

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Dori Zaleznik,
Petitioner

v.

Docket No. CR-24-0602

**Newton Retirement System and
Public Employee Retirement Administration Commission,**
Respondents

Appearance for Petitioner:

Ira H. Zaleznik, Esq.

Appearances for Respondents:

Jaclyn R. Zawada, Esq., Newton Retirement System
Felicia Baruffi, Esq., Public Employee Retirement Administration Commission

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Former elected official was allowed to purchase her creditable service after the statutory 90-day deadline. Twelve years later, the retirement board rescinded the purchase of creditable service as an error. The retirement board's decision is affirmed. Former elected official cannot retain her creditable service, her eligibility for superannuation retirement, or her superannuation retirement benefits.

DECISION

The petitioner, Dori Zaleznik, appeals the decision of the Newton Retirement Board (NRB) that it had erroneously allowed her to purchase her creditable service as an elected

official, it had erroneously granted her superannuation retirement benefits, and she had to repay her superannuation retirement benefits.

The case was submitted on written submissions. 801 CMR 1.01(10)(c). I initially admitted 24 exhibits, which are clearly marked in the Joint Pre-Hearing Memorandum. I later admitted the following exhibits: Exhibit 25 is a January 18, 2024 email from NRB to the Public Employee Retirement Administration Commission (PERAC). Exhibit 26 is a handout by Judith A. Corrigan, Esq., then PERAC's Deputy General Counsel, titled *A Matter of Time: Buybacks and Other Service Purchases Under Chapter 32*, and dated November 14, 2017. (This decision will refer to it as the handout.) Exhibit 27 is *Policies & Procedures Booklet*, issued by the Essex Regional Retirement System in January 2019. Exhibit 28 is Dr. Zaleznik's November 25, 2011 email to Kelly Byrne, NRB's director, and Ms. Byrne's November 28, 2011 email response.

On May 21, 2025, the parties submitted a joint prehearing memorandum with many agreed upon facts, which I take as stipulations. On July 30, 2025, the parties submitted a document, "Stipulations as to Expected Testimony."

After the parties agreed that an evidentiary hearing was not needed, NRB and PERAC decided to rely on their arguments in the joint prehearing memorandum. Dr. Zaleznik instead submitted a substitute brief on August 13, 2025.

Findings of Fact

1. Dr. Zaleznik, a medical doctor, was an elected member of the Newton School Committee from January 1, 2002 through December 31, 2009. Her annual salary was \$4,875. (Ex. 3)
2. As a School Committee member, Dr. Zaleznik did not opt into the Newton Retirement System (NRS). (Ex. 2; stipulation)
3. On February 1, 2011, Dr. Zaleznik became a full-time employee of the City of Newton as a Health Department Commissioner (Ex. 2) and became a member of NRS. (Stipulation)
4. On November 25, 2011, Dr. Zaleznik emailed Kelly Byrne, NRB's director, asking whether she could purchase her service as a School Committee member as creditable service. (Ex. 2;

stipulation)

5. On November 28, 2011, Ms. Byrne emailed Dr. Zaleznik in part:
You did not opt into the Retirement System when elected to the School Committee. It is not clear if you can buyback that service now that you are a member[,] given some of the legislative pension reform that passed in 2009 relating to elected officials. I will have to discuss with our legal counsel and get back to you.

(Ex. 28)

6. On November 28, 2011, Ms. Byrne mailed Judith Corrigan (who was General Counsel or Deputy General Counsel for PERAC at all relevant times (Stipulation)), in part:
We have a question regarding a former elected official (School Committee member) who did not opt into the retirement system and is now a f/t [fulltime] employee (member) seeking to buyback her prior elected service.

This person was a member of the Newton School Committee from 1/1/03-12/31-09,¹ at an annual salary of \$4,875.00 and did not opt into the retirement system.

She was hired as a full-time Health Dept. Commissioner on 2/1/2011 and became enrolled as a member.

She is now seeking to purchase her prior service on the School Committee.....can she?

I have attached the most recently approved supp. regs for our system in case you want to refer to them (not sure they're relevant?).

(Ex. 2) (ellipsis in original)

7. Ms. Corrigan does not remember the facts and circumstances of Dr. Zaleznik's eventual purchase of her time as a member of the Newton School Committee. (Stipulation)
8. Ms. Byrne does not remember the facts and circumstances of Dr. Zaleznik's purchase of her time as a member of the Newton School Committee. (Stipulation)
9. On or about September 13, 2012, Dr. Zaleznik emailed Ms. Byrne about the status of her potential purchase of service. (Stipulation)
10. Ms. Byrne emailed Ms. Corrigan again, noting that Ms. Byrne had not received a response to her November 28, 2011 email. (Stipulation)
11. On October 11, 2012, Ms. Byrne emailed Dr. Zaleznik in part:
I finally heard back from the attorney at our oversight agency (PERAC) and unfortunately she has advised me that you are not eligible to buyback your prior elected service. She said there is an appeal decision that deals with this

¹ Dr. Zaleznik was a member of the School Committee from 1/1/02, not 1/1/03.

very same issue and she is going to locate a copy and forward to me. I will forward a copy once received.

(Ex. 2)

12. The parties do not know how Ms. Corrigan conveyed this advice to Ms. Byrne. It may have been by telephone. They have been unable to locate an email from Ms. Corrigan to Ms. Byrne conveying this advice. (PERAC email to DALA, Jan. 29, 2026; NRB email to DALA, Feb. 4, 2026)
13. The decision that Ms. Corrigan cited was *Michael Rotondi v. Stoneham Retirement Board*, CR-03-551 (DALA Oct. 25, 2004). (Email from NRB to DALA, Feb. 5, 2026)
14. In NRB's file, on a printout of Ms. Byrne's October 11, 2012 email to Dr. Zaleznik, is this handwritten note: "Appeal decision was not related to Dori's situation." (Ex. 2) The parties believe that Ms. Byrne made it. (Stipulation)
15. Also on October 11, 2012, Dr. Zaleznik emailed Ms. Byrne that she would like to see the decision that PERAC mentioned.
16. On October 12, 2012, Ms. Byrne emailed Dr. Zaleznik:
Once I have reviewed the appeal decision with our legal counsel, I will provide you with a formal denial inclusive of your appeal rights and where to file your appeal. I will also include the appeal decision that we have based our decision on.

(Ex. 2)

17. Despite Ms. Byrne's email of October 12, 2012, NRB did not issue Dr. Zaleznik a formal denial. (NRB email to Division of Administrative Law Appeals (DALA), Feb. 4, 2026)
18. On November 8 and 9, 2012, Ms. Byrne, Marie Lawlor, who was counsel to NRB, and Kimberly A. Fletcher, Esq.,² a member of NRB, exchanged emails. The substance of the emails is not in the record because NRB has withheld the emails as privileged and confidential attorney-client communications. (Stipulation)
19. On November 9, 2012, Ms. Byrne advised Dr. Zaleznik that she could purchase her service as a School Committee member for \$4,497.01. (Ex. 4)
20. NRB does not have any non-privileged documents, including any record of communication between Ms. Byrne and Dr. Zaleznik between October 12, 2012 and November 9, 2012, that would explain NRB's change in position about Dr. Zaleznik's eligibility to purchase her service. (NRB email to DALA, Feb. 4, 2026)
21. On November 27, 2012, Dr. Zaleznik paid \$4,497.01 to purchase her service as a School Committee member. (Ex. 4)
22. On November 14, 2017, Judith Corrigan, Deputy General Counsel of PERAC, conducted or participated in PERAC Board Administrator Training. She had a handout that was titled *A Matter of Time: Buybacks and Other Service Purchases Under Chapter 32*.
23. The relevant part of the PERAC handout was a page titled "Elected Officials," which included

² Ms. Fletcher is a former Administrative Magistrate at DALA; she wrote the decision in *Levesque v. Essex County Retirement Board*, CR-95-571 (CRAB Oct. 7, 1996) that CRAB reversed. I discuss *Levesque* below.

