

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

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ROBERTA DuCOMB  
*Petitioner*

Docket No. CR-23-0111

v.

Date: January 26, 2024

MASSACHUSETTS TEACHERS'  
RETIREMENT SYSTEM  
*Respondent*

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**Appearance for Petitioner:**

Roberta DuComb, *pro se*

**Appearance for Respondent:**

Lori Curtis Krussel, Esq.

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

The Petitioner was paid stipends for her additional service as the school's environmental club advisor and co-advisor. The collective bargaining agreement ("CBA") allowed payments for "club" advisors. That was enough to be considered "set forth" in the CBA and compensable. However, there was nothing in the CBA to allow the full stipend amount to be divided between co-advisors. Thus, full stipends the Petitioner received as the club advisor should be considered regular compensation; the half stipends she received as the club co-advisors cannot.

**INTRODUCTION**

The Petitioner, Roberta DuComb, timely appeals from a decision of the Massachusetts Teachers Retirement System ("MTRS") rejecting her stipends as the environmental club "advisor" and "co-advisor" as regular compensation. The parties agreed the matter could be submitted on the papers under 801 Code Mass. Regs. § 1.01(10)(c). Both the Petitioner and

MTRS submitted a memorandum and exhibits.<sup>1</sup> I now admit them into evidence marked Exs. 1-9.

**FINDINGS OF FACT**

1. The Petitioner was employed as an educator with Quaboag Regional Public Schools (“Quaboag”) beginning in September 2006. (Stipulated Facts.)
2. During her time at Quaboag, the Petitioner was a member of MTRS and of a collective bargaining unit, represented by the Quaboag Education Association (“Union”). (Stipulated Facts; Exs. 2& 3.)
3. Quaboag and the Union were parties to a CBA. The CBA included a stipend schedule for certain extracurricular activities, including “club.” (Exs. 2 & 3.)
4. The stipend amount associated for this extracurricular activity during the school years in question was:

- \$1,110 for 2018-19
- \$1,133 for 2019-20
- \$1,139 for 2020-21
- \$1,156 for 2021-22

(Exs. 2 & 3.)

5. During the 2019-20, and 2020-21 school years, the Petitioner received a stipend for her work as the advisor of the environmental club. During the 2018-2019 and 2021-22 school years, she received a stipend for her work as the co-advisor for the environmental club. The amount of the stipend was the same as provided for in the CBA for a “club” during the years she was the advisor, and half the amount listed in the CBA during the years she was co-advisor. (Ex. 8.)

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<sup>1</sup> The Petitioner’s Exhibits were unmarked. I have marked them Exhibits 6-9.

6. MTRS notified Petitioner that the stipends did not qualify as regular compensation under G.L.c. 32, §1 because “the remuneration and language for the above listed stipends wasn’t written into the contract that was in effect for those years.” (Ex. 6.)

### DISCUSSION

The retirement allowance of a Massachusetts public employee depends, in part, on the amount of “regular compensation” the employee received during certain years. Generally, regular compensation means “wages ... for services performed in the course of employment.” G.L. c. 32, § 1. This definition is designed to capture “recurrent or repeated amounts of compensation not inflated by extraordinary ad hoc payments.” *Boston Ass'n of Sch. Administrators & Supervisors v. Boston Ret. Bd.*, 383 Mass. 336, 341 (1981).

A teacher’s regular compensation includes “salary payable under the terms of an annual contract for additional services.” G.L. c. 32, § 1. For purposes of this rule, an applicable CBA is the “annual contract.” 807 C.M.R. § 6.01. Certain additional services can be included in a teacher’s regular compensation if they are “set forth,” and “remuneration . . . is provided,” in the “annual contract.” 807 Code Mass Regs. § 6.02(1). These requirements help “provide clear records of approved stipends so as to avoid confusion and uncertainty at some later time when retirement boards are called upon to calculate pension benefits and would be in an untenable position if they had to sift through a multiplicity of alleged oral or side agreements about which memories might well be hazy.” *Kozloski v. Contributory Ret. Appeal Bd.*, 61 Mass. App. Ct. 783, 787 (2004).

MTRS first contends that the position of environmental club advisor was not “set forth” in the CBA and the CBA’s “club” listing is too broad and vague. DALA has recently held in substantially similar cases that § 6.02 (1)(a) does not require “exacting specificity” as to the specific club being advised as long as the CBA lists the stipend for club advisor. *Hoppensteadt v.*

*MTRS*, CR-22-0582 (DALA Oct. 27, 2023); *see Beford v. MTRS*, CR-18-493 (DALA Oct. 2021) (School’s cooking club advisor qualified under § 6.02 (1)(a) when paid a stipend for intramural activity); *Florio v. MTRS*, CR-18-509 (DALA May 2021) (EMT club advisor qualified under § 6.02 (1)(a) when the CBA provided for a stipend for club advisors).<sup>2</sup> In essence, a position is set forth if the CBA, without supplementation, could “reassure a reasonable reader that the teacher’s additional services were compensable under the CBA in the amount that the teacher received.” *Hoppensteadt*, *supra* at \*3-4. In *Hoppensteadt*, for example, the CBA’s listing of “club advisors” was specific enough to include stipends paid to the “environmental club advisor.” Here, as in *Hoppensteadt* and progeny, the CBA states that clubs were to be among the additional services provided by teachers. That sufficiently “sets forth” the position of environmental club advisor.

MTRS’s second contention is less straightforward. In the present case there are payments for clubs listed in the CBA. During the school years that the Petitioner was an advisor for the environmental club, she was paid the listed stipend. However, when the Petitioner was a co-advisor, she was paid at half the rate listed for “clubs.” No logical leap is needed to make sense of these numbers: by acting as a co-advisor, she split the stipend evenly with the other co-advisor. However, this amount is not listed among the stipends and there is no provision within the CBA that allows for co-advisors or splitting the stipend. This is not necessarily determinative:

The fact that the CBAs do not expressly provide for [half a] stipend is not necessarily fatal. A CBA does not need to set forth the precise dollar amount of the remuneration if it recites an identifiable methodology for calculating the amount, such that “the amount of [the] employee’s stipend rests in good faith upon an articulable, understandable interpretation of the governing CBA.”

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<sup>2</sup> I acknowledge that *Hoppensteadt* and *Florio* are presently under appeal to CRAB.

*Gorman v. MTRS*, CR-22-0347 (DALA Jan 12, 2024), *citing Bedford*. In *Bedford*, for example, the CBA explicitly provided for the proration of certain extracurricular activities.

However, unlike the CBA at issue in *Bedford*, the CBA here does not explain whether or how bonuses paid to co-advisors can or should be split. As such, while there is a logical line between the stipend and the payment received by the Petitioner for the years that she was “co-advisor,” there is no legal exception to allow it. *Gorman, supra* (CBA simply listing a range of possible stipends, without a formula to compute a stipend within that range, is not enough). Because of this, the two years the Petitioner was “co-advisor” for the environmental club cannot count as regular compensation.

### CONCLUSION AND ORDER

For the foregoing reasons, the stipends that the Petitioner received as the environmental club advisor were regular compensation for the purpose of calculating her retirement allowance. MTRS’s decision to the contrary is therefore **reversed**. However, the stipends she received as a co-advisor do not qualify as regular compensation and therefore MTRS’s decision to exclude those amounts is **affirmed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

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Eric Tennen  
Administrative Magistrate