

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Angela Crofford-Bik,**  
Petitioner

v.

Docket No. CR-22-0583

Date: June 9, 2023

**Massachusetts Teachers'  
Retirement System,**  
Respondent

**Appearance for Petitioner:**

Angela Crofford-Bik, *pro se*

**Appearance for Respondent:**

Salvatore Coco, Esq.  
Massachusetts Teachers' Retirement System  
500 Rutherford Ave., Ste 210  
Charlestown, MA 02129

**Administrative Magistrate:**

Kenneth J. Forton

**SUMMARY OF DECISION**

The MTRS properly applied the “anti-spiking” provision under G.L. c. 32, § 5(2)(f) when it reduced Petitioner’s regular compensation in 2020-2021 for the purpose of calculating her retirement allowance. Because Petitioner, an assistant superintendent, was in a managerial position and did not have fixed hours she did not qualify for the increased work hour exception. Petitioner did not have a bona fide change in position because creating an online academy in response to the pandemic is a duty one would expect from an assistant superintendent of curriculum and instruction.

**DECISION**

Petitioner Angela Crofford-Bik timely appeals under G.L. c. 32, § 16(4). She seeks to overturn the Massachusetts Teachers' Retirement System's (MTRS) application

of the anti-spiking law to the calculation of her retirement allowance. MTRS concluded that Ms. Crofford-Bik's regular compensation in the creditable year 2020-2021 must be reduced.

On December 20, 2022, Ms. Crofford-Bik elected to waive an evidentiary hearing and proceed on written submission under 801 CMR 1.01(10)(c). Ms. Crofford-Bik submitted 5 proposed exhibits. On January 24, 2023, Ms. Crofford-Bik offered 1 more proposed exhibit. MTRS offered 5 more proposed exhibits, labeled 7-11. I have admitted these documents into evidence as marked. (Exs. 1-11.)<sup>1</sup>

**FINDINGS OF FACT**

Based on the documents in evidence, I make the following findings of fact:

1. From September 1, 1989 until her retirement on August 31, 2022, Angela Crofford-Bik was a member of MTRS. (Ex. 10.)
2. From September 1, 1989 until August 6, 2021, Ms. Crofford-Bik was employed by Newbury Public Schools. (Exs. 7, 10.)
3. From September 1, 2021 until August 31, 2022, Ms. Crofford-Bik was employed by Manchester Regional School. (Ex. 10.)
4. When she left Newbury Public Schools, and at all times relevant to this appeal, Ms. Crofford-Bik's job title was Assistant Superintendent of Curriculum and Instruction. (Ex. 10.)

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<sup>1</sup> MTRS has objected to Exhibit 6. This itemized list does not explain who, when, or why it was created. I have admitted the list into evidence, but I do not rely on the facts asserted therein because unsworn statements are not "the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." G.L. c. 30A, § 11(2).

5. On January 22, 2020, Ms. Crofford-Bik signed an employment contract with Newburyport Public Schools for the 2020-2021 school year with a contracted salary of \$147,955.00. (Ex. 7.)

6. The contract's duties and responsibilities section provided as follows:

The Assistant Superintendent, subject to supervision and direction of the Superintendent shall perform faithfully and to the best of her ability the duties of Assistant Superintendent, which are included in the Assistant Superintendent job description. . . . In addition thereto said duties and responsibilities shall include those duties and responsibilities as, from time to time, be assigned to the Assistant Superintendent by the Superintendent. The Assistant Superintendent recognizes that her responsibilities and conduct are not determined by prescribed hours and conditions and will perform the directed and implied duties of her position . . . and will expend the time and effort necessary to effectively achieve the goals and purposes of Newburyport Public Schools.

(Ex. 7.)

7. During the Covid-19 pandemic, Ms. Crofford-Bik was tasked with designing the Remote-Learning Academy/Teaching implementation and organization for the 2020-2021 school year. She received a stipend of \$10,000.00 for this work. (Ex. 7.)

8. On June 3, 2021, Ms. Crofford-Bik applied for retirement, effective August 6, 2021. (Ex. 10.)

9. Ms. Crofford-Bik rescinded that application, and eventually retired on August 31, 2022, after her one-year position in Manchester. (Ex. 11.)

10. To determine Ms. Crofford-Bik's retirement allowance, MTRS used the average annual rate of regular compensation during the last three years that she worked, which were also her years of highest annual salary. For 2019-2020 she earned \$145,842.97; for 2020-2021 she earned \$156,916.54, which included the \$10,000.00 stipend; and for 2021-2022 she earned \$145,131.04. (Ex. 11.)

11. MTRS determined that there was an anti-spiking issue in the year 2020-2021, when she earned \$156,914.54.<sup>2</sup> The earnings for the previous two years were \$145,131.04 and \$139,896.39 respectively. The average of these prior two years plus 10 percent was \$156,765.08. This means Ms. Crofford-Bik’s salary for the 2020-2021 year exceeded the salary limit by \$151.45.<sup>3</sup> (Exs. 2, 11.)

12. On November 21, 2022, MTRS informed Ms. Crofford-Bik that her 2020-2021 annual regular compensation must be reduced under the “anti-spiking” provision in G.L. c. 32, § 5(2)(f). (Ex. 2.)

