COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

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Stoneham Retirement Board,

Petitioner,

1. Docket No. CR-12-548

Public Employee Retirement

Administration Commission,

Respondent.

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## RULING ON PERAC’S MOTION FOR RECONSIDERATION

On May 1, 2015, DALA issued a decision in the above-captioned matter. Both parties filed notices of objections with CRAB. On May 15, 2015, PERAC filed a motion for clarification of the May 1, 2015 decision with DALA. In response to a letter from the Board, CRAB issued an Order Staying Appeal Pending Further Action by DALA, on June 8, 2015. On July 21, 2015, I ordered the Stoneham Retirement Board to file a response to PERAC’s motion and to present any evidence that Stoneham elected officials have received less than one day of creditable service for each day that they were in office. The Board presented no such evidence.

I treat this motion as a motion for reconsideration under 801 CMR 1.01(7)(*l*), as PERAC has noted “a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case.” PERAC seeks clarification of certain language in the decision that covers the creditable service earned by elected officials who earn more than $5,000 annually. PERAC argues that these officials are entitled to creditable service for “all actual time served.” PERAC asserts that elected officials are entitled to a day of creditable service for each day the official holds elective office, regardless of whether the official performs any duties on any given day.

In the May 1, 2015 decision, I wrote: “Under PERAC’s interpretation of § 4(1)(a), as amended, elected officials get a day of creditable service for each day worked—period.” Additionally, in several places, I use the phrase “days they work” to describe days for which elected officials, like all other employees, are entitled to creditable service. “PERAC is concerned that this phrase, focusing on the *days they work*, will be construed as authorizing boards to pro-rate elected officials’ creditable service to *actual days* worked, as opposed to actual time served in the position.” PERAC Motion for Clarification, at \*2-3 (emphasis in original). Indeed, I misread PERAC’s position.

PERAC argues that elected officials must be “credited with all actual time served” and “that the Assessor, for example, is the Assessor each day of his term, and it would not be logical, feasible or legally sound to somehow track actual days that the individual was performing his job duties.” PERAC Motion for Clarification, at \*5. So, each day that the official holds office, he would be credited with one day of creditable service. In the decision, I misunderstood PERAC’s argument to be that elected officials are entitled to creditable service only for the time that they actually work.

As I explained in my decision, PERAC’s interpretations of the retirement law must be given deference where they are reasonable and not contrary to the statute. I deferred to what I thought was PERAC’s interpretation because it was reasonable and not contrary to the statute. I conclude, however, that PERAC’s position that elected officials receive credit for each day that they serve in an elected office is contrary to the statute and therefore does not require the usual deference.

Creditable service is “all membership service, prior service and other service for which credit is allowable to any member . . . .” G.L. c. 32, § 1. “Membership service,” the type of service that elected officials render when they qualify as retirement system members, is “service as an employee in any governmental unit rendered since becoming a member of any system pertaining to such governmental unit for which credit is allowable to such member . . . .” *Id.* Additionally, G.L. c. 32, § 4(1)(a), after the 2009 amendments discussed in the decision, provides that any “member in service shall, . . . be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto . . . .” “Employee, as applied to persons whose regular compensation . . . is paid by any political subdivision of the commonwealth . . . shall mean any person who is regularly employed in the service of any such political subdivision, . . . and also including *officials and public officers so paid whether employed, appointed or elected by popular vote for stated terms or otherwise*.” G.L. c. 32, § 1 (emphasis supplied). And, finally, “regular compensation” is “wages,” which the statute defines as “base salary or other base compensation of an employee paid to that employee for employment by an employer . . . .” *Id.*

Applying these definitions to the circumstances of this case, the members of the Stoneham Board of Assessors and the Town Moderator are employees of the Town of Stoneham. They are entitled to the same creditable service that other employees are entitled to. PERAC’s assertion that elected officials’ creditable service should be based on “time served,” by which they mean simply occupying the elected office, has no basis in the statute. PERAC’s real argument seems to be more about the practical difficulties of keeping track of the work that the officials do throughout the year. PERAC does not explain why it would be any more difficult for elected officials to keep track of their time worked than for other employees to do so. There are a plethora of state employees who have various duties that require them to travel across the state without direct supervision, and they have no trouble keeping track of their work hours. Because PERAC’s interpretation is contrary to the statute, I do not defer to it.

Stoneham agrees with this much of the decision, but argues that it should then have the power under G.L. c. 32, § 4(2)(b) to determine the annual creditable service for those specific positions, regardless of the time that the officials actually work. This likewise has no basis in the statute. The Town Moderator and Board of Assessors positions are part-time positions because the persons who occupy them work less than full-time, even if they occupy those offices throughout the entire elected term. Therefore, those elected officials are subject to the same Board regulations on part-time service that other members are subject to, including any regulation on prorating creditable service.

Dated: March 3, 2017 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Kenneth J. Forton

Administrative Magistrate

Notice sent to: Michael Sacco, Esq.

Judith A. Corrigan, Esq.