COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Richard Stafford**,

Petitioner

v. Docket No. CR-12-344

**Massachusetts Teachers’ Retirement System**,

Respondent

**Richard Stafford**,

Petitioner

v. Docket No. CR-17-233

**Salem Retirement Board**,

Respondent

**Appearance for Petitioner**:

Roy Gelineau, Esq.

Gelineau & Kline

49 Federal Street

Salem, MA 01970-3521

**Appearance for Respondents**:

James O’Leary, Esq.

General Counsel

Massachusetts Teachers’ Retirement System

500 Rutherford Avenue, Suite 210

Charlestown, MA 02129

Thomas F. Gibson, Esq.

2400 Massachusetts Avenue.

Cambridge, MA 02140-1854

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

A statutory provision, in effect until July 1, 2009, allowed an uncompensated member of a school committee to purchase creditable service. A former school committee member did not apply to purchase creditable service while the provision was in effect. The denials of his later applications to purchase creditable service are affirmed.

**DECISION**

 The petitioner, Richard Stafford, appeals the denials by the Salem Contributory Retirement Board and the Massachusetts Teachers’ Retirement System to purchase his creditable service from when he was a member of the Salem School Committee.

 I held a hearing on November 21, 2017, which I recorded digitally. The recording was transcribed.

 Mr. Stafford testified, and called Paul Findlen, executive director of the Salem Contributory Retirement Board. I accepted into evidence 26 exhibits, Exhibits 1 through 7, and A through S.

 Mr. Stafford and the Salem Contributory Retirement Board submitted post-hearing briefs. MTRS relied on its prehearing memorandum. Mr. Stafford’s brief alleges facts that are not in evidence and I do not consider them.

 I did not consolidate the appeals but I did hear them together and issue this decision on both appeals.

**Findings of Fact**

 1. Over the years, Mr. Stafford had various jobs with the City of Salem and Essex County, including as City Solicitor of Salem. (Tr. 34, 58.)

 2. Mr. Stafford served on the Salem School Committee from January 7, 1974 to January 2, 1978. (Ex. B.)

 3. Mr. Stafford was not paid for his school committee service. (Tr. 35.)

 4. For part of the time that Mr. Stafford served on the school committee, he was a custodian in the Salem District Court and a member of the Essex County Retirement System. (Tr. 35.)

 5. Mr. Stafford was a member of the Salem Contributory Retirement System from June 1, 1974 to January 1, 1984. (Ex. K.)

 6. In 1985, Mr. Stafford withdrew his money from the Salem Contributory Retirement System. (Ex. D; Tr. 35.)

 7. On February 24, 2002, Mr. Stafford wrote a letter to the Salem Contributory Retirement Board. (The letter is dated 2001, but Mr. Stafford testified that it was a mistake. (Tr. 36, 58-59.)) He asked her for his

dates of service and the amounts of Savings Funds which were credited to my account during my years of employment with the City of Salem.

He also wrote:

I was employed by the County of Essex from 1974 to 1975 as well. Could you please advise me of the appropriate agency to contact for records of that employment?

(Ex. E.)[[1]](#footnote-1)

8. On June 10, 2002, Mr. Stafford wrote a letter to the Salem City Treasurer. (The letter is dated 2001, but Mr. Stafford testified that it was a mistake. (Tr. 58-59.)) He asked for his

dates of service and the amounts of Savings Funds which were credited to my account during my years of employment with the City of Salem.

(Ex. D.)[[2]](#footnote-2)

 9. On June 24, 2002, MTRS wrote to the Salem Contributory Retirement Board, with four requests:

 1. Were retirement deductions taken for any period(s) of service?

 2. Was this service refunded? If so[,] please provide breakdown.

 3. If member still has funds on account, please transfer.

 4. Indicate the periods during each calendar year for which your board will accept liability under G.L. c.32 s.3(8)(c) and the amount of creditable service to be allowed for such periods. Please indicate if the liability is based upon a 10 or 12-month basis.

(Ex. F.)