this bullet point:

- If they do not elect to become a member of the system while in office, they may not buy back the time thereafter UNLESS they subsequently become a member of the same retirement system for which they have service as an elected official.
24. The page had four bullet points and cited G.L. c. 32, §§3(2)(c) and 3(3). However, it is unclear which statutory citation corresponds to which bullet point. (Ex. 26, p. 19).
25. On December 5, 2017, Dr. Zaleznik applied for superannuation retirement benefits. (Ex. 8)
26. On December 20, 2017, NRB voted that Dr. Zaleznik was eligible for superannuation retirement benefits. (Ex. 9)
27. Dr. Zaleznik's purchase of her creditable service as a member of the Newton School Committee gave her enough years in service to make her eligible for superannuation retirement benefits. (Ex. 15)
28. On March 16, 2018, PERAC wrote to NRB, approving superannuation retirement benefits for Dr. Zaleznik. (Ex. 12)
29. On January 18, 2024, NRB emailed PERAC about a member of the Newton Retirement System who had served on the Newton School Committee; the description of this person was not that of Dr. Zaleznik. (I discuss it here because this email led to decisions involving Dr. Zaleznik.) The email read in its near entirety:

Can you please respond to the following two questions:

- Could an active member who served on the Newton school committee from 1996-2003, but did not join the retirement system until she was elected to [the] Newton city council in January 2004 have properly bought back her school committee service in 2016?
- If the answer to question 1 above is no, please advise as to what PERAC's directive to the Newton Retirement Board is in a situation where this member was erroneously allowed to purchase the above referenced prior elected official service (1996-2003).

(Ex. 25)

30. On February 26, 2024, PERAC's Executive Director, John W. Parsons, wrote a letter to NRB's Director, Barbara O'Brien, answering NRB's email. PERAC cited and attached PERAC Memorandum #28/2021 (Ex. 23) and continued:

In the scenario you have described, the member should not have been permitted to buy back their Newton School Committee service after they joined the system in 2004. The member was not entitled to make this purchase as they did not elect membership upon their initial election and thus cannot have this service credited. Any service that was purchased should be rescinded and any payments made by the member for the purchase should be returned without interest.

(Ex. 11)

31. On April 4, 2024, NRB's counsel, Kristen Annunziato, wrote a letter to PERAC's Executive Director, Bill Keefe, Esq., responding to PERAC's letter of February 26, 2024. NRB's letter stated in part that NRB

seek[s] further guidance regarding NRB's options for specific members who may have been erroneously afforded the opportunity to buyback prior elected service.

The NRB is presently aware of six Newton Retirement System members, five of whom are retired and one of whom is active, who were allowed to buyback prior elected official service prior to the issuance of the PERAC Memo 28/2021. These members were identified as part of the first stage of an ongoing investigation, and NRB has reason to believe there are more members of its system impacted by this policy. At the time NRB allowed these buybacks, it was under the impression that such service was eligible for buybacks under c. 32, 3(l)(a)(2)(vi). Indeed, PERAC Memo 28/2021 opens with recognition that there was confusion and conflicting understandings of this process at the time, indicating that NRB was not alone in its uncertainty about this buyback process.

(Ex. 13)

32. The record does not reveal why NRB began its investigation.

33. NRB's letter of April 4, 2024 to PERAC attached page 19 of PERAC's handout, quoted it, and stated that elected official may buy back prior service if "they subsequently become a member of the same retirement system for which they have service as an elected official."

(Ex. 13, p. 2)

34. In its letter of April 4, 2024, NRB cited this quotation as "additional evidence of this contemporaneous uncertainty." (Ex. 13, p. 1)

35. In addition to citing PERAC's 2017 handout in its letter of April 4, 2024, NRB cited the *Policies & Procedures Booklet*, issued by the Essex Regional Retirement System in January 2019.

36. Page 1 of the booklet states:

This booklet contains the policies approved by the Essex Regional Retirement Board. These policies are designed to guide the daily operations of the retirement system. Each policy included in this booklet provides the date on which the policy was originally approved, as well as the date on which any revision to the policy was approved.

(Ex. 27) (emphasis omitted)

The last substantive page of the booklet reads in its entirety:

PURCHASE OF PRIOR NON-MEMBERSHIP SERVICE IN AN ELECTED POSITION

The purchase of prior non-membership service in an elected position shall be permitted if the member earned in excess of \$200 or more annually prior to July 1, 2009, and \$5,000 or more thereafter.

Board Approval Date: *August 31, 2016; Revised November 27, 2017.*

(Ex. 27, p. 28) (emphasis in original)

37. NRB's letter of April 4, 2024 attached this page and stated that NRB had received the booklet from a PERAC compliance officer. The letter continued that the booklet provides guidance on how members can buy back elected official service on Page 28 (enclosed). While the NRB acknowledges that this handbook was not authored by PERAC, it was distributed by a PERAC compliance attorney, and further evidences the conflicting understandings of c. 32, § 3(l)(a)(2)(vi) among local retirement boards prior to the issuance of Memo 28/2021.

(Ex. 27)

38. NRB's letter of April 4, 2024 next discussed the three CRAB cases that PERAC cited in its Memorandum #28/2021. (Ex. 13) The letter asserted:
...PERAC Memo 28/2021 cites to several Contributory Retirement Appeal Board ("CRAB") decisions. On review of those cases, the text of those decisions explain that elected officials were, in certain circumstances in the past, allowed to buyback prior elected official service in certain circumstances. In particular, *Goode v. Weymouth Retirement Bd.*, CR-99-701 (CRAB May 1, 2001) and *Awad v. Hampshire County Ret. Bd.*, CR-08-621 (Contrib. Ret. App. Bd. Dec. 19, 2014) note that elected officials could buyback prior elected official service if the governmental entities to which they were elected were part of the same retirement system prior to the 2009 Amendment to G.L. c. 32 4(1)(a). Several of the buybacks NRB is currently investigating happened prior to these amendments....NRB kindly requests that PERAC clarify what formal guidance, if any, it issued on this topic prior to Memo 28/20215 including any guidance it may have issued based on the CRAB decisions cited therein.

(Ex. 13)

39. NRB's letter of April 4, 2024 continued:
PERAC Memo 28/2021 also cites to *Awad* to advise that a retirement board must comply with the interpretation of c. 32 § 3 articulated therein, even in instances where principles of equity may suggest a different solution. The six buybacks NRB has discovered to date occurred in the context of above-described conflicting advice from CRAB and PERAC, and a general atmosphere of confusion among retirement boards regarding this process. There appear to be significant differences between this broad policy uncertainty that has potentially impacted

the credible service calculations of a number of retirees, and a mere failure to inform an elected official of the 90-day buy-in window that was discussed in *Awad*...

In sum, NRB kindly requests that PERAC address the conflicting guidance it has received....

(Ex. 13)

40. NRB's letter of April 4, 2024 ended with six detailed questions to PERAC. (Ex. 13) (The questions and PERAC's answers are below.)

41. On August 22, 2024, PERAC Executive Director William T. Keefe answered the letter by Kristen Annunziato, NRB's counsel, of April 4, 2024. PERAC stated in part:

- *What, if any, formal guidance did PERAC issue on CRAB decisions and/or elected official buybacks in general prior to PERAC Memo 28/2021?*

PERAC Response: PERAC did not provide any formal guidance to retirement boards regarding the cited CRAB decisions concerning elected official buybacks through memorandum prior to the issuance of PERAC Memo #28 of 2021 ("PERAC Memo #28/2021"). PERAC did respond to individual opinion letter requests from retirement boards regarding elected official buybacks for specific members.

Prior to Chapter 21 of the Acts of 2009, the Division of Administrative Law Appeals ("DALA") and the Contributory Retirement Appeals Board ("CRAB") consistently held that prior nonmembership elected official service time could be purchased under G.L. c. 32, §4(1), regardless of whether the 90-day election requirement of G.L. c. 32, 3(1)(a)(vi) was satisfied. *See Levesque v. Essex County Ret Bd.*, CR-95-571 (CRAB Oct. 7, 1996); *Goode v. Weymouth Rel. Bd. and Norfolk County Ret. Bd.*, CR-99-701 (CRAB May 1, 2001); and *Sauvageau v. Worcester Regional Ret. Bd.*, CR-02-1336 (DALA Dec. 12, 2003).

In Chapter 21 of the Acts of 2009, which became effective on July 1, 2009, the Legislature amended the language of Section 4(1) which in turn eliminated the ability of elected officials to purchase prior non-membership service under that section....

[A]ny elected official who purchased prior non-membership service through Section 4(1) pursuant to the DALA and CRAB determinations, even if it was outside of the 90-day election requirement, should still be credited with the buyback so long as it was completed prior to July 1, 2009 and from the same retirement system for which they performed the elected official service. PERAC

Memo #28/2021 does not apply to elected officials who completed this specific type of buyback.

- 2. What is PERAC's opinion on the conflicting guidance listed in the 2017 Handout and 2019 Essex Regional Retirement System Policies & Procedures documents NRB received from PERAC?

PERAC Response: As noted in PERAC Memo #28/2021, there was some inconsistency across retirement boards regarding the ability of elected officials to buy back their prior elected official time. However, PERAC affirmed its position that after July 1, 2009, elected officials are neither eligible for membership nor are eligible to buy back previous elected official time if they have not applied for membership within ninety days of assuming office pursuant to G.L. c. 32, 3(l)(a)(vi) unless they meet the limited exception described above.

- 3. Does *Awad v. Hampshire County Ret. Bd.*, CR-08-621 (CRAB Dec. 19, 2014) and cases prohibit the board from offering equitable remedies to retirees who may have been erroneously allowed to buyback prior elected official service?

PERAC Response: DALA and CRAB have made clear that neither they nor PERAC nor retirement boards can provide equitable relief and grant benefits that specifically contradict the language in Chapter 32. See *Bristol County Ret. Bd. v. CRAB*, 65 Mass. App. Ct. 443, 446, 450 (2006); *Millar v. State Ret. Bd.*, CR-12-634, 6 (DALA Jun. 29, 2018) (“Neither DALA nor the Contributory Retirement Appeal Board has the authority to employ an equitable remedy that contradicts specific statutory language in Chapter 32...”). As such, the Newton Retirement Board (“the Board”) cannot offer equitable remedies to retirees who were erroneously allowed to buy back prior elected official service.

- 4. Prior to the current language of G L. c. 32, § 4(1)(o), did this section also address buying back prior uncompensated elected official service? Can you please provide the former language and advise as to the period of time that this language was effective, as well as when the former language of G.L. c. 32, §4(1)(a) was effective?

PERAC Response: Prior to July 1, 2009, G.L. c. 32, §4(1)(o) provided as follows:

Any member who served as a selectman, alderman, city councilor, school committee member or town moderator as the result of election by direct vote of the people, in which position he receive no compensation, may establish credit for such service by depositing in the annuity savings fund of the system of which he is a member a sum equal to the amount which would have been paid into such fund during such period if such position had been

compensated at the rate of twenty-five hundred dollars per year, plus buyback interest to the date of payment; provided, however, that the provisions of this paragraph shall not apply to any member first elected on or after January 1, 1986.

The prior language for Section 4(1)(o) was last amended in 2002, with an effective date of December 5, 2002. This language did not necessarily apply to buybacks of service, but rather established how creditable service could be determined for individuals who did not receive compensation for their positions as elected officials.

Additionally, prior to July 1, 2009, G.L. c. 32, § 4(1)(a) provided:

Any member in service shall, subject to the provisions and limitations of sections one to twenty-eight inclusive, be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; provided, that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official; and provided, further, that in no event shall he be credited with more than one year of creditable service for all such membership service rendered during any one calendar year.

The prior language for Section 4(1)(a) was found in Chapter 32 at its inception and was effective until July 1, 2009. This Section, commonly referred to as “the year for a day rule[,]” allowed the granting of a year of creditable service for each year served as an elected official. As discussed in *Levesque* and *Goode*, this Section was utilized to allow elected officials to purchase prior elected official service despite the ninety-day limitation.

- *5. What is PERAC’s directive to Boards in a situation, if applicable, where a current retiree was erroneously allowed to purchase prior elected official service and their retirement allowance used that creditable service in its calculation?*

PERAC Response: As discussed in our prior correspondence, in a situation where a retiree is found to have been erroneously allowed to purchase their prior elected official service, G.L. c. 32, § 20(5)(c)(2) requires a correction by the Board. The retiree’s retirement allowance must be recalculated to remove the creditable service that was erroneously granted, and payments made to purchase that service must be returned to the retiree without interest. Additionally, the retiree is required to repay any overpayment of their received retirement allowance following the recalculation.

- *6. What is PERAC's directive to Boards in a situation, if applicable, where a current retiree was erroneously allowed to purchase prior elected official service, and without this erroneously purchased service would not otherwise have been vested and eligible for a retirement allowance?*

PERAC Response: Pursuant to G.L. c. 32, § 20(5)(c)(2), the Board is required to correct any discovered errors. If a retiree is found to have been erroneously allowed to purchase prior elected official service, that service must be removed from their total creditable service and any payments made to purchase that service must be returned to the retiree without interest. Additionally, if the removal of the creditable service results in the retiree no longer being vested, then their retirement allowance must be refunded to the Board and the member would no longer be eligible for a Chapter 32 retirement.

(Ex . 14)

42. On September 6, 2024, Kristen Annunziato, NRB's acting counsel, sent Dr. Zaleznik a letter, which read in part:

The Newton Retirement Board ("the Board") has recently identified an error in your creditable service calculation which, when corrected, results in the discontinuation of your retirement benefits. Effective September 1, 2024, your retirement allowance and your deductions for associated retirement benefits, such as health insurance, have been terminated.....

According to the records of the Newton Retirement System ("NRS") in 2012, you paid \$4,497.01 to purchase eight (8) years of prior service as an elected official. As a result, at the time of your retirement, you were considered a vested member of the Newton Retirement System ("NRS") with 14.9167 years of creditable service.

Unfortunately, this service purchase was allowed in error. The retirement law prohibits members from buying back previous service as an elected official if they did not apply for membership in the retirement system within ninety (90) days of assuming office. See G.L. c. 32, §3(2)(a)(vi). Pursuant to G.L. c. 32, §20(5)(c)(2), and consistent with its fiduciary obligations to the public employee retirement system, the Board is required to correct such errors in creditable service calculations. After voiding the service purchase, you are left with 6.9167 years of service. As such you are no longer vested and the Board must terminate your benefits and refund to you the cost of the purchase without interest.

I have enclosed a letter from the Public Employee Retirement Administration Commission ("PERAC") that clarifies the relevant law on this question and

confirms PERAC's directive on the immediate discontinuation of your retirement allowance and termination of your benefits.³

In addition to discontinuing your benefits, PERAC has directed the Board to seek repayment of the retirement benefits you received in error. According to our records, the amount due the System is \$327,892.25 as of August 30, 2024. The Board is amenable to a discussion of repayment terms.

(Ex. 15)

43. On September 19, 2024, Dr. Zaleznik timely appealed. (Ex. 17)

44. Also on September 19, 2024, Dr. Zaleznik

- A. moved that NRB reconsider its September 6, 2024 decision;
- B. requested that NRB, if it declined to reconsider its decision, waive any repayment of benefits that Dr. Zaleznik had received; and
- C. requested that NRB present the motion to reconsider to PERAC for its view.

(Ex. 16)

45. On September 30, 2024, DALA stayed this appeal until NRB ruled on Dr. Zaleznik's motion to reconsider. (Order)

46. Also on September 30, 2024, NRB presented Dr. Zaleznik's motion to reconsider to PERAC for its view, as she had requested. (Ex. 18)

47. On November 20, 2024, PERAC's Executive Director Keefe responded to Assistant City Solicitor Jaclyn R. Zawad's letter of September 30, 2024, presenting Dr. Zaleznik's motion to reconsider, which she had filed with NRB. It stated in part:

...Dr. Zaleznik served as an elected member of the School Committee for the City of Newton from 2001 to 2005.⁴ During her four terms with the School Committee, she did not elect to join the NRS. It was not until she joined the NRS in 2011 that she sought to buy back her prior elected official service time. As Dr. Zaleznik did not join the NRS within ninety days of assuming office, pursuant to Section 3(1)(a)(vi), she was not eligible to purchase that prior service in 2011.

Therefore, the NRB must refund to Dr. Zaleznik the amount she paid to purchase her prior elected official service plus corrections of error interest. As the NRB must now remove four years of creditable service attributed to the erroneous buyback of her prior elected official service, it appears that Dr. Zaleznik is no longer eligible for a retirement allowance as she does not have the 10 years of creditable service to be vested. Regarding any refund due to the NRB by Dr. Zaleznik of her previously received retirement allowance, the NRB has the discretion to waive repayment of these funds pursuant to G.L. c. 32, § 20(5)(c)(3).

³ This was PERAC's letter of August 22, 2024. (Ex. 14)

⁴ The date should have been 2009, not 2005. (Ex. 2)

(Ex. 20)

48. On January 2, 2025, NRB denied Dr. Zaleznik's motion to reconsider. It also voted not to consider her request that NRB waive repayments until her appeal at DALA was final. (Ex. 24 (email from NRB Assistant City Solicitor Zawada to Ira Zaleznik))
49. On February 3, 2025, Dr. Zaleznik and NRB moved to lift the stay at DALA. (Joint Motion to Lift Stay) On February 4, 2025, DALA granted it. (Email from DALA to parties, Feb. 4, 2025)
50. Also on February 3, 2025, Dr. Zaleznik and NRB jointly moved that PERAC be joined as a party. PERAC assented, and DALA granted the motion. (Joint Motion to Join PERAC as Additional Party; email from DALA to parties, Feb. 4, 2025)
51. On January 28, 2026, I asked NRB to rule on Dr. Zaleznik's request that it waive a refund. I wrote, "I believe that if it does so, it will conserve the resources of this tribunal." (Amended Request to Newton Retirement Board)
52. On February 19, 2026, NRB decided not to vote then on Dr. Zaleznik's request that it waive repayments. (Email from NRB to DALA, Feb. 20, 2026)

Factual Allegations that I Do Not Find as Fact

- When Ms. Byrne calculated the purchase price of Dr. Zaleznik's creditable service, "Ms. Byrne believed that she was following the dictates of Chapter 32, and that the buyback of time by Dr. Zaleznik was available to her and conformed to the law." (Stipulation from Stipulations as to Expected Testimony)
- After receiving PERAC's opinion that Dr. Zaleznik could not buy back her elected official time, Ms. Byrne reviewed section 25 of Chapter 21 of the Acts of 2009....

At that time, the NRS believed in good faith that Dr. Zaleznik could buy back her elected official time based on the language of section 25 of Chapter 21 of the Acts of 2009.

(Stipulation from the prehearing memorandum)

I do not accept these stipulations as true because to do so would be improvident and because they are not credible. *Goddard v. Goucher*, 89 Mass. App. Ct. 41, 45 (2016) (factual stipulations are generally binding on the parties and respected by the courts, unless a court determines that to do so would be improvident or not conducive to justice); *Commonwealth v. Triplett*, 398 Mass. 561, 570 (1986) ("a jury cannot be compelled to accept as true all the facts within the stipulated testimony. Instead, they may accept that testimony which, if the witness were to testify, they would find credible and they may reject the remainder or they may accept or reject

the testimonial stipulation in its entirety”). See *Malone v. Bianchi*, 318 Mass. 179, 180 (1945) (referring to “discharging a stipulation”).

I discharge these stipulations. The parties stipulated that Ms. Byrne does not remember the facts and circumstances of Dr. Zaleznik’s purchase of her time as a member of the Newton School Committee. That is a credible stipulation (the events happened almost 13 years before the stipulation) that I accept as a fact. I don’t know how to reconcile Ms. Byrne’s lack of memory with (1) her alleged belief that she was complying with Chapter 32 (this is a purported memory); and (2) her alleged detailed memory of reviewing a session law.

Discussion

I discuss various cases and PERAC memoranda in chronological order. Before my discussion of cases and memoranda, I discuss the statutes that the cases and memoranda cite.

G.L. c. 32, § 3(2)(a)(vi)

The statute generally requires that anyone “elected by popular vote to a state, county or municipal office” who applies for membership in a retirement system do so within 90 days of taking office.

The statute was in effect at all times relevant to this appeal.

Various other statutes have been invoked by elected officials, former elected officials, and retirement boards to allow elected officials and former officials to purchase their creditable service as elected officials after the 90-day deadline. Over time, these various exceptions were foreclosed. (An exception to the 90-day deadline is also called “late entry” into a retirement system. *E.g.*, *Annie Awad v. Hampshire County Retirement Board*, CR-08-621 (Contrib. Ret. App. Bd. Dec. 19, 2014). See also G.L. c. 32, § 3(3) heading (“Late Entry int Membership”).)

G.L. c, 32, § 4(1)(a)

This statute was one statute invoked as an exception to the 90-day deadline. Before July 1, 2009, the statute provided:

Any member in service shall, subject to the provisions and limitations of sections one to twenty-eight inclusive, be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; provided, that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official; and provided, further, that in no event shall he be credited with more than one year of creditable service for all such membership service rendered during any one calendar year.

The second “provided” – an elected official “shall be credited with a year of creditable service for each calendar year” – was called the “year for a day rule.” (Ex. 14) If an elected official served only one day in a calendar year, say, on January 1, they could purchase a year of creditable service. The year for a day rule is not directly an issue in this appeal. However, the rule does arise in various discussions of the larger issue of former elected officials purchasing creditable service, and it makes sense to discuss it enough to put it aside.

Eliminating the rule was a reason that G.L. c, 32, § 4(1)(a) was amended. On and after July 1, 2009, the statute reads:

Any member in service shall, subject to the provisions and limitations of sections one to twenty-eight inclusive, be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; provided, that in no event shall he be credited with more than one year of creditable service for all such membership service rendered during any one calendar year.

The remaining “provided” – a member shall not be credited with more than one year of service during any one calendar year – is not relevant to this appeal. I left it in the quotation for completeness.

Two excerpts are relevant to this appeal. The first excerpt is “subject to the provisions and limitations of sections one to twenty-eight.” One limitation on G.L. c. 32, § 4(1)(a) is G.L. c. 32, § 3(2)(a)(vi): elected officials must purchase their creditable service within 90 days of taking office. That limitation means that G.L. c. 32, § 4(1)(a) does not provide an exception to the 90-day deadline in G.L. c. 32, § 3(2)(a)(vi).

(When Dr. Zaleznik quoted G.L. c. 32, § 4(1)(a) in her substitute brief, she omitted the very relevant words “subject to the provisions and limitations of sections one to twenty-eight.” (Petitioner’s Substitute Memorandum 7))

The second relevant excerpt is “after becoming a member of the system pertaining thereto.” These words can be interpreted in two ways. One, a member shall be credited, after becoming a member of a system, with all service, including prior service. Or, two, a member shall be credited only with the service that the member rendered after becoming a member of the retirement system.

