

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Linda Celona,
Petitioner,

No. CR-23-0395

Dated: October 25, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearances:

For Petitioner: Linda Celona (pro se)

For Respondent: James C. O'Leary, Esq.

For Public Employee Retirement Administration Commission: Judith A. Corrigan, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner's employer increased the wages of its staff members in response to the abatement of the COVID-19 pandemic. The petitioner's wage increases were rooted in generalized, group-oriented considerations. They were accordingly exempt from the anti-spiking rule of G.L. c. 32, § 5(2)(f), under the recently enacted exception for raises that "[result] . . . from an employer's systemic wage adjustments." Acts 2024, c. 141, § 3.

DECISION

Petitioner Linda Celona appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) adjusting her regular compensation for retirement purposes under the anti-spiking rule of G.L. c. 32, § 5(2)(f). The appeal was submitted on the papers without objection, and the Public Employee Retirement Administration Commission (PERAC) filed a brief. I admit into evidence Ms. Celona's exhibits 1-5 and MTRS's exhibits 1-6.

Findings of Fact

The following facts are not in dispute.

1. Ms. Celona worked as a finance director at the Atlantis Charter School (Atlantis). She was a member of MTRS. (Respondent exhibit 6.)

2. In 2021, worried about the financial impact of the COVID-19 pandemic, Atlantis withheld pay raises from its staff. In 2022, the school granted raises to all of its staff members. It did so again in 2023. (Petitioner exhibits 1-5.)

3. The record details the raises that Atlantis's senior staff members received in 2022 and 2023. In 2022, a school principal received a raise of 31%. In 2023, the executive director's raise was 3%. Otherwise, virtually every annual raise was between 9% and 11%. Ms. Celona's raises were 10% in 2022 and 10.5% in 2023. (Petitioner exhibit 2.)

4. Atlantis's executive director explained the school's thinking as follows: "[W]e provided average 10% increases to all staff . . . for a number of reasons, including comparisons to other school salaries in our area, retention of staff, and in recognition of the very hard work of running schools during a pandemic." Contemporaneous minutes from meetings of the school's governing body reflect the same motivating factors. (Petitioner exhibits 1, 4, 5.)

5. Ms. Celona retired for superannuation effective April 2023. The years pertinent to the calculation of her retirement allowance are 2019-2023. As a result of her two post-COVID raises, Ms. Celona's salary in 2023 exceeded the average of her salaries in the two preceding years by more than 10%. (Respondent exhibit 6.)

6. MTRS determined that Ms. Celona's regular compensation for retirement purposes must be adjusted downward under the anti-spiking rule of G.L. c. 32, § 5(2)(f). This

appeal followed. MTRS subsequently revisited its decision for reasons discussed below, ultimately declining to change its mind. (Respondent exhibit 5.)¹

Analysis

The retirement allowance of each Massachusetts public employee is derived from the employee's "regular compensation" during a few short years. *See* G.L. c. 32, § 5(2)(a). This methodology exposes the retirement systems to losses due to "spiking," i.e., sharp compensation increases during a member's pension-generating years. Spiking tends to yield retirement benefits disproportionate to the member's careerlong retirement contributions. *See generally Hartnett v. Contributory Ret. Appeal Bd.*, 494 Mass. 612 (2024).

Among the statutes devoted to counteracting spiking is G.L. c. 32, § 5(2)(f). That section excludes from each member's regular compensation for retirement purposes any pay amount "that exceeds the average of regular compensation received in the 2 preceding years by more than 10 per cent." *Id.* Multiple exceptions temper this rule. Until recently, they covered pay increases resulting from longer working hours, overtime, changes of position, renegotiated collective bargaining agreements, and increases to statutorily prescribed wages. *Id.* None of these exceptions covered the raises Ms. Celona received in 2022 and 2023. *See generally Stanton v. State Bd. of Ret.*, No. CR-18-399, 2023 WL 11806178, at *2 (CRAB Oct. 11, 2023).

While Ms. Celona's appeal was pending, the Legislature enacted Acts 2024, c. 141.² Among its other effects, this statute created two new exceptions to § 5(2)(f)'s anti-spiking rule. The first addresses raises designed to correct gender-based wage differentials. *See* G.L. c. 149,

¹ The record does not include a copy of MTRS's original decision. Because MTRS redecided the matter during the appeal's pendency, it is unlikely that any timeliness issue impairs DALA's jurisdiction. *Cf. United States v. Roberts*, 978 F.2d 17, 20 n.5 (1st Cir. 1992).

² The statute is captioned, "An Act Relative to Salary Range Transparency."

