COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Peter West,
Petitioner,

v.

State Board of Retirement,
Respondent.

Docket No.: CR-25-0500

Dated: July 31, 2026

Appearances:
For Petitioner: Peter West (pro se)
For Respondent: Matthew Szafranski, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner's position at a public university was abolished. The university's hazily defined promise to find alternative employment for the petitioner at the same institution did not make the petitioner ineligible to retire for termination under G.L. c. 32, § 10(2).

DECISION

Petitioner Peter West appeals from a decision of the State Board of Retirement (board) declining to retire him for termination under G.L. c. 32, § 10(2). I held an evidentiary hearing by videoconference on July 23, 2026, at which only Mr. West testified. At the hearing, I admitted exhibits marked 1-13, to which I now add an exhibit marked 14.

Findings of Fact

I find the following facts.

1. Mr. West was hired by the University of Massachusetts in Amherst (university) in 2003. He had a bachelor's degree in early education and substantial work experience with computer systems. Mr. West was assigned to the university's advancement office, where he

worked with a database of alumni and donations. He maintained a home on Cape Cod and a rented apartment in Amherst, where he stayed on workdays. (Testimony; exhibits 9, 11.)

2. The advancement office shared fundraising duties with a nonprofit corporation known as the University of Massachusetts Amherst Foundation (foundation). At some point, the university reexamined the compliance of its fundraising work with federal and state legal requirements. As a result of that exercise, in late 2022, the university determined that its own employees should no longer perform fundraising work. (Exhibits 5, 6.)

3. The university began to transfer all fundraising responsibilities to the foundation. In communications to Mr. West and his colleagues, the university emphasized that their positions would be "moving" to the foundation and available to them there. As an optional alternative, the university wrote that its human-resources department would "provide pathways" for advancement personnel to remain at the university in new, non-advancement jobs. (Exhibits 2-5.)

4. As of May 1, 2023, all advancement employees were instructed to spend no more than 25% of their time on fundraising work. The university wrote to them that "[a]ll access to advancement-related systems will cease close of business on May 31, 2023," adding: "Beginning June 1, 2023, all remaining advancement employees will be relieved of performing any advancement related work." (Exhibit 7.)

5. Also during May 2023, the university concretized its plan for advancement employees who wished to remain within the university. An agreement with the pertinent labor unions invited affected employees to "express interest in any non-grant-funded vacant UMass Amherst positions . . . at or below their current salary." Employees who met the

"minimum qualifications" of a position would be given "priority" over other candidates. In the case of new positions at lower salaries, the pay would be "evaluated . . . and [would] remain as close to [the employees'] current salary as [legally] possible." An email from a human-resources officer asked the advancement employees to "spend all of their time on their job search efforts." (Exhibits 7, 14.)

6. Mr. West considered his options. He doubted that his skillset would carry over to other university positions. He was also interested in continuing to work remotely, as he had been doing since the onset of the COVID-19 pandemic. By early 2023, the university was encouraging or requiring employees to return to mostly in-person work. Mr. West's supervisor in the advancement department apparently was not inclined to enforce the new policy, but a different university position was unlikely to be similarly lenient. The foundation informed Mr. West at an interview that he could work remotely there. (Testimony.)

7. On June 7, 2023, Mr. West notified the university by email that he would leave his job that week. He transitioned immediately to an identical position with the foundation, where he remained for two years. (Testimony; exhibits 8, 10.)

8. In mid-2025, Mr. West filed applications to retire for superannuation under G.L. c. 32, § 10(1), or termination under *id.* § 10(2). In response to an inquiry from the board, a university representative checked a box to indicate that "[t]he employee's office or position has been abolished," adding: "resigned from employment effective 06/10/2023 and his position with UMass Amherst was abolished." (Exhibits 1, 9, 11.)

9. In August 2025, the board declined to retire Mr. West for termination, reasoning that his "separation from employment at the [university] was voluntary." This timely appeal followed.[1] Mr. West is currently retired for superannuation. (Exhibits 12, 13.)

Analysis

As a longtime public servant, Mr. West is entitled to a retirement allowance. G.L. c. 32, §§ 5(1)(a), 10(1). The question presented is whether the allowance should be calculated under the "enhanced" formula provided by *id.* § 10(2). *See generally Barnstable Cty. Ret. Bd. v. Public Emp. Ret. Admin. Comm'n* (*Fayne*), No. CR-12-572, 2016 WL 11956834, at *4 (Contributory Ret. App. Bd. July 25, 2016).

Colloquially, benefits under § 10(2) are known as "termination" allowances. More precisely, § 10(2) is available only to an employee "who fails of reappointment, or whose office or position is abolished, or [who] is removed or discharged from his office or position without moral turpitude . . . ." § 10(2)(a). Other elements of the statute are not at issue.

As the university certified to the board, Mr. West's position there was "abolished." The university determined that it could no longer keep the job. No successor to Mr. West was going to be hired. *See Reilly v. Smith*, 92 Misc. 309, 310, 312 (N.Y. Sup. Ct. 1915); *Ex rel. Boyd v. Matson*, 155 Minn. 137, 142-43 (1923). The abolishment became effective in practice when Mr. West and his colleagues were forbidden to perform their duties, several days before Mr. West informed the university of his departure. Regardless, the analysis would not change

[1] The conclusion that the appeal is timely is not unassailable on the current record. The board may move for reconsideration based on lack of jurisdiction if necessary and appropriate in light of the information in its possession.

materially if Mr. West had left preemptively, knowing that the job was about to end anyway. *See Tarlow v. Massachusetts Tchrs.' Ret. Syst.*, 32 Mass. L. Rptr. 487, 488 (Super. Ct. 2015).

The board's position grows out of *Megiel-Rollo v. Contributory Retirement Appeal Board*, 81 Mass. App. Ct. 317 (2012). As part of a settlement to resolve litigation, the employee and employer in *Megiel-Rollo* agreed that the employee would receive a notice of termination. The Appeals Court held that an employee is "removed or discharged" under § 10(2) only if the removal or discharge was "involuntary." 81 Mass. App. Ct. at 322-23. To assess voluntariness, the court looked by analogy to case law under the unemployment-assistance statute, G.L. c. 151A. *See* 81 Mass. App. Ct. at 323-24.

It may be significant that *Megiel-Rollo* involved a "removal" or "discharge" as opposed to the "abolishment" of a position. On a straightforward but narrow analogy to *Megiel-Rollo*, an employee probably is not entitled to § 10(2) benefits if he or she agreed to the abolishment of his or her position. Such an employee, like one who agrees to be fired, would be covered instead by the portion of § 10(1) about members who "voluntarily terminate[]" their service. *See Megiel-Rollo*, 81 Mass. App. Ct. at 322-23. But the abolishment of Mr. West's position was involuntary. He had no say in or effect on the matter. *See Tarlow*, 32 Mass. L. Rptr. at 488. *See also McDermott v. State Bd. of Ret.*, No. CR-19-71, 2025 WL 3002775, at *7 (Div. Admin. Law App. Oct. 17, 2025).

The board offers a different perspective. Its essential theory is that even an employee who involuntarily loses a specific job is ineligible for § 10(2) benefits if he or she voluntarily left the employer's employ—i.e., if he or she could have remained with the employer in a different capacity. The board concedes that no § 10(2) case has articulated such a principle.

The unemployment-assistance case law arguably does support a moderated version of the board's theory. Employees are statutorily disqualified from unemployment benefits if they "left work . . . voluntarily . . . [without] good cause." G.L. c. 151A, § 25(e). This category covers employees who "refuse[] an offer of suitable [alternative] employment." *Augustine v. Director of Div. of Emp. Sec.*, 392 Mass. 1007, 1007-08 (1984). In a nutshell, a suitable alternative position is one "for which [the employee] is fitted by experience and training at a wage rate comparable to that for which [he or she] previously worked." *Graves v. Director of Div. of Emp. Sec.*, 384 Mass. 766, 769 (1981). An employee's resignation is not disqualifying if "employer-created uncertainty" surrounding a force-reduction plan left the employee to speculate about his or her likely fate. *Curtis v. Commissioner of Div. of Unemployment Assistance*, 68 Mass. App. Ct. 516, 517-19, 523-24 (2007).[2]

Mr. West refused no "offer of suitable employment." *Augustine*, 392 Mass. at 1007-08. What the university extended to Mr. West and his colleagues was primarily an invitation to apply with preference to open positions. Mr. West received no guarantee that he would qualify for any particular position. The practical workings of the "priority" promised by the university remained hazy. Even if the advancement employees were assured of eventually receiving some position or another, the new position might or might not have "fitted [them] by experience and training." *Graves*, 384 Mass. at 769. These uncertainties about the likely outcomes of the reorganization project were "employer-created." *Curtis*, 68 Mass. App. Ct. at 518-19. In all, the

[2] Opinions under G.L. c. 151A, § 25(e), sometimes arrive at the subtle conclusion that an employee left work "voluntarily" but "for good cause." *E.g.*, *Curtis*, 68 Mass. App. Ct. at 523-24. The current decision does not dwell on this distinction: a fair and symmetrical analogy would view employees as disqualified under § 10(2) only if they would be disqualified under § 25(e).

analogy to the unemployment-assistance framework leaves intact the conclusion that the circumstances of Mr. West's separation from employment qualify him for § 10(2).

Conclusion and Order

Mr. West is entitled to a termination allowance under G.L. c. 32, § 10(2). The board's contrary decision is REVERSED.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals