

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Wendy Cliggott,
Petitioner,

No. CR-23-0342

Dated: August 16, 2024

v.

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

Appearances:

For Petitioner: Wendy Cliggott (pro se)

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a teacher, received stipends for certain “additional services.” The services and stipends were not mentioned in the petitioner’s “annual contract.” The stipends thus do not qualify as regular compensation for retirement purposes.

DECISION

Petitioner Wendy Cliggott appeals from a decision of the Massachusetts Teachers’ Retirement System (MTRS) declining to treat certain stipends as part of Ms. Cliggott’s regular compensation for retirement purposes. The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-16.

Findings of Fact

I find the following facts:

1. Ms. Cliggott became a teacher in the Somerville school district in 2000. She belonged to a labor union and was a member of MTRS. (Exhibits 3, 13.)

2. During the school year 2021-2022, Ms. Cliggott performed the following services on top of her usual teaching assignments: All year, she was a member of a “district instructional leadership team” (DILT). And for part of the year, she filled the role of an “equity specialist.” She received stipends for both responsibilities. (Exhibits 1-3, 6, 7, 10, 11, 13, 16.)

3. Ms. Cliggott’s work in that school year was governed by a collective bargaining agreement (CBA) between her union and the school district. The effective dates of the agreement were September 1, 2021 through August 31, 2022. The agreement did not mention work with the DILT or work as an equity specialist. (Exhibit 4.)

4. In June 2022, Ms. Cliggott applied to retire for superannuation, effective that month. The school year 2021-2022 is among the school years pertinent to the computation of her retirement allowance. (Exhibits 1, 3.)

5. In November 2022, Ms. Cliggott’s union and the school district executed a document self-described as a “side letter.” The side letter established stipends both for DILT membership and for service as an equity specialist. The letter stated that the stipends would be effective “as of the start of the 2021-2022 contract year.” (Exhibits 6, 10.)

6. In June 2023, MTRS informed Ms. Cliggott that it would not treat her two stipends in 2021-2022 as regular compensation for retirement purposes. Ms. Cliggott filed this timely appeal. (Exhibits 1, 2.)

Analysis

The retirement allowance of a Massachusetts public employee is derived from the employee’s “regular compensation” in certain years. G.L. c. 32, § 5. Regular compensation means “wages . . . for services performed in the course of employment.” *Id.* § 1. Wages are an employee’s “base salary or other base compensation.” *Id.*

In the case of teachers, wages also include “salary payable under the terms of an annual contract for additional services.” G.L. c. 32, § 1. The parties agree that the two stipends at issue here were payments for “additional services.” *See generally Fonseca v. Massachusetts Teachers’ Ret. Syst.*, No. CR-12-164, 2024 WL 2880049, at *3 (CRAB Feb. 14, 2024). The dispute focuses on whether the stipends were “payable under the terms of an annual contract.” § 1.

The “annual contract” in this context is the CBA. 807 C.M.R. § 6.01. Both the “services” and the corresponding “remuneration” are required to be stated there. *Id.* § 6.02(1). The purpose of these rules is to “provide clear records of approved stipends so as to avoid confusion and uncertainty . . . when retirement boards are called upon to calculate pension benefits.” *Kozloski v. Contributory Ret. Appeal Bd.*, 61 Mass. App. Ct. 783, 787 (2004). The boards cannot be expected to “sift through a multiplicity of alleged oral or side agreements about which memories might well be hazy.” *Id.*

Ms. Cliggott’s two additional services were not mentioned in the original version of the applicable CBA. Her appeal relies on the side letter’s attempt to cover the two services. The side letter was executed after Ms. Cliggott performed her work and after the end of the CBA’s effective term. On the other hand, it apparently was a binding agreement between the appropriate bargaining parties. There is some force to the theory that such a document should be able to revise the “annual contract” effectively, thereby causing the “additional services” rules to be satisfied. *Cf. Rumbolt v. Massachusetts Teachers’ Ret. Syst.*, CR-21-0057, at *4 (DALA Sept. 29, 2023).

Nevertheless, this theory was rejected in *Kozloski*. Several of the reasons articulated there do not extend to Ms. Cliggott’s case.¹ But the Appeals Court also said:

Conclusive to CRAB . . . was the fact that . . . the [additional service] was simply not included in the relevant collective bargaining agreements under which [the member] worked CRAB reasonably took the view that the decisive fact under the regulations was that the [service] was not included

61 Mass. App. Ct. at 788. In light of this portion of *Kozloski*’s analysis, “the relevant agreement is the one under which the member *actually* worked, rather than an agreement that comes into being after the work had been performed.” *Lutz v. Massachusetts Teachers’ Ret. Syst.*, No. CR-21-75, 2023 WL 8122653, at *5 (DALA Nov. 17, 2023). Stated otherwise, even when revisions or clarifications to a CBA are effective as between the bargaining parties, they do not cause already-paid stipends for already-performed work to be viewed as having been “payable under the terms of an annual contract” within the meaning of G.L. c. 32, § 1. *See also Snarsky v. Massachusetts Teachers’ Ret. Syst.*, No. CR-04-791, 2006 WL 4211639 (DALA May 5, 2006); *DeMelo v. Massachusetts Teachers’ Ret. Syst.*, No. CR-08-47 (DALA Oct. 24, 2012).

Conclusion and Order

In view of the foregoing, MTRS’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

¹ The side letter in *Kozloski* was executed after the retirement board had issued its decision, approximately six years after the original CBA’s expiration, by individuals with dubious contracting authority. 61 Mass. App. Ct. at 788.