

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Stanley J. Usovicz,**  
Petitioner,

No. CR-21-0117

Dated: September 15, 2023

v.

**Salem Retirement Board,**  
Respondent.

**Appearance for Petitioner:**  
James H. Quirk, Jr, Esq.  
Yarmouthport, MA 02675

**Appearance for Respondent:**  
Gerald A. McDonough, Esq.  
Cambridge, MA 02140

**Administrative Magistrate:**  
Yakov Malkiel

**SUMMARY OF DECISION**

The respondent retirement board correctly computed the petitioner’s creditable service for retirement purposes. The “year-for-a-day” rule does not apply to the petitioner because he retired after the Legislature repealed that rule.

**DECISION**

Petitioner Stanley Usovicz appeals from the Salem Retirement Board’s computation of his creditable service for retirement purposes. The appeal was submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence the board’s proposed exhibits marked 1-6.

**Findings of Fact**

I find the following facts:

1. Mr. Usovicz served intermittently in elected capacities over the course of a long career. His first elected term on the Salem City Council began during January 1978 and ended during January 1980. His second such term began during January 1984 and ended during

January 1986. Mr. Usovicz also eventually served as Mayor of Salem; his term began during January 1996 and ended during January 2006. (Exhibit 1.)

2. The board computed Mr. Usovicz’s creditable service in a March 2021 decision letter. In pertinent part, the board declined to translate Mr. Usovicz’s brief periods of service in January 1980, January 1986, and January 2006 into three years’ worth of credit. Mr. Usovicz timely appealed. He retired for superannuation effective October 11, 2021. (Exhibits 3-5.)

### **Analysis**

“Creditable service” is a key input into the formula that generates a public employee’s retirement allowance. G.L. c. 32, § 5(2). As a rule, employees receive credit for periods when they worked for governmental entities while belonging to public retirement systems. *See* § 4(1)(a).

At one time, a special provision controlled the amount of creditable service earned by “elected officials.” It stated that each elected official “shall be credited with a year of creditable service for each calendar year during which he served . . . .” Acts 1947, c. 660, § 3 (formerly codified in G.L. c. 32, § 4(1)(a)). This provision became known as the “year-for-a-day” rule. Its apparent goal was “to provide a clear and certain method for calculating years of creditable service for legislators who served in a body that was not necessarily in session continuously throughout the year . . . .” *Rockett v. State Bd. of Ret.*, 77 Mass. App. Ct. 434, 441 (2010).

The 2009 amendments to the retirement law included a provision repealing the year-for-a-day rule. Acts 2009, c. 21, § 4. The Legislature made that repeal applicable to “all members of retirement systems who retire after July 1, 2009.” *Id.* § 26. Mr. Usovicz is such a member. A series of authorities holds that his creditable service therefore must be computed without the benefit of the year-for-a-day rule. *See Pereira v. State Bd. of Ret.*, No. CR-16-558 (CRAB June

9, 2023); *Kennedy v. Stoneham Ret Bd.*, No. CR-13-298 (DALA Sept. 6, 2019); *Loscocco v. State Bd. of Ret.*, No. CR-17-294 (DALA May 10, 2019). *See also* PERAC Memo No. 24 / 2009 (June 22, 2009).

General Laws c. 32, § 25(5) provides that “no amendments . . . shall be made that will deprive any . . . member or any group . . . of their pension rights or benefits.” Mr. Usovicz’s primary theory is that, under § 25(5), he is entitled to the same calculation methodology that the retirement law prescribed approximately when he became a member. *See Opinion of the Justices*, 364 Mass. 847, 862 (1973); *Dullea v. Massachusetts Bay Transp. Auth.*, 12 Mass. App. Ct. 82, 94 (1981). *See also Hartnett v. Contributory Ret. Appeal Bd.*, No. 2184-cv-02258, 2022 WL 18779945, at \*6-7 (Suffolk Super. Oct. 31, 2022). At that time, the year-for-a-day rule was still in effect.

The Supreme Judicial Court has held that § 25(5) “protects the member of a retirement plan in the core of his reasonable expectations, but not against subtractions which, although possibly exceeding the trivial, can claim certain practical justifications.” *Opinion of the Justices*, 364 Mass. at 862. Otherwise stated, the Legislature may make “reasonable modifications” to the retirement law without offending § 25(5). *Id.* at 862-64; *Madden v. Contributory Ret. Appeal Bd.*, 431 Mass. 697, 701 (2000). To be “reasonable,” modifications must bear “some material relationship to the theory of a pension system,” and must offset new “disadvantage[s] to the employees” with “comparable new advantages . . . to the [same] individual[s].” *Opinion of the Justices*, 364 Mass. at 862 (quoting *Wisley v. San Diego*, 188 Cal. App. 2d 482, 485 (1961)). *See also McCarthy v. Sheriff of Suffolk Cty.*, 366 Mass. 779, 784 (1975); *Colo v. Contributory Ret. Appeal Bd.*, 37 Mass. App. Ct. 185, 191 (1994).

Claims under § 25(5) present complex problems. They may implicate both constitutional concerns and questions of statutory interpretation. See *Opinion of the Justices*, 364 Mass. at 863; *Stanton v. State Bd. of Ret.*, No. CR-18-399, 2021 WL 9697062, at \*4-5 (DALA Aug. 20, 2021). It is not necessary to excavate any such issues here, because CRAB has recently resolved the precise argument that Mr. Usovicz raises. The member in *Pereira, supra*, performed her pertinent periods of service before the year-for-a-day rule was repealed. She claimed that § 25(5) made the repeal inapplicable to her. Analyzing the issue in detail, CRAB disagreed. It allowed that the “that repeal of the ‘year-for-a-day’ rule amounted to an interference with Ms. Pereira’s reasonable expectations.” *Id.* at \*5. Even so, CRAB concluded that the repealing amendment “bore a reasonable and material relationship to the theory of the pension system,” in part because the reforms of 2009 were designed to rescue Massachusetts’s public retirement scheme from a severe fiscal crisis. *Id.* at \*7-9, \*11, \*14.

*Pereira* is binding and controlling. The result is that the board was correct to compute Mr. Usovicz’s creditable service without resort to the year-for-a-day rule.

### **Conclusion and Order**

The board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate