

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Laura Bertonassi,
Petitioner

v.

Docket No. CR-20-0252

Middlesex County Retirement System,
Respondent

Appearance for Petitioner:

Pro se

Appearance for Respondent:

Thomas F. Gibson, Esq. Chairman
Middlesex County Retirement Board
Linnell Circle - P.O. Box 160
Billerica, MA 01865

Administrative Magistrate:

James P. Rooney

Summary of Decision

Retirement System treated eleven years of work by member as part-time because she was scheduled to work 18.75 hours per week during that period and the System's supplemental regulation defines full-time as 20 hours per week. The evidence shows however, that during five and one-half of those years she was "regularly employed" at 20 or more hours per week, and thus she was a full-time employee during those years.

DECISION

Laura Bertonassi, who was a school secretary for the Hudson Public Schools, appeals from a May 18, 2020 estimate of her creditable service that treats eleven years of her service as part-time. I held a hearing on March 30, 2023 via Webex. I marked Ms. Bertonassi's prehearing memorandum as Pleading A and the Retirement System's memorandum as Pleading B. I

recorded the hearing digitally and admitted into evidence the nine exhibits submitted by the Retirement System. Ms. Bertonassi testified in her own behalf. At my invitation, after the hearing she filed payroll records that she had for the years in question; collectively, these are now Exhibit 10. Following this filing, the Board responded that the records did not change its position. The parties filed closing briefs by June 13, 2023, thereby closing the record.

Findings of Fact

Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. Laura Bertonassi began her employment as a middle school secretary with the Hudson Public Schools on November 1, 1999 and became a member of the Middlesex County Retirement System. She was hired for a 0.5 time position, and was expected to work 18.75 hours per week and 223 days during the school year. (Bertonassi testimony; Exs. 2-4.)
2. The number of hours and days she was scheduled to work changed over time. On August 19, 2010, she assumed a 0.8 time position, which required her to work for 30 hours per week during the school year. On August 19, 2013, she became a full-time employee during the school year, and thus worked 37.5 hours per week. On July 1, 2016, she became a 12-month full-time secretary. It was this position she held when she retired on March 8, 2021. (Bertonassi testimony; Ex. 4.)
3. Ms. Bertonassi began working three days per week at the middle school, Monday, Wednesday and Friday, starting in January 2000. She worked during the school year, which was 44 weeks long, including 17 weeks in the fall, 22 weeks in the spring with three weeks of school

vacation. If she was asked to work extra hours or extra day, a form variously called a payroll request/change form or a special payment form was filled out and she was paid straight time for her extra hours. (Bertonassi testimony; Ex 10.)

4. The records for 2000 shows that Ms. Bertonassi was asked to work extra days or half-days sporadically: once in January, seven times in June, three times in August, once in October, three times in November, and twice in December. (Ex. 10A)

5. The payroll change records Ms. Bertonassi submitted for 2001 and 2002 are not as complete. The records for 2001 focus on the spring semester, while the records for 2002 exclusively address the fall semester. It is not clear whether this reflects that Ms. Bertonassi was asked to work extra only in certain semesters, which is doubtful, or simply that the records she had are incomplete. In 2001, she worked five extra days in January, four extra days in February, six extra days in March, and two full days and two half days extra in the last week of June. She worked three extra half days in August and an extra day in September 2001. In 2002, she worked four extra days in September, with her hours ranging from 2.5 to 10.5 hours. In October and November, she worked two extra periods of 2.5 hours in each month. In December, she worked two such extra period plus an additional day. (Exs. 10B and 10C.)

6. In the spring of 2003, Ms. Bertonassi worked extra time on four days in the spring, with her hours worked varying considerably. She worked an extra 23 hours in August; five days of extra time in September, with her hours apparently ranging from 1.75 to 3 hours; five extra days in October, with hours ranging from 1.2 to 3.25; 2.25 extra 2.25 hours in November; and 6.25 extra hours in December over two days. (Ex. 10D.)

