



RHODE ISLAND
FEDERATION OF TEACHERS AND
HEALTH PROFESSIONALS ^{AFT}_{AFL-CIO}

January 18, 2017

Frank Karpinski
Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue
Warwick, RI 02886

Dear Director Karpinski,

Please find attached a copy of a letter mailed to you on or about December 27, 2016.

Thank you for your attention to this matter.

Sincerely,

Christopher Lambert, Esq.

356 SMITH STREET PROVIDENCE, RHODE ISLAND 02908-3761 (401) 273-9800 FAX (401) 331-8815

• Francis J. Flynn President • Michael J. Mullane Field Representative • James A. Parisi Field Representative •
• Christopher Lambert Field Representative • Kenneth L. Fontaine Executive Assistant • Carol Santangini Staff Assistant •
• Colleen Callahan Director of Professional Issues • Maureen Martin Director of Political Activities •





RHODE ISLAND
FEDERATION OF TEACHERS AND
HEALTH PROFESSIONALS ^{AFT}_{AFL - CIO}

December 27, 2016

Frank Karpinski
Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue
Warwick, RI 02886

RE: Kimberly McGowan

Dear Director Karpinski,

Please be advised that I represent Kimberly McGowan, a current Lincoln school teacher.

Mrs. McGowan requests a hearing, at the appropriate level, to review her retirement eligibility. Specifically, as it relates to the correspondence she received on April 2, 2014 (enclosed herein).

If you could contact me to arrange a date and time to review this matter it would be greatly appreciated.

Sincerely,

Christopher Lambert, Esq.

356 SMITH STREET PROVIDENCE, RHODE ISLAND 02908-3761 (401) 273-9800 FAX (401) 331-8815

• Francis J. Flynn President • Michael J. Mullane Field Representative • James A. Parisi Field Representative •
• Christopher Lambert Field Representative • Kenneth L. Fontaine Executive Assistant • Carol Santangini Staff Assistant •
• Colleen Callahan Director of Professional Issues • Maureen Martin Director of Political Activities •



Employees' Retirement System of Rhode Island

ERSRI Board:

Gina M. Raimondo
General Treasurer
Chair

William B. Finelli
Vice Chair

Gary R. Alger

Daniel L. Beardsley

Frank R. Benell, Jr.

Roger P. Boudreau

Michael R. Boyce

M. Carl Heintzelman

Richard A. Licht

John P. Maguire

John J. Meehan

Thomas A. Mullaney

Claire M. Newell

Louis M. Prata

Jean Rondeau

Frank J. Karpinski
Executive Director

April 2, 2014

Ms. Kimberly McGowan

Lincoln, RI 02865

Dear Ms. McGowan:

Please accept this letter in response to your request confirming retirement eligibility in the Employees' Retirement System of Rhode Island. As part of the approved 2010 Budget, Article 7 Substitute A made changes to pension benefits for State Employees, Teachers and Judges. The new law established a minimum retirement age of 62 for all members vested prior to July 1, 2005 and not eligible to retire as of September 30, 2009. The bill did, however, provide for a proportional downward adjustment of the minimum retirement age of 62 based on the years of service credited to your account as of September 30, 2009. The passage of the Rhode Island Retirement Security Act (RIRSA) in 2011 further changed retirement benefits and contributions. Among those changes are a combined defined pension benefit and defined contribution program, a retirement age that mirrors the Social Security retirement age (with transition rules for those closer to retirement) and cost-of-living adjustments that are tied to the system's funding level and actual investment returns.

Based on your account information, you now fall under Schedule ABNE. The amount of service credit you have earned as of September 30, 2009 is 16 years and 6 months. Based on this, ERSRI has determined your earliest date of retirement to be February 9, 2016, at approximately age 60 and 6 months. Please note, if you decided to retire as of this date, you would only receive accrued benefits through June 30, 2012.

However, your estimated RIRSA eligibility date for full retirement benefits is 12/25/16 at which point you will be approximately age 61 and 5 months. If you wait until this later date, your pension will be based on your salary and service through your termination date.

For example, if you leave State service on 6/30/2014, you would be able to collect your benefit on 2/9/2016 but we can only base your pension on the salary and service credit you earned through 6/30/2012. Therefore, if your highest consecutive 5-year average salary at that time was \$76,000.00 and your service credit factor through 6/30/2012 was 34.75%, your annual pension under the Maximum Plan would be approximately \$26,410.00, with a monthly benefit of \$2,200.83.

If you leave State service on 6/30/2014 and waited until your RIRSA date of 12/25/2016 to begin collecting your pension, we would use your highest consecutive 5-year average salary through 6/30/2014 which would be approximately \$80,000.00 and your service credit factor through 6/30/2014 would be approximately 36.75%. Therefore, your annual pension under the Maximum Plan would be approximately \$29,400.00, with a monthly benefit of \$2,450.00.

Should you have any questions after reviewing this, please feel free to contact us 401-462-7600.

Sincerely,

Claudia Cardona
Retirement Benefit Analyst

Employees' Retirement System of Rhode Island



6.2. Administrative Appeal - Richard P. D'Addario vs. ERSRI

For Vote

Presented by Michael P. Robinson

RICHARD P. D'ADDARIO

VS.

ERSRI

Roxanne Donoyan

From: Roxanne Donoyan
Sent: Thursday, September 05, 2019 3:40 PM
To: Tom Connolly
Subject: D'Addario v. ERSRI

Tracking:	Recipient	Delivery	Read
	Tom Connolly		
	Frank Karpinski 'mrobinson@shslawfirm.com'	Delivered: 9/5/2019 3:40 PM	Read: 9/5/2019 5:33 PM
	Gayle Mambro-Martin	Delivered: 9/5/2019 3:40 PM	Read: 9/5/2019 4:36 PM

Good afternoon Attorney Connolly,

This email is being sent to you as a reminder of the upcoming hearing, D'Addario v. ERSRI, which is scheduled before the ERSRI Retirement Board on September 18, 2019. In addition, yesterday I left you a voicemail, written notice was provided on August 2, 2019 , and I left you voicemail messages within the last month as a reminder.

Please be advised that the hearing will be presented in front of the Retirement Board on Wednesday, September 18, 2019 at 9:45 a.m. here at the ERSRI Office, 50 Service Avenue, 2nd Floor, Warwick, RI 02886. As of today, our office has not heard back from you. It would be most helpful if you could please acknowledge receipt of the notification of hearing and if either you and/or Mr. D'Addario will be in attendance as the Board will be voting on this matter.

Thank you.
Regards,
Roxanne

Roxanne Donoyan
Assistant to Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue
2nd Floor
Warwick, RI 02886-1021
Tel:(401) 462-7608
Fax: (401) 462-7691
roxanne.donoyan@ersri.org

Roxanne Donoyan

From: Microsoft Outlook
To: Tom Connolly
Sent: Thursday, September 05, 2019 3:40 PM
Subject: Relayed: D'Addario v. ERSRI

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Tom Connolly (tconnolly109@gmail.com)

Subject: D'Addario v. ERSRI



Employees' Retirement System of Rhode Island

ERSRI Board:

August 2, 2019

Seth Magaziner
General Treasurer
Chair

Thomas Connolly, Esq.
1 Courthouse Square
Newport, RI 02840

William B. Finelli
Vice Chair

RE: Notice of Full Board Meeting – *Richard P. D. Addario vs ERSRI*

Roger P. Boudreau

Attorney Connolly:

Mark A. Carruolo

Please be advised that the Hearing Officer has issued an opinion in agreement with the decision of the Employees' Retirement System of Rhode Island (ERSRI) regarding your membership in the Municipal Employees' Retirement System.

Brian M. Daniels

Michael DiBiase

In accordance with Regulation 1.4 of the *Rules of Practice and Procedure of the Employees' Retirement System for Hearings on Contested Cases*, this matter will be presented to the full Retirement Board for approval or denial at the September 18, 2019 Retirement Board Meeting. You have the right to appear before the Retirement Board and make oral argument in support of or in opposition to the Hearing Officer's decision.

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Thomas A. Mullaney

The September meeting of the Retirement Board is scheduled for 9:00 a.m. Your hearing is scheduled as follows:

Claire M. Newell

Marcia B. Reback

DATE:	Wednesday, September 18, 2019	UPDATE
TIME:	9:45 a.m.	
LOCATION:	50 Service Avenue, 2 nd Floor Conference Room Warwick, Rhode Island 02886	

Jean Rondeau

Laura Shawhughes

Lisa A. Whiting

A party wishing to file a brief or make exceptions to the decision must submit documentation to the Retirement System, Attention: Roxanne Donoyan, no later than 10 days prior to the date of the Retirement Board meeting.

Frank J. Karpinski
Executive Director

If you are unable to attend this meeting, please notify me at 462-7608 as soon as possible. Should the meeting be rescheduled, we will notify you of the new date and time of the meeting.

Sincerely,


Roxanne Donoyan
Administrative Assistant

Ccs: Richard P. D'Addario
Michael P. Robinson, Esq.

Roxanne Donoyan

From: Roxanne Donoyan
Sent: Friday, July 26, 2019 1:35 PM
To: 'Tom Connolly'
Subject: Richard P. D'Addario vs. ERSRI

Good afternoon Attorney Connolly,

Our office has not heard back from you regarding the hearing time scheduled for the Richard P. D'Addario vs. ERSRI hearing matter since last communicated. You asked on behalf of the member if the hearing could be scheduled for 11:00 a.m. at the next Retirement Board meeting of September 18, 2019; however, as mentioned, after being presented to the Director, he requested it be scheduled no later than 9:45 a.m. since the meeting itself may end before 11:00 a.m.

Please respond to this email at your earliest convenience that you and the member are able to attend the hearing scheduled for 9:45 a.m. on Wednesday, September 18, 2019, at the ERSRI office here in Warwick (address below).

Thank you for your assistance and attention in this matter. We look forward to hearing from you.

Regards,

Roxanne

Roxanne Donoyan
Assistant to Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue
2nd Floor
Warwick, RI 02886-1021
Tel:(401) 462-7608
Fax: (401) 462-7691
roxanne.donoyan@ersri.org

Roxanne Donoyan

From: Roxanne Donoyan
Sent: Wednesday, July 03, 2019 9:04 AM
To: Tom Connolly
Subject: RE: [EXTERNAL]Re: FW: Richard P. D'Addario vs. ERSRI hearing

You're very welcome, Attorney Connolly.
Thank you again.
Regards,
Roxanne

Roxanne Donoyan
Assistant to Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue
2nd Floor
Warwick, RI 02886-1021
Tel: (401) 462-7608
Fax: (401) 462-7691
roxanne.donoyan@ersri.org

From: Tom Connolly <tconnolly109@gmail.com>
Sent: Tuesday, July 02, 2019 7:09 PM
To: Roxanne Donoyan <Roxanne.Donoyan@ersri.org>
Subject: [EXTERNAL]Re: FW: Richard P. D'Addario vs. ERSRI hearing

Excellent. Thank you.

On Tue, Jul 2, 2019, 10:19 AM Roxanne Donoyan <Roxanne.Donoyan@ersri.org> wrote:

Good morning Attorney Connolly,

Thank you for your leaving your voice message late yesterday afternoon regarding the Richard P. D'Addario vs. ERSRI hearing matter acknowledging that this hearing is being rescheduled to September 18, 2019 due to a scheduling conflict. I have informed Executive Director Karpinski and Board Counsel Robinson of your voice message.

Also, please be advised that you will receive a scheduling notification letter with complete details for this hearing to be assigned at the September 18th's Retirement Board meeting.

If you should have any questions, please contact our office, and thank you once again for your assistance in this matter.

Regards,

Roxanne

Roxanne Donoyan

Assistant to Executive Director

Employees' Retirement System of Rhode Island

50 Service Avenue

2nd Floor

Warwick, RI 02886-1021

Tel:(401) 462-7608

Fax: (401) 462-7691

roxanne.donoyan@ersri.org

From: Roxanne Donoyan

Sent: Monday, July 01, 2019 1:43 PM

To: tconnolly109@gmail.com

Subject: Richard P. D'Addario vs. ERSRI hearing

Good afternoon Attorney Connolly:

Our office has left you a couple of voice messages regarding the rescheduling of the Richard P. D'Addario vs. ERSRI hearing due to a scheduling conflict from the July 10, 2019 date to the rescheduled date and time of **September 18, 2019 at 9:15 a.m.**

Please see the attached letter which was mailed last Friday, the 28th of June for your notification. Please if you would contact our office at your earliest convenience to reschedule this hearing as indicated.

Thank you; and excuse any inconvenience this may have caused in this matter.

Regards,

Roxanne

Roxanne Donoyan

Assistant to Executive Director

Employees' Retirement System of Rhode Island

50 Service Avenue

2nd Floor

Warwick, RI 02886-1021

Tel:(401) 462-7608

Fax: (401) 462-7691

roxanne.donoyan@ersri.org

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system.



Employees' Retirement System of Rhode Island

ERSRI Board: June 28, 2019

Seth Magaziner
*General Treasurer
Chair*

William B. Finelli
Vice Chair

Roger P. Boudreau

Mark A. Carruolo

Brian M. Daniels

Michael DiBiase

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

Laura Shawhughes

Lisa A. Whiting

Frank J. Karpinski
Executive Director

Thomas Connolly, Esq.
The Law Offices of Thomas Connolly
1 Courthouse Square
Newport, RI 02840

Dear Attorney Connolly:

Please be advised that due to a scheduling conflict, the upcoming hearing scheduled for July 10, 2019 at 9:30 a.m. in the matter of *Richard P. D'Addario vs. ERSRI* will need to be rescheduled to the next Board meeting on September 18, 2019 at 9:15 a.m.

Kindly confirm that the new date and time are convenient for you and Mr. D'Addario.

Thank you.

Sincerely,

Frank J. Karpinski
Executive Director

FJK:rd

1.4 Rules of Practice and Procedure for Hearings in Contested Cases

A. Introduction

1. These Rules of Practice and Procedure are promulgated pursuant to R.I. General Laws Section 36-8-3. The Rules shall be in effect during any hearing on a contested case before the Retirement Board or its duly authorized representatives.

B. Definitions

1. The definitions set forth in R.I. General Laws Sections 36-8-1, 45-21-2, 45-21.2-2 and 16-16-1, and as further set forth in Regulations promulgated by the Retirement Board, are specifically incorporated by reference herein.
 - a. "Contested case" means a matter for which a member requests a hearing because he or she is aggrieved by an administrative action other than a Disability decision. The term shall apply to hearings conducted before Hearing Officers, and thereafter in proceedings before the full Retirement Board.
 - b. "Party" means any member, beneficiary, Retirement System, or such other person or organization deemed by the Hearing Officer to have standing.
 - c. "Hearing Officer" means an individual appointed by the Retirement Board to hear and decide a contested case.

C. Request for Hearing and Appearance

1. Any member aggrieved by an administrative action other than a Disability decision, may request a hearing of such grievance. Upon such request, the matter will be deemed a contested case. The procedure for Disability decisions and appeals therefrom shall be governed by the procedures set forth in Section 1.9, Rules Pertaining to the Application to Receive an Ordinary or Accidental Disability Pension.
2. Such request shall be in writing and shall be sent to the Retirement Board within sixty (60) days of the date of a letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial.
3. A request for hearing shall be signed by the member and shall contain the following information:
 - a. Name of member;
 - b. Date and nature of decision being contested;

c. A clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and

d. A concise statement of the relief sought.

4. Requests for hearing should be sent to the Retirement Board at 50 Service Avenue, 2nd Floor, Warwick, RI 02886-1021.

5. Failure to strictly comply with the procedures outlined in this Section shall be grounds to deny any request for a hearing.

D. Contested Cases – Notice of Hearing

1. Upon receipt of a request for hearing in matters other than Disability decisions and appeals therefrom, the Retirement Board or its designee shall appoint a Hearing Officer. The appointed Hearing Officer shall hear the matter, find facts and offer conclusions of law to the Retirement Board. The decision of a Hearing Officer shall be subject to approval by the full Retirement Board. The Retirement System's action shall not be deemed final until such time as the Hearing Officer's recommendation has been voted upon by the Retirement Board.

2. Within forty-five (45) days after receipt by the Retirement Board of a request for hearing, the Retirement Board shall give notice that the matter has been assigned to a Hearing Officer for consideration.

3. In any contested case, all parties shall be afforded an opportunity to be heard after reasonable notice.

4. The notice described in subsection (2), above, shall include:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. The name, official title and mailing address of the Hearing Officer, if any;

e. A statement of the issues involved and, to the extent known, of the matters asserted by the parties; and

f. A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

5. The notice may include any other matters the Hearing Officer or the Retirement Board considers desirable to expedite the proceedings.

E. Contested Cases – Hearings in General

1. All parties shall be afforded an opportunity to respond and present evidence and argument on all issues involved.
2. Members must appear at hearings either personally, or by appearance of legal counsel. Members may represent themselves or be represented by legal counsel at their own expense. Consistent with RIGL §11-27-2 entitled, "Practice of law", any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island) cannot represent the member in the hearing.
3. Continuances and postponements may be granted by the Hearing Officer or the Retirement Board at their discretion.
4. Disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
5. Should the Hearing Officer or Retirement Board determine that written memoranda are required, the member will be notified by the Hearing Officer or the Retirement Board of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the member or the representative of the retirement systems.
6. The Executive Director may, when he or she deems appropriate, retain independent legal counsel to prosecute any contested case.
7. A recording of each hearing shall be made. Any party may request a transcript or copy of the tape at their own expense.

F. Contested Cases - Conduct of Hearings before Hearing Officers

1. Hearings shall be conducted by the Hearing Officer who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence.
2. The Hearing shall be convened by the Hearing Officer. Appearances shall be noted and any motions or preliminary matters shall be taken up. Each party shall have the opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing written evidence.
3. The Member shall first present his or her case followed by presentation of the Retirement System's case.

RICHARD P. D'ADDARIO VS. ERSRI
(PART 1)



Employees' Retirement System of Rhode Island

ERSRI Board:

May 29, 2019

Seth Magaziner
General Treasurer
Chair

Thomas Connolly, Esq.
1 Courthouse Square
Newport, RI 02840

William B. Finelli
Vice Chair

RE: Notice of Full Board Meeting – *Richard P. D. Addario vs ERSRI*

Roger P. Boudreau

Attorney Connolly:

Mark A. Carruolo

Please be advised that the Hearing Officer has issued an opinion in agreement with the decision of the Employees' Retirement System of Rhode Island (ERSRI) regarding your membership in the Municipal Employees' Retirement System.

Brian M. Daniels

Michael DiBiase

In accordance with Regulation 1.4 of the *Rules of Practice and Procedure of the Employees' Retirement System for Hearings on Contested Cases*, this matter will be presented to the full Retirement Board for approval or denial at the July 10, 2019 Retirement Board Meeting. You have the right to appear before the Retirement Board and make oral argument in support of or in opposition to the Hearing Officer's decision.

Paul L. Dion

Thomas M. Lambert

John P. Maguire

The July meeting of the Retirement Board is scheduled for 9:00 a.m. Your hearing is scheduled as follows:

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

DATE: Wednesday, July 10, 2019
TIME: 9:30 a.m.
LOCATION: 50 Service Avenue, 2nd Floor Conference Room
Warwick, Rhode Island 02886

Jean Rondeau

Laura Shawhughes

Lisa A. Whiting

A party wishing to file a brief or make exceptions to the decision must submit documentation to the Retirement System, Attention: Roxanne Donoyan, no later than 10 days prior to the date of the Retirement Board meeting.

Frank J. Karpinski
Executive Director

If you are unable to attend this meeting, please notify me at 462-7608 as soon as possible. Should the meeting be rescheduled, we will notify you of the new date and time of the meeting.

Sincerely,


Roxanne Donoyan
Administrative Assistant

Ccs: Richard P. D'Addario
Michael P. Robinson, Esq.

1.4 Rules of Practice and Procedure for Hearings in Contested Cases

A. Introduction

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 - b. "Party" means any member, beneficiary, Retirement System, or such other person or organization deemed by the Hearing Officer to have standing.**
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- 2. Such request shall be in writing and shall be sent to the Retirement Board within sixty (60) days of the date of a letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial.**
- 3. A request for hearing shall be signed by the member and shall contain the following information:**
 - a. Name of member;**
 - b. Date and nature of decision being contested;**

- c. A clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and
 - d. A concise statement of the relief sought.
- 4. Requests for hearing should be sent to the Retirement Board at 50 Service Avenue, 2nd Floor, Warwick, RI 02886-1021.
 - 5. Failure to strictly comply with the procedures outlined in this Section shall be grounds to deny any request for a hearing.

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- 2. Within forty-five (45) days after receipt by the Retirement Board of a request for hearing, the Retirement Board shall give notice that the matter has been assigned to a Hearing Officer for consideration.
- 3. In any contested case, all parties shall be afforded an opportunity to be heard after reasonable notice.
- 4. The notice described in subsection (2), above, shall include:
 - a. A statement of the time, place, and nature of the hearing;
 - b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - c. A reference to the particular sections of the statutes and rules involved;
 - d. The name, official title and mailing address of the Hearing Officer, if any;
 - e. A statement of the issues involved and, to the extent known, of the matters asserted by the parties; and
 - f. A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

5. The notice may include any other matters the Hearing Officer or the Retirement Board considers desirable to expedite the proceedings.

E. Contested Cases – Hearings In General

1. All parties shall be afforded an opportunity to respond and present evidence and argument on all issues involved.
2. Members must appear at hearings either personally, or by appearance of legal counsel. Members may represent themselves or be represented by legal counsel at their own expense. Consistent with RIGL §11-27-2 entitled, "Practice of law", any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island) cannot represent the member in the hearing.
3. Continuances and postponements may be granted by the Hearing Officer or the Retirement Board at their discretion.
4. Disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
5. Should the Hearing Officer or Retirement Board determine that written memoranda are required, the member will be notified by the Hearing Officer or the Retirement Board of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the member or the representative of the retirement systems.
6. The Executive Director may, when he or she deems appropriate, retain independent legal counsel to prosecute any contested case.
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3. The Member shall first present his or her case followed by presentation of the Retirement System's case.

APPEAL OF:

RICHARD D'ADDARIO, Appellant

vs.

EMPLOYEES' RETIREMENT SYSTEM
OF RHODE ISLAND, Respondent

Appearance for Appellant: THOMAS CONNOLLY, ESQ.
1 Courthouse Square
Newport, Rhode Island 02840

Appearance for Respondent: MICHAEL P. ROBINSON, ESQ.
Legal Counsel
Employees Retirement System
of Rhode Island
50 Service Avenue
Warwick, Rhode Island 02886

Hearing Officer: TERESA M. RUSBINO, ESQ.
Employees' Retirement System
of Rhode Island
50 Service Avenue
Warwick, Rhode Island 02886

DECISION

Pursuant to R.I.G.L. Section 36-8-3 and Regulation Four, Rules of Practice and Procedure for Hearings, Richard D'Addario (hereinafter "Appellant") is appealing the August 11, 2017 Administrative Denial of the Employees' Retirement System of Rhode Island (hereinafter " Respondent"). Respondent's decision denied the Appellant's 2008 request to purchase service credit for the period 1993-2007, during which time he served as a probate judge for the Town of Tiverton ("Town"). In denying the Appellant's request to purchase service credit, the Respondent determined that the Appellant was not eligible for

membership in the Municipal Employees' Retirement System ("MERS") because he had not worked a minimum of twenty (20) business hours per week for the Town, in accordance with the requirements of R.I.G.L. Section 45-21-2(5), which defines "employee" for purposes of membership eligibility in MERS.¹

The August 11, 2017 decision was appealed and subsequently referred for hearing to this Hearing Officer. The appeal was perfected in accordance with the Rules of Practice. A Hearing was held on December 7, 2017 at the offices of the Employees' Retirement System, 50 Service Avenue, Warwick, Rhode Island. Both parties submitted pre-hearing memoranda of law. Exhibits were introduced at the hearing by agreement (see joint exhibits 1-14) and by Appellant with no objection from Respondent (see Appellant's exhibits 1-2). The Appellant testified in his own behalf. Testifying for the Respondent was Frank J. Karpinski, Executive Director of the Employees' Retirement System. The parties submitted pre and post hearing memoranda of law in support of their respective positions.

FINDINGS OF FACT:

1. On or about July 26, 1993, the Appellant was appointed probate judge of the Town of Tiverton, Rhode Island.
2. By letter dated January 4, 2008, the Appellant applied for membership in MERS and sought to purchase service credit retroactive to the date

¹ R.I.G.L. Section 45-21-2 was amended in 2009 to add two definitions prior to that of "employee," such that the definition of "employee" now appears in R.I.G.L. Section 45-21-2(7).

of his appointment, namely, for the period August, 1993 to December, 2007.

3. For the period August of 1993 to October of 2007, neither the Appellant nor the Town made any contributions to MERS.
4. On or about October of 2007, the Town began to pay employer and employee contributions to MERS.
5. From the time of his appointment as probate judge in August of 1993 to the present, the Appellant has not worked consistently a minimum of twenty (20) hours per week for the Town.
6. By letter dated January 10, 2008, the Respondent requested that the Appellant provide information necessary for the Respondent to evaluate his request to purchase service credit for the period August, 1993 to December, 2007, including, but not limited to, the number of hours actually worked.
7. By email dated April 13, 2010, the Appellant inquired about the status of his January 10, 2008 request.
8. By email dated April 22, 2010, and by letter dated June 15, 2010, the Respondent informed Appellant that he was not eligible for membership in MERS, nor was he eligible to purchase service credit for the period 1993-2007, because he did not meet the statutory definition of "employee."

9. By email and letter addressed to the Town, both dated June 28, 2016, Respondent notified the Town that it should cease deducting retirement contributions from the Appellant's wages.
10. By letter dated July 8, 2016, the Respondent informed Appellant that the Town had been instructed to cease deducting retirement contributions from his wages and that the retirement contributions previously deducted by the Town for the period 9/28/2007 to 6/23/2016 would be refunded to him.
11. By letter dated February 22, 2017, Appellant's counsel requested that Respondent suspend any actions regarding Appellant's retirement contributions.
12. By letter dated February 22, 2017, Respondent reiterated its earlier position that Appellant did not meet the statutory definition of "employee," as he did not meet the minimum work requirement of twenty (20) hours per week for the Town.
13. By letter dated April 12, 2017, Respondent informed Appellant that he had fourteen (14) days to provide Respondent with evidence to support his claim that he was eligible for membership in MERS.
14. By letter and memorandum, both dated May 12, 2017, the Appellant set forth his position that he was eligible for membership in MERS as a condition of his employment with the Town, retroactive to his initial appointment as probate judge in 1993.

15. By letter dated August 11, 2017, the Respondent issued an Administrative Denial of Appellant's request for retroactive membership in MERS and his request to purchase service credit for the period 1993 to 2007.

16. By letter dated September 5, 2017, the Appellant's appeal of Respondent's Administrative Denial was assigned for hearing to this hearing officer.

ISSUE ON APPEAL:

Did the Respondent err in its determination that Appellant was not eligible for membership in MERS, nor entitled to purchase or otherwise obtain service credit for the period 1993 to 2007, because he was not an "employee" within the meaning of R.I.G.L. Section 45-21-2(5)?

CONCLUSION AND ORDER:

Membership in the Municipal Employees' Retirement System is a condition of employment and is required of all employees who meet the Board's eligibility requirements. (See Joint Exhibit 2, Employees' Retirement System of Rhode Island Handbook, 7th Edition, August 2006). R.I.G.L. Section 36-8-3 vests the Retirement Board with, "the general administration and responsibility for the proper operation of the retirement system..." The Retirement Board has been granted authority to establish and implement rules and regulations to effectuate the provisions of the retirement statutes. See Perotti v. Solomon, 657 A.2d 1045, 1048 (R.I. 1995). The Rhode Island Supreme Court has consistently held that an administrative agency will be accorded great deference in interpreting a statute

whose administration and enforcement have been entrusted to the agency. Town of Richmond v. R.I. Dept. of Env'tl. Mgmt., 941 A.2d 151, 157 (R.I. 2008). Moreover, its interpretation is entitled to substantial deference, even if the agency's interpretation is not the only permissible interpretation that could be applied. Lyman v. Employees' Retirement Sys., 693 A.2d 1030, 1031 (R.I. 1997). Specifically, in this instance, Respondent has been charged with determining what constitutes an "employee" within the meaning of R.I.G.L. Section 45-21-2(5) [now Section 45-21-2(7)] for the purpose of determining Appellant's eligibility for participation in MERS, as well as his eligibility to purchase service credit towards a MERS retirement benefit.

At the time of Appellant's request to purchase service credit, the governing statutory section was R.I.G.L. Section 45-21-2(5), and it reads in relevant part as follows:

(5) "Employee" means any regular and permanent employee or officer of any municipality, whose business time at a minimum of twenty (20) hours a week is devoted to the service of the municipality.... Notwithstanding the previous sentence, the term "employee", for the purposes of this chapter, does not include any person whose duties are of a casual or seasonal nature. The retirement board shall decide who are employees within the meaning of this chapter, but in no case shall it deem as an employee any individual who annually devotes less than twenty (20) business hours per week to the service of the municipality.... (emphasis supplied)

The Appellant argues that when he was appointed a probate judge in 1993, he was automatically eligible for enrollment in MERS. In support of his argument, Appellant cites R.I.G.L. Section 45-21-8(a), which states in part that, "

Any employee...shall, under contract of his or her employment, become a member of the retirement system." Appellant contends that he should be deemed an "employee" under R.I.G.L. Section 45-21-2(5), because the statute did not yet include the twenty (20) hour per week minimum work requirement, at the time Appellant was appointed a probate judge in 1993. However, even before the minimum twenty (20) hour per week work requirement was codified into the statute in 1994, Respondent was empowered by the legislature to decide who was an employee within the meaning of the statute. In so doing, Respondent was within its authority to adopt rules and policies regarding the number of hours devoted to the municipality's business, in determining whether one was a regular and permanent employee of a municipality or a casual or seasonal employee. The retirement board has always had the authority to decide who are "employees" within the meaning of the statute.

At the hearing, the Appellant testified that he had not worked a minimum of twenty (20) business hours per week for the Town between the time of his appointment as probate judge in 1993 to the present. Respondent concluded that the Appellant did not meet the statutory definition of employee, even prior to the 1994 amendment imposing a twenty (20) hour minimum weekly work requirement. Respondent determined that the business time Appellant devoted to the service of the municipality was of a casual or seasonal nature and did not rise to the level of a regular and permanent employee whose business time was devoted to the service of the municipality. Respondent exercised its authority in interpreting the language of R.I.G.L. Section 45-21-2(5), and its interpretation is

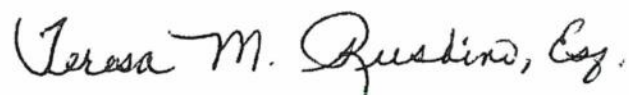
entitled to substantial deference, even if it is not the only permissible interpretation that could be applied. See Lyman v. Employees' Retirement Sys., 693 A.2d 1030, 1031 (R.I. 1997). Moreover, the 1994 codification in the statute of a minimum twenty (20) hour per week work requirement only serves to bolster Respondent's position that its interpretation of the statute prior to the 1994 amendment was a reasonable one.

Even assuming, arguendo, that Appellant had been considered an employee pursuant to the statute as it existed prior to the 1994 amendment, his 2008 request to purchase service credit would have been evaluated under the language of the statute in effect at the time he applied to purchase said credit. Since the statute in effect after the 1994 amendment included the twenty (20) hour per week minimum work requirement to be considered an "employee," the Appellant, having not met that standard, would not have been permitted to purchase the service credits.

For the reasons set forth herein, the Decision of the Respondent, dated August 11, 2017, is hereby affirmed.

It is so ordered.

DATED: April 22, 2019



TERESA M. RUSBINO, ESQ.
Hearing Officer
Employees' Retirement System
50 Service Avenue, 2nd floor

Warwick, Rhode Island 02886

CERTIFICATION

I hereby certify that on the 22nd day of April, 2019, I emailed a true copy of the Within Decision to the following email addresses:

tconnolly109@gmail.com (Thomas Connolly, counsel for Appellant);

mrobinson@shslawfirm.com (Michael P. Robinson, counsel for Respondent);

FKarpinski@ersri.org (Frank Karpinski, Executive Director, ERSRI);

Gayle.Mambro-Martin@ersri.org (Gayle Mambro-Martin, Deputy General Counsel, ERSRI).

Teresa M. Rustino, Esq.

RICHARD D'ADDARIO,)
Petitioner,)
)
v.)
)
EMPLOYEE RETIREMENT)
SYSTEM OF RHODE ISLAND,)
Respondent.)

**PETITIONER RICHARD D'ADDARIO'S
POST HEARING MEMORANDUM**

INTRODUCTION

Petitioner Richard D'Addario (Petitioner) submits the within Post Hearing Memorandum in support of his request for retroactive membership in the Municipal Employees Retirement System (MERS). In the alternative, Petitioner respectfully requests that he be permitted to continue within MERS pursuant to the System's 2007 determination of eligibility.

Petitioner incorporates the Facts and Posture and Arguments contained within his previously filed Request for Retroactive Membership. Additionally, Petitioner incorporates the exhibits and testimony adduced at the December 7, 2017 hearing where necessary.

ARGUMENT

I. PETITIONER IS ENTITLED TO RETROACTIVE MEMBERSHIP IN MERS SINCE HIS 1993 APPOINTMENT AS TIVERTON PROBATE JUDGE.

Petitioner briefly restates his argument for retroactive reinstatement as follows. When he was appointed Tiverton's probate judge in 1993, he was eligible by statute for automatic enrollment in the Municipal Employees' Retirement System (MERS). See 1993 enactment of

RIGL §§ 45-21-2(5)¹ (defining employee without reference to a 20-hour requirement and excluding only “seasonal” or “casual” employees), and 45-21-8(a) (stating that “Any employee ... **shall**, under contract of his or her employment, become a member of the retirement system.” (emphasis added)).² At that time, Petitioner had a vested statutory right to participation in MERS. See Wilkinson v. State Crime Laboratory Comm’n, 788 A.2d 1129, 1139-40 (R.I. 2002) (“[S]tatutory benefit [of automatic pension eligibility] had matured from a mere gratuity or floating expectancy into a full-blown vested property right.”). At the time of his appointment Petitioner was 1) a qualifying employee (neither “seasonal” nor “casual”),³ 2) employed by a participating municipality, 3) who was not a member of any other pension or retirement system. The 1994 Amendment to RIGL § 45-21-2(5)’s statutory definition of employee, which included for the first time the 20-hour requirement, could not divest Petitioner of that right.

¹ (5) "Employee" mean any regular and permanent employee or officer of any municipality, whose business time is devoted to the service of the municipality, including elective officials and officials and employees of city and town housing authorities provided, however, that the commissioners of city or town housing authorities shall not be deemed to be employees within r"employee" whose duties are of a casual or seasonal nature. The retirement board shall decide who are employees within the meaning of this chapter.

² The term “shall” contemplates the mandatory and imperative imposition of a duty. See e.g., Castelli v. Carcieri, 961 A.2d 277, 284 (R.I. 2008) (quoting Conrad v. State of R.I. Med. Ctr. Gen. Hosp., 592 A.2d 858, 860 (R.I. 1991)) (stating that the “use of the word ‘shall’ contemplates something mandatory or the ‘imposition of a duty’”); Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983) (quoting Carpenter v. Smith, 79 R.I. 326, 334-35, 89 A.2d 168, 172-73 (1952)) (noting that the “word ‘shall’ usually connotes the imperative and contemplates the imposition of a duty” unless the particular context requires a contrary meaning); see also Friedman v. Kelly & Picerno, Inc., C.A. No. PB 05-1193, 46-47 (Silverstein, J.)(R.I. Super. Ct., Dec. 6, 2010).

³ “‘Casual’ is defined [by Maine Statute] as occasional, irregular or incidental. ‘Seasonal’ refers to farm laborers engaged in agricultural employment beginning at or after the commencement of the planting season and terminating at or before the completion of the harvest season.” Edwards v. Curtis, 387 A.2d 223, 225 n.1 (Me. 1978).

At hearing, ERSRI presented no evidence that Petitioner should have been excluded from MERS when he was appointed in 1993. In lieu of such evidence, the System's sole witness, Executive Director Frank Karpinski, testified that it was the practice of ERSRI in 1993 to exclude municipal employees who worked less than 20 hours per week, despite the language of the clear language of 45-21-2(5), which imposed no such requirement in the definition of employee, and the non-discretionary language of 45-21-8(a), which required the automatic enrollment of qualifying municipal employees.

When pressed on his assertions concerning the Systems practices in 1993, Mr. Karpinski acknowledged that he had no personal knowledge of such practices. He testified that he was not employed by or affiliated with ERSRI at that time, and was not aware in 1993 of ERSRI's practices. He could produce no statutes, rules, written documents or written policies from 1993 which would impose a 20-hour requirement. He testified to no instances where a municipal employee was denied eligibility under the purported practices of the System in 1993. There is simply no foundation for Mr. Karpinski's claim that Petitioner was excluded from automatic enrollment in MERS by the policies or practices of ERSRI in 1993.

Even if such a practice could be established, it would be in direct contravention of the statutory language as it existed in 1993. There was clearly no 20-hour requirement in 1993, a fact that is highlighted by the later amendment to include such a requirement. Accordingly, pursuant to the non-discretionary terms of RIGL 45-21-8(a), Petitioner should have been automatically enrolled as a qualifying employee at the time of his appointment by Tiverton as Probate Judge in 1993. Petitioner is entitled to retroactive reinstatement now.

II. AT A MINIMUM, PETITIONER'S INTEREST IS ENTITLED TO CONTINUED PARTICIPATION IN MERS FROM 2007 GOING FORWARD.

A. PETITIONER'S INTEREST IN MERS AFTER 2007 IS CLEARLY VESTED AND HE CANNOT BE DIVESTED OF THAT INTEREST

The record at hearing is rife with representations by ERSRI that Petitioner had a vested right in both his contributions, and the Town of Tiverton's matching contributions. Indeed, the July 19, 2016 letter from ERSRI to Petitioner, containing the so-called Termination Statement (Joint Exhibit 7 from the Hearing), specifically provides at page 3 "Vesting Information – Vested" and goes on to state "'Vested' means that you have earned the right to a future pension benefit." Thus, even if the Hearing Officer concludes that Petitioner's interest did not vest in 1993, by the express representations of

B. ERSRI'S ARGUMENT THAT ITS SUBSEQUENT DETERMINATION THAT PETITIONER WAS NOT ELIGIBLE CANNOT TRUMP ITS DETERMINATION IN 2007 THAT PETITIONER WAS ELIGIBLE

Ignoring the fact that it had already determined that Petitioner was a qualifying employee in 2007, ERSRI has previously sought to rely on its broad discretion to determine who is and is not an employee to insulate its 2010 effort to divest Petitioner of his membership in MERS. This it cannot do.

To the extent that ERSRI's determination of employee eligibility is entitled to discretion, that determination was made in 2007 when Petitioner was granted membership in MERS. There can be no plausible argument that ERSRI's 2010 determination is entitled to greater deference without gutting the meaning of the term "vested".

At hearing, Mr. Karpinski testified that ERSRI conducted a review of the documents submitted by Tiverton at the time Petitioner's application for membership was submitted. Mr. Karpinski testified that based on such a review Petitioner's application for membership was

approved. Mr. Karpinski testified that, in the normal course, no further review of the application would have been conducted. Mr. Karpinski testified that the 2010 review of Petitioner's application – in which ERSRI stated that he was not eligible for membership – was prompted by Petitioner's inquiry concerning retroactive eligibility to 1993.

When asked if Petitioner's right to participation in MERS had vested in 2007, Mr. Karpinski essentially testified that it was vested *unless* he subsequently made a determination (at any time in the future and subject to his unbridled discretion) that Petitioner's rights are not vested. Thus, according to Mr. Karpinski, members have a vested interest unless he decides they don't and he can make that decision whenever he wants, and it cannot be questioned. That's not what "vested" means.

This policy on the part of ERSRI is even more invidious, because it interferes with its members' right and ability to redress errors by ERSRI in the calculation of benefits. Mr. Karpinski acknowledged at hearing that, unless an application were brought to ERSRI's attention, a member's application would not normally be subjected to further review. Recall that the 2010 decision to divest Petitioner of membership in MERS was made in the context of Petitioner's request for retroactive approval to 1993. If ERSRI's position is accepted, any member who complains about the calculation of payments, or even questions ERSRI's actions in any regard, risks prompting a review by ERSRI. Such a review might, as it did here, prompt a wholesale revocation of their so-called "vested" property rights.

Accordingly, at a minimum, Petitioner is entitled to the benefit of ERSRI's initial determination in 2007 that he was eligible for membership in MERS.

CONCLUSION

For the reasons set forth herein, Petitioner Richard D'Addario respectfully requests a determination that:

1. He is eligible for membership in the MERS system as a condition of his employment contract with the Town dating back to 1993;
2. He shall be retroactively enrolled in the MERS system dating back to 1993;
3. He shall be retroactively afforded the opportunity to make all past contributions, including matching payments from the Town, and that appropriate interest be retroactively calculated.

OR IN THE ALTERNATIVE THAT:

Petitioner be re-enrolled in MERS dating back to 2007 and that all payments by and on behalf of Petitioner – including, but not limited to employee contributions, matching payments by the Town of Tiverton and any interest, which has or should have accrued – be restored.

Respectfully submitted,
Richard D'Addario
By and through his attorney,

/s/ Thomas Connolly, Esq.

Thomas Connolly (#7497)
1 Courthouse Sq.
Newport, RI 02840
Phone: (401) 699-8810
Fax: (401) 849-0897
Tconnolly109@gmail.com

Dated: 3/20/18

CERTIFICATION

I, Thomas Connolly, hereby certify that on the 20th day of March, 2018, I caused to be delivered a true copy of the within Post Hearing Memorandum to be served upon the below counsel via email at the below address:

Michael P. Robinson, Esq.
Schechtmen, Halperin, Savage, LLP
1080 Main Street
Pawtucket, RI 02860
mrobinson@shslawfirm.com

/s/ Thomas Connolly, Esq.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF
THE STATE OF RHODE ISLAND**

RICHARD D'ADDARIO

v.

**Before Hearing Officer
Teresa M. Rusbino, Esq.**

**MUNICIPAL EMPLOYEES'
RETIREMENT SYSTEM OF THE
STATE OF RHODE ISLAND**

**POST-HEARING MEMORANDUM OF THE MUNICIPAL EMPLOYEES'
RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND**

Introduction

Now comes the Municipal Employees' Retirement System of the State of Rhode Island (the "Retirement System" or "MERS"), and hereby submits this post-hearing memorandum of law in support of the August 11, 2017 administrative determination of the Executive Director, Frank J. Karpinski, that Richard D'Addario ("D'Addario") is not eligible for membership in the Retirement System and is not entitled to purchase or otherwise obtain service credit for the period from 1993 to 2007.

Background

Mr. D'Addario has been the Probate Judge in Tiverton since 1993. Transcript of December 7, 2014 Hearing before Hearing Officer Teresa M. Rusbino, Esq., Page 8, Lines 10 – 11; Page 52, Lines 21 – 25.¹ In 2008 he applied for membership in the Retirement System and

¹ Subsequent references to the Transcript will be in the form: Tr., Page ____, Lines ____.

sought to obtain service credit for the time he had served as Probate Judge between 1993 and 2007. Tr., Joint Exhibit 1.

The facts adduced at the Hearing on December 7, 2017 (the "Hearing") indicated that in 2007 Mr. D'Addario was informed by somebody, exactly whom he did not recall, at the Town of Tiverton (the "Town") that he was eligible to take part in the Employees' Retirement System² as an employee of the Town. Tr., Page 9, Lines 11 – 17. Mr. D'Addario filled out an application dated December 12, 2007, which he sent in with a letter dated January 4, 2008. Tr., Page 9, Lines 18 – 20. In response to Mr. D'Addario's initial application, on January 10, 2008, Executive Director Frank J. Karpinski wrote to Mr. D'Addario noting the 20 hour per week requirement of R.I.G.L. § 45-21-2(5) and requested more information regarding Mr. D'Addario's position as Probate Judge. Tr. Joint Exhibit 3. Notwithstanding Mr. Karpinski's letter of January 10, 2008, the Town and Mr. D'Addario commenced making contributions in 2007 and continued to do so until June of 2016. Tr., Page 10, Line 20 – Page 11, Line 3; Tr., Page 21, Line 21 – Page 22, Line 16.

Evidence was also introduced at the Hearing that during his tenure as Probate Judge, Mr. D'Addario has not worked 20 hours per week for the Town:

CROSS EXAMINATION BY MR. ROBINSON

Q. You don't dispute, do you, that you did not – I thought your answer on this was clear. Just to make it abundantly clear, you're not disputing that you did not work a minimum of 20 hours a week each and every week between the years 1993 and the present time as a probate judge in Tiverton, Correct?

A. Absolutely.

² Employees of the Town of Tiverton are members of the Municipal Employees' Retirement System of the State of Rhode Island ("MERS"). Subsequent references to the retirement system will be deemed to refer to MERS.

Tr., Page 31, Line 19 – Page 32, Line 1.

Subsequently in 2010, Mr. D'Addario again raised the issue of purchasing service credit for the years between 1993 and 2007 (Tr. Joint Exhibit 4) and has continued to raise this issue through this process. On August 11, 2017, Executive Director Karpinski wrote to Mr. D'Addario's counsel, issuing an official notice of administrative denial of his claim to be a member of MERS and his claim to purchase or otherwise obtain service credit. Tr. Joint Exhibit 13.

Standard of Review

ERSRI's interpretation of the statutes that it is entrusted with administering is entitled to substantial deference, even if the agency's interpretation is not the only permissible interpretation that could be applied. *Lyman v. Employees' Retirement Sys.*, 693 A.2d 1030, 1031 (R.I. 1997). The Rhode Island Supreme Court has consistently held that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency. *Town of Richmond v. R.I. Dep't of Envtl. Mgmt.*, 941 A.2d 151, 157 (R.I. 2008).

In Chapter 8 of Title 36, the Legislature vested "the general administration and the responsibility for the proper operation of the retirement system" of Rhode Island in the Retirement Board. R.I.G.L. § 36-8-3. The Retirement Board has been endowed by the Legislature with a broad grant of authority over the state retirement system. See *Iselin v. Ret. Bd. of the Emples. Ret. Sys.*, R.I. Super. LEXIS 75, *aff'd* at 943 A.2d 1045 (R.I. 2008) (quoting *Perotti v. Solomon*, 657 A.2d 1045, 1047-48 (R.I. 1995)). "The retirement board [] possesses the

power to 'establish rules and regulations' for the administration and transaction of the retirement system and may 'perform other such functions as are required' for the administration of the retirement system." *Perotti*, 657 A.2d at 1048. (quoting R.I.G.L. § 36-8-3). The Retirement System routinely interprets the statutes it has been entrusted with administering, including §45-21-2(5), and has been entirely reasonable in its interpretation of the statute to deny the relief sought by Mr. D'Addario.

Argument

1. Mr. D'Addario is not, and never has been, entitled to be a member of MERS through his position as Probate Judge for the Town of Tiverton.

As anticipated by MERS's pre-hearing memorandum, the evidence adduced at hearing did not show that Mr. D'Addario has worked a minimum of 20 hours per week during his tenure as the Probate Judge for Tiverton. Tr. Page 31, Line 20 – Page 32, Line 1. At the time of Mr. D'Addario's initial application to become a member of MERS, the applicable definition setting forth standards of eligibility was R.I.G.L. § 45-21-2(5):³

(5) "Employee" means any regular and permanent employee or officer of any municipality, whose business time at a minimum of twenty (20) hours a week is devoted to the service of the municipality, including elective officials and officials and employees of city and town housing authorities. Notwithstanding the previous sentence, the term "employee", for the purposes of this chapter, does not include any person whose duties are of a casual or seasonal nature. The retirement board shall decide who are employees within the meaning of this chapter, but in no case shall it deem as an employee any individual who annually devotes less than twenty (20) business hours per week to the service of the municipality and who receives less than the equivalent of minimum wage compensation on an hourly basis for his or her services, except as provided in section 45-21-14.1. Casual employees mean those persons hired for an occasional period

³ R.I.G.L. § 45-21-2 was amended in 2009 by 2009 R.I. Pub. Laws ch. 310, § 41 to add two definitions prior to that of "employee" so that the definition of "employee" now appears as R.I.G.L. § 45-21-2(7).

to perform special jobs or functions not necessarily related to the work of regular employees. Any commissioner of a municipal housing authority, or any member of a part-time state board commission, committee or other authority is not deemed to be an employee within the meaning of this chapter.

Amendments to the definition of "employee" since 2007 have not effected a material change in that definition.⁴ As the record shows that Mr. D'Addario has not, at any time during his tenure as Probate Judge, worked the 20 hours per week as contemplated by the statute, he has not at any time been qualified to become a member of MERS.

Mr. D'Addario's argument that when he assumed the position of Probate Judge he was eligible to become a member of MERS because the statute in 1993 did not include a 20 hour requirement is without basis. Even if the standard for granting membership in MERS related to the statute in effect at the time the service began, which it does not, Mr. D'Addario would not have been entitled to become a member at that time. While R.I.G.L. § 45-21-2(5) at the time of

⁴ The current version of R.I.G.L. § 45-21-2(7) reads:

(7) "Employee" means any regular and permanent employee or officer of any municipality, whose business time at a minimum of twenty (20) hours a week is devoted to the service of the municipality, including elective officials and officials and employees of city and town housing authorities. Notwithstanding the previous sentence, the term "employee", for the purposes of this chapter, does not include any person whose duties are of a casual or seasonal nature. The retirement board shall decide who are employees within the meaning of this chapter, but in no case shall it deem as an employee any individual who annually devotes less than twenty (20) business hours per week to the service of the municipality and who receives less than the equivalent of minimum wage compensation on an hourly basis for his or her services, except as provided in § 45-21-14.1. Casual employees mean those persons hired for an occasional period or a period of emergency to perform special jobs or functions not necessarily related to the work of regular employees. Any commissioner of a municipal housing authority, or any member of a part-time state board commission, committee or other authority is not deemed to be an employee within the meaning of this chapter.

Mr. D'Addario's initial term as Probate Judge did not explicitly state a 20 hour per week minimum, it did state:

(5) "Employee" shall mean any regular and permanent employee or officer of any municipality, whose business time is devoted to the service of the municipality, including elective officials and officials and employees of city and town housing authorities, provided, however, that the commissioners of city or town housing authorities shall not be deemed to be employees within the meaning of this section and further provided that no person shall be considered an "employee" whose duties are of a casual or seasonal nature. The retirement board shall decide who are employees within the meaning of this chapter.

R.I.G.L. § 45-21-2(5) as amended by 1992 R.I. Pub. Laws Ch. 306, Art.3, § 2 (emphasis added).

As the Retirement Board is explicitly charged with determining who are employees, it would have been well within its discretion to determine that service was of a casual nature, as the Supreme Court determined in *Lyman*. *Lyman*, 693 A.2d at 1031. Mr. D'Addario's citation of *Edwards, v. Curtis*, 387 A.2d 223, 225 n.1 (Me. 1978) is inapposite, as that footnote gives the text of 39 M.R.S.A. § 4 (subsequently repealed effective January 1, 1993) which provides statutory definitions of seasonal and casual, not in the context of determining who are employees for purposes of a retirement system, but rather as to their qualification for Workers' Compensation benefits. Repealed Maine statues do not provide compelling authority in this context.

Further, Executive Director Karpinski testified at hearing that prior to the amendment of § 45-21-2(5) in 1994 to include an explicit 20 hour per week requirement, it was the policy of the retirement board that one had to be a 20 hour employee to satisfy the statute as it existed in 1993:

Q. Can you just outline for the Hearing Officer what the administrative decision was and how you arrived at that conclusion?

A. So, the board, board's policy prior to the change in the law in 1993 was that you had to be a 20-hour employee. Membership is – you can't pick membership. It's by condition of employment.

Tr., Page 34, Lines 15 – 21. Additionally, the amendment to add an explicit 20-hour requirement did not contradict the explicit grant of power to the retirement board to determine who is an employee, nor did it mean that there had been no minimum service requirement prior to the amendment, but simply that from the time of amendment forward, it was no longer within the discretion of the retirement board to grant membership to anybody who didn't meet the 20-hour requirement. Prior to amendment, the discretion of the retirement board was unfettered. Accordingly, Mr. Karpinski's testimony that the retirement board had been employing a 20-hour rule of thumb prior to the statute's amendment establishes that the retirement board had decided, within its statutory authority, that 20 hours a week was the cutoff. It is also within the ambit of the statute as currently written that the retirement board could institute a 25-hour cutoff.