In *Awad v. Hampshire County Retirement Board*, CR-08-621 (Contrib. Ret. App. Bd. Dec. 19, 2014), CRAB stated that the second interpretation is correct; the words “provid[e] for credit for service rendered only ‘after becoming a member.’” This interpretation is binding. *E.g., John P. Fahey v. Boston Retirement Board*, CR-15-630 (Div. Admin. L. App. Nov. 2, 2016) (“DALA is bound by CRAB precedent until it is reversed by CRAB itself or the Court”).

This interpretation also makes sense. Although rules of statutory construction can be confusing and can be cherry-picked, and although legal writers, including drafters of legislation, do not always write what they intend to convey, it makes sense and is more likely that “after becoming

a member of the system” modifies the closer words “all service,” and not the more distant words “shall...be credited.”

(When Dr. Zaleznik argued in her substitute brief that “after becoming a member of the system” modifies the more distant words “shall...be credited,” she did not discuss either *Levesque’s* or *Awad’s* treatment of this issue. (Petitioner’s Substitute Memorandum 8) I discuss *Levesque* in more detail below.)

Thus, G.L. c. 32, § 4(1)(a) did not provide an exception to Dr. Zaleznik (or to anyone similarly situated) to purchase her creditable service after 90 days of assuming elected office. It did not provide an exception, and should not have been interpreted to have provided an exception, for two reasons. Section 4(1)(a) is not an exception to the 90-day deadline (the statute is “subject to... limitations,” including the 90-day deadline) and Dr. Zaleznik was not a member of the Newton Retirement System when she served on the School Committee; the only service that she could purchase was “service rendered...after becoming a member of the system.”

Levesque v. Essex County Retirement Board

In a 1996 case, *Linda Levesque v. Essex County Retirement Board*, CR-95-571 (Contrib. Ret. App. Bd. Oct. 7, 1996), CRAB ruled that a former selectman in an Essex County town who had not joined the Essex County Retirement System within 90 days of taking office could not purchase creditable service as a selectman. In a brief, quickly-moving two-page decision (not counting the signature page), CRAB in one sentence stated that the appellant “did not become a member of the Essex County Retirement System within the period provided” by G.L. c. 32, § 3(2)(a)(vi). In the next sentence, CRAB stated, “G.L. c. 32, § 4 provides that a member of a retirement system can purchase creditable service for time prior to his or her membership in the

retirement system.” In the next sentence after that, CRAB noted that the appellant was not a member of the Essex County Retirement System. CRAB then ruled against her.

Levesque requires extensive parsing. It is initially unclear whether the reference to G.L. c. 32, § 4 was to § 4(1)(a) or § 4(o). Years later, in *Awad v. Hampshire County Retirement Board*, CR-08-621 (Contrib. Ret. App. Bd. Dec. 19, 2014), CRAB specified that the reference was to G.L. c. 32, § 4(1)(a). Furthermore, G.L. c. 32, § 4(o) refers to elected officials who “receive no compensation,” and the appellant in *Levesque* received over \$1,000. *Linda Levesque v. Essex County Retirement Board*, CR-95-571 (Div. Admin. L. App. June 6, 1996). Therefore, *Levesque* was about § 4(1)(a).

When CRAB stated,

G.L. c. 32, § 4 provides that a member of a retirement system can purchase creditable service for time prior to his or her membership in the retirement system,

it interpreted the words “after becoming a member of the system” in G.L. c. 32 § 4(1)(a) to mean that a member shall be credited, after becoming a member of a system, with all service, including prior service. However, CRAB rejected that interpretation in *Awad*, a 2014 case (as discussed above), which purported to affirm *Levesque*. CRAB did not acknowledge in *Awad* that CRAB had rejected its prior interpretation in *Levesque* of the statute.

Furthermore, *Levesque* did not quote or discuss the language in G.L. c. 32, § 4(1)(a): “subject to the provisions and limitations of sections one to twenty-eight.” CRAB considered G.L. c. 32, § 4(1)(a) to be an exception to G.L. c. 32, § 3(2)(a)(vi).

The heart of *Levesque* consists of three consecutive sentences, which I paraphrase:

1. The appellant did not become a member of the retirement system within 90 days, as G.L. c. 32, § 3(2)(a)(vi) required.

2. A member of a retirement system can purchase prior creditable service in the same governmental entity, under G.L. c. 32, § 4(1)(a). (CRAB's interpretation was incorrect and CRAB later interpreted the statute differently, but put those things aside for now.)
3. Since the appellant was a member of a retirement system, but not the same system that served the entity of which he was an elected official, they could not purchase their creditable service.

Levesque did not state, but implied:

4. An elected official who does not become a member of the retirement system within 90 days, but is *later* a member of the same retirement system, *may* purchase the creditable service as an elected official.

In *Awad*, CRAB stated in a footnote that *Levesque* contained dictum to the effect that G.L. c. 32, § 4(1)(a), as it existed prior to its 2009 amendments, allowed purchase by members of a retirement system of their prior service as elected officials, where that service occurred in a governmental entity within the same retirement system.

That footnote had at least three problems. One, the 2009 amendments repealed the year for a day rule – but that rule was not the basis of the misinterpretation that G.L. c. 32,

§ 4(1)(a) allowed a former elected official who had not become a member of a retirement system within 90 days to purchase creditable service if they were later a member of the same retirement system. Rather, the basis of the interpretation was language in G.L. c. 32, § 4(1)(a) that preceded and survived the 2009 amendments: “after becoming a member of the system.”

Two, G.L. c. 32, § 4(1)(a) did not *allow* what *Levesque* said it allowed. A *misinterpretation* of the statute *facilitated* retirement boards' allowing former elected officials to purchase creditable service.

Three, *Levesque* did not contain dictum. It contained an implication. At most, it was an implied dictum.

I am bound by CRAB decisions, as I have said, *e.g.*, *Fahey v. Boston Retirement Board*, but I am not bound by dictum, implied dictum, or an implication. I am especially not bound by dictum,

implied dictum, or an implication based on CRAB's misinterpretation in 1996 of the words "after becoming a member of the system," a misinterpretation that CRAB rejected in 2014. However, four years after *Awad*, PERAC interpreted *Levesque* more strictly than CRAB did in *Awad*. In Memorandum #28/2021, PERAC said this about *Levesque*:

...CRAB determined that the petitioner could not purchase prior elected service time because she did not become a member of the relevant retirement system within ninety days of assuming office, as required by Section 3(2)(a)(vi).

(Ex. 23) That was it. PERAC did not mention *Levesque's* incorrect implication that a former elected official could purchase prior creditable service if they were a member of the same retirement system that they previously did not join.

In 2024, NRB overstated one of the holdings in *Levesque*. On April 4, 2024, NRB wrote a letter to PERAC stating that *Levesque* and other cases "explain that elected officials were, in certain circumstances in the past, allowed to buyback prior elected official service in certain circumstances." (Ex. 13) The words "explain," "in the past," and "circumstances" in the plural were inaccurate. The *implication* in *Levesque* was that a former elected official *could* purchase creditable service in *one* circumstance (if they were a member of the same retirement system), not that former elected officials *had* purchased it.

G.L. c. 32, § 3(3)

The statute generally states that any employee who, having or having had the right to become a member, failed to become or elected not to become a member, may apply for and be admitted to membership if under the maximum age for his group on the date of his application....

This statute was one of the statutes that was invoked, until *Goode* in 2001, as an exception to the 90-day deadline in G.L. c. 32, § 3(2)(a)(vi).

Goode v. Weymouth Retirement Board and Norfolk County Retirement Board

In a 2001 case, CRAB ruled that a former selectman in Weymouth who had not joined the Weymouth Retirement System within 90 days of taking office could not purchase creditable service as a selectman. *Goode v. Weymouth Retirement Board and Norfolk County Retirement Board*, CR-99-701 (Contrib. Ret. App. Bd. May 1, 2001). In *Goode*, CRAB reaffirmed *Levesque*. *Goode* quoted the language in G.L. c. 32, § 3(2)(a)(vi) and noted that the appellant had not joined the retirement system within 90 days. *Goode* then stated that G.L. c. 32, § 4 (which was a reference to § 4(1)(a), as *Awad v. Hampshire County Retirement Board* clarified),

provides that a member of a retirement system can purchase creditable service for time prior to his or her membership in the retirement system

and stated,

Since Appellant is not a member of Weymouth Retirement System, he is not eligible to purchase the creditable service that he seeks.

The sequence of sentences in *Goode* was similar to that in *Levesque*. *Goode*, like *Levesque*, did not state, but implied, that an elected official who does not become a member of the retirement system within 90 days, but is later a member of the same retirement system, may purchase the creditable service as an elected official. *Goode*, like *Levesque*, based this implication on a mischaracterization of G.L. c. 32, § 4(1)(a).

Goode continued:

The Magistrate's reliance on G.L. c. 32, § 3(3) is misplaced. G.L. c. 32, § 3(2)(a)(vi) provides the mechanism for elected officials to become members of a retirement system and provides the time period during which they must exercise this option. This provision cannot be rendered meaningless by operation of G.L. c. 32, § 3(3).

With that, CRAB foreclosed G.L. c. 32, § 3(3) as an exception to the 90-day deadline (although it impliedly recognized G.L. c. 32, § 4(1)(a) as an exception).

In a 2003 case, DALA described *Goode* inaccurately as recogniz[ing] the ability to gain creditable service if the member is a member of the same retirement system that pertained to the city, town or county in which he served as an elected official.

Michael J. Sauvageau v. Worcester Regional Retirement Board, CR-02-1336 (Div. Admin. L. App. Dec. 12, 2003). *Goode* so implied but did not so recognize.

Later, in a footnote in the 2014 case of *Awad v. Hampshire County Retirement Board*, CRAB stated that *Goode* (like *Levesque*) contained dictum that a former elected official who did not join a retirement system within 90 days could later do so if they were a member of the same retirement system. The problems with that footnote as applied to *Levesque*, discussed above, also apply to *Goode*.

In Memorandum #28/2021, PERAC interpreted *Goode* more strictly than CRAB did in *Awad*.

PERAC stated that the appellant in *Goode*

was not permitted to purchase prior elected service time because he never became a member of that retirement system within the ninety-day requirement of Section 3(2)(a)(vi).

That was it. PERAC did not mention the exception of G.L. c. 32, § 4(1)(a) that *Goode* had implied.

As it did with *Levesque*, NRB overstated one of *Goode*'s holdings. In its April 4, 2024 letter to PERAC, NRB stated that *Goode* and other cases "explain that elected officials were, in certain circumstances in the past, allowed to buyback prior elected official service in certain circumstances." (Ex . 13) The words "explain" and "in the past" were inaccurate. NRB continued, stating that *Goode* "note[d] that elected officials could buyback prior elected official

service if the governmental entities to which they were elected were part of the same retirement system” *Goode* so implied, but did not so note.

G.L. c. 32, § 4(1)(o)

When Dr. Zaleznik was first elected as a member of the Newton School Committee, this was the wording of G.L. c. 32, § 4(1)(o):

Any member who served as a selectman, alderman, city councilor, school committee member or town moderator as the result of election by direct vote of the people, *in which position he received no compensation*, may establish credit for such service by depositing in the annuity savings fund of the system of which he is a member a sum equal to the amount which would have been paid into such fund during such period if such position had been compensated at the rate of twenty-five hundred dollars per year, plus buyback interest to the date of payment; provided, however, that the provisions of this paragraph shall not apply to any member first elected on or after January 1, 1986.

(Emphasis added.)

This version of the statute did not apply to Dr. Zaleznik, because she *did* receive compensation for her service on the School Committee, and she was first elected after January 1, 1986.

Toward the end of Dr. Zaleznik’s service on the School Committee, G.L. c. 32, § 4(1)(o) was amended, effective July 1, 2009. St. 2009, c. 21, § 5. On that date, it read and still reads:

The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

Because Dr. Zaleznik’s annual salary, \$4,875, was under \$5,000, she was not eligible to purchase credit for her service for July 1 through December 31, 2009 (the day that the legislation became effective until the end of her service on the Newton School Committee).

Even though G.L. c. 32, § 4(1)(o) does not apply to Dr. Zaleznik, I have discussed it because it has been an exception to the 90-day deadline and it has arisen in the parties’ submissions.

G.L. c. 32, § 3(2)(d)

This statute generally allows retirement boards to make eligible for membership in a retirement system

part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit, including such employment or service of any state official.

The statute was apparently invoked as an exception to the 90-day rule.

Memorandum #20/2003

A few months after Dr. Zaleznik took office for the first time, PERAC issued, on June 12, 2003,

Memorandum #20/2003. It stated in part:

The Commission has long opined that a compensated elected official is entitled to membership in the appropriate retirement system regardless of the amount of his or her compensation. G.L. c. 32, § 3(2)(vi) grants membership to:

Any person hereafter elected by popular vote to a state, county or municipal office or position who files with the board on a prescribed form a written application for membership within ninety days after the date of assuming office; provided, that a member becoming an elected official shall retain his membership and an elected official who is a member shall remain a member upon his re-election or upon his election or appointment to any other position which would otherwise entitle him to membership[.]

.... Since the Legislature included a separate section covering the membership of elected officials, the provision concerning membership of less than full time employees, G.L. c. 32, § 3(2)(d), does not apply to elected officials.

Eligible elected officials have 90 days after assuming office to decide whether or not to become members of the retirement system. Once the 90 days have passed, an elected official would need to wait until he or she was reelected and again assumed office in order to join the system. While the statute does not require boards to notify elected officials of this right, many boards do notify newly elected officials in writing. Additionally, certain uncompensated elected officials may purchase their service under the provisions of G.L. c. 32, §§ 4(1)(o) and 4(1)(o½).

(Ex. 21)

Thus, PERAC foreclosed G.L. c. 32, § 3(2)(d) as an exception to the 90-day deadline, and seemed to have acknowledged G.L. c. 32, §§ 4(1)(o) and (o½) as continuing exceptions. (This decision does not discuss the substance of G.L. c. 32, §§ 4(1)(o½), which is not relevant.)

Sauvageau v. Worcester Regional Retirement Board

In a 2003 case, *Michael J. Sauvageau v. Worcester Regional Retirement Board*, CR-02-1336 (Div. Admin. L. App. Dec. 12, 2003), DALA held that an elected official who did not become a member of a retirement system within 90 days of taking office could purchase creditable service under G.L. c. 32, § 4(1)(a). The decision also discussed G.L. c. 32, § 4(1)(o) as an exception to the 90-day deadline, and discussed how G.L. c. 32, § 3(3) could no longer be used as an exception. The decision is hard to follow and discussed *Levesque* inaccurately (as involving G.L. c. 32, § 3(3), whereas *Levesque* did not involve that statute).

PERAC Memorandum #35/2009

On September 16, 2009, PERAC issued Memorandum #35/2009. (Ex. 22) The memorandum noted the amendment of G.L. c. 32, § 4(1)(o), which “had permitted the purchase of uncompensated service as an elected official in some circumstances.” (Ex. 22)

Memorandum #35/2009 also noted that retirement boards had asked PERAC questions, including one relevant to this appeal:

whether those persons who have previously purchased the service may retain such service. The answer to this question is yes, so long as they met all the criteria contained in those sections of the law and completed payment of the service prior to July 1, 2009.

(Ex. 22)

As discussed above, G.L. c. 32, § 4(1)(o) did not apply to Dr. Zaleznik.

Awad v. Hampshire County Retirement Board

In *Awad v. Hampshire County Retirement Board*, CR-08-621 (Contrib. Ret. App. Bd. Dec. 19, 2014), CRAB ruled that a Select Board member in Amherst who had not joined the Hampshire County Retirement System within 90 days of taking office could not purchase creditable service as a Select Board member under G.L. c. 32, § 3(3).

Awad reaffirmed CRAB's 1996 and 2001 decisions in *Levesque v. Essex County Retirement Board* and *Goode v. Weymouth Retirement Board and Norfolk County Retirement Board* and stated that

the ninety-day time limit for elected officials to join a retirement system following their election, provided under G.L. c. 32, § 3(2)(a)(vi), is mandatory. The late entry and buy-back provisions under §§ 3(3) and 3(5) cannot override the more specific provisions of § 3(2)(a)(vi), and neither late entry nor, in most cases, subsequent purchase of creditable service is available to elected officials who miss the ninety-day "window" for retirement system membership.

CRAB continued:

Section 3(2)(a)(vi) does not merely include elected officials as persons generally eligible for membership in a retirement system, it conditions their membership upon application within a specific time limit....[T]he Legislature did not repeal or amend [the requirement] at the time of its pension reform legislation in 2009 or later. It would be entirely illogical for the Legislature to have enacted a ninety-day application limit and, at the same time, nullify that limit by allowing a late application. Both sections 3(2)(a)(vi) and 3(3), in slightly different form, were enacted with the original version of the current retirement law, effective in 1946. We cannot conclude that the ninety-day limit was intended to be optional or subject to a late application — if it were, there would have been no reason to include it at all.

(Footnotes omitted.)

A footnote in *Awad* asserted that *Levesque* and *Goode* contained dictum that G.L. c. 32, § 4(1)(a), before 2009, could be used as an exception to the 90-day deadline. CRAB did not

“reach this issue since it is not presented here and since the current version of § 4(1)(a) omits this language.”

Thus, in *Awad*, CRAB

- reaffirmed that G.L. c. 32, § 3(3) was not an exception to the 90-day rule (as CRAB had foreclosed in *Goode* in 2001);
- foreclosed G.L. c. 32, § 3(5) as an exception;
- and implied that G.L. c. 32, § 4(1)(a), after the amendment of its language in 2009, was no longer an exception (even though *Awad* reaffirmed *Levesque* and *Goode*, both of which implied that the statute was an exception).

Nine years earlier, PERAC Memorandum #20/2003 had foreclosed G.L. c. 32, § 3(2)(d) as an exception to the 90-day deadline. With the issuance of *Awad* in 2014, G.L. c. 32, §§ 4(1)(o) and (o½) seemed to be the remaining exceptions to the 90-day rule.

When *Awad* stated that “in most cases, subsequent purchase of creditable service is [not] available to elected officials,” it might have been referring to G.L. c. 32, §§ 4(1)(o) and (o½) as still allowing such purchases, although it is unclear.

(In her substitute brief, Dr. Zaleznik cites the “in most cases” language to argue that in some cases, elected officials, including her, who miss the 90-day deadline may nonetheless purchase creditable service. However, she did not specify which exception to the 90-day rule would apply to her. (Petitioner’s Substitute Memorandum 11)) The only apparently remaining exceptions when CRAB issued *Awad*, G.L. c. 32, §§ 4(1)(o) and (o½), did not apply to her.)

G.L. c. 32, § 3(2)(c)

This statute generally provides that

[a]ny employee otherwise eligible for membership, who has elected not to become a member in service, may thereafter apply for and be admitted to membership.

Under this statute, an employee's application and admission to membership in a retirement system is under G.L. c. 32, §§ 3(3) and 3(8), the latter of which governs transfer of membership among retirement systems.

PERAC's 2017 handout

The relevant part of PERAC's 2017 handout stated this about elected officials:

- If they do not elect to become a member of the system while in office, they may not buy back the time thereafter UNLESS they subsequently become a member of the same retirement system for which they have service as an elected official.

(Ex. 26, p. 19)

The handout cited no cases. As stated above, this bullet point appeared on a page with a total of four bullet points and cited G.L. c. 32, §§ 3(2)(c) and 3(3). However, it is unclear which statutory citation corresponded to which bullet point.

PERAC's bulleted statement *sounded* as if referred to G.L. c. 32, § 4(1)(a). However, (1) *Awad* had implied three years earlier that G.L. c. 32, § 4(1)(a), after the 2009 amendments, was no longer an exception to the 90-day rule. And (2) the handout cited two other statutes, but not G.L. c. 32, § 4(1)(a).

One statute that PERAC's handout cited was G.L. c. 32, § 3(3). PERAC probably did not mean that G.L. c. 32, § 3(3) supported its assertion about former elected officials, because *Awad*, three years earlier, had foreclosed G.L. c. 32, § 3(3) as an exception to the 90-day rule.

The other statute that PERAC's handout cited was G.L. c. 32, § 3(2)(c). However, that statute operates under G.L. c. 32, § 3(3) – which is not an exception to the 90-day deadline –

and § 3(8) – which is about transfer of memberships among retirements systems and is therefore irrelevant to former elected officials who did not join a retirement system.

Thus, the authority of PERAC’s assertion in its 2017 handout is unknown. The handout was probably incorrect.

Furthermore, the PERAC handout asserted in 2017 that a former elected official who did not join a retirement system within 90 days could later do so if they were a member of the same retirement system – even though PERAC advised NRB in 2012, for a reason or reasons that are not entirely clear, that Dr. Zaleznik, who fit that description, could not purchase her service on the School Committee.

PERAC Memorandum #28/2021

On October 19, 2021, PERAC issued Memorandum #28/2021. (Ex. 23) It began as follows:

PERAC has recently received inquiries from several retirement boards regarding the ability of members to buy back their prior service time as an elected official, specifically for members who did not elect membership within the required timeframe. As you are aware, elected officials are given the option of membership in a retirement system pursuant to G.L. c. 32, § 3(1)(a)(vi)....

(Ex. 23) The memorandum also stated that elected officials are given the option of membership in a retirement system pursuant to G.L. c. 32, § 3(1)(a)(vi), which provides that membership is available to:

Any person hereafter elected by popular vote to a state, county or municipal office or position who files with the board on a prescribed form a written application for membership within ninety days after the date of assuming office; provided, that a member becoming an elected official shall retain his membership and an elected official who is a member shall remain a member upon his re-election or upon his election or appointment to any other position which would otherwise entitle him to membership.

The Contributory Retirement Appeal Board (“CRAB”) has consistently determined that elected officials must adhere to Section 3(1)(a)(vi)’s ninety-day requirement in order to gain membership to the retirement systems and receive creditable service.

(Ex. 23)

The word “consistently” needs clarification. In *Levesque, Goode, and Awad*, CRAB did not allow former elected officials who had missed the 90-day deadline to purchase creditable service. But CRAB did imply in *Levesque* and *Goode* that former elected officials could do so in one circumstance.

The memorandum cited *Levesque, Goode, and Awad* and described *Levesque* and *Goode* narrowly as not having allowed elected officials who missed the 90-day deadline to become members of the retirement system – although earlier interpretations of the two cases, including by PERAC, allowed elected officials to become members after the 90-day deadline if they were members of the same retirement system.

The memorandum continued:

Given the prevailing caselaw, it is PERAC’s position that elected officials are neither eligible for membership nor are eligible to buy back previous elected official time if they have not applied for membership within ninety days of assuming office pursuant to G.L. c. 32, § 3(1)(a)(vi). The elected official has the opportunity to join the system each and every time he or she is elected to a new term. However, if an elected official opted to become a member upon his or her election to a third term, for example, he or she would still be ineligible to buy back the first two terms for which he or she did not elect membership.

(Ex. 23)

With this, PERAC seemed to foreclose all exceptions to the 90-day deadline for elected officials. The memorandum ended by advising readers who had questions to contact General Counsel Judith Corrigan (Ex. 23), who had authored the 2017 handout with a more liberal interpretation

of the 90-day deadline and who, in 2012, had advised NRB that Dr. Zaleznik could not purchase her creditable service.