7. In the spring of 2004, Ms. Bertonassi worked extra time in 9 of the weeks that semester, with her extra hours ranging from 1.0 hour to 3.25 hours. In the fall, she put in extra time the first six weeks of the semester, with a minimum of 2.0 hours on each occasion, and then extra times in five other weeks for the remainder of the semester, for a total of 14 days of extra work. (Ex. 10E.)

8. The number of weeks in which Ms. Bertonassi put in extra time grew in 2005. She put in extra time during 15 weeks of the spring semester, with all but one week her extra time amounting to 2.25 hours or greater. In the fall semester, she put in extra time during 10 weeks of the semester with the minimum time being 2.5 hours. (Ex. 10F.)

9. Again, the number of weeks Ms. Bertonassi worked grew in 2006. In the spring, she put in extra time during 19 weeks, with 2.5 hours extra per week being typical and in a few instances more time than that. She worked extra time during 14 weeks of the fall semester, with the time she put in more variable. In all but one instance, her extra time was sufficient to put her work that week at 20 hours or more. At the end of the semester, she put in extra time three days per week for five weeks in a row. (Ex. 10G.)

10. That pattern continued in 2007. She put in extra time three times per week for 20 weeks in the spring semester, with each week typically being 2.25 extra hours, though a few times it was much more, including one week in which she worked 10.75 hours of extra time. During two weeks that semester, she worked extra hours only two days those weeks putting in 1.0 and 1.5 hours respectively. In the fall she worked extra hours on multiple days for 17 weeks, with 3.0 or more extra hours during nine of those weeks and with the least amount of extra hours being 1.25

hours. (Ex. 10H.)

11. In 2008, Ms. Bertonassi worked extra time during each of the 22 weeks in the spring semester. In seven of those weeks, she put in extra time three day per week, and in ten of those weeks she put in extra time four days per week. In seventeen of those weeks she put in 3.0 or more extra hours that week. The least amount of extra time she put in was 1.25 hours while the greatest was 16 hours. In the fall semester, she put in extra time during 16 weeks. In each of those weeks her total hours were 20 or more hours. In thirteen of those weeks, she put in extra time four day that week and in eleven of those weeks, she put in 11.25 hours of extra time. (Ex. 10I.)

12. In 2009, Ms. Bertonassi worked at least 2.25 extra hours during 19 weeks in the spring semester. In seven of these weeks she worked 10 or 10.75 extra hours. In ten of these weeks she worked 11.25 extra hours. In each week, she put in extra hours on at least three days; in 12 of these weeks she put in four days of extra work. In the fall semester, Ms. Bertonassi worked extra hours in the two weeks prior to the start to school and in all 17 weeks of the term. She worked extra hours for three days per week in 4 of those weeks and four days per week in 10 of those weeks. She put in 10 or more extra hours during ten of those weeks, with 11.25 the most common amount of extra hours she worked. (Ex. 10J.)

13. In 2010, Ms. Bertonassi put in extra hours during 23 weeks in the spring. In sixteen of the weeks she worked 11.25 or more extra hours and in fifteen of those weeks she worked extra hours for four days per week. The least amount of extra hours she put in was 2.5 hours and the most was 12.75 hours. (Ex. 10K.)

14. On June 15, 2009, Ms. Bertonassi sent an email to a Middlesex County Retirement System staffer about her situation. She stated that she was hired as a half-time employee scheduled to work 18.75 hours, while she actually worked 30 hours per week. She noted that “my extra hours do not go toward my retirement and I do not get overtime pay. I believe I am not being fairly compensated.” On October 14, 2009, an individual named Brian Daniels, who I assume was in the Middle School administration, emailed the Business Manger of the Hudson Public Schools about the work Ms. Bertonassi performed. He listed her duties as:

- Conduit for teacher requests for supplies and materials
- Distributes supplies and materials
- Enters orders in Budget Sense
- Processes purchase orders
- Receives and checks shipments
- Tracks the budget
- Maintains the student funds accounts
- JFK [Middle School] webmaster
- Collects material, design, layout, production and distribution of the JFK monthly publication Middle Matters
- Student and parent assistance as needed

Mr. Daniels concluded by observing that “This work requires more than a .5 appointment. The extra time is devoted to this work.” On May 11, 2010, the Retirement System staffer originally contacted by Ms. Bertonassi reported to the Retirement System’s counsel that the Payroll Clerk of the School Department had told her that the “‘School Dept.’ wants to keep the job @18.75 hours per week and pay her an additional 11.75 hours overtime @straight time.” (Ex. 5.)

15. Prior to her retirement, Ms. Bertonassi purchased some non-membership service with the Town of Hudson, including work in the school system from January 1, 1998 to October 31, 1999. (Ex. 6.)

16. Ms. Bertonassi also asked the Retirement System to provide her with a creditable service estimate. The Retirement System responded to Ms. Bertonassi on May 18, 2020. It credited her differently depending on whether she worked at least 20 hours per week. For the period between June 30, 2010 and May 18, 2020, during which she worked at least 20 hours per week, it credited her with full time service for a total of 9 years, 10 months, and 18 days of creditable service. For the period between November 1, 1999 and June 29, 2010, when she was assigned to work 18.75 hours per week, it credited her with half time work, for a total of 5 years and 4 months of creditable service. (Ex. 1.)

17. Ms. Bertonassi filed a timely appeal. (Ex. 1.)

Discussion

A Middlesex County Retirement System Supplemental Regulation, effective September 1, 2010, provides at Part II B that:

Members of the Middlesex County Retirement System shall be credited with one year of service for each year of employment of not less than 20 hours per week or yearly proportion thereof.

(Ex. 9.)

The Retirement System maintains that Ms. Bertonassi should not be treated as a full-time employee under the supplemental regulation during the 2000 to 2010 period because she was not regularly employed in a position that required her to work 20 hours. It acknowledges that she frequently worked more than the 18.75 hours she was scheduled to work, but contends that this extra work for which she was paid was not regular compensation under either definition that applied during this period because this work was irregular, beyond her normal work hours, and

was not part of her base compensation. *See* 840 CMR 15.03(3). Ms. Bertonassi responded that, although her total hours varied, she worked consistently at least 20 hours per week during the relevant period.

The issue here is not whether the extra time Ms. Bertonassi worked beyond 18.75 hours was regular compensation, but whether this “extra” work showed that she was “regularly employed” for at least 20 hours per week.

DALA has had occasion previously to determine whether someone was “regularly employed.” “The term ‘regularly employed’ according to its usual meaning refers to continuous employment as distinguished from sporadic, intermittent, or temporary employment.”

Retirement Bd. of Concord v. Collieran, 34 Mass. App. Ct. 486, 488-489 (1993). It has not depended on whether the employee worked the exact same hours each week. For example, Magistrate Kenneth Forton determined that a grant writer paid by the Revere Police Department was “‘regularly employed,’ even though she worked part-time, did not work the same number of hours each week, and occasionally took a week or two off of work for an unpaid vacation.”

Callahan v. Revere Retirement Bd., CR-12-523, at 9 (DALA Aug. 25, 2017). Similarly, Magistrate Kenneth Bresler held that a town counsel who worked for four years for the town was regularly employed because “he worked part of every month for 48 months. Although his hours varied, he did not work sporadically, intermittently, or temporarily.” *Gorski v. Massachusetts Teachers Retirement Sys.*, CR-18-544 (DALA Feb. 3, 2022).

The question then is whether Ms. Bertonassi was continuously employed for at least 20 hours during the 2000 to 2010 period. From the beginning of her work in 2000, Ms. Bertonassi

put in extra hours beyond the 18.75 hours she was hired to perform per week. The records for 2000 show her working extra hours sporadically, working many extra hours in a few months and not otherwise. The 2001 and 2002 records are each for only half a year. They do not provide enough information to show whether she worked extra hours routinely throughout the year. The records for 2003 show the bulk of her extra work in August and September of that year, apparently focusing on the start of the school year, but not otherwise consistent throughout the year. In 2004, there was more consistency, particularly in the spring when she put in extra work during 9 weeks, although in the fall, most of her extra hours were early in the semester. Still, she put in extra hours for eleven of the weeks in the fall semester that year.