To the extent that Mr. D'Addario argues that because he became Probate Judge in 1993, before the statute was amended in 1994 to include a 20-hour minimum he was "grandfathered" or that the rights became "vested," he ignores the fact that membership in the retirement system is fluid and that one must consistently maintain eligibility. By way of illustration, there is a special statute for state school lunch employees, R.I.G.L. § 36-9-24, which permits such employees who have been members, but who are involuntarily transferred to a position of less than 20 hours per week to remain members so long as they work at least 15 hours weekly.⁵ If one were

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- ⁵ R.I.G.L. § 36-9-24
 - (a) Whenever any state school lunch employee, who is a member of the system as a full-time employee is involuntarily transferred to a position of less than twenty (20) hours per week, the employee shall remain a contributing member of the retirement system and receive full credit for that part-time service, provided the service shall be at least fifteen (15) hours per week.

"grandfathered" or "vested" by once having qualified for membership, § 36-9-24 would be entirely unnecessary.

Mr. D'Addario's claims that because he became Probate Judge before the 1994 amendment of §45-21-2(5) he is not subject to the 20-hour requirement are directly contradicted by R.I.G.L. § 45-21-47, which provides, in pertinent part:

I. § 45-21-47. Reserved power to amend or repeal -- Vested rights

The right to amend, alter, or repeal this chapter at any time or from time to time is expressly reserved, and in that event the liability of the municipal employees' retirement system is limited in the case of a member or a person claiming through the member to the contributions made by the member, without interest, and in the case of a municipality, to contributions made by the municipality without interest, subject to deductions prescribed in the case of withdrawal by a municipality as provided in § 45-21-6.

(emphasis added); *see also, McGrath v. R.I. Ret. Bd.*, 88 F.3d 12, 14 (1st Cir. 1996)("From its very inception, the statute that paved the way for municipal employees to enter the state retirement system included a provision reserving the state's power to amend the terms of the municipal members' participation.").

Pursuant to R.I.G.L. § 45-21-16, retirement rights do not vest until a member has met minimum service requirements, which in no case requires less than five years of service. As Mr. D'Addario testified that his service commenced on or about July 26, 1993 (Tr., Page 10, Lines 16 – 21), he had less than a year's service when the 20 hour requirement became effective on July 7, 1994. 1994 R.I. Pub. Laws, ch. 142. Accordingly, Mr. D'Addario was subject to the 20 hour

-
- (b) Whenever a school lunch employee previously ineligible for membership in the system because of employment less than twenty (20) hours per week, subsequently becomes eligible for membership but who has since attained the age of sixty (60) years, the employee shall have the option to join the system at the time of the subsequent eligible employment status.

requirement as of July 7, 1994, and he had no right to membership from that date, even if one could ignore the Supreme Court's decision in *Lyman*, that it is within the power of the Retirement Board to determine what constitutes casual employment, which one cannot. *Lyman*, 693 A.2d at 1031.

2. Argument that Mr. D'Addario became a member through the provisions of R.I.G.L. § 45-21-8 is groundless.

Mr. D'Addario's theory that he automatically became a member of MERS pursuant to R.I.G.L. § 45-21-8 is without merit. The argument that he automatically became a member through the provisions of R.I.G.L. § 45-21-8(a) assumes, without basis, that Mr. D'Addario was an employee within the meaning of R.I.G.L. § 45-21-2(5) at the time he became Probate Judge in 1993. For the reasons set forth above, even before the amendment of the statute to explicitly exclude from the definition of "employee" those who worked fewer than 20 hours per week, there was still a requirement that the individual's employment not be seasonal or casual, and which otherwise gave the retirement board complete discretion to determine who was an employee. As such, the language cited by Mr. D'Addario: " Any employee of a participating municipality as defined in this chapter, who becomes an employee on and after the effective date of participation, shall, under contract of his or her employment, become a member of the retirement system;" (R.I.G.L. § 45-21-8(a)) merely assumes that Mr. D'Addario was an employee, when he didn't, in fact, meet the definition of "employee" in R.I.G.L. § 45-21-2(5). Mr. D'Addario's citation of *Wilkinson v. State Crime Lab. Comm'n*, 788 A.2d 1129, 1144 (R.I. 2002) is completely inapposite, as it dealt not with membership in a retirement system, but with whether an employee with 20 years of service could be fired without cause after having acquired "full status" under the State Merit System. R.I. G.L. § 36-4-59. As such, it has no relevance as

to whether someone who didn't meet the statutory requirement of membership initially could, prior to vesting, have their membership subsequently divested by a change in the statute.

An argument based upon R.I.G.L. § 45-21-8(b) is similarly without basis. At hearing, Counsel for Mr. D'Addario requested that Mr. Karpinski read R.I.G.L. § 45-21-8(b) into the record. Tr., Page 55, Line 25 – Page 57, Line 6. The text of § 45-21-8(b) reads:

(b) Any employee or elected official of a participating municipality in service prior to the effective date of participation, who is not a member of any other pension or retirement system supported wholly or in part by a participating municipality, and who does not notify the retirement board in writing before the expiration of sixty (60) days from the effective date of participation that he or she does not wish to join the system, shall automatically become a member; and

Mr. Karpinski further testified that the Town of Tiverton's effective date of participation in MERS was in 1963, before Mr. D'Addario became Probate Judge, and that accordingly, the opt-out provision of this section did not apply to Mr. D'Addario. Tr. Page 57, Lines 13 – 22.

Both subsections of R.I.G.L. § 45-21-8 cited by Mr. D'Addario apply to employees. Because Mr. D'Addario has at no time met the applicable statutory definition of "employee," his citation of cases that indicate that the term "shall" is mandatory in R.I.G.L. § 45-21-8 has no relevance to this matter. You have to be an employee for the statute to apply, and Mr. D'Addario is not, and has not been, an employee within the meaning of the applicable statute.

Mr. D'Addario's citation of *Elliot v. Town of Warren*, 2001 R.I. Super. LEXIS 89, at *3 (Super. Ct. Aug. 24, 2001), has no relevance to this matter. At issue in *Elliot* was whether the Town of Warren had properly entered into MERS pursuant to R.I.G.L. § 45-21-4. Mr. Elliot claimed that Warren hadn't properly entered into MERS in 1970 and, because their entry was improper, he didn't have the benefits of a disability pension and was thus entitled to benefits under R.I.G.L. § 45-19-1. The Superior Court, Savage, J., disagreed. Mr. Karpinski's

uncontradicted testimony indicated that the Town of Tiverton had joined MERS in 1963. Tr., Page 57, Lines 13 – 15. As the participation of the Town in MERS is not an issue, *Elliot* offers no guidance in the present matter.

3. As Mr. D'Addario was not entitled to membership in MERS, he is not entitled to purchase service credit.

To the extent Mr. D'Addario is seeking to purchase credit for the years between 1993 and 2007, as he requested in his letter of January 4, 2008, the time is clearly not purchasable. R.I.G.L. §36-8-1(10) specifically provides that “[t]he rules applicable to a service credit purchase shall be the rules of the retirement system in effect at the time the purchase application is submitted to the retirement system.” *See also, Lyman v. Employees’ Retirement System of Rhode Island*, 693 A.2d 1030, 1031 (R.I. 1997). There is no question but that the twenty (20) hour per week requirement had been codified by the legislature long prior to Mr. D'Addario’s request in 2008, and as he has not satisfied that threshold eligibility requirement for membership at any time during his years of employment as a probate judge, he is neither entitled to membership nor is he entitled to purchase service credit for the time at issue.

MERS incorporates herein the arguments made in its pre-hearing memorandum. It also incorporates as Exhibits A-C copies of prior Hearing Officer Decisions on the issue of entitlement to participate in the Retirement System where one has not worked 20 hours per week in service to the state or a municipality. In *Francis v. Employees Retirement System of Rhode Island*, (2007), this Hearing Officer determined that in the absence of evidence of having worked 20 hours per week, two state lunch employees were not entitled to purchase service credit for prior service. Exhibit A. This decision was based upon the definition of "employee" applicable to state workers, R.I.G.L. § 36-8-1(8), which stated: "...but in no case shall it deem as an

employee, for the purposes of this chapter, any individual who devotes less than twenty (20) business hours per week to the service of the state...." *Id.* As noted, the version of the applicable statute at the time of Mr. D'Addario's application, and since, has provided: "... but in no case shall it deem as an employee any individual who annually devotes less than twenty (20) business hours per week to the service of the municipality...." R.I.G.L. § 45-21-2(7).

Similarly, in *Riley v. Employees' Retirement System of Rhode Island*, (2010), Hearing Officer Koutsogiane held that, as the evidence showed that the applicant had worked fewer than 20 hours per week, she was not entitled to purchase service credit for such time. Exhibit B. There, Hearing Officer Koutsogiane was addressing an application to purchase service credit for a period between 1984 – 1989, long before R.I.G.L. § 36-8-1(2) was amended to add the explicit direction that no individual who devotes less than 20 business hours per week to the service of the state shall be deemed an employee. 1994 R.I. Pub. Laws ch. 142, § 3.

As well, in *Langlois v. Employers⁶ Retirement System of Rhode Island* (2010), Hearing Officer Koutsogiane cited the *Francis* decision in noting that in the absence of evidence that the applicant had worked 20 hours per week during the period for which the applicant sought to purchase service credit, no such service credit could be purchased.

As the above-cited authorities make clear, the statutes which apply to a request to purchase service credit are those in effect at the time of the application. *Lyman*, 693 A.2d at 1031. As Mr. D'Addario applied to purchase service credits for the years between 1993 and 2007 in 2008, the applicable statute was that form of R.I.G.L. § 45-21-2(5) which existed in 2008, and which unambiguously required that the applicant had worked no fewer than 20 hours per week to be eligible. As Mr. D'Addario admitted that he had not worked a minimum of 20

⁶ "Employers" should have been "Employees."

hours per week between the years 1993 and the present (Tr., Page 31, Line 20 – Page 32, Line 1)
he is not entitled to purchase service credit for the years between 1993 and 2007.

Conclusion

For all the reasons stated above, the Hearing Officer should issue a Recommendation to the Retirement Board that the decision of the Executive Director be UPHELD and AFFIRMED in all respects, and that Mr. D'Addario's claim of entitlement to be a member of the Retirement System and to purchase service credit for time between 1993 and 2007 be DENIED.

Respectfully Submitted,
MUNICIPAL EMPLOYEES'
RETIREMENT SYSTEM OF THE
STATE OF RHODE ISLAND,
By its attorneys,

Michael P. Robinson, Esq. (#6306)
Shechtman Halperin Savage, LLP
1080 Main St.
Pawtucket, RI 02860
(401) 272-1400
mrobinson@shslawfirm.com

CERTIFICATION

I hereby certify that on this 20th day of March, 2018, I mailed a true and accurate copy of the within post-hearing memorandum to Hearing Officer Teresa M. Rusbino, Esq., Law Office of Teresa Rusbino, P.O. Box 8767, Cranston, RI 02820, and I sent an electronic copy to Hearing Officer Rusbino at tmrri@aol.com and to Thomas Connolly, Esq. at tconnolly109@gmail.com.

William Y. Charrette



APPEAL OF:

DONNA R. FRANCIS and DONNA HASSELL , Appellants

vs.

**EMPLOYEES' RETIREMENT SYSTEM
OF RHODE ISLAND, Respondent**

Appearance for Appellants: PRO SE

**Appearance for Respondent: WILLIAM O'GARA
Legal Counsel
Employees Retirement System
of Rhode Island
40 Fountain Street
Providence, Rhode Island 02903**

**Hearing Officer: TERESA M. RUSBINO, ESQ.
Employee' Retirement System
of Rhode Island
40 Fountain Street
Providence, Rhode Island 02903**

DECISION

Pursuant to R.I.G.L. Section 36-8-3 and Regulation Four, Rules of Practice and Procedure for Hearings, the Appellants, Donna R. Francis and Donna Hassell, are appealing their respective decisions of the Employees' Retirement System, dated January 3, 2005 (Francis) and December 22, 2005 (Hassell), denying them the ability to purchase prior service credits for time employed as state school lunch employees.

These appeals were joined and perfected in accordance with the Rules of Practice. A hearing was held on May 25, 2006 at the offices of the Employees' Retirement System, 40 Fountain Street, Providence, Rhode Island. The

Appellants testified on their behalf. Frank Karpinski, Executive Director of the Employees' Retirement System, testified on behalf of the Respondent. Various documents were admitted into evidence (see attached exhibits).

FINDINGS OF FACT:

1. In January of 1987, Appellant Francis became employed by the Rhode Island Department of Education as a school lunch worker and was placed in a fifteen (15) hour per week position from approximately 1/20/87 through 11/11/91.
2. In November of 2000, Appellant Francis requested an invoice from Respondent Employees' Retirement System, in order to purchase prior service credit for the period 1987 through 1991.
3. In December of 2000, Appellant Francis received an invoice from the Employees' Retirement System in the amount of \$3,129.61.
4. Appellant Francis did not purchase the service credit referred to in paragraph 3, above, but instead requested a recalculation in July of 2002.
5. In January of 2005, Appellant Francis was denied her request to purchase prior service credit for the period 1987 through 1991 for her employment as a school lunch worker, on the basis that she worked less than twenty (20) business hours per week for the state during that period and was not a contributing member of the Employees' Retirement System.

minimum twenty (20) hours per week required by statute (see Respondent's exhibits 3 and 4).

RIGL 36-8-1(8) defines "employee" as any employee of the state whose business time is devoted exclusively to the services of the state. Although the retirement board shall determine who are employees within the meaning of the statute, they are nonetheless bound by the statutory dictates. In this instance, the statute states in relevant part, ..."but in no case shall it deem as an employee, for the purposes of this chapter, any individual who devotes less than twenty (20) business hours per week to the service of the state..." (emphasis supplied).

Therefore, by necessity, the Employees' Retirement System seeks time verification from the appropriate state department(s) that employed the individual who is seeking the requested service credit. In this instance, the Employees' Retirement System corresponded with Ann Blanchard, Fiscal Clerk of the Department of Education, Office of Finance/Nutrition, and ascertained that the Appellants did not work at least twenty (20) hours per week for the Department of Education, but instead were deemed fifteen (15) hour per week employees. Moreover, the Employees' Retirement System was provided with no documentation which would have allowed it to conclude that Appellants were full time contributing employees from their initial date of hire, who were thereafter involuntarily transferred to a position of less than twenty (20) hours per week, so as to trigger the provisions of RIGL Section 36-9-24. Additionally, there was

6. Appellant Donna Hassell was employed by the Rhode Island Department of Education as a school lunch worker for the period 1977 through 1983.
7. In September of 1982, Appellant Hassell applied for a refund of her retirement contributions with the state.
8. In April of 1992, Appellant Donna Hassell purchased credit for her withdrawal time, covering the period 9/24/79 through 10/10/81.
9. During the period 1977 through 1983, Appellant Hassell worked as a fifteen (15) hour per week school lunch employee with the Department of Education.
10. By letter dated December 22, 2005, Appellant Hassell was denied her request to purchase prior service credit for the period 1977 through 1983 for her employment as a school lunch worker with the Department of Education, on the basis that she was employed less than twenty (20) business hours per week.

ISSUE: Did the Employees' Retirement System err in denying the Appellants' request to purchase prior service credit for time employed by the Rhode Island Department of Education as school lunch workers?

CONCLUSION AND ORDER:

Both Appellants were denied their respective requests to purchase prior service credit, because the prior time verification received from their employer, the Department of Education, specifically stated that they did not work the

minimum twenty (20) hours per week required by statute (see Respondent's exhibits 3 and 4).

RIGL 36-8-1(8) defines "employee" as any employee of the state whose business time is devoted exclusively to the services of the state. Although the retirement board shall determine who are employees within the meaning of the statute, they are nonetheless bound by the statutory dictates. In this instance, the statute states in relevant part, ..."but in no case shall it deem as an employee, for the purposes of this chapter, any individual who devotes less than twenty (20) business hours per week to the service of the state...." (emphasis supplied).

Therefore, by necessity, the Employees' Retirement System seeks time verification from the appropriate state department(s) that employed the individual who is seeking the requested service credit. In this instance, the Employees' Retirement System corresponded with Ann Blanchard, Fiscal Clerk of the Department of Education, Office of Finance/Nutrition, and ascertained that the Appellants did not work at least twenty (20) hours per week for the Department of Education, but instead were deemed fifteen (15) hour per week employees. Moreover, the Employees' Retirement System was provided with no documentation which would have allowed it to conclude that Appellants were full time contributing employees from their initial date of hire, who were thereafter involuntarily transferred to a position of less than twenty (20) hours per week, so as to trigger the provisions of RIGL Section 36-9-24. Additionally, there was

insufficient evidence to confirm that Appellants were "floaters", since the Department of Education failed to provide documentation to certify that status.

Hence, the prior time verification of less than twenty (20) hours per week, the lack of documentation regarding full time contributing employee status at date of hire, and the absence of "floater" certification all combine to support the decisions of the Employees' Retirement System relative to the Appellants denying their respective requests to purchase the prior service credit referred to above. For the reasons stated herein, the decisions of the Employees' Retirement System, dated January 3, 2005 and December 22, 2005, are hereby affirmed.

It is so ordered.

DATED: February 28, 2007



TERESA M. RUSBINO, ESQ.
Hearing Officer
Employees' Retirement System
of Rhode Island
40 Fountain Street
Providence, Rhode Island 02903

CERTIFICATION

I hereby certify that on the 9th day of March, 2007, I mailed a true copy of the Within Decision, by regular mail, postage prepaid, to FRANK J. KARPINSKI, EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, 40 Fountain Street, Providence, Rhode Island 02903, WILLIAM O'GARA, LEGAL COUNSEL, EMPLOYEES' RETIREMENT SYSTEM, c/o Pennone, Lopez, and Devereaux, 1800 Financial Plaza, Providence, Rhode Island 02903, DONNA R. FRANCIS, [REDACTED], Barrington, Rhode Island 02806, and DONNA HASSELL, [REDACTED] West Warwick, Rhode Island 02893.



Appellant Francis
1
(Full Exh)

November 3, 2000

Employers Retirement Board
40 Fountain Street
Providence, RI 02903

To whom it may concern:

I am requesting the date that I will be vested with the state. My hire date with the state was January 21, 1987 but I worked part time for a few years. My social security number is [REDACTED] and my current address is [REDACTED], Barrington, RI 02806. Would you also be able to give me a figure on how much it would cost me to buy the part three years back.

Sincerely,

Dennis R. Francis
[REDACTED]
Barrington, RI 02806
Home telephone: [REDACTED]
Work telephone: [REDACTED]



*Untimely -
direct change
in law
Phil Lucca
1/9/95*

*Equitable Estoppel
Annette Frisella
1/9/95*

STATE OF RHODE ISLAND
PROVIDENCE, SC

EMPLOYEES RETIREMENT
SYSTEM OF RHODE ISLAND

*Cranston Crossing
guards*

= compare newsletters

Appeal of:

Mary Riley
(Purchase of Service Credits)
Appellant-Petitioner

Vs.

Employees Retirement System of Rhode Island,
Appellee-Respondent

DECISION

Appearances

For Petitioner:

Gerald O'Neill, Esq.
AFSCME
Rhode Island Council 94
1179 Charles Street
North Providence, RI 02904

For Respondent:

Michael Robinson, Esq.
Shechtman, Halperin, Savage LLP
1080 Main Street
Pawtucket, RI 02860

Hearing Officer:

Charles M. Koutsogiannis, Esq.
One Grove Avenue
East Providence, RI 02914

DATE RECEIVED BY SHS

1/18/10

cc:
APP-VA

**TRAVEL OF THE CASE
AND
STATEMENT OF FACTS**

The present appeal was brought pursuant to and in accordance with the mandate of RIGL 36-8-3 and Regulation Forw. Rules of Practice and Procedure for Hearings.

Mary Riley ("Petitioner") is appealing the April 3, 2009 (Respondent's Exhibit #6) and the May 13, 2009 (Petitioner's Exhibit #3) decisions of the Employees Retirement System of Rhode Island ("RRSRI") denying her request to purchase service credit for time she worked as a Cook's Helper for the Rhode Island Department of Education. Petitioner asserted that she was entitled to purchase time from September 16, 1984 to September 10, 1989, claiming that she was an eligible employee under applicable law.

RRSRI maintained that Petitioner did not qualify to purchase service credits under any of the available pension statutes, i.e., RIGL 36-9-20, 36-9-20.5, 36-9-25.1, 36-9-26, 36-9-31 or 36-9-31.1. RRSRI's denial was based on the assertion that Petitioner's work as a Cook's Helper in the School Lunch Program did not meet the definition of "employee" within the meaning of RIGL 36-8-1 (8), which states, RRSRI said, essentially provides that an individual must routinely work at least 20 hours per week in order to qualify. RRSRI claimed that Petitioner failed to provide sufficient evidence to reasonably conclude that she had regularly worked at least 20 hours per week during the relevant time period. RRSRI also pointed out that during the relevant period of 1984-1989 Petitioner did not contribute to the Retirement System as required under RIGL 36-9-12.

Petitioner's appeal was perfected in accordance with the Rules of Practice. A hearing on this matter was held on September 22, 2009, at the offices of the Employees Retirement System of Rhode Island, 40 Fountain Street, Providence, Rhode Island. Petitioner testified on her own

behalf and Frank Karpfield, Executive Director of HRSRI, also testified. The documents that were admitted into evidence are listed in the hearing transcripts as well as on the Index of Documents that is attached hereto and made a part hereof. Both parties also submitted post-hearing Memoranda of Law.

Petitioner testified that she first began substitute service in September 1984 in the School Lunch Program. (TR. p. 4) Her personnel action forms (Respondent's Exhibit #3) indicated that she was hired into a Cook's Helper position which was a standard 35 hour position. She testified that she although she was hired into a standard 35 hour-per-week position (see also Petitioner's Exhibit #1) she had no set hours and she was considered a "float" because there was no school to which she officially and permanently assigned. (TR. p.4) She testified that she was on call each morning and that she would be assigned to a different school as required. (TR. p. 4). Petitioner further stated that in 1985, for example, she estimated that she worked 20 hours or more per week "probably three-quarters to 80 per cent of the time." (TR. p.6)

On further direct examination, Petitioner testified that she was on mandatory leave from approximately October or November 1986 to May 1987. (TR. p. 10) She stated that when she returned to work she essentially worked an academic year in 1987 and 1988, and reiterated her claim that she worked at least 20 hours per week during this time. (TR.p.10)

On cross examination, the Petitioner agreed that the standard or typical academic year in which she worked consisted of a 180-day school year, or the equivalent of a 36 work-week period. (TR. p.12) Petitioner frequently testified that because of her low security she could not bid into a standard 35 hour per week position and therefore her work week varied: she might have a work week of anywhere from 5 to 35 hours, but she said that she modestly worked a minimum of 20 hours. (TR. p. 14, 15) When asked how many weeks did she believe that she

worked a minimum of 20 hours per week. Petitioner stated: "Of the top of my head, I would have to say I don't know. Maybe a majority of them. I'm not sure." (TR. p.15) She also agreed that perhaps she would work a minimum of 20 hours per week more than 50% of the time. (TR. p. 15) Petitioner stated that she had no documentation to support her claim as to the hours that she worked per week. (TR. p. 15, 16)

On cross-examination Petitioner displayed reticence in one of the exhibits that was admitted into evidence -- The Prior/Probationary Time form (Respondent's Exhibit #1) stated that "Mary was scheduled less than 20 hours per week from September 16 of 1984 to September 10 of 1989". (TR. p.17) However, upon further cross-examination Petitioner acknowledged again that she did not always work a minimum of 20 hours per week (TR. p. 19). She also agreed that certain exhibits admitted into evidence (e.g. Respondent's Exhibit #2) evidence thus frames for what she might be scheduled to work, but not necessarily the number of hours that she actually worked. (TR. p.19) She again agreed that she had no documentation to verify her claim that she worked in excess of 20 hours per week for 75-80% of the time of her employment. (TR. p. 24, 30)

Frank Karpinski testified on direct examination that ER SRI made a review of Petitioner's request to purchase service credits because state forms showed that Petitioner had not made any contribution to the retirement system during the relevant period. (TR. p. 44, Respondent's Exhibit # 1). He further testified that ER SRI had also received information from the Department of Education that indicated that Petitioner was scheduled to work fewer than 20 hours per week. (TR. p. 45). This information was problematic, he said, because it was ER SRI's interpretation of the statute(s) that "you must regularly work 20 hours per week, a minimum of 20 hours per week" in order to be eligible for the purchase of service credits. (TR. p. 45) (Exhibits supplied)

Mr. Karpinski acknowledged that a so-called "floater" could still qualify to purchase service credits if he/she could reasonably demonstrate that he/she regularly worked in excess of 20 hours per week (TR. p. 50). He noted that HRSRI determined Petitioner had been unable to provide sufficient documentation to support her claim (TR. p. 51-52). On further cross-examination Mr. Karpinski consistently repeated HRSRI's position that the statute requires that a school-lunch employee who works a standard 36 week school year, such as in the present case, would have to work a minimum of 20 hours per week for all 36 weeks in order to be eligible to purchase service credits. (TR. p. 48, 53, 54)

FINDINGS OF FACT

1. Petitioner began state service in 1984 in the Rhode Island Department of Education School Lunch Program.
2. Petitioner was hired as a Cook's Helper.
3. The Cook's Helper position was created as a 35 hour per week job.
4. During the relevant period (1984-1989) Petitioner had low seniority and therefore could not bid into a standard 35 hour per week job.
5. Petitioner was consequently hired as a "floater" and therefore she had no set hours and was not formally nor permanently assigned to any one particular school.
6. Petitioner was on call each morning and would then be assigned to a school for the day.
7. Petitioner worked a standard academic year, consisting of 180 days, the equivalent of a 36 week period.
8. During the relevant period Petitioner did not contribute to the State Retirement System.

ISSUE

Did BRSRI commit reversible error in denying Petitioner's request to purchase prior service credit for time employed by the Rhode Island Department of Education as a school lunch worker for the time-period of 1984-1989?

CONCLUSION AND ORDER

The interpretation and application of RIGL 36-8-1(B) is pertinent to this case. It provides in part as follows:

"The Retirement Board shall determine who are employees within the meaning of this chapter...and...in no case shall it deem as an employee for the purposes of this chapter any individual who derives less than twenty (20) business hours per week to his service of the state...except as provided in §36-9-24."

The exception of RIGL 36-9-24 provides in pertinent part as follows:

Part-time lunch employees.

"Whenever any state lunch employee, who is a member of the system as a full-time employee is involuntarily transferred to a position of less than twenty (20) hours per week, the employee shall remain a contributing member of the retirement system and receive full credit for that part-time service, provided the service shall be at least fifteen (15) hours per week."

The standard of review available to this Hearing Officer is well established. Deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency...even when the agency's interpretation is not the only permissible interpretation that could be applied." *Defendant of Animals, Inc. v.*

Department of Environmental Management, 553A 2d 541, 548 (RI 1989). *Martinez v. Johnston*

School Committee, 824 A. 2d 426 (RI 2004). An agency decision will be reversed only when it is clearly erroneous. Diorita v. Morgala, 635 A. 2d 1115 (RI 1994).

A corollary to these established principles is that in construing a statute the aim is to determine and effectuate the legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes. Local 400 v. Rhode Island Labor Relations, 747 A. 2d 1002 (RI 2000). Legislative intent is to be found solely in words of the statute if they are unambiguous and express a sensible and clear meaning. Badoni v. State, 715 A. 2d 280 (RI 1998).

In the present case the testimony and documentary evidence indicated that Petitioner was hired into a standard 35 hour position. However, Petitioner repeatedly indicated during the hearing that because of her lack of seniority her actual work time varied from week to week, anywhere from 5 to 20 plus hours per week. (TR. p. 4, 6, 14, 15, 16) She testified that she did not yet earn seniority, so her floating job status was reflected in the inconsistent number of hours worked each week. (TR. p.12, 13, 14)

Petitioner claimed that 75-80% of the time she worked more than 20 hours per week, and then said it was more than 50% of the time and then testified that there were some weeks where she did not work the minimum 20 hours. (TR. p. 16) She repeatedly admitted that she had no written documentation to support her assertion for purchasing service credits. (Tr. 15, 16, 30) One document that was submitted from the Department of Education (Respondent's Exhibit #1) indicated that Petitioner did work more than a minimum of 20 hours per week. The form is a pre-printed state form that only allows the preparer to check off a yes or no answer with respect to the issue of hours worked per week. It appeared to be a boilerplate form that really does not address the minimum number hours worked by any one specific employee and it does not allow

for further explanation or examination. As a standard template document it failed to shed meaningful light on Petitioner's particular work history. Moreover, Petitioner's own testimony indicated that during the relevant time periods she did not regularly work a minimum of 20 hours per week. (TR. p. 15, 16) She also did not produce any witnesses, such as fellow employees or a supervisor, who could verify her claims as to the minimum hours that she worked each day and week.

Petitioner did not testify that she was involuntarily transferred to a position of less than 20 hours per week, a claim that perhaps would have allowed her to remain a contributing member of the retirement system and receive full credit for that part-time service as allowed under RIGL 36-9-24. Petitioner did not meet these criteria. Petitioner was not able to do so since she had low seniority and was a "floater" working indeterminate hours within the school lunch program. She agreed that she was never scheduled to be in a 20 hour per week position during this time. (TR. p. 18, 19) After the relevant period she was able to establish seniority and become eligible for a full standard 35 hour work week. (TR. p. 26, 27, 28)

Of equal import here is the fact that Petitioner did not make contributions to the Retirement System, as required under relevant statute, during the relevant period of September 16, 1984 to September 10, 1989. (TR. p. 27)

HRERI stated in correspondence to Petitioner that it would entertain her appeal for purchasing service credits, provided she could reasonably show that she regularly worked a minimum of 20 hours per week, within the meaning of RIGL 36-8-1 (5). HRERI concluded that Petitioner did not meet her burden of proof. In light of the available standard for administrative review, and based on the evidence presented by the Petitioner for consideration, the Hearing Officer cannot find fault with HRERI's decision.



EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND

NANCY LANGLOIS,
Petitioner

VS.

EMPLOYEES' RETIREMENT SYSTEM ;
OF RHODE ISLAND,
Respondent

DECISION

INTRODUCTION

The Superior Court remanded this matter to the Employees' Retirement System of Rhode Island (the "Retirement Board") to determine whether Nancy Langlois ("Ms. Langlois") is entitled to receive a full year of service credit toward retirement for each year that she worked 21 hours per week in a 35-hour-per-week position.

All facts and procedural history as referenced on page 2 of my December 14, 2009 decision are hereby adopted. Both parties have relied on their prior filings, the prior hearing transcript, and related exhibits. The parties also have submitted for my review their respective briefs filed in Superior Court. Having reviewed the foregoing materials and the Superior Court's April 2012 Order, the matter is ready for decision.

DISCUSSION

The sole issue on remand, as directed by the Superior Court, is whether Ms. Langlois is entitled to receive one full year of retirement service credit for each year between 1990 and 1994, in which she worked 21 hour per week in a 35-hour-per-week position. What is not in question is whether Ms. Langlois was a state employee and whether she was eligible to be a

member of the Employees Retirement System of Rhode Island.¹ By virtue of her working 21 hours per week between 1990 and 1994, she was qualified as both

Ms. Langlois contends that, pursuant to the Employees Retirement System of Rhode Island Handbook ("Handbook"), a state employee will receive one year of retirement credit for each year worked. Specifically, the Handbook states:

Service and Purchase of Service Credit

Generally, the number of years you have worked and contributed to the retirement system will determine the amount of your retirement allowance. If you are a state or municipal employee, you will receive one year of retirement credit for each year worked. You must have worked a minimum of 20 hours per week. Casual or seasonal employment is excluded.

According to Ms. Langlois, this language entitles her to receive four full years of retirement credit for the years 1990-1994 because she was working at that time at least 20 hours per week as a state employee. She contends that there is no statute or regulation that requires a person employed in a 35-hour-per-week position to actually work a full 35 hours per week in order to qualify for the full retirement credit. To the contrary, according to Ms. Langlois' position, any employee who works at least 20 hours per week can receive full retirement service credit, regardless of the number of hours per week the position requires.

The Retirement Board rejects this interpretation, instead arguing that the Handbook "merely states the general proposition that up to a year of service credit is available to a member who works the full hours of [his or] her position in a given year." (Retirement Board's Superior

¹ According to R.I. Gen. Laws § 36-8-1(9), an employee is defined as any state employee "whose business time is devoted exclusively to the services of the state, but shall not include ones whose duties are casual or seasonal in nature. . . . [I]n no case shall it deem as an employee . . . any individual who devotes less than twenty (20) business hours per week to the service of the state[.]"

Likewise, the Employees Retirement System of Rhode Island Handbook provides that "[a]ny person who is employed on at least a 20-hour-per-week basis is eligible for membership in the Employees Retirement System of Rhode Island." It is undisputed that Ms. Langlois worked 21 hours per week from 1990 to 1994, thus qualifying her as an employee who was eligible to be a member of the retirement system.

Court Memo at 8.) The Retirement Board asserts that there is nothing in the Handbook that would award full retirement credit to an employee who worked less than the prescribed number of hours that the employee's position required. (Retirement Board's Superior Court Memorandum at 8.)

In response to the Retirement Board, Ms. Langlois asserts that the foregoing Handbook language is clear and unambiguous, and that if the Retirement Board wanted to require an employee to work his or her full hours to be entitled for a full retirement service credit, then the Handbook should specifically express that. Because of the absence of that specificity, Ms. Langlois argues that she is entitled to receive her full retirement credit despite only working 21 hours of her 35-hour-per-week position.

The statute applicable to the issue presented in this appeal is R.I. Gen. Laws § 36-9-25(a), which is entitled "Standard for year's service credits" and provides, in pertinent part:

The retirement board shall fix and determine, by appropriate rules and regulations, how much service in any year is equivalent to a year of service, but in computing that service or in computing the compensation it shall credit no period of more than a month's duration during which a member was absent without pay nor shall more than one year of service be credited on account of all service in one calendar year. (Emphasis added).

The statutory language of § 36-9-25 sets forth the process by which service credits are calculated. It explicitly places upon the Retirement Board the responsibility of determining how to calculate retirement service credit. Furthermore, by stating that the Retirement Board is to determine "how much service in any year is equivalent to a year of service" it is implicit that an all-or-nothing approach to retirement service credit, as proposed by Ms. Langlois was not intended by the Legislature. To the contrary, the Legislature intended for the Retirement Board to establish the policy to determine how retirement service credit is to be calculated.

In his testimony at the September 10, 2009 evidentiary hearing, Frank J. Karpinski,

~~Executive Director of the Employees' Retirement System of Rhode Island, testified as to how the~~

Retirement Board calculates retirement service credit:

[Question:] Now, how was service credit determined for State employees?

[Mr. Karpinski:] Service credit for a State employee is calculated on a per-day basis. We actually get transmissions back from the State that says the total hours that the person can work, meaning what does their job classification require. It's a 35-hour-a-week job, and they tell us the actual number of hours that they do work; and then our system goes back, and it divides what you did work or what you can work; and, for example, if you were a 35-hour employee, you would see - we would see 35 over 35, and we would say, [y]ou get a full - because they get paid biweekly, they would get a biweekly period of a full service credit. If it was something less than that, then whatever that fraction, whether it's half or a third, you would get that time during that week. (Hearing Tr. at 53-54.)

Mr. Karpinski further clarified the Retirement Board's policy by stating that if a state employee in a 35-hour-per-week job worked 35 hours in a week, he or she would get a full retirement credit for that week. (Tr. at 54.) It was also Mr. Karpinski's testimony that a person in a 21-hour-per-week position, who worked for 21 hours in a week, would receive a full retirement credit for that week. (Tr. at 54.) However, and more to the issue presented in the present matter, Mr. Karpinski testified that a person in a 35-hour-per-week position, but who only worked half of those hours, would only receive half of the service credit during that time frame. (Tr. at 61.)

Mr. Karpinski testified that the Retirement Board's policy provides full retirement service credit to those employees who work their full work hours. Likewise, the Retirement's Board's policy also provides fractional retirement service credit to those employees who work fractional hours. Various statutory provisions require the Retirement Board to employ actuaries to provide the board with regular and ongoing analyses of the status of the retirement system. See R.I. Gen. Laws § 36-8-8 (requiring the Retirement Board to submit to the Governor, the Speaker of the

House of Representatives, the President of the Senate and the Secretary of State, a "valuation balance sheet" that is prepared by an actuary); §36-8-10 (necessitating the Retirement Board to hire an actuary to be an "actuarial advisor" to the Board and to make the "actuarial computations and valuations" required by statute); §36-8-13 (directing the Retirement Board's actuary to investigate the "mortality, service and compensation experience of the members and beneficiaries of the retirement system"); §36-8-14 (requiring the actuary to make an "annual valuation of the assets and liabilities" of the retirement system). Regarding these actuarial evaluations, Mr. Karpinski testified that if the Retirement Board allowed for state employees to receive a full year of retirement service credit after working fewer hours than their position required, as Ms. Langlois suggests, "actuarial issues" would definitely arise. (Tr. at 66.) Thus, to remain fiscally sustainable, it is imperative that the Retirement Board not provide retirement credits in excess to what is actually being earned by working employees.

The General Assembly has vested broad authority in the Retirement System to "establish rules and regulations for the administration and transaction of the business of the Retirement System... [and to] perform such other functions as are required for the execution of Chapters 8-10 of this Title." § 36-8-3. Our Supreme Court has interpreted this grant of authority to be an expansive and necessary one, to enable the Retirement System to conduct its statutorily prescribed functions. *Ses Perrotti v. Solomon*, 657 A.2d 1045, 1047-48 (R.I. 1995).

Considering the foregoing statutes and testimony, it is clear that the Legislature intended for the Retirement Board to determine how much retirement service credit is to be calculated for a state employee for any given year worked. I find Mr. Karpinski's testimony of how the Retirement Board determines retirement service credits to be credible. Accordingly, the Retirement Board has devised a reasonable, fair, and equitable method for determining how

much retirement service credit is provided to an employee who has worked fewer hours than his or her job requires. To permit a full credit for partial work, as Ms. Langlois is proposing, is illogical and inequitable; it also is likely to be financially infirm. For example, the faulty logic of Ms. Langlois' position is illustrated in the scenario where two employees, each working 20 hours of a single 40-hour-a-week position, would each earn full retirement credit for the time they worked in that position.

Moreover, without commenting on the weight that the language of the Handbook may or may not carry, the Handbook language Ms. Langlois points to in support of her position is weak. The particular provision begins "[g]enerally, the number of years you have worked and contributed to the retirement system will determine the amount of your retirement allowance." Clearly, beginning this sentence with the word "generally" implies that this is not an absolute rule. The next sentence, "[i]f you are a state or municipal employee, you will receive one year of retirement credit for each year worked," provides no clarity as to what constitutes a "year worked."

According to the policy articulated by Mr. Kapinski, working the full number of hours a position requires for a full year entitles an employee to a year of retirement credit. Indeed, it is apparent that the entire statutory framework regarding retirement service credit is based on an employee receiving the retirement credit commensurate to the actual work the employee provided. See generally § 36-9-25 (prohibiting more than one year of service credit for any given year worked); §36-9-25.1 (allowing retirement system members who have taken a leave of absence may receive leave service credit upon purchasing such credit by paying into the system "an amount equal to the full actuarial cost" of their absence); §36-9-26 (permitting members who

were laid off may purchase retirement credit upon paying "into the retirement system the full actuarial cost" of their absence).

Here, Ms. Langlois worked 21 hours a week in her 35-hour-per-week position from 1990-1994. Thus, Ms. Langlois appropriately received fractional retirement service credit that was proportional to the amount she actually worked. (Tr. at 82.) None of the relevant statutes or the Handbook can reasonably be read to reach the result that she is entitled to any more retirement service credit than what she had earned by working part-time.

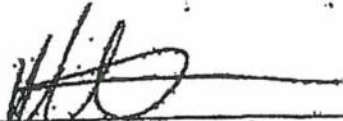
Even if I were to find ambiguity in the language of § 36-9-25 -- which I do not -- the rules of statutory construction accord deference to the agency that administers and enforces an ambiguous statute. Such deference is afforded so long as "the agency's construction is neither clearly erroneous nor unauthorized." *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008); see also *Lyman v. Employees' Retirement System of the State of RI*, 693 A.2d 1020, 1031 (R.I. 1997) (finding that the Superior Court erred in failing to give proper deference to administrative interpretation); *Pawtucket Power Associates, Ltd. Partnership v. City of Pawtucket*, 622 A.2d 452, 456 (R.I. 1993) (explaining that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency). Deference is accorded "even when the agency's interpretation is not the only permissible interpretation that could be applied." *Town of Burrillville*, 950 A.2d at 446 (internal quotations omitted) (emphasis added).

When an employee does not work the allotted hours set forth for a position, the employee does not meet the requirement to receive the full service credit. Rather, the employee receives a proportion that reflects the amount actually worked. Although not expressly stated in my prior

decision, based on the referenced statutes and foregoing analysis, I make that determination today.

CONCLUSION

For the reasons set forth above, the June 5, 2009 administrative decision is hereby affirmed.



Raymond A. Marascio

Dated: October 2nd 2012

Moreover, ERSRI introduced rearing evidence that showed Petitioner's work history, gross annual wages and hourly earnings for the relevant period of 1984-1989. (Respondent's Exhibit #1, #3)(See TR. p. 30, 31, 32) The evidence more than reasonably showed that Petitioner consistently did not work more than 20 hours per week during the time periods in question. (TR. 22, 23, 24, 25)

In post-hearing memoranda both parties pointed to decisions made by other Hearing Officers involving essentially the same issue. Those decisions might appear to take divergent paths but upon closer examination they really emphasize the same threshold evidentiary requirements that must be satisfied by each and every claimant.

Petitioner relies upon a decision rendered in *Margaret Badger v. Bangladeshi Restaurant System*, March 12, 2004 (Petitioner's Exhibit #5), claiming that Hearing Officer Jeffrey Michelson concluded that "Ms Badger would have to prove, as a finder, or on average, she worked more than twenty hours per week." (Petitioner's post-hearing Memorandum of Law, p.1). Petitioner argues that this case is identical in nature to the present appeal and case in which Ms. Badger was allowed to purchase service credits much like Petitioner seeks to do.

The Hearing Officer in *Badger* addressed the issues of whether Ms. Badger worked in excess of 20 hours per week between May 19, 1986 and September 10, 1989. (*Badger*, P. 4-5) He concluded that for the year 1986 neither the testimony nor the documentary evidence supported the claim that as a finder Ms. Badger regularly worked more than 20 hours per week. He made the same finding for 1987 and 1988 because in all those years the evidence again showed that the hours worked were fewer than 16 hours per week. For the 1989 year the Badger Hearing Officer concluded that there was sufficient evidence to find that Ms. Badger regularly

worked in excess of 20 hours per week for the entire calendar year and he therefore granted her the right to purchase service credits.

In the present matter ERSR1 contends that in *Badger* the Hearing Officer miscalculated the number of hours worked in 1989 and that this mistake should not be repeated here. Upon closer scrutiny, the *Badger* Hearing Officer may or may not have made an arithmetic error, but that fact need not be decided here because he clearly reinforced the fundamental principle that ERSR1 takes the position that RIGL 36-8-1(8) requires a finding that an employee must regularly work a minimum of 20 per week. In the present matter, there is simply insufficient evidence to support the conclusion that Petitioner worked the requisite time period to satisfy the statute. In fact, the contrary evidence presented by ERSR1 reasonably shows that she never reached that minimum in any of the years in question.

A 2007 administrative decision relied upon by ERSR1 in this case also established the evidentiary burden of proof imposed on claimants. In *Donna Pymala and Donna Fassel v. Employees Retirement System*, February 28, 2007, Hearing Office Teresa Raubino found that the petitioners had presented insufficient evidence to support their claim that they regularly worked more than 20 hours per week. In so doing she reaffirmed the basic premise that ERSR1's interpretation of the statute requires a finding that an employee must regularly devote more than 20 hours per week in order to qualify.

This Hearing Office finds that in the present case ERSR1's position with respect to Petitioner appeal is consistent with prior administrative decisions insofar as there must be a fair showing that an employee worked a minimum of 20 hours per week in order to purchase service credits. In the opinion of this Hearing Office both the documentary evidence and the testimony advanced at the hearing shows that Petitioner did not reach that threshold as to any of the years in

question. RRSRI's interpretation, enforcement and application of the pertinent statutes do not appear to be in contravention of established law and does not appear to be clearly erroneous. The statute is unambiguous and conveys a clear intent for enforcement.

For the reasons stated above, and based upon the record as a whole, the Hearing Officer affirms the RRSRI decision denying Petitioner's prayer to purchase service credits.

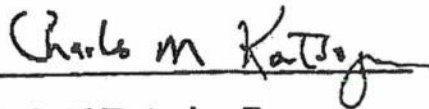
It is so Ordered.

Date: November 7, 2010

By: 
Charles M. Koutsogiannis, Esq.

CERTIFICATION OF SERVICE

I hereby certify that on the 13th day of November 2010, a true copy of the within Decision was mailed to the following: Frank Karpinski, Executive Director, Employees Retirement System of Rhode Island, 40 Fountain Street, Providence, RI 02903; Michael Robinson, Esq., Shechtman, Halperin, Savage, LLP, 1080 Main Street, Pawtucket, RI 02860 and Gerald O'Neill, Esq., AFSCME, Rhode Island Council 94, 1179 Charles Street, North Providence, RI 02904

By: 
Charles M. Koutsogiannis, Esq.

In Re: Appeal of Mary Riley (Purchase of Service Credit)

EXHIBIT A

INDEX OF DOCUMENTS

Respondent:

- 1 Verification of Prior Probationary Time for Mary Riley
- 2 April 1, 2009 Memo from Lisa Vicina to Employees Retirement System
- 3 Packet of Personnel Action forms for Mary Riley
- 4 April 3, 200 Letter from HRSRI to Petitioner
- 5 April 23, 2009 Letter from Petitioner to HRSRI
- 6 May 22, 2009 Letter from Petitioner to HRSRI
- 7 June 2, 2009 Letter from HRSRI to Petitioner
- 8 August 14, 2009 Letter from RI Accounts and Control to Petitioner
- 9 March 20, 2009 Fax Cover Sheet as to Department of Education
- 10 HRSRI Decision of Francis, Hassell v. HRSRI

Petitioner:

1. Personnel Action Form for Mary Riley
2. February 28, 2005 Letter from Petitioner to HRSRI
3. May 13, 2009 Letter from HRSRI to Petitioner
4. January 15, 2004 Letter from Frank Karpinski to Ann Blanchard (for Identification)
5. HRSRI Decision of Maureen Badger v. HRSRI
6. January 27, 2004 Letter from Ann Blanchard to HRSRI (for Identification)
7. June 22, 2004 Letter from Petitioner to HRSRI

In The Matter Of:
Employees Retirement System Hearing

Appeal of Richard D'Addario
December 7, 2017



Min-U-Script® with Word Index

1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
2 STATE EMPLOYEES RETIREMENT SYSTEM

4 IN RE:
5 Appeal of Richard D'Addario :

9 DATE: December 7, 2017
10 TIME: 11:00 A.M.
11 PLACE: 50 Service Ave.
12 Warwick, RI

16 BEFORE: TERESA RUSBINO, HEARING OFFICER
17 PRESENT:
18 FOR MERS.....BY: MICHAEL ROBINSON, ESQUIRE
19 FOR THE APPELLANT.....BY: THOMAS CONNOLLY, ESQUIRE
20 ALSO PRESENT:
21 FRANK J. KARPINSKI
22 RICHARD D'ADDARIO

1 (COMMENCED AT 12:35 P.M.)
2 (JOINT EXHIBITS 1 - 14 MARKED)
3 (APPELLANT'S EXHIBITS 1 & 2 MARKED)
4 MS. RUSBINA: We are on the record today
5 in the matter of the appeal of Richard D'Addario.
6 Today is December 7, 2017. Mr. D'Addario is appealing
7 the August 11, 2017 administrative denial of his
8 request for membership in the Municipal Employees
9 Retirement System, also known as MERS, retroactive to
10 his election of probate judge of the Town of Tiverton
11 in July of 1993.

12 My name is Teresa Rusbino. I am the Hearing
13 Officer that has been assigned to hear the appeal of
14 this matter. Would the parties and counsel please
15 identify themselves for the record?

16 MR. CONNOLLY: Tom Connolly for the
17 appellant, Richard D'Addario.

18 MR. D'ADDARIO: I'm here, Richard
19 D'Addario.

20 MR. ROBINSON: Michael Robinson, counsel
21 for the Municipal Employees Retirement System, with
22 the executive director of the retirement system, Frank
23 Karpinski.

24 MS. RUSBINO: All right. Thank you. It
25 is my understanding that after consultation between,

I N D E X

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2	WITNESS	PAGE
3	RICHARD D'ADDARIO	
4	DIRECT EXAMINATION BY MR. CONNOLLY.....	8
5	CROSS EXAMINATION BY MR. ROBINSON.....	31
6	FRANK J. KARPINSKI	
7	DIRECT EXAMINATION BY MR. ROBINSON.....	33
8	CROSS EXAMINATION BY MR. CONNOLLY.....	46
9	REDIRECT EXAMINATION BY MR. ROBINSON.....	58

EXHIBITS

10	EXHIBIT	DESCRIPTION	PAGE
11	JOINT		
12	EXHIBIT 1	LETTER AND DOCUMENTS.....	3
13	EXHIBIT 2	HANDBOOK.....	3
14	EXHIBIT 3	CORRESPONDENCE.....	3
15	EXHIBIT 4	CORRESPONDENCE.....	3
16	EXHIBIT 5	CORRESPONDENCE.....	3
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21	EXHIBIT 10	CORRESPONDENCE.....	3
22	EXHIBIT 11	CORRESPONDENCE.....	3
23	EXHIBIT 12	CORRESPONDENCE.....	3
24	EXHIBIT 13	CORRESPONDENCE.....	3
25	EXHIBIT 14	CORRESPONDENCE.....	3
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(ALL EXHIBITS RETAINED BY HEARING OFFICER)

1 or consultation with counsel for both parties and the
2 parties themselves that there has been an agreement to
3 introduce some joint exhibits; is that correct?

4 MR. ROBINSON: That is correct.

5 MR. CONNOLLY: That is correct.

6 MS. RUSBINO: Also an agreement that

7 there will be two appellant exhibits introduced as

8 full exhibits with no objection from respondent,
9 Employees Retirement System; is that also correct?

10 MR. ROBINSON: That is correct.

11 MR. CONNOLLY: That is correct.

12 MS. RUSBINO: So for the record, the

13 first document in its entirety, it's several pages, is

14 Joint Exhibit 1. That is a letter dated January 4,
15 2008 addressed to respondent, Employees Retirement

16 System, from the appellant, Richard D'Addario, with
17 accompanying documentation. That document in its

18 entirety is marked Joint Exhibit 1.

19 Joint Exhibit 2 is a photocopy of the Employees

20 Retirement System of Rhode Island handbook, subtitled
21 Membership and Retirement. Joint Exhibit 3 is a

22 two-page document dated January 10, 2008. That is
23 addressed to the appellant, Richard D'Addario, from

24 Frank Karpinski, executive director of the Employees
25 Retirement System.

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1 Joint Exhibit 4, I believe, is a three-page
 2 document that appears to be correspondence from Gayle
 3 Mambro-Martin, internal legal counsel and policy
 4 analyst for the Employees' Retirement System to
 5 Richard D'Addario, the appellant. That is dated
 6 April 22, 2010. Joint Exhibit 5 is a letter addressed
 7 to the appellant, Richard D'Addario, from Frank
 8 Karpinski, executive director of the Employees'
 9 Retirement System. That is dated June 15, 2010.
 10 That's Joint Exhibit 5.
 11 Joint Exhibit 6 is a letter dated July 8, 2016
 12 addressed to the appellant, Richard D'Addario, from
 13 Frank Karpinski, executive director of the Employees'
 14 Retirement System. Joint Exhibit 7 is a document with
 15 several pages. That is dated July 19, 2016. That is
 16 addressed to the appellant, Richard D'Addario, from
 17 the Employees' Retirement System of Rhode Island.
 18 Joint Exhibit 8 is a two-page document from Diane
 19 Bourne addressed to Deb Parent, P-A-R-E-N-T, accounts
 20 payable payroll. That is from Diane Bourne, assistant
 21 to the executive director, Employees' Retirement
 22 System. That is dated June 28, 2016. Again, that is
 23 Joint Exhibit 8. Joint Exhibit 9 is dated
 24 February 22, 2017. That is from Cheryl Derhagopian,
 25 D-E-R-H-A-G-O-P-I-A-N, business analyst with the

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1 parties and legal counsel have agreed to introduce
 2 into this hearing?
 3 MR. ROBINSON: They do.
 4 MR. CONNOLLY: Yes, they do.
 5 MS. RUSBINO: Thank you. We additionally
 6 have two exhibits, Appellant's 1 and Appellant's 2.
 7 These are going to be introduced as full exhibits with
 8 no objection being lodged by respondent, Employees'
 9 Retirement System.
 10 The first exhibit, Appellant's 1, is a two-page
 11 document that appears to be minutes of a Tiverton Town
 12 Council meeting dated July 26, 1993. Appellant's 2 is
 13 a two-page document dated May 2012 addressed to
 14 appellant, Richard D'Addario, from Darren Lopes from
 15 TIAA-CREF. Again, the two exhibits, Appellant's 1 and
 16 2, do those accurately reflect both parties' and
 17 counsels' understanding of what those documents are
 18 supposed to be?
 19 MR. CONNOLLY: They do.
 20 MS. RUSBINO: All right. Is there
 21 anything further that either party wishes to introduce
 22 as documents in this hearing?
 23 MR. CONNOLLY: Nothing at this time.
 24 MR. ROBINSON: No.
 25 MS. RUSBINO: Does either party wish to

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1 Employees' Retirement System.
 2 Joint Exhibit 10 is a one-page document dated
 3 February 22, 2017 to Frank J. Karpinski, executive
 4 director of the Employees' Retirement System and
 5 Cheryl Derhagopian, business analyst of the Employees'
 6 Retirement System from attorney Thomas Connolly.
 7 Joint Exhibit 11 is a one-page document dated
 8 April 12, 2017, addressed to Attorney Thomas Connolly
 9 from Frank Karpinski, executive director of the
 10 Employees' Retirement System.
 11 Joint Exhibit 12 is several pages. That is dated
 12 May 9, 2017 from Cheryl Derhagopian. That's Joint
 13 Exhibit 12. Joint Exhibit 13, all right, Joint
 14 Exhibit 13 is a document in its entirety of several
 15 pages, and it is a letter dated August 11, 2017
 16 addressed to Attorney Thomas Connolly from Frank
 17 Karpinski, executive director of the Employees'
 18 Retirement System.
 19 Joint Exhibit 14 is a one-page letter dated
 20 September 5, 2017 addressed to Attorney Thomas
 21 Connolly from Roxanne Donoyan, D-O-N-O-Y-A-N,
 22 assistant to the executive director of the Employees'
 23 Retirement System. The 14 joint exhibits that I just
 24 recited for purposes of the record, do those
 25 accurately represent the 14 joint exhibits that the

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1 introduce any other evidence by way of testimony or
 2 otherwise?
 3 MR. CONNOLLY: Briefly, I would like to
 4 examine my client on this.
 5 RICHARD D'ADDARIO
 6 Being duly sworn, testifies as follows:
 7 DIRECT EXAMINATION BY MR. CONNOLLY
 8 Q. Mr. D'Addario, for the purpose of this dispute,
 9 what is your relevant employment history?
 10 A. I was employed by the Town of Tiverton as the
 11 probate judge at the end of July of 1993. I have
 12 continued to serve as probate judge since that date.
 13 Q. All right. Drawing your attention back to 1993,
 14 what were the circumstances of your commencing
 15 employment as the probate judge?
 16 A. The judge at that time had resigned in
 17 midterm. It was a two-year term. His term was from
 18 '92 to '94. He resigned in the summer of '93. They
 19 conducted interviews, and I was selected by the Town
 20 Council, or appointed by the Town Council on July 26,
 21 1993.
 22 Q. All right. Drawing your attention to Appellant's
 23 Exhibit 1, I'm going to draw your attention to the
 24 bottom of the page where it says appointment, probate
 25 judge. At the bottom there appears to be a vote?

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1 A. Right.
 2 Q. Who is appointed probate judge on that vote?
 3 A. I was.
 4 Q. Then who is confirmed, moving on to the following
 5 page, as probate judge at that time?
 6 A. Yes, I was confirmed. There was a unanimous
 7 vote of five to nothing to appoint me.
 8 Q. Okay. At that time did you, were you put into
 9 the Employees' Retirement System?
 10 A. No.
 11 Q. At what time did you begin to seek to be placed
 12 into the Employees' Retirement System?
 13 A. I believe I was advised, and I don't remember
 14 by whom, probably by the Town payroll department or
 15 someone, that I was eligible to take part in the
 16 Employees' Retirement System as an employee of the
 17 Town of Tiverton in late 2007.
 18 I applied by application. I filled out an
 19 application dated December 12 of 2007. I sent it in
 20 with a letter dated January 4, 2008.
 21 Q. All right. Is that application and that letter
 22 what's been marked as Joint Exhibit 1?
 23 A. Yes.
 24 Q. Now, were you accepted into the Employees'
 25 Retirement System at that time?

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1 A. I was.
 2 Q. Was it your understanding that the determination
 3 was made that you were eligible at that time for the
 4 Employees' Retirement System?
 5 A. Yes.
 6 Q. Now, I'm moving through Joint Exhibit 1 briefly.
 7 I just want to draw your attention to -- I want to say
 8 the pages aren't numbered, but it is the --
 9 MS. RUSBINO: Indicate the title of the
 10 page.
 11 Q. The fourth page, Prior Time Verification?
 12 A. Right.
 13 Q. You can see that it says, Was the employee
 14 seasonal or casual? What's checked off there?
 15 A. It says no.
 16 Q. Underneath that, you see it states, Did the
 17 employee work at least 20 hours per week? Are either
 18 yes or no checked off there?
 19 A. Neither one is.
 20 Q. All right. Above that, it says employee --
 21 underneath the line that says Employee Verification
 22 there is a sentence, do you see where it reads, The
 23 above employee did not contribute for the dates August
 24 1993 from September 2007 and wishes to purchase time
 25 towards --

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1 A. That's correct.
 2 Q. -- retirement?
 3 A. Correct.
 4 Q. This was your application for membership?
 5 A. Well, the application for membership is the
 6 first three pages of Joint 1, not counting the letter,
 7 of course. This was a prior time verification form
 8 that was required to be filled out to request prior
 9 time. Attached -- it was filled out by the Town
 10 treasurer at that time, Mr. Goncalo.
 11 He attached to it a record of my earnings from
 12 '93 to 2007 for the Town. Those earnings are not
 13 gross earnings. Those are taxable earnings. I was
 14 contributing to a Town pension plan, which is a 403B
 15 or something like that, qualified plan. Some of my
 16 salary was actually higher. You could see it was
 17 \$6,000 in 1994, \$6,000 in '02. It dips after that
 18 into the \$4,000 range because of my contributions.
 19 Q. Is it fair to say that the amounts provided under
 20 salary and with the corresponding year on that last
 21 page don't reflect a person who is working 20 hours a
 22 week?
 23 A. Could you repeat that?
 24 Q. The amount paid here in the salary column for the
 25 years 1993 through 2007, is it fair to say that the

Page 12

1 amount on your salary does not reflect working greater
 2 than 20 hours a week, employment working greater than
 3 20 hours a week?
 4 A. Yes, I would think so.
 5 Q. All right.
 6 A. There are some weeks where I would work more
 7 than 20 hours for the Town, depending on how many
 8 cases I had and how much work I had to do. If I had a
 9 contested matter, I might spend 30 hours writing a
 10 decision in a week. So some weeks I worked less than
 11 20 hours, and some weeks I worked more than 20 hours.
 12 Q. All right.
 13 A. I didn't keep track of my time, because I was
 14 paid a salary.
 15 Q. Did you receive any documents after you were
 16 brought in as a member of the Employees' Retirement
 17 System of Rhode Island?
 18 A. Well, I used to get a newsletter every month.
 19 I would get a statement of my account. I got the
 20 handbook that was sent to me.
 21 Q. All right. I'm going to draw your attention to
 22 Joint Exhibit 2.
 23 A. This is a portion of the handbook that I
 24 received, the original handbook I still have. I threw
 25 it in my folder.

Page 13

1 Q. Drawing your attention to Page 8, it's the third
 2 page of Joint Exhibit 2. It's Page 8 at the top left
 3 corner. Could you read into the record the portion
 4 that is circled on that page?
 5 A. It states, Am I required to become a member
 6 of the system? Answer, yes. Membership in the
 7 Employees' or Municipal Employees' Retirement System
 8 is a condition of employment and is required of all
 9 employees to meet the board's eligibility
 10 requirements.
 11 Q. Just going back, when you were appointed to that
 12 position in 1993, is it your understanding that there
 13 was a 20-hour requirement at that time?
 14 A. Not that I know of. I looked at the statute.
 15 There was no requirement for 20-hour employment.
 16 Q. Now I'm moving on to Joint Exhibit 3 here. This
 17 is a document dated January 10, 2008. This appears to
 18 be a response by executive director Frank J. Karpinski
 19 concerning your request to repurchase?
 20 A. Right. I don't have any independent
 21 recollection of having seen this letter. It probably
 22 came to me, but I didn't have a copy of it in my
 23 folder. It's the first time, it may be the first time
 24 I've seen it today. I don't remember getting that
 25 letter.

Page 14

1 Q. So it's fair to say that you're not aware of
 2 having responded to this letter?
 3 A. Correct.
 4 Q. All right. It's fair to say that you didn't
 5 continue at that time to press the issue of the
 6 repurchase?
 7 A. Yes.
 8 Q. And that you continued to, but that you did
 9 continue after that time to contribute a portion of
 10 your salary to the Employees' Retirement System of
 11 Rhode Island; is that right?
 12 A. Yes. So it would appear that my application
 13 was accepted, but my request to purchase the earlier
 14 time was not accepted. I didn't, because of time
 15 constraints, I really didn't follow up on it. You
 16 know, you always work on everybody's else's case
 17 before you work on your own situation.
 18 I was paying into the system. I figured, Well,
 19 I'll deal with it at some point. It wasn't until a
 20 couple of years later that I raised the issue with
 21 counsel for the department that I was dealing with on
 22 a domestic relations matter that I was handling for a
 23 client. I was doing a QDRO. That's referenced in the
 24 April 22, 2010 e-mail.
 25 Q. You're referring to Joint Exhibit 4?

Page 15

1 A. That's Joint 4. I raised it, you know,
 2 telling her that I wanted to discuss my situation with
 3 the executive director. I pointed out a few things in
 4 the e-mail that speak for themselves.
 5 Q. Now, at that point, April 22, 2010, at that point
 6 how does ERSRI respond to your question about the
 7 repurchase?
 8 THE WITNESS: Well, you mean how did Gail
 9 Mambro Martin respond to my questions?
 10 MR. CONNOLLY: That's correct, yes.
 11 A. Well, it speaks for itself in the e-mail that
 12 she sends.
 13 Q. She says, You're not eligible for the repurchase;
 14 is that fair to say?
 15 A. Right. It was kind of left up in the air.
 16 Once again, once I speak with Frank, I will contact
 17 you again. I don't think there was any definite
 18 decision at that point whether or not I was going to
 19 be able to buy in, and the issue hadn't been raised
 20 about my eligibility as far as I know. I was still
 21 paying in.
 22 Q. All right. That's my question, I guess. At that
 23 point on April 22, 2010, did they take action to give
 24 you a determination that they felt you were not
 25 eligible at that time?

Page 16

1 A. No, no.
 2 Q. What's the next action that gets taken on this?
 3 A. Well, I guess there was a letter sent to me,
 4 which is Joint 5, June 15, from Mr. Karpinski, which
 5 was meant to clarify my eligibility for membership.
 6 It pointed out that Rhode Island general laws had a
 7 requirement of a minimum of 20 hours a week annually.
 8 That I wasn't eligible at that point.
 9 But it didn't, it didn't terminate my membership
 10 in the pension system. I still continued to be a
 11 member after June 2010 all the way up until 2016, I
 12 think.
 13 Q. So did they take action at that time to remove
 14 you?
 15 A. No, and I continued to pay in.
 16 Q. You continued to make payments during that period
 17 of time?
 18 A. Yes.
 19 Q. What's the next action that's taken on this
 20 matter?
 21 A. In July of 2016 I received another letter
 22 from Mr. Karpinski saying that my question, the
 23 question of my eligibility being a member of ERSRI
 24 arose in 2015 and we wrote to you on June 15, 2010.
 25 Joint 5 was attached to Joint 6, telling me it came to

Page 17

1 our attention that your employee continues to deduct
 2 retirement contributions.
 3 They were instructing them to cease deducting
 4 contributions from my salary immediately. That I
 5 would be entitled to a refund of my contributions. We
 6 were in the process of preparing a refund. That was
 7 the next thing that I got.
 8 Q. So for six years they continued to accept
 9 payments from you into the fund?
 10 A. That's true. Well, not just for six years,
 11 but from the time I applied, eight years, from January
 12 of '08. In other words, in January of '08 when
 13 Mr. Karpinski sent me a letter saying you're not
 14 entitled to buy-in for the back years, he didn't say,
 15 You're not eligible to be in the program at all. He
 16 didn't say, you know, We're not even accepting your
 17 application. I was accepted into the system.
 18 Q. Exactly.
 19 A. You know, I'm not an expert on these things.
 20 It seemed to me I was in the system at that point, and
 21 I paid in.
 22 Q. So for eight years you had been making, and the
 23 Town had been matching the payments. They had been
 24 accepting those matching payments that were being
 25 made?

Page 19

1 A. Right.
 2 Q. It has an enclosure attached to it; is that
 3 correct?
 4 A. That's right. This is my termination of
 5 employment packet that they sent me. It had
 6 membership information in it. It had my highest
 7 average salary, \$10,102. My accumulated monthly
 8 pension payable as of my eligibility date starting on
 9 July 1, 2016, which is when I was being removed from
 10 the system supposedly, \$113.01 per month. My taxable
 11 contribution is \$3,851.58.
 12 They gave me an option to defer the monthly
 13 pension of \$113.01 by leaving my contributions in the
 14 plan if I had chosen that, but I did not accept the
 15 determination at that point. We challenged it. So I
 16 never sent this back in, you know, with the election
 17 or decision that I wanted to do, as to whether or not
 18 to take the lump sum or whether or not I wanted the
 19 monthly payment, whether or not I wanted to roll over
 20 my lump sum into another qualified plan, which I think
 21 I'm entitled to do if that were the case, or also
 22 whether or not I wanted to just defer it, leave it in.
 23 I don't know how that would work. I guess I
 24 would get it later when you retire, because I'm still
 25 working as a judge.

Page 18

1 A. That is true.
 2 Q. For six of those eight years, six of those eight
 3 years they were aware at least of your status as being
 4 someone working less than 20 hours, expressly aware?
 5 A. Yes. I think they were aware from 2008. In
 6 2008 in Mr. Karpinski's letter, which is Joint 2, I
 7 think, his letter of January 10 points out the 20
 8 hours.
 9 Q. It's Joint 3, for the record.
 10 A. Joint 3, sorry. Joint 3 points out the 20
 11 hours. So there was a question as to whether or not
 12 that applied to me. It wasn't in existence at the
 13 time I joined into, that I started employment in '93.
 14 In fact, in '93 the statute said that if you were
 15 appointed to a municipal position you were
 16 automatically in the system. You had to be, unless
 17 you opted out. I didn't opt out at that point.
 18 Q. There was no -- once again, there was no 20-hour
 19 requirement under the statute at that point?
 20 A. Not at all.
 21 Q. All right. Moving on to -- so we just, this was
 22 joint, we just did Joint 6; is that right?
 23 A. Yes.
 24 Q. At some point -- moving on to Joint 7, this is a
 25 letter dated July 19, 2016?

Page 20

1 Q. I'm just going to draw your attention to Page 3
 2 of the membership information document on June 7.
 3 A. Right.
 4 Q. I want to draw your attention to the term
 5 service. It's underlined term. It's heading service.
 6 Four down there.
 7 A. Right.
 8 Q. Do you see the column Vesting, the row Vesting
 9 Information?
 10 A. Yes.
 11 Q. All right. What does that indicate?
 12 A. It says vested. Under that, it says, Vested
 13 means that you have earned the right to a future
 14 pension benefit.
 15 Q. Thank you very much. Anything else that you
 16 think is important in this document?
 17 A. Well, this is a little different than what
 18 came to me later.
 19 Q. All right.
 20 A. Which is just --
 21 Q. We'll move on to that. Let's just keep pushing
 22 forward to that. Drawing your attention to Joint
 23 Exhibit 8.
 24 A. Yes.
 25 Q. Have you seen this document before?

Page 21

1 A. No, not before today.
 2 Q. So this is the first time we're seeing this
 3 document is today?
 4 A. That's correct.
 5 Q. What is this document to your understanding?
 6 A. It appears that Diane Bourne, who works for
 7 ERSRI, sent an e-mail to Deborah Parent, who is in the
 8 payroll department in the Town of Tiverton, advising
 9 her that I worked less than 20 hours a week, and I
 10 shouldn't be contributing to the plan. That ERSRI
 11 neglected to inform the employer in 2010 when they
 12 discovered that I shouldn't be contributing to the
 13 plan.
 14 They were going to be sending me a letter
 15 informing me of that action. Deb Parent responded
 16 five minutes later saying, Thank you for the
 17 information. We will stop taking deductions from his
 18 biweekly check. That basically was the last time that
 19 a contribution was made to the plan because of the
 20 action of ERSRI and the Town.
 21 Q. So it's fair to say since June 28 of 2016 you
 22 have, the Town has ceased to deduct from your salary
 23 and you ceased to make payments?
 24 A. Right. I wanted to make payments, but I
 25 wasn't allowed to.

Page 22

1 Q. Would you have made payments if they had not?
 2 A. Yes.
 3 Q. Move on to Joint Exhibit 9. This is the
 4 February 22, 2017 letter to, without a heading, from
 5 the Employees' Retirement System written by Cheryl
 6 Derhagopian.
 7 A. Right.
 8 Q. What is this document?
 9 A. It says that it had come to their attention
 10 that I was only working five hours a week as a probate
 11 judge for the Town from September of '07 through June
 12 of '16. So I don't know where they got that
 13 information. They don't say that I was working five
 14 hours before that. You should not have been
 15 contributing to the state retirement system as he did
 16 not meet the minimum requirement of 20 hours per week.
 17 Q. Is it your understanding that this is a different
 18 offer than the previous offer which indicated that you
 19 had a vested right in this system?
 20 A. Yes.
 21 Q. What is the difference in that offer?
 22 A. Well, they're just telling me we're going to
 23 give you back the money you put in; you're not vested.
 24 You're not going to get a monthly check; you have no
 25 option. You're not going to get any earnings on that.

Page 23

1 That's it.
 2 Q. All right. What does that do in -- does that
 3 also affect how the employee-employer contributions,
 4 Town contributions are handled here?
 5 A. My understanding is that the Town
 6 contributions would be refunded to the Town.
 7 Q. And not to you?
 8 A. Right.
 9 Q. So there are consequences, there's a big
 10 difference between what happens here in Joint 9 and
 11 what happened in the previous exhibit, Joint 7, when
 12 they said you had a vested interest; is that right?
 13 A. I think so.
 14 Q. What did you do in response?
 15 A. Well, actually, this letter was sent to the
 16 Town. It says, Good afternoon. It doesn't say it was
 17 addressed to me. I think the Town notified me that
 18 day. They called me saying, you know, We got a letter
 19 from ERSRI saying you're getting thrown out of the
 20 system.
 21 I said, Can you guys send it over to me? They
 22 did. Then I spoke to you, Mr. Connolly. We sent a
 23 letter to Mr. Karpinski and the business analyst,
 24 Cheryl Derhagopian, on that same day, requesting a
 25 hearing of that determination.

Page 24

1 Q. Drawing your attention to Joint Exhibit 11, this
 2 is a document to Thomas Connolly, Esq.; that's your
 3 attorney in this matter?
 4 A. Correct.
 5 Q. Concerning this, ERSRI, once again, states that
 6 you were required to work 20 hours and that they were
 7 kicking you out of the system; is that correct?
 8 A. Correct.
 9 Q. Drawing your attention to Joint Exhibit 12, this
 10 is a May 9, 2017 e-mail from Cheryl Derhagopian to
 11 Tiverton; have you seen this before?
 12 A. No, but it's the same language that's in the
 13 February 22, Joint 9, letter from Cheryl Derhagopian
 14 stating that I was a probate judge working five hours
 15 per week for the Town of Tiverton from September of
 16 '07 through June of 2016.
 17 I don't know where she would have gotten that
 18 information. I never told anyone that I worked five
 19 hours a week for the Town of Tiverton. Like I said, I
 20 don't keep track of my time.
 21 Q. All right. Do you dispute the accuracy of that
 22 statement?
 23 A. Yes.
 24 Q. Do you dispute the accuracy of the -- well,
 25 there's a number of, there's an invoice credit amount

Page 25

1 after that?
 2 A. Yes.
 3 Q. This is presumably the money that is being
 4 returned; is that correct?
 5 A. Well, okay, yes. I've never seen this
 6 before, the invoice amount. I see. These are the
 7 amounts that I paid in itemized per check, I take it.
 8 Let's see. No, these are from '07. Yes, okay, that
 9 would have been when I started. But it says October
 10 of '07, which is puzzling, \$45.80.
 11 My application wasn't sent in until January of
 12 '08. I don't follow that. We have five
 13 contributions, six contributions from '07.
 14 MR. CONNOLLY: If we can hold off. We'll
 15 do this: This, I think, is the question that we were
 16 wrestling with at the beginning on this. Just for the
 17 sake of accuracy in the record, we don't know exactly
 18 when that application went in. We do have a chunk of
 19 time of 2007 contributions being made. I'm not sure
 20 it makes a difference, but I don't want the record to
 21 be unclear on this.
 22 I just want to point out that I think we had
 23 discussed this previously. I just ask that you agree
 24 we discussed this previously. While the application
 25 is dated 2007, it does appear that some

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1 contributions -- 2008. The application is dated
 2 December of 2007. The first correspondence seems to
 3 be 2008, but money seems to be coming out. I don't
 4 know, is this done quarterly? I'm trying to figure
 5 out. I don't want to be inaccurate here.
 6 MR. ROBINSON: Candidly, I'm not really
 7 in a position to be able to offer anything right now
 8 with regard to the accuracy of the figures that were
 9 taken and/or when they were specifically taken.
 10 I mean, I think if it turns out that the
 11 retirement system's administrative position in the
 12 case is ultimately correct and there is a dispute as
 13 to how much money was returned to the Town and/or to
 14 Mr. D'Addario, I would think we could address that at
 15 a later date. I'm not sure that's something
 16 necessarily that needs to be addressed today.
 17 MR. CONNOLLY: That's fine. I want to
 18 put it out there that there is some question to the
 19 start date on this thing. We raised this earlier.
 20 Neither of us were in a position to make a final
 21 determination on that.
 22 MR. ROBINSON: Yes. I'm not sure that we
 23 even have a dispute about it either.
 24 MR. CONNOLLY: I'm not sure either. To
 25 the extent it is ever meaningful.

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1 MR. ROBINSON: I don't think anything
 2 we're doing here today would preclude us from visiting
 3 that issue at a later date.
 4 Q. I want to point something out. The numbers that
 5 are coming out here on the invoice credit amount, are
 6 they the raw numbers that were pulled out of your
 7 paychecks on those dates?
 8 A. I don't know. I think so. They go down in
 9 value. So they must base it upon my -- because I
 10 increased my contribution to the 403B plan that the
 11 Town had. So maybe it's based on that and not on your
 12 gross earnings. Maybe on your taxable earnings.
 13 I don't know; I don't know. It's a much lower
 14 amount in the later years, because I was contributing
 15 more to the other plan. I raise this, because I have
 16 no idea how I made six payments into the system in '07
 17 when I didn't apply until '08. It's a little
 18 puzzling.
 19 Maybe I was accepted into the system earlier than
 20 that on a verbal that the Town just started taking it
 21 out. I don't know. Then they had me fill this out
 22 later. I don't know. I don't remember.
 23 Q. Does it appear that, in terms of the credit
 24 that's being proposed here, does it appear you're
 25 receiving any sort of interest or anything on the use

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1 of --
 2 A. No. I understand that's just the amount I
 3 put in, period, end of story.
 4 Q. Anything else you feel is important on this
 5 document? This is Joint 12.
 6 A. No.
 7 Q. Moving on to Joint Exhibit --
 8 A. Well, there is. Let me just check that for a
 9 second. The e-mail from Cheryl Derhagopian, which is
 10 Joint 12, says that we have negated his contributions
 11 from 9/28/07 through 6/23/16. So it appears that they
 12 started taking contributions from my paycheck and
 13 accepting them to the state, or ERSRI, on September 28
 14 of 2007. I don't know how that squares. Again, I
 15 don't know how that squares with the application date.
 16 Apparently I was in the system in September of '07.
 17 MR. ROBINSON: Which exhibit?
 18 MS. RUSBINO: Exhibit Joint 12.
 19 MR. CONNOLLY: Moving on to Joint
 20 Exhibit 13, I just want to make sure, I think I have a
 21 lot of documents stuck together on Joint 13; is that
 22 accurate?
 23 MS. RUSBINO: Right. Joint 13 appears to
 24 be the formal administrative denial dated August 11,
 25 2017. Then attached to that are just some of the

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1 prior correspondence, which I think are actually also
 2 in as individual joint exhibits, which is fine.
 3 THE WITNESS: And the rules of practice
 4 and procedure.
 5 MS. RUSBINO: And the rules of practice
 6 and procedure for the Employees' Retirement System.
 7 MR. CONNOLLY: My paperclips have been
 8 catching things. I want to make sure I was looking at
 9 one single document.
 10 Q. On August 11, 2017, what's the document that
 11 you're looking at right here?
 12 A. This is another letter from Mr. Karpinski to
 13 you, my attorney.
 14 Q. Is this the, is it your understanding this is the
 15 final denial of your --
 16 A. Yes. It says, This letter constitutes
 17 official notification of an administrative denial.
 18 Q. What is the reason given for the administrative
 19 denial?
 20 A. Well, the document speaks for itself. It
 21 sets out ERSRI's position, that my employment was not
 22 sufficient to make me eligible for membership in MERS.
 23 Q. One last document, this is Appellant's Exhibit 2.
 24 A. Okay.
 25 Q. What is this document?