10. Mr. Stafford did not see this letter until 2011. (Tr. 40.)

 11. In 2002, MTRS sent Mr. Stafford an invoice relating to his purchase of creditable service that is not directly relevant to these appeals. He did not have enough money to pay the invoice. In 2004, Mr. Stafford called MTRS for another invoice. (Tr. 41-42.)[[3]](#footnote-3)

 12. On August 8, 2002, the Salem Contributory Retirement Board answered MTRS’s requests. It stated that

he was a member of our Retirement System from 06/01/1974 to 01/01/1984 and refunded his money when he left. In the event he wishes to redeposit that time[,] the Salem Contributory Retirement board will accept liability as follows:
🞄 Essex County Retirement from 06/01/1974 to 10/31/1977 (transfer-in) (2) Two Years + (5) Five Months.

🞄 City of Salem, Mayor’s office from 12/01/19[]70 to 09/18/1971 (refunds) (10) Ten Months

🞄 City of Salem, City Solicitor from 01/03/1978 to 01/01/1984 (refunds) (6) Six Years.

(Ex. G.)

 13. Mr. Stafford did not see this letter until 2011. (Tr. 40.)

 14. On January 28, 2012, Mr. Stafford asked MTRS what “evidence of service” it would “require to consider” his service on the school committee. (Ex. 5.)

 15. On June 19, 2012, MTRS denied Mr. Stafford’s request to purchase creditable service for his service on the Salem School Committee. It gave the following reason:

ch. 32 §4(1)(o) service purchases were repealed under the Chapter 21 of the Acts of 2009 pension reform law, where any purchase applications received after July 1, 2009 for uncompensated municipal service were no longer eligible for purchase.

(Exs. 1, N.)

 16. On June 28, 2012, Mr. Stafford timely appealed. (Ex. 2.)

 17. On March 24, 2017, Mr. Stafford asked Salem Contributory Retirement Board to credit him with his service on the Salem School Committee, minus two years and five months, when he was a member of the Essex County Retirement System. (Ex. O.)

 18. On April 26, 2017, SCRB denied Mr. Stafford’s request. (Ex. R.)

 19. At Mr. Stafford’s request, SCRB also voted to acknowledge that if Mr. Stafford had timely applied to purchase his service on the Salem School Committee, he would have been eligible to do so. (Ex. Q, p. 349, Tr. 81.)[[4]](#footnote-4)

 20. On May 8, 2017, Mr. Stafford timely appealed SCRB’s denial. (Ex. S.)

21. What Mr. Stafford has appealed in both appeals is the denial of his application to purchase 19 months of his service on the school committee. (Ex. 5, p. 2; Tr. 8.)

**Discussion**

 G.L. c. 32, § 4(1)(o) was amended in 1994, St. 1994, c. 197, to permit school committee members who were elected before January 1, 1976 to purchase creditable service. The provision was later changed to apply to school committee members who were elected after January 1, 1986. St. 2002, c. 116.

G.L. c. 32, § 4(1)(o) read:

Any member who served as a…school committee member 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…twenty-five hundred dollars per year, plus regular interest….

The provision was repealed in 2009, effective as of July 1, 2009. St. 2009 c. 21, §§ 5, 25. In other words, Mr. Stafford had until July 1, 2009 to purchase creditable service for his membership on the school committee. He did not do so.

 There is no reason to overcomplicate these appeals.

 On February 24, 2002, Mr. Stafford wrote a letter to SCRB *requesting information*. He did not apply to purchase his creditable service on the school committee. (Ex. E.) He did not present evidence about the SCRB’s response to his request for information or what he did when he received the information.

 In 2004, Mr. Stafford called MTRS for another invoice. (Tr. 41-42.) This was a request for an invoice, not an application to purchase creditable service on the school committee. And Mr. Stafford has assumed, without presenting any argument, and certainly without proving it, that a member of a retirement system may orally apply to purchase creditable service. *See* *Deborah Herst Hill v. State Board of Retirement*, CR-07-605 (DALA 2009)(“The Petitioner has the burden of proof on each element necessary to establish entitlement to a benefit under Chapter 32”).

