THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

Gail Levy,

 **Petitioner**

v. Docket No. CR-14-414

 DATED: April 27, 2018

Massachusetts Teachers’

Retirement System,

 **Respondent**

**Appearance for Petitioner:**

Ronda G. Parish, Esquire

1350 Main Street, Suite 1003

Springfield, MA 01103

**Appearance for Respondent:**

James H. Salvie, Esquire

General Counsel

Massachusetts Teachers’ Retirement System

500 Rutherford Avenue, Suite 210

Charlestown, MA 02129-1628

**Administrative Magistrate:**

Judithann Burke

 **Case Summary**

The Petitioner has not met her burden of proving that she is entitled to purchase the remainder of her state service at the earlier-imposed buyback interest rate. Rather, she is bound by the statutorily-imposed current actuarial interest rate.

 **DECISION**

The Petitioner, Gail Levy, is appealing from the August 6, 2014 decision of the Respondent, Massachusetts Teachers’ Retirement System (MTRS) denying her request to purchase prior service at the lower buyback interest rate. (Exhibit 14.) The appeal was timely filed on August 18, 2014. (Exhibit 16*.*) I held a hearing on January 22, 2018 in Room 305 at 436 Dwight Street, Springfield, MA. I marked Exhibits 1-16. The Petitioner testified in her own behalf. The MTRS presented no witnesses. The parties submitted pre-hearing and post-hearing memoranda of law. (Petitioner-Attachments A & C; MTRS-Attachments B & D.) The hearing was digitally recorded. The post-hearing submissions were received on February 26, 2018 thereby closing the record.

 **FINDINGS OF FACT**

 Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Petitioner, Gail Levy, born in 1952, is an active member of the MTRS. Since 2007, she has taught in the Longmeadow Public Schools. (Petitioner Testimony.)
2. The Petitioner first began her teaching career with non-membership service in the Wilbraham Public Schools, from January to June 1975, when she was employed as an hourly Title I tutor. Her work hours varied significantly from month to month during that period. (*Id.* andExhibit 15.)
3. The Petitioner became a full time teacher in Wilbraham in September 1975. She became a member of the MTRS at that time. She worked in Wilbraham as a full time teacher until June 1986. (Exhibits 2 and 6.)
4. The Petitioner separated from service in Wilbraham in June 1986. In 1988, she took a refund of her contributions. (Petitioner Testimony.)
5. The Petitioner returned to active teaching in 2007 when she became employed in Longmeadow. She did not immediately re-deposit her contributions from her prior service. (*Id.*)
6. In March 2013, the Petitioner completed the MTRS’s “MA substitute, temporary or part-time service” purchase application. On the application, she also included all of her service, both part-time non-membership and full time membership from January 1975 through June 1986. She further noted that her full time teaching service in Wilbraham ended in February 1986 when it actually ended in June 1986. The application was filed with the MTRS on March 27, 2013. (Exhibit 2.)
7. On March 27, 2013, Jon Lapriore, Director of the MTRS Springfield Office, sent an email to the Petitioner wherein he informed her that she did not have credit for her non-membership Wilbraham service rendered between January 27, 1975 and June 30, 1975. Mr. Lapriore indicated that she needed to complete an attached form and return it by April 2, 2013, and then have Wilbraham complete the rest of the form so that the January through June 1975 non-membership service could be documented. Mr. Lapriore informed the Petitioner that Wilbraham would have until October 2, 2013 to do this without the higher interest rate coming into play. The final paragraph of the email reads as follows:

FYI….Your refund buyback covers 11.5167 years and has a current cost of $37,016.75. The total cost of the 5-year installment plan would be $40,068.10, with annual installment payments of $8,013.62. **This information is covered in the invoice, so let me know if you have any questions at all when you receive it; it’s going in the mail today.**  (Emphasis added.) (Exhibit 11.)

1. The Petitioner was confused by the March 27, 2013 email from Mr. Lapriore and believed that the invoice being sent out was a proposal to show her how the buyback “would look like after she had filed all of the paperwork.” She did not think that the invoice being issued was a bill that needed to be paid. (Petitioner Testimony.)
2. Mr. Lapriore mailed the invoice for the Petitioner’s membership service on March 27, 2013. The invoice clearly noted that it was for a period of service in Wilbraham beginning in September 1975, not January 1975. The invoice also clearly noted that it would expire on May 26, 2013, and contained a clear “INTEREST INCREASE ALERT” that informed the Petitioner that if she did not pay the invoice by May 26, 2013 or enter into an installment agreement by that date, an increased interest rate of 8.25% would apply to the purchase. (Exhibit 12.)
3. The Petitioner received the invoice, but she did not open the envelope. She assumed that the envelope contained a form that she could take care of at a later time. (Petitioner Testimony.)
4. In August 2013, the Petitioner opened the envelope containing the invoice that was issued on March 27, 2013. She realized then that she had not paid the invoice in connection with an installment purchase agreement. She sent a check to the MTRS in the amount of $8,013.62. The MTRS rejected that payment, as the March 27, 2013 invoice had warned, and issued her a new invoice at the increased (actuarial) interest rate. (Exhibits 4 and 9.)
5. In September 2013, the Petitioner returned a form to the MTRS that Wilbraham had completed. The town did not give information on the correct time period, January to June 1975. (Exhibit 6.)
6. Initially, the MTRS erroneously informed the Petitioner that she had submitted the correct information. Sometime later, the MTRS requested that she obtain the necessary information from Wilbraham. (Exhibit 7.)
7. On August 6, 2014, the MTRS denied the Petitioner’s claim for the buyback interest rate and provided her appeal rights. (Exhibit 14.)
8. The Petitioner’s timely appeal was received on August 18, 2014. (Exhibit 16.)

**CONCLUSION**

The Petitioner is not entitled to prevail in this appeal. She has not identified any factual or legal basis upon which to set aside the clear requirements of the law that she must pay the actuarial interest rate. It is through no fault of the MTRS that she did not respond to the invoice for her membership service by May 26, 2013 or heed the Interest Increase Alert enclosed therewith. The MTRS fulfilled its obligation by emailing her the breakdown of her non-membership and membership service, notifying her that an invoice was being issued on March 27, 2013 and mailing the document to her home. The MTRS and bears no additional burden for any confusion on her part or her failing to open the envelope containing the invoice for four (4) months. If there was any confusion as a result of being informed that an invoice was being issued, it was incumbent upon her to ask the appropriate questions rather than make sweeping assumptions. There is nothing vague or ambiguous in Mr. Lapriore’s March 27, 2013 email. He is clearly addressing distinct types of service.

The clear language of [Section] 3(8)(b) does not permit a member to receive the buyback rate if [he] does not make payment within the time specified, regardless of that member’s efforts.

See *Dunse v. MTRS,* CR-14-285 (Division of Administrative Law Appeals 12/4/15) (no Contributory Retirement Appeal Board Decision) and *Susan Lauder v. MTRS*, CR-15-303 (Division of Administrative Law Appeals 6/16/17; no Contributory Retirement Appeal Board Decision.)

 In summary, the Petitioner has not demonstrated any arbitrary or capricious actions, mistakes or other wrongdoing on the part of the MTRS. Rather, the MTRS has applied the principles of retirement law correctly. It should be noted that neither G.L. c 32, § (8)(b) or § 25 (5)(c)(3) provide for any equitable remedies, although no equitable considerations are due in this case. See *Bristol County Retirement Board v. Contributory Retirement Appeal Board,* 65 Mass. App. Ct. 413 (2006). The decision of the MTRS is affirmed.

So ordered.

Division of Administrative Law Appeals,

BY: Judithann Burke, Administrative Magistrate DATED: April 27, 2018