Bd. Oct. 23, 2017). Ms. Thomas is currently employed by the Commonwealth, whereas the service for which she seeks to purchase credit took place in a separate governmental unit, namely the city of New Bedford. See G.L. c. 32, § 1 (governmental unit).²

² The board’s memorandum includes more than one error that should not need to be repeated. The memorandum maintains that Ms. Thomas would have qualified as an “employee” under G.L. c. 32, § 1, only if she had worked “during . . . ordinary working hours,” but that requirement does not apply to “persons whose regular compensation . . . is paid by [a] political subdivision of the commonwealth.” *Id.* The memorandum also argues that Ms. Thomas’s purchase is barred by certain conditions stated in 941 C.M.R. § 2.04, a regulation that explicitly covers only “service of less than six consecutive months” (whereas Ms. Thomas’s prior service was one year long). Separately, the board’s treatment of certain statutory terms appears to conflate the divergent sets of requirements applicable to membership service and to purchasable non-membership service; but confusion about that aspect of the retirement law may be more difficult to eliminate. See, e.g., *Roberts v. Massachusetts Teachers’ Ret. Syst.*, No. CR-23-0289, 2025 WL 689849, at *2 (Div. Admin. Law App. Feb. 21, 2025); *Hamm-Moylan v. Massachusetts Teachers’ Ret. Syst.*, No. CR-22-243, 2024 WL 4010773, at *3 (Div. Admin. Law App. July 5, 2024).

Conclusion and Order

For the foregoing reasons (and not those stated by the board), the board's decision is

AFFIRMED.

Dated: December 5, 2025

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

14 Summer Street, 4th floor

Malden, MA 02148

Tel: (781) 397-4700

www.mass.gov/dala