In 2005, her extra work became even more consistent. She put in extra times during 15 weeks of the spring semester, nearly twice as many weeks as she had worked extra time the previous spring semester. She worked extra hours in 10 of the weeks of the fall semester. In 2006, she once again put in extra time for more weeks. In the spring, she put in extra time for 19 weeks, with 2.5 hours extra per week being typical. She put in extra time during 14 weeks of the fall semester; in all but one instance, her extra time was sufficient to put her work week at 20 hours or more. In 2007, it was more of the same. She put in extra time three times per week for 20 weeks in the spring semester, with each week typically being 2.25 extra hours. In the fall, she worked multiple days extra for 17 weeks, working 3.0 or more extra hours for nine of those weeks, with the least amount of extra hours being 1.25 hours.

By 2008, it was all but certain that she was working at least 20 hours per week. She put in extra time during 22 weeks in the spring semester and 16 weeks in the fall semester. In each

of those weeks, she worked for at least 20 hours. In 2009, she worked at least 2.25 extra hours during 19 weeks in the spring semester. In the fall semester, Ms. Bertonassi worked extra hours in the two weeks prior to the start to school and in all 17 weeks of the term. In 2010, she put in extra hours during 23 weeks in the spring semester and consistently worked more than 20 hours.

Despite the multiplicity of tasks Ms. Bertonassi was assigned that led her to being asked to work beyond her scheduled work hours and the recognition by an administrator at her school that her workload required more than 18.75 hours of work per week, it was not until 2009, when Ms. Bertonassi objected to working more than 18.75 hours, but still being treated as if she was half-time worker, that the Hudson Public Schools began to respond to her situation. In 2010, the payroll clerk at the school where she worked acknowledged that by then she was working 11.75 hours per week beyond her scheduled 18.75 hours, but that the School Department wanted to keep it that way, for reasons unknown but presumably financial. But once Ms. Bertonassi had brought her situation to light, what was by then a pretense that she worked only 18.75 hours per week could no longer stand. In 2010, her job was reclassified as requiring 30 hours per week. It was made a full-time job a few years after that and then in a few more years a 12-month job.

In this decision, I am not bound by the manner in which the school district treated Ms. Bertonassi's hours of employment. I must consider whether and when she began to work 20 or more hours regularly. There is no established guidepost to make this determination. In the first few years, the extra work seemed sporadic, but over time she was asked to put in more and more extra time and she began more consistently to work more than 20 hours per week. Ms.

Bertonassi suggests that she would be willing to accept 2005 as the year she began to work

regularly at least 20 hours per week. That year she worked more than half the weeks in both semesters at or beyond 20 hours per week, and it was the first time that this occurred. While I do not reach a conclusion that working more than half-time for a certain number of hours per week must absolutely be shown to prove that one is regularly employed for that number of hours, if this can be shown that is at least sufficient proof of regular employment at that number of hours. Thus, Ms. Bertonassi has established that by 2005, she was regularly working at least 20 hours per week. The following years she worked even more 20 plus hour weeks in the two semesters each year. Therefore, in those years as well, she was regularly employed for 20 hours or more, which means that for those years she was a full-time employee as defined by Middlesex County Retirement System Supplemental Regulation.

Conclusion

The Middlesex County Retirement System's decision to treat Laura Bertonassi's work between 2000 and mid-2010 as part-time employment is partially reversed. She has established that her work from 2005 through mid-2010 was full-time work as defined under the supplemental regulation.

DIVISION OF ADMINISTRATIVE LAW APPEALS



James P. Rooney
First Administrative Magistrate

Dated: February 16, 2024

