

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Ralph Cali,
Petitioner,

No. CR-21-0664

Dated: March 29, 2023

v.

Winthrop Retirement Board,
Respondent.

Appearances:

For Petitioner: Amanda Y. Cordes, Esq.

For Respondent: Michael Sacco, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The respondent retirement board properly required the petitioner, a retiree, to repay amounts he earned in excess of the caps on hours and total earnings stated in G.L. c. 32, § 91(b).

DECISION

Petitioner Ralph Cali is a retired member of the Winthrop Retirement Board. He appeals from a board decision requiring him to repay approximately \$36,000 in excess earnings under G.L. c. 32, § 91(b). The appeal was submitted on the papers. I admit into evidence exhibits marked 1-15.

Findings of Fact

I find the following facts:

1. Mr. Cali worked for the Winthrop school system. His job title was “senior custodian.” He retired for superannuation effective in December 2010. (Exhibit 1.)
2. Mr. Cali returned to work with the Winthrop schools in the years 2011-2019. He performed custodial work but was not restored to the senior custodian position. (Exhibits 2, 13.)

3. During six of the years of his post-retirement employment, Mr. Cali worked more than 960 hours per year. The following chart collects the number of hours he worked in each of those years, along with his hourly rate of pay in each year¹:

Year	Hours	Rate	Year	Hours	Rate
2011	1,370.59	\$15.53/hr	2016	1,482	\$17.67/hr
2013	1,184.50	\$17.71/hr	2017	1,113	\$22.00/hr
2015	1,253	\$17.67/hr	2019	1,260	\$22.00/hr

(Exhibits 2-9.)

4. In 2012, Mr. Cali worked 976 hours, earning \$24,569.03 in employment income. His retirement allowance that year came to \$30,073.92.² (Exhibits 2, 4, 15.)

5. Mr. Cali's successor as senior custodian was John McDougall. The documents in the record analyze Mr. McDougall's salaries using periods running from July through June. From July 2011 through June 2012, Mr. McDougall was paid \$36,836.80 in "regular" pay, plus a longevity stipend of approximately \$900. Prior to his retirement, Mr. Cali's own annual longevity stipend had been about \$1,100 annually. (Exhibits 4, 13.)

6. In December 2021, the board directed Mr. Cali to repay the board approximately \$36,000 in excess earnings for the years discussed in paragraphs 3-4. Mr. Cali timely appealed. (Exhibits 10, 11.)

¹ The board derived these hourly rates from the Winthrop schools' payroll records. Mr. Cali does not articulate a disagreement with this aspect of the board's analysis.

² Mr. Cali arrives at a slightly lower version of the latter figure by overlooking the portion of his retirement allowance attributable to a cost-of-living increase.

Analysis

Retired individuals who wish to work in public service are required to comply with restrictions on both the number of hours they are permitted to work and the total amount of money they are permitted to earn. Both restrictions are stated in G.L. c. 32, § 91(b).

During the pertinent period, the hours restriction stated that a retiree “may . . . be employed . . . for not more than nine hundred and sixty hours in the aggregate, in any calendar year.” § 91(b).³ The restriction on total earnings ran (and still runs) as follows:

provided that the earnings [from employment] when added to any pension or retirement allowance [the employee] is receiving do not exceed the salary that is being paid for the position from which he was retired . . . plus \$15,000⁴

Id. “The statute reflects a clear policy that an employee . . . may not . . . , by combining her pension and her new compensation, make more money than if she had not retired.” *Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 447 (2006). Both employers and retirement boards may recoup sums paid to retirees in excess of § 91(b)’s restrictions. *Flanagan v. Contributory Ret. Appeal Bd.*, 51 Mass. App. Ct. 862 (2001).

In 2011, 2013, 2015, 2016, 2017, and 2019, Mr. Cali exceeded the statutory cap of 960 work hours.⁵ To compute his excess earnings in each year, the board multiplied Mr. Cali’s hourly rate by his number of hours above 960. Mr. Cali does not identify anything erroneous about this calculation method. *See also Fratto v. MTRS*, No. CR-12-238, at *4 (DALA Feb. 1,

³ The limit rose to 1,200 hours effective in July 2021. Acts 2021, c. 67, § 1.

⁴ The “plus \$15,000” cushion does not apply to an employee’s first twelve months of retirement. § 91(b). That nuance does not entail practical consequences here.

⁵ It may be that, in 2011, Mr. Cali also exceeded the statutory cap on total earnings. Neither party argues that the board erred by concentrating on the hours cap instead.

2013). Instead, he appears to maintain that the cap on hours does not apply to employees who satisfy the cap on total earnings. But that view “is inconsistent with the plain meaning of the statute.” *Prevey v. Berkshire Cty. Ret. Syst.*, No. CR-16-576, at *6 (DALA Nov. 30, 2018).

In 2012, Mr. Cali worked only a few hours more than the statute permits. The board therefore focused instead on the cap on total earnings. The board calculated the “salary that [was] being paid for the position from which [Mr. Cali] was retired,” § 91(b), as \$37,936.80. Mr. Cali does not challenge this aspect of the board’s math except by concisely offering a competing figure slightly *less* favorable to him. I do not hold him to this inadvertent position.⁶ There is no serious dispute as to the remainder of the board’s analysis, i.e., that Mr. Cali must repay the amount by which his earnings from employment and retirement⁷ exceeded the “salary that [was] being paid for [his] position” plus \$15,000.

Mr. Cali’s final argument is that he is exempt from § 91(b)’s restrictions under the rule that: “in any period during which there is a critical shortage of certified teachers . . . [a] school district may employ as a teacher or as a mentor to other teachers any person who has retired from the teachers’ retirement system or the Boston retirement system” § 91(e). The argument is obviously baseless. Mr. Cali was not reemployed “as a teacher or as a mentor to other teachers,” and he did not retire from either of the two particular systems that the statute identifies.

⁶ Mr. Cali identifies the “salary that [was] being paid for [his] position” as \$37,888.51. To reach this number, Mr. Cali apparently averages out Mr. McDougall’s pay amounts during the two twelve-month periods of July 2011-June 2012 and July 2012-June 2013. The reason that the board’s figure ends up favoring Mr. Cali is that the board replaced Mr. McDougall’s \$900 longevity pay with the \$1,100 that Mr. Cali had been receiving pre-retirement. In the posture of this appeal, it is not necessary to dissect the merits of the parties’ competing approaches. *But see Bowen-Sanford v. MTRS*, No. CR-18-387, 2023 WL 3687347 (DALA May 19, 2023).

⁷ With respect to the retirement income, see *supra* page 2 at paragraph 4 and note 2.

Conclusion and Order

In view of the foregoing, the board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate