COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

MICHAEL FLORIO,

Petitioner-Appellee

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,

Respondent-Appellant.

CR-18-509

DECISION

Respondent Massachusetts Teachers' Retirement System (MTRS) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing respondent's decision to exclude stipends petitioner Michael Florio received for serving as an advisor to the Emergency Medical Technician (EMT) Club at the New Bedford High School as 'regular compensation. Magistrate Judithann Burke had previously held an evidentiary hearing on February 4, 2021 and admitted ten agreed-upon exhibits into evidence, before transferring the case to Magistrate Malkiel upon her retirement. Magistrate Malkiel's decision is dated May 7, 2021.

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 - 10 as our own and incorporate the DALA decision by reference. For the reasons discussed below, we affirm.

Background

Michael Florio taught in the New Bedford Public Schools from 1984 until 2018.[1] From 2015-17, he advised the high school's EMT Club.[2] The relevant Collective Bargaining Agreements (CBAs) covering Mr. Florio during this time period included a table of clubs along with the amount of money teachers would be compensated for advising them. The table included a "NOTE" that "Unless otherwise specified, any clubs not listed…will be paid $742.00 effective July 1, 2008, and $757.00 effective July 1, 2010."[3] Mr. Florio received a stipend for the amount specified in the CBA ($757) for advising the EMT Club for each of the years at issue.[4] When Mr. Florio retired in 2018, MTRS refused to classify these stipends as 'regular compensation' given that, even though his CBA made inclusive reference to an amount of compensation for "any clubs not listed," the document did not specifically list the EMT Club, prompting Mr. Florio's appeal.

Discussion

This appeal turns on the sole question of 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, or any extracurricular club not otherwise specified, 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."[5]

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

[1] Finding of Fact 1.
[2] FF 3.
[3] Exhibits 7, 10 (p.32), FF 7.
[4] Exhibits 2, 4, 5, FF 8.
[5] G.L. c. 32, s.1.

in the annual contract; (d) The additional services are performed during the school year."[6] MTRS argues that Mr. Florio's compensation for advising the EMT Club should not qualify as 'regular' given that the name of the club was not specifically referenced in his CBA, meaning that, in MTRS's view, it was not "set forth in the annual contract", nor did it have "remuneration" specifically "provided" for it, notwithstanding that the CBA specifically stated that a teacher advising any club not otherwise identified in the CBA would be remunerated at a specific rate for identified years and that this was in fact the compensation Mr. Florio received.

We do not find MTRS's argument persuasive. At the outset, we note that, per the principles of statutory construction mandated to us by the Supreme Judicial Court (SJC), our analysis is controlled primarily by the statute's plain language. As the SJC has repeatedly emphasized, "statutory language is the principal source of insight into legislative purpose" and "[o]rdinarily, if the language of a statute is plain and unambiguous it is conclusive as to legislative intent."[7] Only when legislative or regulatory language is unclear, or when a plain language reading would lead to "absurd or unreasonable" consequences should we engage in speculation regarding the Legislature's intent, particularly with regard to the public policy benefits of a particular reading—a standard that helps us maintain a strong check against "judicial legislation."[8]

Turning then, to the statute and regulations' plain language, Mr. Florio's CBA does expressly and specifically "set[s] forth" the "additional service[]" he performed as an advisor to the EMT Club—namely, the service of advising a "club." Nowhere do G.L. c. 32's definition of "wages" or MTRS's regulations specify that a significant level of detail regarding a service is required for such service to be considered "set forth in an annual contract"—let alone that a club must be specifically listed to qualify as such. Nor does this interpretation appear plausible given that listing the name of a specific club would not further clarify the type of "services" an advising teacher would be performing. Regardless of the specific identity of the club, the advising teacher will be performing the same fundamental service: supervising and advising a

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[6] 807 CMR 6.02 (1) https://www.mass.gov/doc/807-cmr-6-regular-compensation/download.
[7] *Bronstein v. Prudential Ins. Co. of America, 390 Mass. 701* (1984) and *Sterilite Corp. v. Continental Casualty Co., 397 Mass. 837* (1986).
[8] *Bronstein v. Prudential Ins. Co. of America, 390 Mass. 701* (1984).

school club.[9] Importantly, as the Superior Court noted 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.[10] Moreover, the word "club" is itself a sufficiently specific unit to qualify as having been "set forth in the annual contract." A "club," in the context in which it is used in Mr. Florio's CBA, plainly refers 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.

The (reasoning behind) the Superior Court's decision in *Fazio v. CRAB* (referenced above), is relevant and persuasive to us on this question. Mr. Fazio, a teacher in the Framingham public school system, received stipends for advising his school's Morning Jazz Choir. While Mr. Fazio's CBA did not explicitly reference the choir, it did mention the existence of "5 clubs selected by [the] principal" (of which the jazz choir was one) whose advisors would receive a yearly stipend of $825. In ruling that Mr. Fazio's stipends were "regular compensation," the Superior Court emphasized that the phrase "set forth" meant, according to its plain meaning and dictionary definition, "to give an account or statement of" and that the encompassing reference present in the "5 clubs" clause of Mr. Fazio's CBA met this standard. We find this conclusion—along with the Judge's accompanying holding that MTRS's argument that a duty needed to "be ascertainable solely from the four corners of the CBA" to be eligible for 'regular compensation' was neither supported by any statutory or regulatory language, nor practically reasonable given that the agency needed to look outside the CBA to verify the existence of nearly every "additional service[]" a teacher performed—logical and convincing, and thus rule for Mr. Florio here.

The majority of MTRS's appeal brief, though, focuses on pragmatic considerations—specifically, the claim that permitting schools to designate a compensation amount for advising all 'clubs' at the school would enable "open ended, possibly limitless back-end appointments that

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[9] It is important to note that an interpretation of the law that would require teachers' CBAs to specifically list every sub-type of service an advising teacher provided a club would be plainly absurd given the multiplicity and flexibility of services teachers provide the clubs they advise (including, for example, facilitating meetings, overseeing members' conduct, helping organize group events, and obtaining necessary equipment).

[10] *Fazio v. Contributory Retirement Appeal Board* (Superior Court Civil Action 17-664-D).

would overburden the retirement system and destabilize retirement benefits for all."[11] This claim—which, as noted above, is of only secondary importance to our decision given that, in order to rule for it, we would have to find either that the statutory language was ambiguous, which we do not, or believe that MTRS's policy concern was plausible and significant enough that the Legislature clearly sought to avoid it when passing the statute, notwithstanding its failure to use any statutory language so indicating—is unpersuasive to us for three reasons. First, MTRS has not proven the reasonability of its fear. MTRS has provided no evidence that Massachusetts teachers are, or are likely to begin, deriving undue, excessive amounts of compensation for advising clubs in a way that could, even in the aggregate, significantly burden the retirement system. Further, the hypothetical possibility appellants raise that schools could create an "[in]finite," or even inordinate, number of clubs to boost teacher salaries appears implausible, given the presence of natural checks on the amount of clubs at a school, such as limitations on student interest and time, school resources, and teacher availability. This is particularly true given that the amount of clubs that would need to be created to significantly affect the retirement system would need to be massive since compensation for an advising role typically numbers between 700 and 1200 dollars per year.[12] Notably, as the Appeals Court specifically held in *Christensen v. CRAB*, simply alleging (as MTRS does) 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" is insufficient to win their case where "there [i]s insufficient evidence to support a finding that [a] revised article" would actually "create[]" such "burdens."[13] As MTRS has provided no evidence that widespread abuse of the pension system is probable if CBAs are allowed to designate a particular amount of payment for all club advising —and we do not believe such evidence exists—we cannot rule for them on this claim.

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[11] Appellant's brief, p.4.

[12] For example, in *Fazio v. CRAB* (referenced above), Mr. Fazio's yearly stipend for advising his school's Morning Jazz Choir was $825. In the instant case, Mr. Florio's EMT Club stipends were $757. In *Beford v. MTRS,* CR-18-493 (DALA Oct. 15, 2021)), Ms. Bedford's cooking club stipends were $1,056, $1,072, and $1,096 (DALA Decision, p.4). In *Hoppensteadt v. MTRS,* CR 22-0582 (DALA Oct. 7, 2023), Mr. Hoppensteadt's environmental club stipends were $1,127, $1,138, $1,150 (DALA Decision, p.2).

[13] *Christiansen v. Contributory Retirement Appeal Board* ,42 Mass. App. Ct. 544 (1997).