 Mr. Stafford, a lawyer, should know that a letter requesting information is not an application, and that a telephone call requesting an invoice is not an application.

 Mr. Stafford did not see, until 2011, the June 24, 2002 letter that MTRS wrote to SCRB

(Ex. F, Tr. 40.) He did not see, until 2011, the August 8, 2002 letter that SCRB sent to MTRS. (Ex. G, Tr. 40.) His point in emphasizing these facts seems to be that had he known that MTRS and SCRB were not discussing his school committee service, he could have rectified the situation and purchased creditable service. His apparent point has many flaws. Neither MTRS nor SCRB were obligated to share their correspondence with Mr. Stafford. The correspondence does not establish that that MTRS and SCRB were not discussing his school committee service as clearly as he seems to believe. Mr. Stafford did not introduce the responses to his 2001 letters to SCRB and the City of Salem (Exs. D, E) or testify about them, which would have provided *direct* information about what he and SCRB knew about his school committee service. Mr. Stafford cannot prove that he would have completed his purchase of creditable service before July 1, 2009.

 Mr. Stafford did not present evidence why MTRS wrote to SCRB in 2002. Yet he calls the letter (and other factors) “overwhelming evidence” that SCRB treated Mr. Stafford’s letter as an application. (Pet. Br. 10.) It is not overwhelming. It is not evidence. It is not even an indication. For *MTRS* to write to SCRB for an unestablished reason does not mean that *SCRB* considered Mr. Stafford’s letter of February 24, 2002 to be an application.

 On February 24, 2002, Mr. Stafford wrote a letter to the Salem Contributory Retirement Board. (The letter is dated 2001, but Mr. Stafford testified that it was a mistake. (Tr. 36, 58-59.)) He asked her for his

dates of service and the amounts of Savings Funds which were credited to my account during my years of employment with the City of Salem.

He also wrote:

I was employed by the County of Essex from 1974 to 1975 as well. Could you please advise me of the appropriate agency to contact for records of that employment?

(Ex. E.)[[5]](#footnote-5)

On June 10, 2002, Mr. Stafford wrote a letter to the Salem City Treasurer. Even if these two letters were each an application, *Mr. Stafford* did not follow up on *his* application. The simple fact remains that Mr. Stafford did not purchase creditable service before July 1, 2009, when the provision that would have allowed him to do so was repealed.

He has not satisfactorily explained *why* he should be allowed to purchase creditable service years later or *how* he should be allowed to do so years later. General Laws c. 32, § 20(5)(c)(2), which governs errors in records and in computing benefits, does not clearly apply.

**Conclusion and Order**

 Mr. Stafford did not, while the statutory provision allowing him to do so was in effect, apply to purchase creditable service for the time that he was a member of the Salem School Committee, let alone actually purchase it. The denials of his later applications to purchase creditable service are affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: April 27, 2018

1. Mr. Stafford claims that this letter was an application. (Tr. 57.) Mr. Stafford did not offer the retirement board’s response as an exhibit or testify about it. [↑](#footnote-ref-1)
2. Mr. Stafford claims that this letter was an application. (Tr. 57.) Mr. Stafford did not offer the city’s response as an exhibit or testify about it. [↑](#footnote-ref-2)
3. These invoices are not in evidence. They may have established which creditable service Mr. Stafford knew he was purchasing. Mr. Stafford claims that his telephone call in 2004 was an application to buy his service on the School Committee. (*E.g.*, Pet. Br. 10.) [↑](#footnote-ref-3)
4. Twice I ruled at the hearing that SCRB’s vote to acknowledge the outcome of this hypothetical situation was not dispositive. (Tr. 51, 82.) At the hearing, Mr. Stafford agreed that the vote was not dispositive and said that it was not important (Tr. 52) – and then cited the SCRB’s vote in his brief in support of his argument. (Pet. Br. 6.) [↑](#footnote-ref-4)
5. Mr. Stafford claims that this letter was an application. (Tr. 57.) Mr. Stafford did not offer the retirement board’s response as an exhibit or testify about it. [↑](#footnote-ref-5)