Commonwealth of Massachusetts Contributory Retirement Appeal Board

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Roberta Ducomb,

Petitioner-Appellee v.

Massachusetts Teachers' Retirement System,

Respondent-Appellant.

CR-23-0111

DECISION

Respondent Massachusetts Teachers' Retirement System (MTRS) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing MTRS' decision to exclude stipends petitioner Roberta Ducomb received for serving as an advisor to her school's Environmental Club from her regular compensation. Magistrate Eric Tennen admitted 9 exhibits into evidence and issued a decision on January 26, 2024. MTRS filed a timely appeal to us.

After giving careful consideration to all the evidence in the record and the arguments presented by the parties, we adopt the magistrate's findings of fact 1 - 6 as our own and incorporate the DALA decision by reference. For the reasons discussed below and in our decision *Florio v. MTRS*, CR-18-509 (CRAB March 2025) issued today, we affirm the DALA decision. ***Affirm***.

Background. Roberta Ducomb taught in Quaboag Regional Public Schools from 2006 until 2022.[1] From 2018-2022, she advised her school's Environmental Club.[2] The relevant Collective Bargaining Agreements (CBAs) covering Ms. Ducomb during this time period included a table providing a "Salary Schedule" for "Extra-Curricular Duties," which contained a line providing compensation for advising "Clubs (# determined by Admin.)" as well as a provision (re)stating that "The number" of "clubs" would be "determined by the Administration and the School Committee."[3] For the years at issue in this appeal, Ms. Ducomb received stipends for the amounts specified in the CBA for advising the Environmental Club. When Ms. Ducomb retired in 2022, MTRS refused to classify these stipends as 'regular compensation' given that, even though her CBA made inclusive reference to a compensation rate for advising all "[c]lubs," the document did not specifically list the Environmental Club, prompting Ms. Ducomb's appeal.

Discussion. The singular question on which this appeal turns is whether teachers' CBAs must specifically identify the name of the extracurricular club a teacher will be paid for advising in order for such payment to qualify as 'regular compensation,' or whether instead it is sufficient for the CBAs to specify the exact amount of money that will be paid to a teacher who advises any extracurricular club at their school. G.L. c.32, s.1, defines "regular compensation" as "compensation received exclusively as wages by an employee for services performed in the course of employment for his employer," where wages are defined in the same section as including, for "a teacher employed in a public day school who is a member of the teachers' retirement system," "salary payable under the terms of an annual contract for additional services in such a school."[4]

MTRS has issued interpretive regulations for this provision that state that "*Regular Compensation* shall include salary payable under the terms of an annual contract for additional services so long as (a) The additional services are set forth in the annual contract; (b) The additional services are educational in nature; (c) The remuneration for these services is provided in the annual contract; (d) The additional services are performed during the school year."[5] MTRS argues that Ms. Ducomb's compensation for advising the Environmental Club should not qualify

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[1] Finding of Fact 1.
[2] FF 3.
[3] Exhibits 2-3.
[4] G.L. c. 32, s.1.
[5] 807 CMR 6.02 (1) https://www.mass.gov/doc/807-cmr-6-regular-compensation/download

as 'regular' given that the name of the club was not specifically referenced in her CBA. In MTRS's view, her additional service was not "set forth in the annual contract", nor did it have "remuneration" specifically "provided" for it, notwithstanding that the CBA specifically stated that any teacher that advised a "club[]" would be remunerated at a specific rate for identified years, which was the compensation Ms. Ducomb received.

We do not find MTRS' argument persuasive. We note that this case turns on precisely the same issue of law we resolved in *Florio v. MTRS,* CR-18-509 (CRAB, ___) and continue to believe the conclusions we drew are correct. In *Florio*, we emphasized that the plain language of Chapter 32's "annual contract" provision, and MTRS's interpretive regulations of it, supported the notion that, when a CBA allots a specific amount of payment for a "club advisor" position, this payment should be considered 'regular compensation.' Like in Mr. Florio's case, Ms. Ducomb's CBA explicitly and specifically "set[s] forth" the "additional service[]" she performed as an advisor to the Environmental Club—namely, the service of advising a "club." Requiring CBAs to list the name of every club a teacher could be compensated for advising, as MTRS requests, would in no way further clarify the type of "services" an advising teacher would be performing given that the fundamental service (advising and supervising a club) would remain the same. This fact is particularly problematic for MTRS's appeal, given that, as the Superior Court held in *Fazio v. CRAB*, the statute and regulations' emphasis on the "services" a teacher provided imports the question of the function of a teacher's work, rather than the specific subgroup of the student body for which that work was performed. Additionally, as we noted in *Florio*, the term "club" is itself sufficiently specific to qualify as having been "set forth in [an] annual contract," given that it refers plainly to a student group united by a particular interest that is recognized by the school and is designated an advising teacher— far from the type of vague, open-ended reference the statute and MTRS's regulations appear to have been intended to prevent.

We continue to hold that, based on the principles of statutory construction mandated to us by the Supreme Judicial Court (SJC), our decision in this case should be controlled primarily by this interpretation of the statute's plain language. The SJC has held that only when a statute's plain language is unclear or ambiguous, or when a plain language reading would lead to "absurd or unreasonable" consequences, should we engage in speculation regarding the Legislature's

intent.[6] Given that we do not find the language currently under dispute to be ambiguous, MTRS would need to show that the pragmatic consequences of an adverse holding would be sufficiently plausible and harmful that the Legislature clearly sought to avoid them when passing the statute, notwithstanding its failure to use any statutory language so indicating. The main such consequence MTRS emphasizes here is the administrative burden the agency would have to undergo to verify that teachers advised a school-approved club. Specifically, MTRS argues that it would be forced to "embark on" an arduous "additional inquiry and verification procedure" to determine "whether the club at issue was approved by the district during the years at issue," citing decisions such as *Kozloski v. CRAB*, which required that an "additional service" and its "compensation…be explicitly set forth in the collective bargaining agreement" and that retirement boards should not have "to sift through a multiplicity of alleged oral or side agreements about which memories might well be hazy."[7] We disagree both with MTRS's contention that such an arduous procedure would be necessary, as well as with its reliance on *Kozloski*.

Beginning with the former, as the Superior Court noted in *Fazio v. CRAB*, "nothing in the [relevant] statute or regulation requires that the salary payable under the terms of an annual contract for additional services… be ascertainable solely from the four corners of the CBA" and MTRS must already routinely violate this standard when verifying that a teacher actually performed the club advising they claim to have done (or almost any other service specified in their CBAs, for that matter), often done by contacting payroll or HR personnel or obtaining other external evidence.[8] It is unclear, then, what, if any, additional verification work MTRS would be required to perform if CBAs were allowed to refer to a "club advisor" position, without

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[6] *Bronstein v. Prudential Ins. Co. of America,* 390 Mass. 701 (1984) and *Sterilite Corp. v. Continental Casualty Co.,* 397 Mass. 837 (1986).

[7] Appellant's brief, p.14 and *Kozloski v. Contributory Retirement Appeal Bd.,* 61 Mass. App. Ct. 783 (2004).

[8] *Fazio v. Contributory Retirement Appeal Board* (Suffolk Superior Court Civil Action 17-664-D). For example, MTRS commonly contacts human resources or payroll personnel at a member's school to confirm that the member properly received longevity payments or step increases, or that they were required to work certain days for which they received compensation. See *Christensen v. Contributory Retirement Appeal Bd.,* 24 Mass. App. Ct. 54 (1997), *Lamkin v. Massachusetts Teachers' Retirement System,* CR-10-804 (CRAB Sept. 30, 2016), and *Whitmore & Hall v. Massachusetts Teachers' Retirement System,* CR-06-0620 and CR-06-0625 (CRAB July 22, 2010).

specifying each eligible club.[9] If a teacher received compensation for having advised a particular club at their school, and their CBA states that they should receive this amount for being a club advisor, MTRS can—notwithstanding the additional verification procedures it would undergo regardless of this decision—count this compensation as regular. MTRS appears to rely in its argument on the assumption that there exist shadow lists of 'approved' and 'unapproved' clubs when Ms. Ducomb's CBA emphasizes that compensation for advising any "club" ("[t]he number of which, it explicitly notes, would be "determined by the Administration and the School Committee,") would count towards teachers' regular compensation. Even were MTRS required to engage in some additional verification measures based on our ruling, it has provided no evidence (other than general statements that the agency has a large workload) that such burdens would add substantially, let alone arduously, to its workload, nor that it could not merely apply its existing verification standards and procedures to this issue without relying on "alleged oral or side agreements." Thus, given that, as the Appeals Court held in *Christensen v. CRAB*, in order to win a claim that a particular interpretation of Chapter 32 is necessary to provide "a safeguard against the introduction into the computations of adventitious payments to employees which could place untoward, massive, continuing burdens on the retirement systems" (as MTRS seeks to here), a party must show "[]sufficient evidence to support a finding that the revised article" would actually "create[]" such "burdens" (rather than merely alleging these burdens might occur), we cannot rule for MTRS here.[10]

Finally, as we noted in *Florio*, to the extent we seek to consider the harms the Legislature likely sought to avoid when passing the "annual contract" provision, we are most concerned by the plausible and significant danger of contravening its intent to meaningfully expand

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[9]As the Superior Court noted in *Fazio*, "even if the CBA said 'Morning Jazz Club Director,' the MTRS would still need proof to identify what that position actually was, whether the services were actually provided in any given year and who provided those services, just as it must when assessing credit for services as a 'Fall Drama Technical Director'— a category that MTRS apparently finds sufficiently specific." *Fazio v. Contributory Retirement Appeal Board* (Suffolk Superior Court Civil Action 17-664-D).

[10] *Christensen v. Contributory Retirement Appeal Board,* 42 Mass. App. Ct. 544 (1997). In *Christensen,* the Appeals Court held that MTRS' determination that certain payments distributed to the plaintiffs were severance payments, rather than longevity payments, was erroneous. In so holding, the Court noted that CRAB's reliance on *Boston Assn. of Sch. Administrators & Supervisors v. Boston Retirement Bd.* was misplaced, given that "there was insufficient evidence to support a finding that the revised article created 'untoward, massive, continuing burdens on the retirement systems.'"

pensionable compensation for teachers to include all "salary" received "under the terms of an annual contract for additional services in such a school." Evaluating both the general structure of G.L c.32, s.1's definition of the term "Wages" and the Legislature's stated goal of "Granting Full Credit Under The Retirement Law For Compensation Earned By Teachers In Public Day Schools Under Annual Salary Contracts" when passing the "annual contract" provision, we emphasized that, given that clubs come in and out of existence far more frequently than CBAs are renewed, requiring CBAs to list the name of every club a teacher can be compensated in their pension for advising would hamstring teachers' ability to earn regular compensation for a function of their profession that both their union and their school board agreed they should perform and for which they were to earn specified remuneration (not to mention serving as a deterrent for the founding of these clubs in the first place).[11] Thus, any remaining concern we held regarding MTRS's administrative burden argument would be more than outweighed by our countervailing concern of unfairly limiting teachers' ability to have payments that their union and the school board intended to be regular and, as such, set out in their CBAs be counted in calculating their retirement benefits.

Turning then to the latter prong of MTRS's appeal, as we held in *Florio*, we find the system's reliance on *Kozloski v. CRAB* to be misplaced given that the question of law in that case is significantly different from the one in the case currently at issue. In *Kozloski*, a science teacher's CBA—which contained no general clause providing a specific amount of compensation for all school club advising—originally contained an explicit reference to his position as advisor to the school's audiovisual club, but later versions of the document (apparently, accordingly to a later joint memorandum of agreement between the teacher's union and the school board, accidentally) excluded it. The Appeals Court held that the total lack of contemporaneous evidence that the CBA should have included the audiovisual club was fatal to Mr. Kozloski's appeal and that requiring MTRS to rely on "alleged oral or side agreements about which memories might well be hazy" was "untenable."[12] Unlike in Mr. Kozloski's case, though, Ms. Ducomb's CBA contains clear contemporaneous evidence that her Environmental Club stipends were intended to be regular compensation and "explicitly set forth" her responsibility as

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[11] H. 2037 (1952), "An Act Granting Full Credit Under The Retirement Law For Compensation Earned By Teachers In Public Day Schools Under Annual Salary Contracts." https://archives.lib.state.ma.us/items/77ce6034-9cc5-4215-b20d-8c17a654212a.

[12] *Kozloski v. Contributory Retirement Appeal Bd.*, 61 Mass. App. Ct. 783 (2004).

advisor to the Environmental Club and the compensation for it by designating a specific rate of compensation for advising all clubs at the school. Ms. Ducomb's CBA thus does not hoist any inappropriate administrative burden on MTRS or introduce any confusion into the pension system and is thus "regular compensation."

Conclusion. We affirm the DALA decision for the reasons set forth above and in our decision *Florio v. MTRS*, CR-18-509 (CRAB March 2025) issued today. Ms. Ducomb's Environmental Club stipends were 'regular compensation' because they were specifically "set forth" in her CBA. ***Affirm***.

SO ORDERED.

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