Further, even if MTRS had presented evidence that it would unreasonably burden the pension system to recognize contract-specified compensation for advising an unnamed school club as "regular compensation," it is unclear to us why ruling for MTRS would properly resolve this harm. We do not see how requiring CBAs to name the clubs a teacher could be compensated for advising would prevent or significantly reduce the chance of fraud since, to the extent MTRS wants to verify that a teacher actually advised a real, school–approved club for which the school had chosen to pay them, it can do so regardless of whether the club for which the teacher worked is named in the contract.[14] Additionally, to the extent MTRS seeks to argue that teachers should not be compensated in their pensions for club advising that they legitimately performed (and that was identified as a specifically remunerated service to the school in their contracts) simply because doing so could theoretically burden the retirement system down the line, we strongly disagree. MTRS has a legal obligation to determine its members' retirement benefits based on the work they performed—as governed by the bounds of Massachusetts law— and we cannot allow the agency to deny individuals money they lawfully earned simply because doing so might not allow for maximal cost-efficiency. Moreover, to the extent excessive club advising ever became a true burden on the retirement system (a possibility for which, as noted above, MTRS has provided no evidence, and that appears highly unlikely), a fix that altered the state's laws themselves, rather than interpreting existing laws contrary to their plain meaning in order to deny current members their gainfully earned benefits, would be the appropriate response.

Finally, any remaining concern we had about the danger of contravening the Legislature's intent to shield the pension system from an undue and overwhelming burden from teachers advising too many clubs would be outweighed by the countervailing, and much more plausible, danger of contravening its intent to meaningfully expand pensionable compensation for teachers to include all "salary" received "under the terms of an annual contract for additional services in such a school." The structure of G.L. c.32, s.1's definition of the term "Wages" is generally restrictive, and the "annual contract" provision enables many payments that would not

[14] MTRS routinely engages in similar verification procedures involving contacting human resources or payroll personnel at a member's school to confirm that, for example, 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 Mas. Ap. 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).

be counted as "regular compensation" for other employees to qualify as such for teachers.[15] Indeed, the Legislature's stated goal in including the "annual contract" provision in Chapter 32 was to "Grant[] Full Credit Under The Retirement Law For Compensation Earned By Teachers In Public Day Schools Under Annual Salary Contracts," indicating that an interpretation of the law that would give less than "full credit" to work referenced in teachers' CBAs would go contrary to the Legislature's intent and vision of the statement that "salary payable under the terms of an annual contract for additional services in such a school… shall be regarded as regular compensation."[16] Requiring CBAs to list the name of every club a teacher can be compensated in their pension for advising would undermine the Legislature's clearly demonstrated intent to compensate teachers for the numerous duties they perform outside of classroom work that are noted, and for which specific remuneration is mandated, in their CBAs. As MTRS appears to concede, extracurricular clubs fluctuate year by year based on factors such as student interest and teacher availability, while CBAs tend to be locked in for significantly longer periods. As such, requiring a CBA to name every club a teacher can be compensated 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, a result seemingly directly at odds with the Legislature's intent in adopting the "annual contract" provision. Further, such an interpretation of the "annual contract" provision would serve as a serious deterrent to students and teachers founding new clubs, particularly those that reflect a niche student interest or that might otherwise not be around for decades, since teachers could not receive retirement credit for compensation for any clubs not specifically identified in the most recent CBA.

MTRS cites in support of its position the Appeals Court's decision in *Kozloski v. CRAB*. We find such a reliance misplaced. 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

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[15] These payments include stipends for being a Master Schedule Builder (*Riker v. Teachers' Retirement Board*, CR-97-1397 (CRAB, May 12, 1999), a Drug Education Director (*Boisseau v. CRAB and Teachers' Retirement Board*, Docket No. No. 97-5217-H), and a Supervising Program Leader (*Smith v. Teachers' Retirement System*, CR-03-1031 (DALA Oct. 11, 2007)).

[16] See 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

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. Allowing Mr. Kozloski's audiovisual club advising stipends to be considered regular compensation without any contemporaneous evidence and based solely on the later word of his union and school board, the Appeals Court concluded, would be unreasonable given that such a decision would go contrary to the Legislature's intent to prevent MTRS from having "to sift through a multiplicity of alleged oral or side agreements about which memories might well be hazy" and to generally ensure "compensation" is "explicitly set forth in the collective bargaining agreement."[17] This ruling is quite reasonable and significantly distinct from the matter of law currently at issue. Unlike in Mr. Kozloski's case, Mr. Florio's CBA "explicitly set forth" his responsibility as advisor to the EMT Club and the compensation for it by designating a specific rate of compensation for advising all clubs at the school other than those for which it had set out specific compensation rates. Mr. Florio'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. Mr. Florio's EMT Club stipends were 'regular compensation' because they were specifically "set forth" in his CBA. ***Affirm***.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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

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