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1 A. Some time in May 2012 I received a packet
 2 announcing the Road To Retirement program. This was a
 3 welcome to the Road To Retirement program. It was
 4 accompanied by a brochure put out by TIAA-CREF about
 5 the way the new pension system would be now working,
 6 as there was legislation that had changed, changed the
 7 whole contribution setup from a defined benefit plan
 8 to just an investment plan.
 9 Q. Now, is it your understanding that your
 10 membership in TIAA-CREF plan was contingent upon
 11 ERSRI's determination?
 12 A. Yes. I made payments to that plan from May,
 13 from whenever it started, sometimes in 2012. Instead
 14 of the payments going to ERSRI, they went to TIAA.
 15 Q. What's been the result, or what would be or has
 16 been the result of ERSRI's subsequent action,
 17 Retirement System's subsequent action on the CREF
 18 plan?
 19 A. I don't think that -- well, what's happened
 20 is I can't pay in any further into that plan. My
 21 money is in that plan. I can roll that over to any
 22 other qualified plan or leave it there. It's a small
 23 amount. It's only a few years.
 24 I think it was mandated that I participate in
 25 that. I was eligible, but now that I'm not eligible,

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1 I can't participate in that plan any further, now that
 2 they made a determination that I'm not eligible. So
 3 the money is sitting there.
 4 Q. I just want to draw your attention to Item 8 on
 5 Page 2 of Appellant's Exhibit 2.
 6 A. Yes. These are questions and answers about
 7 the plan. The question is, Can I opt out of this
 8 plan? Answer, No. This is a state-mandated plan.
 9 Under that it says Question 9, When do I vest in this
 10 plan? It says, Employee contributions will
 11 immediately vest. Obviously, that is my money.
 12 Employer contributions will vest after three
 13 years of contributing service, including service prior
 14 to July 1, 2012. So I took that to mean that the
 15 employer contributions vested also.
 16 MR. CONNOLLY: All right. That's the way
 17 it worked. No further questions.
 18 THE WITNESS: Thank you.
 19 CROSS EXAMINATION BY MR. ROBINSON
 20 Q. You don't dispute, do you, that you did not -- I
 21 thought your answer on this was clear. Just to make
 22 it abundantly clear, you're not disputing that you did
 23 not work a minimum of 20 hours a week each and every
 24 week between the years 1993 and the present time as a
 25 probate judge in Tiverton, correct?

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1 A. Absolutely.
 2 Q. Can you take a quick look at Exhibit 3? My
 3 recollection of your testimony is that you did not
 4 recall actually having received this letter; is that
 5 correct?
 6 A. That is correct.
 7 Q. Okay. As we sit here today you have no present
 8 recollection of having received that in 2008?
 9 A. Correct. It's probably addressed -- the
 10 address is right, but I can't remember this letter.
 11 Q. Can you take a look at Joint Exhibit 5? Do you
 12 recall having received that letter from the executive
 13 director?
 14 A. Yes.
 15 Q. I would also like you to take a look, by the way,
 16 at Joint 6. It should be the immediately following
 17 document. Joint 6 is dated roughly six years later?
 18 A. Right.
 19 Q. When you received this letter from the executive
 20 director in 2010, between then and 2016 did you take
 21 any affirmative steps to communicate with the Town of
 22 Tiverton or with the retirement system with regard to
 23 any issues that you may have had in your own mind with
 24 regard to your eligibility for membership?
 25 A. No.

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1 MR. ROBINSON: I don't have any further
2 questions.
3 MR. CONNOLLY: Nothing further.
4 MR. ROBINSON: I would like to present,
5 unless you have something else.
6 MS. RUSBINO: Does the appellant have
7 anything further they wish to present?
8 MR. CONNOLLY: Nothing.
9 MS. RUSBINO: Respondent, Employees'
10 Retirement System?
11 MR. ROBINSON: Brief testimony from the
12 executive director.
13 FRANK J. KARPINSKI
14 Being duly sworn, testifies as follows:
15 DIRECT EXAMINATION BY MR. ROBINSON
16 Q. Mr. Karpinski, you are the executive director of
17 the Municipal Employees' Retirement Systems?
18 A. Yes, I am.
19 Q. How long have you held that position?
20 A. Since 2001.
21 Q. I'm going to show you what's been marked as Joint
22 Exhibit 13 and ask if you recognize that document?
23 A. I do.
24 Q. Is that your administrative denial letter to
25 Mr. D'Addario that gave rise to today's hearing?

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1 A. Yes.
2 Q. In preparing that letter, did you have occasion
3 to review the various documents and exhibits that have
4 been entered into the record today?
5 A. Yes.
6 Q. You heard Mr. D'Addario's testimony here today,
7 wherein he doesn't dispute that he did not work a
8 minimum of 20 hours per week consistently between 1993
9 and the present as a probate judge in the Town of
10 Tiverton, correct?
11 A. Yes.
12 Q. Is that consistent with the basis for your
13 administrative decision in this case?
14 A. Yes.
15 Q. Can you just outline for the Hearing Officer what
16 the administrative decision was and how you arrived at
17 that conclusion?
18 A. So the board, board's policy prior to the
19 change in the law in 1993 was that you had to be a
20 20-hour employee. Membership is -- you can't pick
21 membership. It's by condition of employment. So if
22 we don't receive an application, we don't know. We
23 have to assume that you're also less than a 20-hour
24 employee.
25 If there is a request to buy service credit,

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1 first question that the staff always confirms is, why
2 did you not contribute; what was the reason? Is it a
3 mistake of fact? Is it somebody fat fingered? Pick
4 the issue. It's not an automatic. The very first
5 point is to make a determination as to why you were a
6 contributing member, which I believe probably began to
7 trigger our analysis as to why. Once you become an
8 employee, certainly things happen.
9 So even if you -- step back a bit. Data is
10 provided to us. That's what triggers the entire
11 event. We're receiving 147 employers who report
12 biweekly payrolls to us. The data comes through. The
13 data gets posted. We're not looking at each person,
14 knowing you're 20 hours, 30 hours, 40 hours, 2 hours.
15 We don't know that. It's firing through.
16 It's generally incumbent on the employer to make
17 that determination, to check off or to at least make
18 an analysis, should this person be a member. So
19 again, if you're not, it's very, very common that in a
20 city or town, for example, that you may be a 19-hour
21 employee just for the purpose of not providing
22 benefits.
23 Q. What specifically was the basis of your decision
24 with regard to Mr. D'Addario's eligibility for
25 membership in the system?

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1 A. So what we're seeing is that in making some
2 communications with the employer, that we're getting
3 information back that you're not working a 20-hour
4 week. It must be consistently 20 hours. It cannot be
5 40 this week, 2 next week, 60 the week after. The
6 statute is clear on 20 hours per week. Again, that
7 was enacted, the statute was enacted in 1994.
8 Memorandums were sent to cities and towns that
9 identified that information, made reference to the law
10 had changed. This is the new standard. Based on
11 that, what we generally do is when we get a request,
12 we'll write back to whomever asked a question. It
13 could be an employer who says, Hey, I have somebody
14 here; I have X to understand, or B.
15 The members are either making a request verbally,
16 or calling our staff, or trying to purchase credit.
17 What we generally do is contact the member back and
18 say, Well, seems to us you do not -- why weren't you a
19 member, or you don't have 20 hours. Can you verify
20 something? Can you have something come from whomever,
21 the employer, to say are you a 20-hour employee?
22 We're not going to take it just from a member. We're
23 going to take it from an employer and say confirm to
24 us that you do that.
25 Q. I'm going to show you a copy of Exhibit 1. Are

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1 you aware that Mr. D'Addario sent an application for
 2 membership into the system, to the retirement system
 3 in 2008?
 4 A. Yes. This is a new document, which again,
 5 would probably trigger our staff to say, Well, if
 6 you're trying to get time from '93, then why don't we
 7 have information back from then?
 8 Q. Okay. I'm going to show you what's been marked
 9 as Joint Exhibit 3.
 10 A. Okay.
 11 Q. Do you recognize that letter? Take a look at it,
 12 please.
 13 MS. RUSBINO: Which exhibit?
 14 MR. ROBINSON: Joint 3.
 15 A. Okay.
 16 Q. Is that a letter that you sent to Mr. D'Addario?
 17 A. Yes.
 18 Q. Does that contain your signature?
 19 A. Yes.
 20 Q. What was the purpose in sending that letter?
 21 A. To make reference that we had questions to
 22 ask regarding his request and provide us this
 23 information in the back, official duties, terms of
 24 employment, hours worked. You know, generally when we
 25 see positions like that, they're positions in which

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1 the staff questions. For example, in 1994 when the
 2 law was enacted, people who were on school committees
 3 were members.
 4 When the law got enacted, we contacted all those
 5 communities to say, Can you verify or give us
 6 information that you have, that you are a 20-hour
 7 employee? To date, I've got none. So they were given
 8 the opportunity if they already were vested, because
 9 they may have been in prior to. We said you can have
 10 what you have as of '93, but prospectively no. The
 11 only people who are eligible for less than 20-hour
 12 membership were city council, town council.
 13 The statute actually provided that. That was a
 14 specific statute that was removed during the pension
 15 reform. When we see these types of titles, we're not
 16 saying that you're not. It's just a title that we
 17 would sit back and say, is it technically a 20-hour
 18 employee?
 19 Probate judges work differently throughout
 20 communities. Some are employees of the community.
 21 They are hired people. Other towns, they're hired
 22 guns. They may be somebody for whom they contract
 23 with to provide those services. There's a
 24 differentiation there of how to do that. Again, a
 25 contractor, is it different than an employee?

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1 When we see these, our first question is if
 2 you're a probate, give me some of the conditions
 3 behind that. Once we have that information, we'll go
 4 back and make determinations to identify were you an
 5 employee; does the employer agree?
 6 Q. Was that the intent of that letter?
 7 A. Yes, yes.
 8 Q. Showing you what's marked as Joint Exhibit 5.
 9 A. Okay.
 10 Q. Is that also a letter that you sent to
 11 Mr. D'Addario?
 12 A. Yes.
 13 Q. What was the intention in sending that letter?
 14 A. In this case here, you know, we had not
 15 gotten anything new or any information that helped us
 16 to make any identifications.
 17 Q. Are you aware now, having reviewed the file in
 18 this matter, that both Mr. D'Addario and the Town were
 19 contributing as of the date of that letter, Joint
 20 Exhibit 5?
 21 A. Yes.
 22 Q. That those contributions continued until
 23 approximately 2016?
 24 A. Yes.
 25 Q. Do you have any understanding as to why those

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1 contributions were allowed to continue during that
 2 time period?
 3 A. Again, when we send in information, we're
 4 looking to get information back. You know, the file
 5 comes in; we don't know what you are. We're waiting
 6 to get T dollars, keep coming in. Once the proverbial
 7 torpedo is in the water, it's a mechanical process.
 8 Things keep making their way through the system.
 9 Similar to the TIAA-CREF, if you're in the
 10 system, everything plays itself through. We always
 11 try to give the member the opportunity to at least
 12 identify for us or provide information to help us make
 13 our decision. We wouldn't stop it immediately. We
 14 wait to go ahead.
 15 You know, if it's in the reverse, where an
 16 employer calls or employer writes to us, they may not
 17 start the process but dollars are coming in, they come
 18 in mechanically. Again, torpedo is in the water.
 19 Routine information begins to flow. Once the process
 20 starts, it just goes through a series of you get this,
 21 this, this, and this particular piece of information.
 22 So yes, we're going back and saying, We're not
 23 disputing it. Until we get any information, if we get
 24 nothing new, we're going to make a determination, as
 25 we did here, saying we don't think you're, you haven't

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1 given us any information to justify it, so we don't
 2 think you're a member of the system.
 3 Q. Having looked at the file in this case, do you
 4 have an understanding as to whether the contributions
 5 were being made and accepted by the retirement system
 6 in error during this time period?
 7 A. Yes. Again, at that point in the game, once
 8 we make a determination, we will return all
 9 contributions. If we make a determination you're not
 10 a member of the system, it goes back to the very
 11 beginning.
 12 Q. I'm going to show you Joint Exhibit 6, which is
 13 dated July of 2016.
 14 A. Okay.
 15 Q. Is it fair to say at that point, as of that date,
 16 the retirement system had notified the employer, or
 17 was in the process of notifying the Town of Tiverton
 18 that contributions should be stopped and had been
 19 taken in error?
 20 A. Yes.
 21 Q. Do you have any understanding as to why
 22 contributions were allowed to be taken between 2008,
 23 2009, whenever they began, and 2016?
 24 A. Yes. I mean, again, data comes in. We
 25 become aware. We send a letter. We're waiting for

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1 information. Nothing came back. I think we finally
 2 got to the point of, Okay, we have nothing new, no new
 3 information. We don't think you're a member anymore,
 4 unless you can substantiate or provide something to
 5 help us get there.
 6 Q. I'm going to show you what was marked as Joint
 7 Exhibit 7. I'll ask if you can identify what that
 8 document is and how it's used by the retirement
 9 system.
 10 A. We actually have a new system we implemented
 11 in the beginning of 2016. This is purely mechanical.
 12 Once the staff makes or gets a termination, or puts in
 13 a termination and the work flow says we're going to
 14 provide you the, terminate your benefits -- again, let
 15 me step back.
 16 Either we put it in or the member requests, you
 17 have options in terms of getting money out. This is
 18 very standard. It literally requires a determination
 19 date. Again, everything begins to happen. It
 20 collects all the information.
 21 The fact that it notes that there are services
 22 inside there, it does that because it sees it there.
 23 It doesn't know yet. Our system isn't clinical enough
 24 to get to the issue of whether you should or should
 25 have not been a member.

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1 All it knows, it's blind to the fact, and it
 2 says, Okay, you're terminating. Let me give you all
 3 of your options. You know, it's a document that we
 4 need to have to be able to make a refund. We need the
 5 member to sign it.
 6 Q. So is it your testimony that this form, this
 7 document, this July 19, 2016 letter and package that
 8 was sent to Mr. D'Addario was sent independent of any
 9 analysis of whether or not he actually is a qualifying
 10 and eligible employee under the relevant law?
 11 A. Correct. It's just strictly saying here is
 12 our form that you can fill to get back the
 13 contributions. We have not done any -- the next step
 14 would have been to, it's something we have to do off
 15 to the side. We have to kind of unravel everything.
 16 This is the document to at least start the refund.
 17 Any member who terminates, quits on their own would
 18 get this letter.
 19 It's a mechanical form that says, I see
 20 contributions. I do some calculations and think, here
 21 you go. It does not in this particular instance,
 22 given the history, it doesn't go to say, We made
 23 another decision. It's just a mechanical process to
 24 do a refund. Again, whether the person sent in a
 25 refund because I quit my job, or we made a decision,

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1 this is a mechanical form to get over, to allow you
 2 the opportunity to take dollars out.
 3 Q. Thank you. I have one last question. I'm going
 4 to show you what is marked as Joint 12. Did you
 5 review that document while Mr. D'Addario was
 6 testifying?
 7 A. Yes.
 8 Q. Did you note that in the body of the e-mail from
 9 Cheryl Derhagopian to the Town of Tiverton it appears
 10 to indicate that contributions between September 28 of
 11 2007 and June 23 of 2016 were being returned, were
 12 being negatively adjusted?
 13 A. Yes.
 14 Q. Attached to the e-mail appears to be a
 15 spreadsheet of contributions that were deducted from
 16 Mr. D'Addario's salary; is that correct?
 17 A. Yes.
 18 Q. The earliest date on the contributions appear to
 19 be in October of 2007; is that correct?
 20 A. Yes.
 21 Q. Do you have any understanding as to why there may
 22 or may not be a discrepancy in the body of the e-mail
 23 and the appendage?
 24 A. This, what's here is the way our system
 25 collects contributions. It sees everything as you

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1 post data. Once you post data, it then creates an
 2 invoice and says, Well, it's these dollars, times that
 3 percent, you owe me X. Again, I only know what you
 4 send me.
 5 The fact that she has dollars here may very well
 6 be that it's not, it doesn't come out this perfectly.
 7 She probably manufactured it based on going from place
 8 to place, go back and verify the dollars that are
 9 there. If they were posted, they're in the system.
 10 Q. As you sit here today, can you speak with any
 11 degree of authority with respect to when specifically
 12 contributions were posted and when they weren't, that
 13 sort of thing?
 14 A. Contributions were posted on a payroll
 15 frequency, so whether you're weekly, biweekly, most of
 16 them are biweekly, they get posted in that process.
 17 Q. Do you have that information as we sit here
 18 today?
 19 A. Yes. Not in front of me, but in the system.
 20 Q. Not here at this hearing?
 21 A. Yes.
 22 MR. ROBINSON: I don't have anything
 23 else.
 24 MS. RUSBINO: Cross examination?
 25

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1 CROSS EXAMINATION BY MR. CONNOLLY
 2 Q. Just briefly, back in 1993 you agree there was no
 3 20-hour requirement written into the statute?
 4 A. No. I believe it was the board's policy
 5 then. Then subsequently in '94 they enacted the
 6 change in the law.
 7 Q. You agree it's not in the language of the statute
 8 as the statute was written in 1993?
 9 A. I believe so, yes.
 10 Q. Okay. Town council members, they are permitted
 11 to be less, to work less than 20 hours a week?
 12 A. They were. It was a particular statute, yes.
 13 Q. They were permitted to work less than 20 hours a
 14 week prior to 1993 -- prior to 1994, rather, when the
 15 20-rule hour arrived. Then after 1994 they were still
 16 allowed to?
 17 A. The provision in the statute then did not
 18 read to say 20 hours. It says if you served at least
 19 six months, you got a year's service credit. They
 20 were the only party that had a provision that
 21 permitted them to be members for something less than a
 22 full-time job.
 23 Q. You say that in terms of the policy in 1993?
 24 A. It was the statute in '93.
 25 Q. When you say the only individuals permitted to do

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1 less than 20 hours, you're saying that was a policy,
 2 right?
 3 A. By the board.
 4 Q. But not under the statute?
 5 A. Correct, correct.
 6 Q. All right. Were you here in 1993?
 7 A. I was not.
 8 Q. Okay. Now, you said -- in 2007 or 2008 you
 9 acknowledged that the Employees' Retirement System in
 10 Rhode Island entered Mr. D'Addario into the system; is
 11 that correct?
 12 A. Yes.
 13 Q. All right. So they reviewed documents that have
 14 been provided for him. After reviewing documents,
 15 made a determination that he was eligible based on
 16 those documents; is that correct?
 17 A. The information, again, is posted into our
 18 system. I don't know what hours you have. I don't
 19 know what job you have. The data does not say what
 20 your position is.
 21 Q. So there is no determination that's made, unless
 22 a determination is sort of randomly made. There is no
 23 point at which an official determination is made.
 24 It's not made when you're entered; it gets made ad hoc
 25 at some point along the way?

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1 A. It is made by the employer. The employer has
 2 a handbook and has information as to what is
 3 considered membership. So when they go in and make
 4 the assumption, or go in and say that you are a
 5 20-hour employee, that's what we receive.
 6 Q. Now, I'm going back. Did you back in 1993, if
 7 you're aware, did this office send out a manual to the
 8 towns saying that even though the statute doesn't say
 9 20 hours, we mean 20 hours?
 10 A. I don't know what they sent prior to '93.
 11 Q. So you don't know?
 12 A. I don't know what they provided.
 13 Q. That's fine. It's not unreasonable that if
 14 someone who is appointed to a position in 1993, and
 15 you don't know if they're telling the town that, it's
 16 not unreasonable to make a determination that hey, if
 17 this is a 1993 guy, he doesn't have to be under the 20
 18 hours, right, that he should have been placed in back
 19 in 1993? That's an unreasonable determination?
 20 A. Not unreasonable.
 21 Q. Okay. So the determination to place
 22 Mr. D'Addario in 2007, to place him into the system
 23 wasn't an unreasonable determination at the time; is
 24 that correct?
 25 A. In 2007 the law had changed. So all I know

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1 is data came in. Then subsequently an application
 2 came in.
 3 Q. It's not exactly my question. Sorry if I wasn't
 4 clear on this. When that application came in in 2007,
 5 it came in with information that made it clear that he
 6 was, one, an appointed official and, two, appointed
 7 official back in 1993, right?
 8 A. I don't believe that's what the application
 9 has on it.
 10 Q. Let's go back to the application real quick. I
 11 think this is Joint 1. I'm asking you to turn to the
 12 membership application, and this is actually the prior
 13 time verification. It says, Above employee did not
 14 contribute for the dates August 1993 to September
 15 2007. Do you see that?
 16 A. This is a purchase request. This is not a
 17 membership application.
 18 Q. We agree this was sent in simultaneously, right?
 19 A. I don't know.
 20 Q. Does it appear that it was sent in
 21 simultaneously, or roughly the same time? Actually, I
 22 would ask you to turn to the first page of Joint 1.
 23 This is the cover letter; do you see this?
 24 A. Yes.
 25 Q. Do you see the first paragraph, Enclosed please

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1 find my membership application, beneficiary
 2 information and verification form? I need an answer
 3 to the first question as to Page 1.
 4 A. I would like to review it, please.
 5 Q. Sorry if I'm being unclear. I need you to look
 6 at the cover letter of all of this. I will ask the
 7 question again. Question is, do you see the top
 8 paragraph where it says, Please find?
 9 A. Yes.
 10 Q. Please find my membership application,
 11 beneficiary designation form and prior time
 12 verification form?
 13 A. Yes.
 14 Q. So it's fair to say all three of these documents
 15 were simultaneously transmitted to ERSRI; is that
 16 correct?
 17 A. If they were attached to the letter, yes.
 18 Q. Now, I'm asking you to look once again to the
 19 prior time verification form, which was all sent in at
 20 the same time as the application. Are you on that
 21 page?
 22 A. I am.
 23 Q. I'm asking you to go down to the employer
 24 verification box with the black line, three black
 25 lines down.

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1 A. Yes.
 2 Q. Do you see where it says, The above employee did
 3 not contribute for the dates August 1993 to September
 4 2007 and wishes to purchase the time towards
 5 retirement?
 6 A. Correct.
 7 Q. That's what it says. So it's fair to assume that
 8 the person who gets this document, reviews this
 9 document can see that this is an individual who is
 10 working in the Town before 1993; is that right?
 11 THE WITNESS: Working before 1993?
 12 MR. CONNOLLY: Well, as of August 1993.
 13 A. Okay, okay.
 14 Q. Yes?
 15 A. Yes.
 16 Q. That is before the 20-hour requirement was
 17 written into the law, right?
 18 A. Well, if this came in in 2007, there's two
 19 things by this point of the game.
 20 MR. CONNOLLY: It's a yes-or-no question
 21 on this.
 22 MR. ROBINSON: Objection. He asked a
 23 question. Give him a chance to answer it.
 24 MS. RUSBINO: I think the question
 25 pending is whether or not in August 1993 was there a

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1 20-hour-a-week requirement.
 2 THE WITNESS: In 1993 there was not.
 3 Q. Okay. So a person reviewing this document, you
 4 already testified previously that a person that was
 5 aware that the employment began at a time when the
 6 20-hour requirement didn't exist could reasonably
 7 conclude that there was eligibility?
 8 A. No.
 9 Q. You disagree? You didn't say that previously?
 10 A. Completely. Repeat whatever I said.
 11 MR. CONNOLLY: May we take a recess?
 12 MS. RUSBINO: Absolutely. We're going
 13 off the record for a brief recess.
 14 (BRIEF RECESS)
 15 MS. RUSBINO: We're back on the record in
 16 the matter of the appeal of Richard D'Addario. You
 17 were in the midst of your cross examination,
 18 Mr. Connolly. You may continue.
 19 MR. CONNOLLY: Briefly, before I continue
 20 with cross examination, there was a brief discussion
 21 with counsel during the recess. To the extent it
 22 wasn't already clear on the record, we want to clarify
 23 the record that Mr. D'Addario was appointed in 1993
 24 and has been annually elected since 1994. Just for
 25 clarification on the record.

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1 MS. RUSBINO: That's fine. That will be
2 so noted in the record.
3 MR. CONNOLLY: Thank you.
4 Q. I just want to move on. Okay. Now, you stated
5 with respect to -- this is Joint Exhibit 7. On Page 3
6 of the attached termination documents checklist under
7 the heading Service, do you see where it says vesting
8 information?
9 A. Yes.
10 Q. Do you see where it says vested?
11 A. Yes.
12 Q. All right. Now, is there, underneath that it
13 says, Vested means that you have earned the right to a
14 future pension benefit?
15 A. Yes.
16 Q. Do you see that? All right. At what -- so at
17 some point these things vest, right?
18 A. Yes.
19 Q. They do. It becomes a property right; is that
20 correct?
21 A. Yes.
22 Q. Okay. Now, at what point -- and you also
23 testified that you have the authority to redetermine
24 that someone is not eligible at any point throughout
25 their tenure?

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1 A. Should information come to us that would
2 suggest that, yes.
3 Q. So at no point is it truly a vested right, I
4 guess is what I'm getting at?
5 MR. ROBINSON: Objection.
6 MS. RUSBINO: Basis?
7 MR. ROBINSON: I'll withdraw the
8 objection. You can answer.
9 A. If you're accurately and legally a member,
10 and this is the very first question, are you a member;
11 should you be a member? If you are determined, then
12 yes, you are clearly vested to a benefit under the
13 current law after five years of contributory service
14 credit. But to get to that, we have to first make a
15 determination, should you be a member?
16 Q. You never have to make that, or you can make that
17 determination whenever you want; that's your position?
18 A. We don't randomly go and look. If there is
19 information that suggests --
20 Q. That's not my --
21 A. Yes, we can.
22 Q. You can. You have the authority; it's your
23 position you have the authority to come back in and
24 make a determination whenever you want that someone,
25 that a vested right is no longer vested?