NRB's letter to PERAC, April 4, 2024

NRB's letter to PERAC on April 4, 2024 discussed six members who may have been mistakenly allowed to purchase creditable service. NRB wrote:

At the time NRB allowed these buybacks, it was under the impression that such service was eligible for buybacks under c. 32, 3(1)(a)(2)(vi). Indeed, PERAC Memo 28/2021 opens with recognition that there was confusion and conflicting understandings of this process at the time, indicating that NRB was not alone in its uncertainty about this buyback process.

(Ex. 13)

It is not in the record when five Newton Retirement System members were allowed to purchase prior service as elected officials – how long or shortly before the issuance of PERAC Memorandum #28/2021 on October 19, 2021. Dr. Zaleznik was apparently the sixth member whom NRB referred to; NRB allowed her to purchase creditable service on November 9, 2012, as stated above. (Ex. 4) With its April 4, 2024 letter, NRB seemed to be saying, in effect: “In November 2012, we were not alone in our confusion, as a PERAC memorandum issued nine years later indicates.”

Furthermore, I do not read PERAC's memorandum as recognizing confusion or conflicting understandings.

NRB's letter also attached page 19 of PERAC's handout, quoted it, and cited as “additional evidence of this contemporaneous uncertainty.” (Ex. 13, p. 1) NRB did not explain:

Contemporaneous to when? When PERAC distributed the handout in 2017? When NRB allowed Dr. Zaleznik to purchase creditable service in 2012?

NRB also cited the *Policies & Procedures Booklet*, issued by the Essex Regional Retirement System in January 2019. Page 1 of the booklet states:

This booklet contains the policies approved by the Essex Regional Retirement Board. These policies are designed to guide the daily operations of the retirement system. Each policy included in this booklet provides the date on which the policy was originally approved, as well as the date on which any revision to the policy was approved.

(Ex. 27) (emphasis omitted) This statement used “policy” or “policies” five times. It used “approved” two times. The booklet was clearly a compilation of the *policies* that *one* retirement board had *approved*. The booklet does not purport or appear to be a discussion of Chapter 32’s statutes in general.

NRB’s letter attached page 28 and stated that the booklet “provides guidance on how members can buy back elected official service on Page 28.” This description was imprecise. The booklet was a compilation of one retirement system’s policies, not guidance to members. NRB’s letter continued that the booklet was further evidences the conflicting understandings of c. 32, § 3(l)(a)(2)(vi) among local retirement boards prior to the issuance of Memo 28/2021.

It is unclear what NRB’s point was here. That the Essex retirement system misunderstood G.L. 32, § 3(1)(a)(2)(vi)? That because the Essex system misunderstood the provision, it was understandable that NRB misunderstood it too? The source of NRB’s understanding or misunderstanding is ultimately not significant. Whether NRB was alone in its understanding or misunderstanding is ultimately not significant.

NRB’s letter continued:

The six buybacks NRB has discovered to date occurred in the context of above-described conflicting advice from CRAB and PERAC, and a general atmosphere of confusion among retirement boards regarding this process. There appear to be

significant differences between this broad policy uncertainty that has potentially impacted the creditable service calculations of a number of retirees...

It is unclear how a PERAC memorandum, relying on a CRAB decision, *Awad*, entails “conflicting advice” between the two agencies. At this point, NRB added CRAB as a source of its confusion. NRB’s assertions about “a general atmosphere of confusion” and “broad policy uncertainty” were without support.

PERAC’s letter to NRB, August 22, 2024

In its response to NRB’s Question 1, PERAC stated in part:

Prior to Chapter 21 of the Acts of 2009, the Division of Administrative Law Appeals (“DALA”) and the Contributory Retirement Appeals Board (“CRAB”) consistently held that prior nonmembership elected official service time could be purchased under G.L. c. 32, § 4(1), regardless of whether the 90-day election requirement of G.L. c. 32, 3(1)(a)(vi) was satisfied. *See Levesque v. Essex County Ret Bd.*, CR-95-571 (CRAB Oct. 7, 1996); *Goode v. Weymouth Rel. Bd. and Norfolk County Ret. Bd.*, CR-99-701 (CRAB May 1, 2001); and *Sauvageau v. Worcester Regional Ret. Bd.*, CR-02-1336 (DALA Dec. 12, 2003).

(Ex. 14)

This is not what PERAC said three years earlier in PERAC Memorandum #28/2021:

The Contributory Retirement Appeal Board (“CRAB”) has consistently determined that elected officials must adhere to Section 3(1)(a)(vi)’s ninety-day requirement in order to gain membership to the retirement systems and receive creditable service.

(Ex. 23)

In its response to NRB’s Question 3, PERAC stated in part:

The prior language for Section 4(1)(a) was found in Chapter 32 at its inception and was effective until July 1, 2009. This Section, commonly referred to as “the year for a day rule[,]” allowed the granting of a year of creditable service for each year served as an elected official. As discussed in *Levesque* and *Goode*, this Section was utilized to allow elected officials to purchase prior elected official service despite the ninety-day limitation.

Levesque and *Goode* mentioned G.L. c. 32, § 4(1) almost in passing, but did not discuss the year for a day rule.

The state of the law in 2012

What was the state of the law in **2012** when NRB allowed Dr. Zaleznik to purchase her creditable service on the School Committee? (I discuss various statutes generally in the order that I first discussed them.)

G.L. c. 32, § 4(1)(a)

CRAB's decisions in *Levesque* (**1996**) and *Goode* (**2001**) implied that a former elected official who did not join a retirement system within 90 days could later do so if they were a member of the same retirement system. However, the implication was based on an incomplete and erroneous reading of the statute.

Awad implied in **2014** that G.L. c. 32, § 4(1)(a), after **2009**, was no longer an exception to the 90-day rule.

G.L. c. 32, § 3(3)

CRAB foreclosed this statute as an exception in *Goode* in **2001**, before NRB allowed Dr. Zaleznik's creditable purchase.

G.L. c. 32, § 4(1)(o)

This exception to the 90-day deadline never applied to Dr. Zaleznik.

G.L. c. 32, § 3(2)(d)

PERAC foreclosed this statute as an exception in a **2003** memorandum, before NRB allowed Dr. Zaleznik's creditable purchase.

Thus, in 2012, no acknowledged exceptions to the 90-day deadline for elected officials applied to Dr. Zaleznik. NRB's allowing her to purchase her creditable service was an error that NRB must correct under G.L. c. 32, § 20(5)(c)(2)v

In closing

This case has been made more complicated, at least to me, for three reasons or set of reasons. One, various entities have not interpreted and characterized CRAB's key decisions consistently, despite statements to the contrary.

Two, NRB (1) initially decided that Dr. Zaleznik was not eligible to purchase her creditable service; (2) changed its position and allowed her to purchase it, without an explanation in the record; (3) changed its position again, deciding that it had erroneously allowed Dr. Zaleznik's purchase; and (4) told PERAC, in effect and unpersuasively, that it, NRB, had allowed the purchase because PERAC and CRAB had confused NRB, which, like other retirement boards, was confused.

Three, PERAC advised NRB in 2012 that Dr. Zaleznik could not purchase her creditable service. The reason or reasons are unknown. However, in 2017, PERAC's position was that someone in Dr. Zaleznik's situation could purchase creditable service. In 2021, PERAC changed its position; someone in Dr. Zaleznik's situation could *not* purchase creditable service. In 2024, PERAC, in response to NRB's inquiry, directed NRB to rescind Dr. Zaleznik's purchase.

Conclusion and Order

NRB's rescission of Dr. Zaleznik's purchase of creditable service is affirmed. Dr. Zaleznik cannot retain her purchase of creditable service, her eligibility for superannuation benefits, and the superannuation benefits that she received.

Dated: April 17, 2026
/s/ Kenneth Bresler

Kenneth Bresler
Administrative Magistrate

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