§ 105A; *Kidd v. State Bd. of Ret.*, No. CR-21-313, 2023 WL 3547617 (DALA May 12, 2023), *appeal dismissed*, 2024 WL 2956652 (CRAB June 3, 2024). The second applies to pay raises that “[result] . . . from an employer’s systemic wage adjustments.” Acts 2024, c. 141, § 3. Both exceptions are effective as of July 2018. *Id.* § 12.

The key question is whether Ms. Celona’s raises of 2022 and 2023 “[resulted] . . . from an employer’s systemic wage adjustments.” This statutory passage must be read in light of “plain meaning and . . . the aim of the Legislature.” *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012).

As a matter of plain meaning, an “adjustment” is a “correction or modification”; the modifier “systemic” denotes a relationship to an “interdependent group of items.” *Merriam Webster’s Collegiate Dictionary* 16, 1270 (10th ed. 1994). Cases from other contexts tend to describe “systemic” measures as those relating to “general practices,” as contrasted with “isolated” or “single” occurrences. *See Ocean Spray Cranberries, Inc. v. Massachusetts Comm’n Against Discrimination*, 441 Mass. 632, 643 (2004); *KGL Food Servs. WLL v. United States*, 153 Fed. Cl. 497, 508 (2021); *Scott v. N. Dakota Workers Comp. Bureau*, 587 N.W.2d 153, 185 (N.D. 1998).

In terms of legislative goals, § 5(2)(f)’s general rule stands on a different footing from its various exceptions. The general rule aspires to “shield retirement systems from the disproportionate burdens of late-breaking upsurges in compensation.” *Willette v. Somerville Ret. Bd.*, No. CR-20-282, 2021 WL 9697063, at *4 (DALA May 7, 2021), *aff’d*, 2023 WL 11806174 (CRAB Nov. 16, 2023). But the exceptions disclose the Legislature’s “particular interest in combatting abusive, pension-oriented artifices.” *White v. Somerville Ret. Bd.*, No. CR-22-95, 2022 WL 16921475, at *2 (DALA Sept. 2, 2022), *aff’d*, 2023 WL 11806181 (CRAB Nov. 16,

2023). The exceptions thus assign to the retirement systems the burdens of pension-impacting raises in certain sets of “circumstances . . . suggest[ing] that the increase was not the product of an artificial pension-inflation scheme.” *Willette*, 2021 WL 9697063, at *5.

Both plain language and legislative purpose point in the same direction, i.e., that a “systemic” pay raise in this context is the opposite of an *individual* pay raise. As PERAC says in a recent memorandum, the new exception applies where “an employer determines . . . that salaries *across an employer or segment of the employer* need to be adjusted.” PERAC Memo No. 21 / 2024 (Aug. 14, 2024) (emphasis added). The new exception recognizes that the danger of pension manipulation is at its severest when a pay raise is an “isolated” or “single” occurrence; a raise to a “group” or in connection with “general practice” tends to indicate a non-artificial program with only incidental effects on retirement benefits.

Within the context of the foregoing principles, Ms. Celona’s two pay raises “[resulted] . . . from an employer’s systemic wage adjustments.” Acts 2024, c. 141, § 3. Atlantis did not increase Ms. Celona’s wages in response to her personal circumstances. The school’s concerns were instead collective and generalized in nature: the school hoped to retain and to recognize its entire staff in the wake of the pandemic. The group-oriented nature of Ms. Celona’s raises is especially evidenced by the general homogeneity of the other staff members’ raises, with Ms. Celona’s raises at the collective midpoint.

The proper implementation of the new exception for “systemic wage adjustments” may not be obvious in future appeals. The current decision’s analysis may or may not extend to a scenario in which numerous employees receive simultaneous pay raises of varying sizes, with the

variance driven by individualized factors.³ In any event, the statutory language and purpose do not support MTRS's theory that, to qualify as a "systemic . . . adjustment," a raise must be constructed as "an additional x% across the board, or something [else] that could be expressed formulaically." The question is instead whether the employer adjusted its wages to tackle a general, collective issue, as opposed to individual facts. Ms. Celona's raises qualify as systemic in this sense.

Conclusion and Order

In view of the foregoing, Ms. Celona's pay raises in 2022 and 2023 were exempt from downward adjustments under G.L. c. 32 § 5(2)(f). MTRS's contrary decision is REVERSED. The matter is REMANDED to MTRS for a recalculation of Ms. Celona's benefits.

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/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

³ That scenario arguably would continue to reflect a "systemic" wage adjustment in PERAC's view. Consistent with this decision, PERAC's brief describes a systemic raise as one offered collectively to "staff . . . in response to a particular contingency." But the brief may be read as saying further that the analysis does not turn at all on "how [the] adjustment was made." If there is any daylight between this decision and PERAC's view, a more probing analysis of the point is unnecessary here.