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1 MR. ROBINSON: Objection. That's not
2 what he testified to.
3 MS. RUSBINO: Sustained.
4 Q. You have the authority -- I apologize. It's your
5 position that determination of eligibility does not
6 occur when they put you into the system? That's not a
7 determination of eligibility?
8 A. In most cases, yes. In limited conditions,
9 no.
10 MR. CONNOLLY: Let me just see if I have
11 any other questions, but I don't think I have anything
12 else on that.
13 Q. Do elected officials have to work 20 hours to
14 become eligible?
15 A. Yes. The law that changed in 2012, you must
16 now be a 35-hour employee, 35 hours or more.
17 Q. What about in 2007?
18 A. In 2007 you still had the 20-hour employment
19 to go in there, which was again enacted in '94. So in
20 2007, had to be a 20-hour employee.
21 Q. Even as elected?
22 A. Even as elected.
23 MR. CONNOLLY: This has not been marked
24 as an exhibit. I don't know that it needs to be.
25 Q. I'm showing you Title 45, Chapter 45-21,

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1 Section 45-21-8, Subsection B. Can you read that for
2 me?
3 A. This says, again, Membership in the System.
4 It says, An employee or elected official of a
5 participating municipality in service prior to the
6 effective date of participation -- that would be when
7 the employer, when a city or town, fire department,
8 housing authority, joined the system.
9 So if you were one of those, if you fit in one of
10 those categories prior to -- so if I was on the town,
11 let's say I was an elected official. I don't know,
12 the head of the DOT. I was there prior to the system
13 joining MERS, this would apply.
14 It says, again, An employer or elected official
15 of a participating municipality in service prior to
16 the effective date of participation who is not a
17 member of any other retirement system supported wholly
18 or in part by a participating municipality, meaning
19 you cannot have pensions in two places. You can't be
20 participating in Cranston's MERS plan and also have
21 some side thing going on. You can't be in any part of
22 that. The potential, that may have been the case back
23 when members did that.
24 And who does not notify the retirement board in
25 writing before the expiration of 60 days before the

1 effective date of participation, that he or she does
 2 not want to join the system shall automatically become
 3 a member. In other words, if you were there prior to
 4 and you didn't give us any information, we're going to
 5 automatically assume that you are going to be a
 6 member.
 7 MS. RUSBINO: Right. If you were there
 8 prior to the city or town enrolling in the system?
 9 THE WITNESS: Correct, correct.
 10 MR. CONNOLLY: Thank you. I think that's
 11 all. I'm good.
 12 REDIRECT EXAMINATION MR. ROBINSON
 13 Q. Very brief redirect. Mr. Karpinski, when did the
 14 Town of Tiverton join MERS, if you know?
 15 A. 1963.
 16 Q. That was prior to Mr. D'Addario being appointed,
 17 being appointed to the probate judge position,
 18 correct?
 19 A. Yes.
 20 Q. The statute that was presented to you does not
 21 apply to that situation; is that fair?
 22 A. Yes.
 23 Q. Just briefly in terms of clarifying something you
 24 testified to under cross examination, you were asked
 25 about whether or not you had the authority to alter a

1 (OFF THE RECORD).
 2 MS. RUSBINO: The hearing and appeal of
 3 Richard D'Addario has concluded. Thank you.
 4 (CLOSED AT 2:10 P.M.)
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1 determination of eligibility in the retirement system
 2 at any time. You testified that under limited
 3 circumstances you have the ability to do so; is that
 4 correct?
 5 A. Correct.
 6 Q. Under scenarios where information is obtained by
 7 the retirement system that would call someone's
 8 eligibility into question after they had been
 9 participating in the system for a period of time,
 10 would that be one of the scenarios that would allow
 11 the retirement system to remove someone from
 12 membership?
 13 A. Yes.
 14 MR. ROBINSON: I have nothing else.
 15 MR. CONNOLLY: Nothing else.
 16 MS. RUSBINO: All right. Both the
 17 appellant and the respondent have rested. I have the
 18 exhibits in hand. One last question is whether either
 19 or both sides would like to submit post-hearing
 20 memoranda?
 21 MR. CONNOLLY: I know we would. I don't
 22 know if you want to.
 23 MR. ROBINSON: I would. I don't expect
 24 it to be extensive, but I would like to respond.
 25 MS. RUSBINO: Off the record.

1
 2 C-E-R-T-I-F-I-C-A-T-E
 3 I, ELIZABETH GREELEY, a Notary Public, do hereby
 4 certify that I am expressly approved as a person
 5 qualified and authorized to take depositions pursuant
 6 to Rules of Civil Procedure of the Superior Court;
 7 especially, but without restriction thereto, under
 8 Rule 28 of said Rules; that the witness was sworn by
 9 me; that the transcript contains a true record of the
 10 proceedings.
 11 Reading and signing of the transcript was not
 12 requested by any parties involved upon completion of
 13 the hearing.
 14 IN WITNESS WHEREOF, I have hereunto set my hand this
 15 17th day of December, 2017.
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Elizabeth Greeley
 Notary Public

ELIZABETH GREELEY, NOTARY PUBLIC
 CERTIFIED COURT REPORTER
 MY COMMISSION EXPIRES: 04/07/2018

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RICHARD P. D'ADDARIO VS. ERSRI
(PART 2)

The maintenance of cemeteries and digging of graves shall be made by competitive bid. The period of the contract shall not exceed three (3) years. The person awarded the contract for cutting of grass and digging of graves shall be named the Superintendent of the Cemetery.

Sec. 2152. Rules & regulations

The following rules and regulations are to govern the use of the cemetery properties under the custody or control of the Commission:

1. Glass, plastic or spiked vases and pots, artificial flowers and wire blankets are prohibited from cemetery premises from March 1st to November 1st.
2. From November 1st to March 1st, decorations will be allowed on cemetery premises if fastened to base of monument.
3. In those locations where plants are allowed, they shall not exceed the height of the monument.
4. Any flowers left at grave sites will be removed after five (5) days at the discretion of the cemetery staff.
5. Only flat markers shall be allowed on single grave lots. No trees or shrubbery shall be allowed on single grave lots.
6. Monuments cannot exceed the height of those in the area and placed in a row.

Adopted: 7/26/93

OLD BUSINESS:

POLICE CHIEF/MR. BOLDUC - REPORT ON TRAFFIC SIGNS FONDVIEW ESTATE

Chief Conn and Mr. Bolduc surveyed the area in question and concurred that stop signs be posted at each end of Kenny Drive, "Slow - Children Playing" signs entering Mark Drive and Kevin Drive. Also a speed limit sign of 25 miles per hour upon entering the neighborhood.

It was moved by Mr. Bolduc, seconded by Mr. Carreiro to approve the recommendations. The motion carried unanimously.

POLICE CHIEF - REPORT ON TRAFFIC SIGNS:

KENYON ROAD - Chief Conn recommended "25 Miles Per Hour Speed Limit" signs posted Eastbound and Westbound on Kenyon Road.

It was moved by Mr. Bolduc, seconded by Mrs. Gaspar and voted unanimously to approve the recommendation.

ROBERT GRAY AVENUE - In accordance with the petition by the residents in the area, Chief Conn had no objection to posting four-way stop signs at Robert Gray Avenue/O'Connell Road and Robert Gray Avenue/Terry Lane.

Mr. Carreiro motioned, seconded by Mrs. Gaspar to approve the posting of the stop signs on Robert Gray Avenue.

The motion carried unanimously.

STREET SIGN REQUEST - BUCK'S WAY AND CRANDALL ROAD

Mr. Bolduc requested a "Children at Play" sign posted at Buck's Way and Crandall Road, petitioned by the residents in the area.

Mr. Hart motioned, seconded by Mrs. Gaspar that Mr. Bolduc accompany Chief Conn in surveying the area in question. The Chief will submit his recommendation at the next meeting. The motion carried unanimously.

APPOINTMENTS/RESIGNATIONS:

APPOINTMENT - PROBATE JUDGE

The candidates for the position of Probate Judge were interviewed at a previous meeting.

President Durfee called for nominations.

Mr. Bolduc nominated G. Scott Nebergall, Esq.

Mr. Hart nominated Richard E. D'Addario, Esq.

Ms. Durfee closed nominations and called for a vote.

For Mr. Nebergall: Bolduc, Durfee (2)

For Mr. D'Addario: Hart, Carreiro, Gaspar (3)

EXHIBIT

APP 1

PERIOD 800-331-0808

Ms. Durfee motioned, seconded by Mr. Bolduc and unanimously voted 5 - 0 to appoint Mr. Richard F. D'Addario as Probate Judge for the Town of Tiverton.

RESIGNATION - RECREATION COMMISSION MEMBER

Councilman Carreiro submitted his letter of resignation from the Recreation Commission.

It was moved by Mr. Hart, seconded by Mrs. Gaspar and unanimously voted to accept the resignation.

RE-APPOINTMENT - TIVERTON WATER AUTHORITY MEMBERS

The Tiverton Water Authority requested that Mr. Donald Wilbur and Mr. Prescott Packham be re-appointed for a five (5) year term expiring in June 1988.

It was moved by Mr. Hart, seconded by Ms. Durfee and unanimously voted to approve the re-appointments.

MISCELLANEOUS ITEMS:

POLICE CHIEF - REQUEST FOR PUBLIC HEARING - RE: AMENDMENT OF DOG ORDINANCE

Chief Conn requested permission to advertise for a Public Hearing for amendment to the Town Code, Chapter 6, Article II, Section 6-12 "Dogs".

It was moved by Mr. Carreiro, seconded by Mr. Bolduc and unanimously voted to grant the request for Public Hearing scheduled for the first meeting in August.

TAX COLLECTOR - RE: COMPUTER TERMINAL ACQUISITION

Tax Collector, Hannibal F. Costa requested authorization to purchase a computer terminal for the Tax Collector's office with funds appropriated by the Town Financial Meeting, May 5, 1983.

Mr. Costa also requested a waiver of the bid procedure as the terminal must be compatible with the existing system.

It was moved by Mr. Bolduc, seconded by Mr. Carreiro to waive the bidding requirement and authorize the Tax Collector to proceed.

The motion carried unanimously.

FRANK D. LANTON, III, BULGARMARSH ROAD - RE: RECYCLING

Mr. Lanton, who is proprietor of the Dadsen Trailer Park, requested that his Park be included in the Town's recycling program.

The Council took the request under advisement and will consult with the Town Administrator as to a resolution.

EUSAN W. FRIEDMAN - RE: LITTERING/FISHING ON MANAQUAKET BRIDGE

Ms. Friedman requested a resolution of the problem with Manaquaket Bridge regarding the litter and fishing off the bridge.

The Council was in receipt of a report submitted by Police Lt. George Arruda as requested by the Council at the last meeting.

Lt. Arruda recommended the following:

1. The placement of barrels in the area to collect litter.
2. The posting of "No Diving", "Police Take Notice" signs.

It was moved by Mr. Bolduc, seconded by Mr. Carreiro to accept the report and request that the Police Dept. and D.P.W. implement the recommendations of Lt. Arruda.

The motion carried unanimously.

JOSEPH BOSSEM - RE: EASTERN RI CONSERVATION DISTRICT

Dr. Bossem is a director representing the farming district in the Eastern RI Conservation District, an organization that performs services to the Town with regard to conservation.

He advised of the need for appointees for associate director from various commissions to represent the suburban district.

H.C.M.C. - RE: TOWN DOCKS AT STONE BRIDGE

Mr. Bossem submitted a plan for the repair and reconstruction of the Town Docks that was submitted to the Division of Fish & Wildlife for funding back in 1987. The H.C.M.C. designated Samuel Carr and Willard Wetterland as liaison to the Fish & Wildlife to work on the project and requested permission to forward the plan to the D.E.M.

Mr. Hart motioned, seconded by Mr. Carreiro to grant the H.C.M.C. the power and authority to deal with the issues with regard to the Fogland access area and the Stone Bridge docks construction, keeping the Council and Town Administrator informed on the progress made.

The motion carried 4 - 0. Ms. Durfee abstained.



May 2012

*****AUTO**5-DIGIT 02878 2052 T10 P2
Richard P Daddario
112 Nanaquaket Rd
Tiverton, RI 02878-4718



Dear Rhode to Retirement Participant:

Welcome to the Rhode to Retirement Program!

As previously announced, the Rhode Island Retirement Security Act will begin to change your retirement benefits as a State of Rhode Island public employee. Starting with your first payroll period beginning on or after July 1, a percentage of your compensation, together with a designated amount from your employer, will be contributed to an investment account in your name at TIAA-CREF. Your future decisions may impact your future retirement earnings based on how you invest your contributions in the Rhode to Retirement Program. The new system is designed to provide you with a similar level of post-retirement income as the existing system, but as a defined benefit pension combined with your own defined contribution retirement account.

Please review the enclosed Transition Guide to understand the new investment options available to you and the steps you may choose to take. Over the next several weeks, TIAA-CREF will be conducting on-site seminars throughout the state and online webinars to provide additional information on the transition to the new Defined Contribution plan. Please see the enclosed materials for additional information.

Recommended next steps:

1. Review the new Investment Menu on page 7 in the enclosed Transition Guide.
2. Attend or view one of the Transition Information Seminars that will be conducted between May 21 and mid-July. Log on to www.tiaa-cref.org/ri for details.
3. Determine the right investment mix for you.
4. You can update your investments online at www.tiaa-cref.org/ri or over the phone at 800-897-1026. For instructions, see page 11 in the enclosed Transition Guide.

TIAA-CREF is committed to providing the resources you need to understand and act on the upcoming changes and plan for your future financial well-being.

Sincerely,

Darren Lopes,
Sr. Relationship Manager,
Institutional Relationship

Questions and answers

1. **What's the difference between your current "defined benefit" (DB) plan and the new "defined contribution" (DC) plan?**

Your DB pension plan is funded through a combination of deductions from your paycheck and contributions from your employer. These contributions are then invested by the State. When you retire, you'll receive a monthly pension payment based on a set of formulas and years of service. The new DC plan is the same in terms of deductions from your paycheck and contributions from your employer. However, unlike the DB plan, the contributions will be credited to your own account and you decide how they are invested. The investment menu contains options that are suitable for first-time investors, those who do not wish to make choices or those with more investing experience.

The amount of retirement income you receive from your DC plan will vary depending on how well your investments perform, and on how you choose to receive income. After you leave your public employer, you have the option of leaving your assets in the plan, receiving them in a lump sum, rolling them over to an IRA, or moving them to a new employer's retirement plan, depending on that plan's rules.^a

2. **Where can I review the new investment menu online?**
Go to the dedicated retirement plan website at www.tiaa-cref.org/ri.

3. **Can I contribute additional dollars to this plan?**
No, there are no opportunities to contribute additional dollars to the Defined Contribution Plan.

4. **Can I roll over any existing 403(b) or 457(b) funds I have into this new DC account?**
Yes, rollovers are permissible into the new 401(a) defined contribution plan.

5. **I don't have a computer. How do I get my beneficiaries updated?**
Call us or use the forms attached in the Welcome Kit you'll receive in the mail the week of May 25.

6. **Can I take a loan or hardship distribution through this plan?**
No, this plan does not allow for loans or hardship distributions.

7. **Do my contributions to the Defined Contribution Plan impact any existing 403(b) or 457(b) plans I have?**
No, The Rhode Island 401(a) Defined Contribution Retirement Plan is a mandated plan, and consequently does not count toward those IRS limits. You can continue to participate in any of the existing voluntary plans provided through your employer. The IRS limits and catch-up provisions associated with 403(b) and 457(b) plans do not conflict with this state-mandated 401(a) direct contribution plan.

8. **Can I opt out of this plan?**
No, this is a state-mandated plan.

9. **When do I vest in this plan?**
Employee contributions will immediately vest. Employer contributions will vest after 3 years of contributing service, including service prior to July 1, 2012.

10. **Do I "have" to do anything in terms of selecting funds?**
No, if you do nothing, your contributions will automatically be directed into the age-appropriate Vanguard Target Retirement Fund, the default investment for this program.

11. **When do my contributions begin to go into this new plan?**
Contributions will begin to be allocated to your DC plan account for payroll periods beginning on or after July 1.

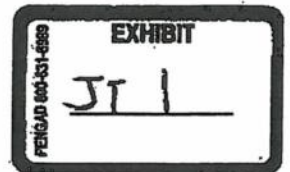
12. **Does my Defined Benefit Pension Plan accrual type (A, AB or B) impact this new account?**
No, your Defined Benefit Pension plan account remains intact.

13. **Who is holding my Defined Contribution retirement funds?**
You are. Your employer is sending TIAA-CREF your contributions directly. The State has no access to your personal account.

14. **Is it correct that the employees have a fee to pay under the new Defined Contribution Retirement Plan?**
A TIAA-CREF annual Plan Servicing Fee of \$32 will be deducted from your account on a quarterly basis. Beginning with the Calendar Quarter ending 9/30/12, eight dollars (\$8) per quarter will be deducted from your account through the selling of shares from mutual funds and annuities. This is the cost for TIAA-CREF to administer the plan. The Rhode Island Plan Sponsor Fee of \$8/year may be deducted from your account in two \$4 installments on a semiannual basis, starting on 12/31/2012 through the selling of shares from mutual

^a Before transferring assets, consider the differences in features, costs, surrender charges and any tax consequences. Consult your own advisors before making any transfers.

LAW OFFICES OF
RICHARD P. D'ADDARIO
NEWPORT, RHODE ISLAND 02840



TELEPHONE
FACSIMILE

January 4, 2008

Employee's Retirement System of RI
40 Fountain Street 1st Floor
Providence, RI 02903 - 1854

Dear Sir or Madam:

Enclosed please find my Membership Application, Beneficiary Designation Form and a Prior Time Verification form.

I have been the elected Probate Judge of the Town of Tiverton since August 1993 and only recently was I notified that I was eligible to participate in the State Employee's Retirement System. I would like my membership to be retroactive to that date and wish to purchase my contributory time for that period.

Would you please let me know whether you need anything further to process this request.

Thank you very much for your consideration.

Sincerely,

Richard P. D'Addario

Enclosures

EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND
 40 Fountain Street, 1st Floor
 Providence, RI 02803 - 1854
 Office (401) 222-2203, Fax (401) 222-2430

BENEFICIARY NOMINATION FORM

Instructions: Please PRINT CLEARLY or TYPE in black ink. Please forward the completed form to the Employees' Retirement System of Rhode Island. Complete all applicable items on this form. See instructions sheet for additional information.

SOCIAL SECURITY NUMBER: [REDACTED] FIRST NAME, MI, LAST NAME: RICHARD DADDARIO

DATE OF BIRTH (mm/dd/yyyy): [REDACTED] MEMBERSHIP STATUS (check only one): MEMBER RETIREE

Person as a Beneficiary

To name an OAP beneficiary, you must be vested (have at least ten years of contributing service) and be an active member.

NAME	RELATIONSHIP	BENEFICIARY TYPE (choose one)	OAP ELECTION (if vested)	BENEFIT	SSN	DATE OF BIRTH
[REDACTED]	[REDACTED]	<input checked="" type="checkbox"/> Primary <input type="checkbox"/> Contingent	<input type="checkbox"/> OAP	<input checked="" type="checkbox"/> Refund <input checked="" type="checkbox"/> Death Benefit	[REDACTED]	[REDACTED]
		<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	<input type="checkbox"/> OAP	<input type="checkbox"/> Refund <input type="checkbox"/> Death Benefit		
		<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	<input type="checkbox"/> OAP	<input type="checkbox"/> Refund <input type="checkbox"/> Death Benefit		
		<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	<input type="checkbox"/> OAP	<input type="checkbox"/> Refund <input type="checkbox"/> Death Benefit		
		<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	<input type="checkbox"/> OAP	<input type="checkbox"/> Refund <input type="checkbox"/> Death Benefit		
		<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	<input type="checkbox"/> OAP	<input type="checkbox"/> Refund <input type="checkbox"/> Death Benefit		

Organization as a Beneficiary

ORGANIZATION NAME	BENEFIT CATEGORY	BENEFIT TYPE	ORGANIZATION TAX ID #
	<input type="checkbox"/> Primary <input type="checkbox"/> Contingent	<input type="checkbox"/> Refund <input type="checkbox"/> Death Benefit	

SIGNATURE OF MEMBER/RETIREE: *Richard J D'Addario* DATE OF SIGNATURE (mm/dd/yyyy): 01/04/2008

NOTARIZATION OF MEMBER'S/RETIREE'S SIGNATURE

State of RI County of Newport
 Subscribed and sworn to (or affirmed) before me on this the 4th day of January, 2008.
 (SEAL) Notary Public Signature: *Cynthia L. Collins*
 Date of Commission Expiration: 12/7/09 Telephone No: 401-844-0880



EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND
 40 Fountain Street, 1st Floor
 Providence, RI 02903 - 1854
 Office (401) 222-2203, Fax (401) 222-2430

MEMBERSHIP APPLICATION

Instructions: PRINT CLEARLY or TYPE in black ink. Have your employer sign page 2, Section B, to certify that you meet eligibility requirements. Mail the completed form to the Employees' Retirement System within 5 days of receipt. Complete all items on this form and put N/A where not applicable.

SOCIAL SECURITY NUMBER [REDACTED]		PLEASE ATTACH A COPY OF YOUR SOCIAL SECURITY CARD/TAX ID NUMBER	
FIRST NAME RICHARD	MR P	LAST NAME DADDARIO	
ADDRESS [REDACTED]		HOME PHONE [REDACTED]	
ADDRESS [REDACTED]		BUSINESS PHONE [REDACTED]	
ADDRESS [REDACTED]		EMAIL ADDRESS [REDACTED]	
CITY Tiverton	STATE RI	ZIP 02878-4718	SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE
DATE OF BIRTH [REDACTED]	PLACE OF BIRTH (CITY & STATE, OR COUNTRY IF OUTSIDE U.S.) [REDACTED]		
ARE YOU CURRENTLY RECEIVING BENEFITS FROM ERS or MERS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

Please make a copy of this page if additional space for family information is needed. NOTE: Designation of a beneficiary must be made on the BENEFICIARY NOMINATION FORM. Indicating family members below does NOT designate beneficiary status.

CURRENT MARITAL STATUS (Check One) <input type="checkbox"/> SINGLE <input checked="" type="checkbox"/> MARRIED <input type="checkbox"/> DIVORCED <input type="checkbox"/> WIDOWED		
SPOUSE NAME [REDACTED]	SSN (REQUIRED) [REDACTED]	DATE OF BIRTH (mm/dd/yyyy) [REDACTED]
DEPENDENT CHILDREN'S NAME None		
PARENT'S NAME deceased		

EMPLOYING AUTHORITY	FROM (mm/dd/yyyy)	TO (mm/dd/yyyy)	REFUND TAKEN
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

HAVE YOU EVER SERVED ON ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES? YES NO

FOR TEACHERS ONLY: ARE YOU PARTICIPATING IN THE TEACHER'S SURVIVOR BENEFITS PLAN? YES NO

SIGNATURE OF MEMBER Richard P D'Addario	DATE Dec 12, 2007
--	----------------------



CURRENT EMPLOYMENT INFORMATION		
DATE EMPLOYED (mm/dd/yyyy) 8/24/93 - present	NAME OF EMPLOYER Town of Tiverton	
CURRENT POSITION Probate Judge	APPROPRIATION NUMBER (For State Employees Only)	AGENCY CODE
EMPLOYER CERTIFICATION		
I CERTIFY THAT THE ABOVE-NAMED INDIVIDUAL MEETS THE STATED REQUIREMENTS FOR MEMBERSHIP IN THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND.		
AUTHORIZED SIGNATURE <i>[Signature]</i>	DATE OF SIGNATURE (mm/dd/yyyy) 01/04/28	
TITLE Treasurer	BUSINESS TELEPHONE NO. 401-625-5323	



EMPLOYERS' RETIREMENT SYSTEM OF RHODE ISLAND 40 Fountain Street, 1 st Floor Providence, RI 02903 - 1884 Office (401) 222-2203, Fax (401) 222-2430		PRIOR TIME VERIFICATION State <input type="checkbox"/> Teaching <input type="checkbox"/> Municipality <input checked="" type="checkbox"/>	
REPORTING AGENCY Town of Tiverton		TELEPHONE NUMBER 401-625-6700	FAX NUMBER
ADDRESS 343 Highland Road,			
ADDRESS			
ADDRESS			
CITY Tiverton	STATE RI	ZIP 02878	
NAME (FIRST, M, LAST) Richard P. D'Addario		SOCIAL SECURITY NUMBER	DATE OF BIRTH (mm/dd/yyyy)
ADDRESS [REDACTED]		ADDRESS	
ADDRESS		ADDRESS	
CITY Tiverton	STATE RI	ZIP 02878	
The above employee did not contribute for the dates: <u>August 1993</u> to <u>September 2007</u> and wishes to purchase this time towards retirement			
1. Was employment seasonal or casual? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
2. Did employee work at least 20 hours per week? <input type="checkbox"/> YES <input type="checkbox"/> NO			
If employment was not seasonal/casual, and employee worked at least 20 hours per week, state reason employee did not contribute:			
Dates (Please, breakdown by school year for teachers/calendar year for others)		Number of Days Worked (Max 180 for teachers/ 260 for others)	Salary (actually earned during this period)
From (mm/dd/yyyy)	To (mm/dd/yyyy)		
OFFICIAL EMPLOYMENT AUTHORITY SIGNATURE			
I hereby certify the above information to be true and correct based upon our official records.			
SIGNATURE <i>J. C. Giacalone</i>		DATE OF SIGNATURE (mm/dd/yyyy) 12/12/07	
PRINT NAME J. C. Giacalone		TITLE Treasurer	

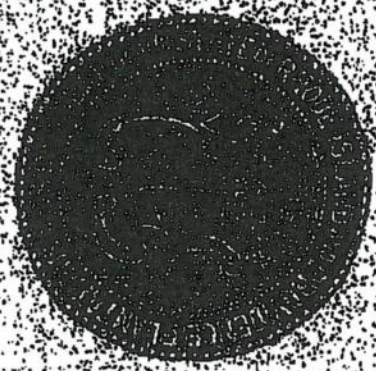
TOWN OF TIVERTON, RHODE ISLAND

OFFICE of the TREASURER

RICHARD P. D'ADDARIO
ELECTED POSITION: PROBATE JUDGE
DATE OF HIRE: 8/24/1993

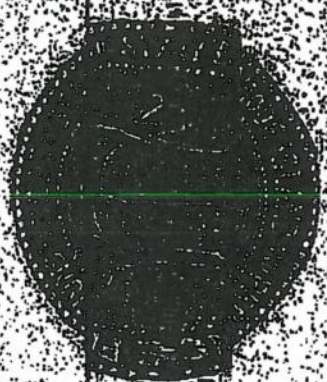
FROM	DATES	TO	DAYS WORKED	SALARY
8/24/1993		12/31/1993	ELECTED	2,307.70
1/1/1994		12/31/1994	ELECTED	6,000.02
1/1/1995		12/31/1995	ELECTED	5,580.00
1/1/1996		12/31/1996	ELECTED	4,540.00
1/1/1997		12/31/1997	ELECTED	4,700.00
1/1/1998		12/31/1998	ELECTED	4,880.77
1/1/1999		12/31/1999	ELECTED	4,735.84
1/1/2000		12/31/2000	ELECTED	4,983.38
1/1/2001		12/31/2001	ELECTED	6,500.00
1/1/2002		12/31/2002	ELECTED	6,500.00
1/1/2003		12/31/2003	ELECTED	6,599.97
1/1/2004		12/31/2004	ELECTED	6,700.00
1/1/2005		12/31/2005	ELECTED	6,880.02
1/1/2006		12/31/2006	ELECTED	7,249.99
1/1/2007		9/27/2007	ELECTED	<u>6,038.46</u>
		TOTAL		84,166.16

EXHIBIT
JT 2
PERIOD 800-651-6666



**EMPLOYEES
RETIREMENT
SYSTEM OF
RHODE ISLAND
HANDBOOK**

**Membership
&
Retirement**



Employees Retirement System of Rhode Island
40 Fountain Street
Providence, Rhode Island 02903-1854
401-222-2203 / Fax: 401-222-2430
Website: www.ersri.org

This booklet was prepared exclusively for use by members of the Employees Retirement System of Rhode Island. It is not intended as a substitute for the Rhode Island General Laws nor will its interpretation prevail should a conflict arise between the contents of this booklet and Chapters 16, 36 and 45 of the Rhode Island General Laws. Rules governing retirement are subject to change periodically either by statute of the Rhode Island Legislature or by regulation of the Employees Retirement Board of Rhode Island.

