

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Worcester Regional Retirement System,
Petitioner,

No. CR-23-0006

Dated: August 16, 2024

v.

**Middlesex County Retirement System and
Public Employee Retirement
Administration Commission,**
Respondents.

Appearances:

For Worcester Regional Retirement System: Ariana N. Imbrescia, Esq.

For Middlesex County Retirement System: Thomas F. Gibson, Esq.

For Public Employee Retirement Administration Commission: Judith A. Corrigan, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

A retirement system's refusal to "accept liability" in advance for a portion of a public employee's future retirement allowance is not an appealable decision under G.L. c. 32, § 16(4).

DECISION

The Worcester Regional Retirement System (Worcester system) asked the Middlesex County Retirement System (Middlesex system) to "accept liability" for proportional reimbursement under G.L. c. 32, § 3(8)(c), in connection with a public employee's consecutive memberships in both systems. The Middlesex system declined. The Worcester system's ensuing appeal was submitted on the papers, and the Public Employee Retirement Administration Commission (PERAC) intervened. I admit into evidence exhibits marked 1-9.

Findings of Fact

The following facts are not in dispute.

1. In 2000-2001, Mr. John Foster worked for the town of Ashby as a permanent-intermittent police officer. During that period, Mr. Foster was not a member of a public retirement system. The Middlesex system is the public retirement system pertaining to Ashby. (Exhibit 1.)

2. Mr. Foster then worked in the private sector for some time. In 2022, he took a position as a full-time police officer in the town of Rutland. He then became a member of the Worcester system. Thereafter, Mr. Foster informed the Worcester system that he wished to purchase retirement credit for his period of pre-membership service in Ashby. (Exhibit 4.)

3. The Worcester system updated the Middlesex system by letter about Mr. Foster's request, adding: "Please inform us of the creditable service your board will accept, if any" The Middlesex system responded that it "will not accept liability." In a subsequent letter declining to change its mind, the Middlesex system stated that its decision was appealable. The Worcester system promptly brought this appeal. (Exhibits 5-8.)

Analysis

The retirement law authorizes administrative appeals by "any person when aggrieved by any action taken or decision of [a] retirement board or [PERAC]." G.L. c. 32, § 16(4).

Correspondence from a retirement board is a "decision" only if it is "binding" and "final."

Bretschneider v. PERAC, No. CR-09-701 (DALA Nov. 13, 2009). A decision is "aggrieving" only if it has some definite "pecuniary effects." *Id.*; *Marlborough Ret. Bd. v. PERAC*, No. CR-

19-14 (DALA Apr. 9, 2021); *Gloucester Ret. Bd. v. PERAC*, No. CR-21-217, 2022 WL

16921454 (DALA June 10, 2022). *See also Board of Health of Sturbridge v. Board of Health of*

Southbridge, 461 Mass. 548, 557 (2012) (discussing the term "aggrieved" in the context of

G.L. c. 30A, § 14).

The Middlesex system and PERAC both maintain that this appeal is “premature.” Another way to describe the argument is that no “aggrieving” decision is at issue here. To appreciate the argument’s merits, it is necessary to review the statutory scheme applicable to the parties’ underlying dispute.

The system from which an employee retires is responsible for disbursing the employee’s retirement allowance. However, the retirement statute imposes a prorated portion of the retirement allowance’s burden on any prior systems in which the employee also served. G.L. c. 32, § 3(8)(c).¹ Each such prior system is required to make annual reimbursement payments to the pension-disbursing system. *Id.* The amount of the annual payments is computed by PERAC once the pertinent member is “retired.” *Id.* See generally *Haverhill Ret. Sys. v. Contributory Ret. Appeal Bd.*, 82 Mass. App. Ct. 129, 132-33 (2012); *Massachusetts Teachers’ Ret. Syst. v. Blue Hills Reg’l Sch. Ret. Bd.*, No. CR-19-226, 2022 WL 16921463, at *3-4 (DALA Jan. 14, 2022).

Each pension-disbursing system is required to issue invoices to the reimbursement-paying systems once every fiscal year. § 3(8)(c). A pension-disbursing system that has not received its due share of reimbursement “may maintain an action of contract to recover the same.” *Id.* Such a system also may challenge a prior system’s refusal to honor § 3(8)(c) invoices by taking an appeal under § 16(4). See *Lynn Ret. Syst. v. Massachusetts Teachers’ Ret. Syst.*, No. CR-10-134 (CRAB Mar. 28, 2014), *aff’d*, 32 Mass. L. Rptr. 501 (Suffolk Super. 2015).

¹ More specifically, the statute apportions the “pension” element of the retirement allowance. G.L. c. 32, § 1. The “annuity” element, which derives from the employee’s own contributions, moves along with the employee from one system to another. *Id.* §§ 1, 3(8)(a).

The Worcester system's correspondence to the Middlesex system asked whether the Middlesex system would "accept liability" for a proportional share of Mr. Foster's future retirement allowance. It appears that such communications among the retirement systems are commonplace. *See Camara v. Fall River Ret. Bd.*, No. CR-21-231, 2024 WL 413687, at *1 n.1 (DALA Jan. 26, 2024) (collecting cases). Their essential inquiry is whether the prior system will commit, even before the member has retired, that it will cooperate with future efforts to collect § 3(8)(c) reimbursement from it.

As far as the statutory scheme is concerned, a prior system's agreement or refusal to "accept liability" for proportional reimbursement is not consequential. *See Shailor v. Bristol Cty. Ret. Bd.*, No. CR-20-343, 2023 WL 2535786, at *7 (DALA Mar. 10, 2023). The amount owing from the prior system, if any, must be determined by PERAC after the member has retired. § 3(8)(c). That determination does not hinge on any agreement or disagreement among the affected systems. *See Tremblay v. Leominster Ret. Bd.*, No. CR-07-685, at *8-9 (CRAB May 19, 2011); *Jacques v. Mass. Turnpike Auth. Empls.' Ret. Bd.*, No. CR-01-1094 (CRAB July 7, 2003). Once PERAC has made its determination, the appropriate amount of § 3(8)(c) reimbursement presents an appealable issue. *See Lynn, supra*.

Before the member has retired, a dispute over the respective obligations of his serial systems is premature. The member may never retire. He may choose to withdraw his accumulated contributions. He may retire only after serving in additional retirement systems. As long as the member remains in service, § 3(8)(c) does not require his prior systems to take

any action. They are not obligated to make any payments; they also are not obligated to make any promises about whether they will cooperate with future requests for payment.²

The upshot of the foregoing analysis is that the Middlesex system's refusal to "accept liability" for a portion of Mr. Foster's future allowance had no impact on the Worcester system's rights and obligations. Those rights and obligations remain undisturbed. The Middlesex system's correspondence did not take anything of value away from the Worcester system. Just as if the Middlesex system had said nothing at all, the Worcester system's entitlements under § 3(8)(c) remain to be determined, if ever, on an application to PERAC in the wake of Mr. Foster's retirement.

Conclusion and Order

In view of the foregoing, this appeal does not arise from an appealable decision under G.L. c. 32, § 16(4). The appeal is therefore DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

² For this reason, the Middlesex system's decision would need to be upheld even if it were appealable: not because the Middlesex system is necessarily right about its share of the member's future allowance, but because there is no basis for requiring the Middlesex system to make an early commitment about that issue.