13. On November 30, 2022, Ms. Crofford-Bik timely appealed.

**CONCLUSION AND ORDER**

MTRS’s application of the “anti-spiking” provision, under which it reduced Ms. Crofford-Bik’s 2020-2021 regular compensation when calculating her retirement allowance, is affirmed.

For members like Ms. Crofford-Bik, who were members of a retirement system prior to April 2, 2012, § 5(2)(a) directs that a member’s yearly retirement allowance be calculated based, in part, on the highest average three-year period of regular compensation. For her, this period took place in the years 2019-2020, 2020-2021, and

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<sup>2</sup> MTRS used a weighted average to determine Ms. Crofford-Bik’s last years of salary because she did not work full years during some of the period relevant to her retirement calculation. (Ex. 11.) This means that her school year salaries and her last year of salary used in the anti-spiking calculation are not the same. \$156,914.54 is the correct amount determined by using the weighted-year average. The MTRS decision letter erroneously states that Ms. Crofford-Bik’s salary was \$157,995.00. (Ex. 2.)

<sup>3</sup> If MTRS used the salary it stated in the notice letter (\$157,995.00), the excess would have been \$1,189.92. (Ex 2.)

2021-2022, during which time her compensation was \$145,842.97, \$156,916.54, and \$145,131.04, respectively.

G.L. c. 32, § 5(2)(f), referred to as the “anti-spiking” provision, provides, in relevant part:

In calculating the average annual rate of regular compensation for purposes of this section, regular compensation in any year shall not include regular compensation that exceeds the average of regular compensation received in the 2 preceding years by more than 10 percent.

Ms. Crofford-Bik’s salary during the 2020-2021 year was \$156,916.54. Her salary for the previous two creditable years were \$145,131.04 and \$139,896.39 respectively. A ten percent increase over the average of the prior two years was \$156,765.09. Her salary of \$156,916.54 exceeds the 10% limit imposed by the anti-spiking provision, so MTRS reduced the regular compensation used for determining her retirement benefits for the 2020-2021 creditable year by the difference of \$151.45.

There are several exceptions to the anti-spiking provision’s limits: (1) an increase in regular compensation due to an increase in hours of employment; (2) a bona fide change in position; (3) a modification of a salary or salary schedule negotiated for bargaining unit members; (4) an increase in salary for a member whose salary is specified by law; and (5) an exception exclusive to teachers. *See* G.L. c. 32, § 5(2)(f).

Ms. Crofford-Bik maintains that, because of changes due to the pandemic, she qualifies for both the increased hours of employment exception and the bona fide change in position exception. DALA has held that “working more hours, alone, is not the same thing as an increase in ‘hours of employment’ under the exception.” *Diana Lam v. MTRS*, CR-17-170 (DALA Feb. 26, 2021). In looking at the hours of employment exception, DALA considers whether the position is managerial, whether the petitioner

would be expected to complete the work required regardless of time, and whether her hours were fixed. *Id.*

According to Ms. Crofford-Bik's employment contract, her position did not have "prescribed hours" and she was expected to "expend the time and effort necessary to effectively achieve the goals and purposes of Newburyport Public Schools." These conditions are consistent with a managerial position, with tasks expected to be completed regardless of time, and she did not have specific work hour requirements. Consequently, even if Ms. Crofford-Bik had worked a greater number of hours than she had in the past, she would not qualify for the increased hours of employment exception.

Ms. Crofford-Bik also claims that her new assignment to create curriculum for a remote academy in response to the COVID-19 pandemic qualifies her for the bona fide change in position exception. A bona fide change in position occurs when "the essential duties of the position change." *See* PERAC Memorandum #16/2014. Additional duties, even if they are significant additional duties, do not necessarily reach the level of a bona fide change in position, unless those additional duties are outside the sphere of duties performed in an employee's position. *Healy v. MTRS*, CR-18-0515 (DALA June 14, 2019).

Ms. Crofford-Bik's specific title was Assistant Superintendent of Curriculum and Instruction. When the need to quickly develop curriculum for a remote learning academy became apparent due to the pandemic, she was assigned the task. It is logical that the assistant superintendent of *curriculum and instruction* would be asked to spearhead the change in curriculum and instruction that coincided with the pandemic. Additionally, Ms. Crofford-Bik's employment contract included the language that the duties of the

position “shall include those duties and responsibilities as, from time to time, may be assigned to the Assistant Superintendent by the Superintendent.”<sup>4</sup> While it is admirable for the school to compensate Ms. Crofford-Bik for her extra effort, and it is in no way undeserved, it does not fall outside the sphere of duties expected of her position. For that reason, Ms. Crofford-Bik did not have a bona fide change in position.

MTRS correctly applied G.L. c. 32, § 5(2)(f) in its calculation of Ms. Crofford-Bik’s retirement allowance. The decision of MTRS is therefore affirmed. MTRS is directed to return to Ms. Crofford-Bik any excess withholdings with interest.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

DATED: June 9, 2023

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<sup>4</sup> The duties and responsibilities in Ms. Crofford-Bik’s employment contract also referred to the assistant superintendent’s job description, which was not included in evidence. However, even without the job description, it is clear that her work developing a new curriculum fit squarely within her job duties.