The information contained in this booklet is provided for Rhode Island state employees, Rhode Island public school teachers and general municipal employees of participating Rhode Island units of the Municipal Employees Retirement System. Different retirement rules and requirements apply to disability applicants, police & fire members, state correctional officers, and members of the General Assembly. Contact the Retirement Office for additional information if you are in one of these categories.

Seventh Edition: August 2006

Directions: ERSRI is located in downtown Providence, across from the Journal Bulletin. Take Exit 22/Downtown Providence off Route 95. Parking is available in nearby parking garages.

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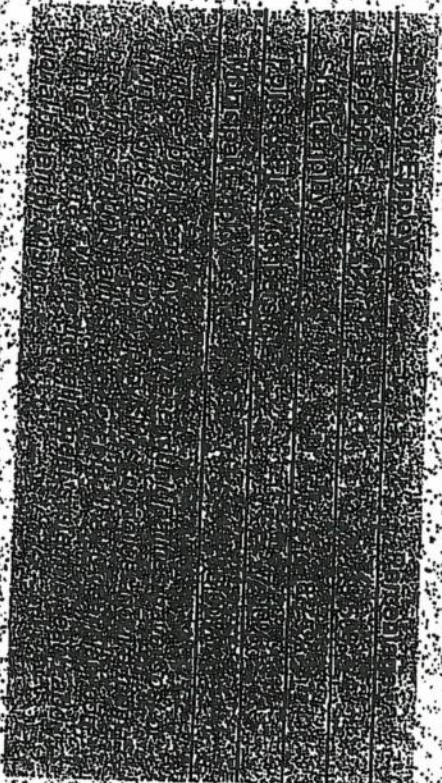
Am I required to become a member of the system?

Yes. Membership in the Employees or Municipal Employees Retirement System is a condition of employment and is required of all employees who meet the Board's eligibility requirements.

Contributions

How much am I required to contribute?

The amount that you contribute to the system is based upon a percentage of your total salary, excluding overtime.



What does the state or municipality contribute to the retirement system?

Each year, the retirement system's actuary determines the amount of money necessary to fund the benefits of retirees and future retirees of the system. Based on the liability of the system, the actuary determines a percentage of payroll, or employer contribution rate, necessary to properly fund the required benefits. The actuary determines a different employer contribution rate for state employees, teachers, and each participating municipality.

What happens to the money that I contribute to the system?

Once you are enrolled as a member in the Employees or Municipal Employees Retirement System, an account is established in your name. Your employer deducts your retirement contributions and transfers them to the system, where they are invested. Each year, contributing members receive a statement showing the amount of contributions credited to their individual account. If for any reason you have not contributed to the system during the previous year, you will not receive a statement.

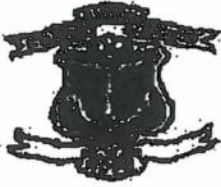
How are my contributions invested?

Your contributions to the Employees and Municipal Employees Retirement System of Rhode Island are deposited into a trust fund set aside for the exclusive benefit of the members of the retirement system and their beneficiaries.

The investments of the fund are managed by the nine-member State Investment Commission (SIC), which is chaired by the General Treasurer. The other members of the SIC are the state's Director of Administration, a director of the Chairman of the Higher Education Assistance Authority to be appointed by the General Treasurer, a member of the retirement system (or union official) appointed by the General Treasurer, two members of the general public appointed by the General Treasurer and three members of the general public appointed by the Governor.

The SIC meets monthly to review and analyze the investment performance of the state's pension fund.





Employees' Retirement System of Rhode Island



ERSRI Board:

*Frank T. Caputo
General Treasurer
Chairman*

*William B. Finelli
Vice Chairman*

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Daniel L. Boardman

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Rosemary Booth Gallogly

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John F. Maguire

John J. Meehan

Louisa M. Prata

Linda C. Riordan

Susan K. Rodriguez

Jacques P. Yancy

*Frank J. Karpinski
Executive Director*

January 10, 2008

Richard P. D'Addario

[REDACTED]
Newport, RI 02840

RE: Pension Eligibility for Prior Time Served as Probate Judge

Dear Mr. D'Addario:

The Employees' Retirement System of Rhode Island (ERSRI) has received your request to purchase your prior time served as a Probate Judge from August 1993 to the present. To allow us to further evaluate your request, we seek from your employer additional information.

Rhode Island General Law §45-21-2(5) provides the definition of a regularly employed member,

"...any regular and permanent employee or officer of any municipality, whose business time at a minimum of twenty (20) hours a week is devoted to the service of the municipality, including elected officials and officials and employees of city and town housing authorities. Notwithstanding the previous sentence, the term "employee", for the purposes of this chapter, does not include any person whose duties are of a casual or seasonal nature. The retirement board shall decide who are employees within the meaning of this chapter, but in no case shall it deem as an employee any individual annually devotes less than twenty (20) business hours per week to the service of the municipality and who receives less than the equivalent of minimum wage compensation on an hourly basis for his or her services, except as provided in § 45-21-14.1. Casual employees mean those persons hired for an occasional period to perform special jobs or functions not necessarily related to the work of regular employees. Any commissioner of a municipal housing authority, or any member of a part-time state board commission, committee or other authority is not deemed to be an employee within the meaning of this chapter."

In order for ERSRI to evaluate whether or not your request is consistent with RIGL §45-21-2(5), please provide the following information to the ERSRI:

40 Fountain Street Providence, RI 02903-1854 (401) 222-2203 Fax: (401) 222-2430
E-Mail: ersri@ersri.org Web Site: www.ersri.org

- The number of hours you were hired to work per week in the position "Probate Judge".
- Your official duties.
- Your term of employment.
- The number of hours you actually worked.
- Whether or not you accrued benefits similar to those of other city employees.
- Whether or not you were provided with healthcare benefits similar to those of other city employees.
- Who completed and supplied you with your W-2 tax statements.

Please have your employer submit the details of this position to my attention.
Thank you for your cooperation.

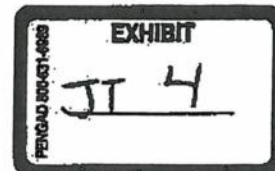
Sincerely,



Frank J. Karpinski
Executive Director

MAMBRO MARTIN, Gayle

From: MAMBRO MARTIN, Gayle
Sent: Thursday, April 22, 2010 3:59 PM
To: [REDACTED]
Subject: RE: Kitts



Hi Richard,

The signed qdro was mailed from here on April 16 to your address at one courthouse square.

As far as the personal matter, I want to discuss it with the Executive Director but he is out this week. However, my first thoughts regarding the answers to your questions are as follows:

When I was elected the law did not have the 20 hour requirement - By law a person was still required to have regular hours, be a permanent employee, and business time must have been devoted to the service of the city or town, the duties could not be casual or seasonal, and it was always a policy of the Board that a person work on a regular basis at least 20 hours per week. This statute did not mandate that elected officials merely by the fact of their election be deemed employees for the purposes of MERS. The statute was revised in 1994 to add the 20 hour requirement.

45-21-8 provides that an employee who does not opt out within 60 days is automatically enrolled - The provision of the statute which would apply to you would be subsection (a) which allows an employee who is elected the option of becoming a member to be exercised within 60 days. The "automatically" language appears in subsection (b) which would only apply to an employee or elected official who was in service prior to the municipality participating in MERS. Tiverton joined MERS prior to your being elected.

Town Council Members - Town Council members have a specific statute, §45-21-14.1, which specifically addresses their membership including the amount of retirement credit they receive for their service. Even at the time that statute was enacted, town council positions were not 20 hours per week.

Once I speak with Frank, I will contact you again.
 Gayle

Gayle C. Mambro-Martin, Esq.
 Internal Legal Counsel/Policy Analyst
 Employees' Retirement System of Rhode Island
 40 Fountain Street, 1st Floor
 Providence, RI 02903
 Tel.: 401-457-3949
 Fax: 401-222-2430
 Email: gmambro@ersri.org

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-----Original Message-----

4/22/2010

From: Richard D'Addario [mailto: [REDACTED]]
Sent: Thursday, April 22, 2010 3:04 PM
To: MAMBRO MARTIN, Gayle
Subject: Kitts

Gayle,

Do you know if your office sent the executed QDRO back to me yet? I have not received it.

Also, have you given any further thought to my personal situation?

Thanks.

Richard

Law Offices of Richard P. D'Addario
One Courthouse Square
Newport, RI 02840
401-849-0880
401-849-0897 fax

4/22/2010

MAMBRO MARTIN, Gayle

From: Richard D'Addario [REDACTED]
Sent: Tuesday, April 13, 2010 11:09 AM
To: MAMBRO MARTIN, Gayle
Subject: Personal

Gayle,

Thank you for the references to RIGL which I have looked at. It appears that when I became elected in 1993 the statute defining employee did not have the 20 hour requirement. Furthermore 45-21-8 provides that an employee who does not opt out within 60 days is automatically enrolled. This did not happen in my case.

I believe the new 45-21-2 became effective in 2000 or 2001.

Am I missing something in my analysis?

Thanks again for your time.

Richard

Law Offices of Richard P. D'Addario

[REDACTED]
Newport, RI 02840
[REDACTED]

4/13/2010



Employees' Retirement System of Rhode Island



June 15, 2010

ERSRI Board:

*Frank T. Caprio
General Treasurer
Chairman*

*William B. Finelli
Vice Chairman*

Gary R. Alger

Daniel I. Beardley

Frank R. Benell Jr.

Rosemary Booth Gillogly

Roger P. Bronstein

Michael R. Boyce

Michael Heintzleman

John E. Maguire

John J. Meehan

Laurie M. Prata

Linda C. Randozza

Susan K. Rodriguez

Jean Rochette

*Frank J. Scipione
Executive Director*

Richard D'Addario
Law Offices of Richard P. D'Addario
Newport, RI 02840

RE: Membership in MERS as Probate Judge

Dear Mr. D'Addario,

I am writing regarding your inquiry as to whether or not you are eligible for membership in the Municipal Employees' Retirement System of Rhode Island (MERS) as a Probate Judge for the Town of Tiverton. You have previously been provided with this information, however I will reiterate the law and how it applies to your position.

You will note that Rhode Island General Law (RIGL) §45-21-2(5) requires a minimum of 20 hours a week annually. You have indicated that when you were elected in 1993 RIGL §45-21-2(5) did not have the 20 hour requirement. However, this statute, even before the 20 hour language was added, required a person have regular hours, be a permanent employee, business time must have been devoted to the service of the city or town, and the duties could not be casual or seasonal. In addition, it had always been the policy of the Retirement Board that in order to be considered for membership as an elected official, a person must be employed on a regular basis at least 20 hours per week. This statute did not mandate that elected officials merely by the fact of their election be deemed employees for the purposes of MERS. The statute was revised in 1994 to add the 20 hour requirement.

You have indicated that RIGL §45-21-8(a) provides that an employee who does not opt out within 60 days is automatically enrolled. However, the provision of that statute which would apply to you would be subsection (a) which allows an employee who is elected the option of becoming a member to be exercised within 60 days. The "automatically" language appears in subsection (b) which would only apply to an employee or elected official who was in service prior to the municipality participating in MERS. Tiverton joined MERS prior to your being elected. MERS would expect to receive retirement contributions and a membership application within the 60 day time period. I would conclude that since no contributions were made to MERS at the time you were elected in 1993, your employer determined that you did not meet the definition of "employee".

D'Addario
June 15, 2010
Page 2 of 2

Even if in 1993 before the statute change requiring a 20 hour minimum you or your employer were not aware that elected official could be members of MERS, you would still be required to meet the definition of employee and the requirements stated above. You have stated that your position as a Probate Judge is not a 20 hour per week position. Additionally, even if membership was granted in 1993, upon passage of the 20 hour requirement to §45-21-2(5), you would have not met the standard and would have had your contributions returned to you if not eligible for a benefit.

The statutory change requires a 20 hour minimum annually, and the subsequent hearing officer decisions challenging this requirement have made it clear that the employee must be employed 20 hours per week, annually, consistently and the statute to be applied is the one in effect at the time of the request of the person.

Finally, with respect to Town Council members, RIGL §45-21-14.1 specifically addresses their membership including the amount of retirement credit they receive for their service. Even at the time that statute was enacted, town council positions were not 20 hours per week.

I hope this clarifies your eligibility for membership.

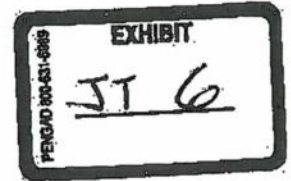
Sincerely,



Frank J. Kaspinski
Executive Director



Employees' Retirement System of Rhode Island



ERSRI Board:

Safi Magaziner
General Treasurer
Chair

William B. Finelli
Vice Chair

Daniel L. Bourdais

Roger P. Boudreau

Mark A. Carrolo

Michael DiBiase

Paul L. Dion

Thomas M. Lambert

John P. Maguire

Josanne A. Matoswaki

Mariano F. Monte

Thomas A. Mullany

Claire M. Newell

Jean Roudsain

Laura Shawinghas

Frank J. Karpinski
Executive Director

July 8, 2016

Richard D'Addario
Law Offices of Richard D'Addario
Newport, RI 02840

RE: Retirement Contributions

Dear Mr. D'Addario:

We write regarding your participation in the Municipal Employees' Retirement System of Rhode Island (MERS). As you know, the question of your eligibility to be a member of MERS arose in 2010 and we wrote to you on June 15, 2010 (letter attached hereto) with our determination; that you did not meet the eligibility requirements of the law to be a member.

It has recently come to our attention that your employer has continued to deduct retirement contributions from your salary. We have confirmed with your employer, the Town of Tiverton, that you are and always have been employed in a position which is less than 20 hours per week. Therefore, you should not have been contributing to MERS.

Your employer has been instructed to cease deducting contributions from your salary immediately. You will be entitled to a refund of your contributions, and we are in the process of preparing the refund.

Sincerely,

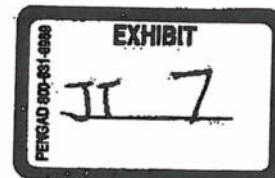
Frank J. Karpinski
Executive Director

Enclosure

Cc: Deborah Parent, Town of Tiverton via email dparent@tiverton.ri.gov



Employees' Retirement System of Rhode Island



ERSRI Board:

July 19, 2016

Seth Magaziner
*General Treasurer
Chair*

CONFIDENTIAL

William B. Finelli
Vice Chair

RICHARD P DADDARIO

Daniel L. Beardsley

[REDACTED]
Tiverton RI 02878-4718

Roger P. Boudreau

Mark A. Carruolo

Re: Employees' Retirement System of Rhode Island (ERSRI) – Termination of Employment Packet

Michael DiBiase

Paul L. Dion

Dear Mr. DADDARIO,

Thomas M. Lambert

Please find enclosed the information requested explaining the options available to you upon your termination of employment on June 30, 2016. It is important that you understand the options that are available to you.

John P. Maguire

Please complete and sign all the documents indicated on the "Termination Documents Checklist" and return them to the Employees' Retirement System of Rhode Island.

Joanne A. Matisewski

Marianne F. Monte

If you anticipate moving within the next three (3) months, please be sure to provide us with your new address and the date you are moving. If no address change is provided, the address on the first page of this packet will be used.

Thomas A. Mullaney

Claire M. Newell

Jean Rondeau

If you have any additional questions, please don't hesitate to contact us at (401) 462-7600.

Laura Shawhugues

We wish you the best of luck in your future endeavors.

Frank J. Karpinski
Executive Director

Sincerely,

EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND

Encl.



MERS - SCHEDULE 3

Membership Information

Every effort has been made to ensure the accuracy of the information shown below. Any changes in the information below may affect the amount of benefit or refund displayed on the Termination of Employment statement. If you feel that any of the information is incorrect, please contact ERSRI. If no information is displayed in the below "Beneficiary as per our Records" section, or if the information is incorrect, please complete the Beneficiary Designation Form if you elect a deferred pension.

TERMINATION INFORMATION

Last day of employment	June 30, 2016
Date of calculation	June 30, 2016

PERSONAL INFORMATION

Date of birth	January 29, 1947
Date of employment	September 28, 2007
Date of 1 st contribution	September 28, 2007
Marital status	Married

BENEFICIARY AS PER OUR RECORDS

Name of beneficiary	CYNTHIA D'ADDARIO
Date of birth of beneficiary	February 8, 1968
Relationship	Current Spouse
Benefit type	Contribution Refund Death Benefit

SERVICE

Contributing service	8.6731
Total service as of calculation date	8.6731
Vesting Information	Vested

"Vested" means that you have earned the right to a future pension benefit.

SERVICE CREDIT FACTOR

Service credit factor as of calculation date	13.42%
--	--------

RICHARD DADDARIO

115023
Page 3



ELE0000-QFDAVZ5

MERS - SCHEDULE 3

Termination Statement

Please carefully read the options that are available to you before choosing a **Deferred Pension** or a **Refund of Contributions**. If you choose a deferred pension, you can later withdraw or combine your current service with future service if you rejoin the Plan. Please go to www.ersri.org to determine when you will be eligible to collect your pension benefits and contact ERSRI six months prior to eligibility. If you would like a Refund of Contributions, please complete the following Refund of Contributions section.

Note that ERSRI strives to ensure the amounts shown are accurate. However, **your benefit is always limited to what is allowed by the Plan rules**, so any inaccuracy or misunderstanding of pension information arising from this benefit choice cannot increase the benefits available under the Plan rules.

DEFERRED PENSION

You may leave your pension benefit in the Plan until your retirement.

- I elect a monthly deferred pension of \$113.01 starting on July 1, 2016 by leaving my contributions in the Plan.

(SEE NEXT PAGE(S) FOR THE REFUND OF PENSION CONTRIBUTIONS OPTION)

I have read the "Explanation of Benefits" and other documents provided with this Termination Statement, and I understand that by selecting a deferred pension, I am choosing to leave my contributions in the Plan so that I can maintain my entitlement to receive a future benefit.

I understand that it is my responsibility to contact ERSRI 6 months before I become eligible to collect a pension benefit.

Signature of Member

Date

RICHARD DADDARIO

115023
Page 5



DEFERRED PENSION

What does the monthly pension amount indicated in the Membership Information section represent?

The monthly pension amount represents the full retirement allowance you will receive if you elect to begin receiving your pension on your eligibility date.

This pension will be paid to you for your lifetime.

What happens if I die before retirement?

If you die while your funds remain in the Plan, your beneficiary(ies) may be entitled to benefits or a refund of contributions. If your beneficiary is your estate, your estate may be entitled to a refund of contributions.

Will my pension be increased to keep up with the cost of living?

COLA payments for all retirees except MERS Police and Fire are scheduled to begin the month after the third anniversary of your date of retirement or when you reach your Social Security Normal Retirement Age, whichever is later. MERS Police and Fire members will be eligible for COLA payments the month after the third anniversary of your retirement date of when you reach age 50 whichever is later. The COLA for all state employees, teachers, BHDDH nurses, correctional officers, judges and state police is suspended until the plans' funding level for all groups, calculated in the aggregate, exceeds 80 percent funded. For MERS, COLAs for eligible employees are suspended until the funding level of the individual plan exceeds 80 percent funded – MERS plans are not aggregated (individual plan funding may be found in the annual MERS actuarial valuation at www.ersri.org).

For members with suspended COLA, an interim COLA may be calculated and awarded at four-year intervals until the plan reaches 80 percent funded. The COLA is calculated as a combination of investment performance and inflation, as measured by CPI-U.

What should I do to start receiving my pension?

When you decide to receive your pension, please contact ERSRI. We recommend contacting our office six months in advance to allow time for processing.

What if I want to start receiving my pension earlier?

You are now eligible to receive your pension.



EMPLOYER CERTIFICATION OF TERMINATION AND FINAL WAGES

Do not submit this form more than 3 months prior to member's termination. This form must be completed in entirety and signed by both the member and employer. For additional information, see instructions at the end.

Please print clearly in black ink.

Section 1 - Member information

Form fields for member information: Name (RICHARD P DADDARIO), Address (Tiverton, Rhode Island, 02878-4718), Home phone number, Business phone number, Date of birth, Social Security number.

Section 2 - Employment information

Form fields for employment information: Name of the employer, Position of the member, Employment start date, Position start date.

Section 3 - Termination information

Form fields for termination information: Date of termination, Last pay date, Date of last wage/cont report submitted.

Reason for separation from service (check one)

- Reasons for separation: Death, Resigned, Dismissed, Transferred to another covered employer, Terminated covered employment, Other.



EMPLOYER CERTIFICATION OF TERMINATION AND FINAL WAGES

Section 5 - Disclaimer and signatures

The member understands that the Employment information and the Termination information contained on this form have been provided solely by the employer. By signing this form the member acknowledges that he/she has voluntarily made the decision to submit the completed form to the Employees' Retirement System of Rhode Island (ERSRI) which includes the member's date of termination, final wages and service credits through the date of termination. The member further understands that if he/she has made the determination not to terminate after submission of this form, he/she must notify ERSRI in writing immediately. No further contributions will be accepted after the date of termination provided on this form.

The undersigned acknowledges that he/she has read the foregoing disclaimer, understands the contents, has reviewed all information provided for accuracy and has determined it to be correct, and is signing it freely and voluntarily.

I understand that any person who makes a false statement or shall falsify or permit to be falsified any record to the retirement system in an attempt to defraud the system may be subject to criminal prosecution, and with that understanding, I certify that all information on this form is true and correct.

Authorized employer representative signature

M | M | D | D | Y | Y | Y | Y
Date of signature

Authorized employer representative name (print)

Title

Authorized employer representative phone number (area code and number)

Member signature

M | M | D | D | Y | Y | Y | Y
Date of signature

Please forward this completed form, dated and signed, to the following address:

Employees' Retirement System of Rhode Island
50 Service Avenue 2nd Floor
Warwick, RI 02886-1021
Office: (401) 462-7600 | Fax: (401) 462-7691
Email: ersri@ersri.org | Web site: www.ersri.org

RICHARD DADDARIO

[REDACTED]

Tiverton RI 02878-4718





MERS - SCHEDULE 3

Explanation of Benefits

GENERAL INFORMATION:

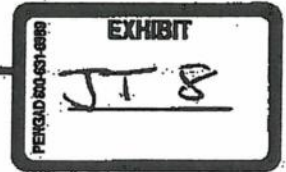
How can I get help with this packet?

If you have any additional questions, don't hesitate to contact us by email at ersri@ersri.org or call us at (401) 462-7600.

Faxes may be sent to (401) 462-7691

ERSRI is located at 50 Service Avenue, Warwick, RI 02886.

MAMBRO MARTIN, Gayle



From: Bourne, Diane
Sent: Tuesday, June 28, 2016 10:25 AM
To: Scio, Paula
Cc: MAMBRO MARTIN, Gayle
Subject: FW: Richard D'Addario xxx xxx

fyi

From: Deborah Parent [mailto:dparent@tverton.ri.gov]
Sent: Tuesday, June 28, 2016 10:18 AM
To: Bourne, Diane
Subject: RE: Richard D'Addario xxx xxx 8072

Thank you for the information
We will stop taking the deduction from his biweekly check

Deb Parent

Accounts Payable/Payroll

Phone 401-625-5323
Fax 401-624-8640

From: Bourne, Diane [mailto:DBourne@ersri.org]
Sent: Tuesday, June 28, 2016 10:13 AM
To: dparent@tverton.ri.gov
Cc: MAMBRO MARTIN, Gayle; Scio, Paula
Subject: Richard D'Addario xxx xxx 8072

Hi Deborah,
I believe that you were discussing this case with Paula Scio. It appears that Mr. D'Addario is in a position that is less than 20 hours per week and should not be contributing. Actually, Mr. D'Addario was informed of this by the executive director, Frank Karpinski, back in June 2010. Unfortunately, ERSRI neglected to inform the employer at the same time. If Mr. D'Addario's position has not changed and he is still employed for less than 20 hours per week, contributions should no longer be taken from his wages. ERSRI will be sending a letter to Mr. D'Addario (along with a copy of the letter that was previously sent to him) informing him of this action.
Please let me know if you have any questions.

Diane

Diane S. Bourne
Assistant Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue, 2nd Floor
Warwick, RI 02886

Phone: 401-462-7604
Fax: 401-462-7691
Email: dbourne@ersri.org

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