

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Barry Galvin,
Petitioner,

Docket No.: CR-25-0767

Dated: September 4, 2026

v.

**Middlesex County Retirement System and
Public Employee Retirement Administration
Commission,**
Respondents.

Appearances:

For Petitioner: Barry Galvin (pro se)

For Middlesex County Retirement System: Thomas F. Gibson, Esq.

For Public Employee Retirement Administration Commission: Daniel Taylor, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

As part of a renegotiated collective bargaining agreement, a fire department granted pay increases to all of its employees. The department gave a commensurate raise to its deputy chief, the petitioner in this appeal, while simultaneously excluding the deputy chief position from the employees' bargaining unit. In the circumstances, the petitioner's pay raise "result[ed] from . . . an employer's systemic wage adjustments." G.L. c. 32, § 5(2)(f). The pertinent sums therefore counted as "regular compensation" for purposes of calculating the petitioner's retirement allowance.

DECISION

Petitioner Barry Galvin appeals from a decision of the Middlesex County Retirement System (board) reducing his regular compensation for retirement purposes under the anti-spiking provision of G.L. c. 32, § 5(2)(f). The Public Employee Retirement Administration Commission (PERAC) was joined as a respondent on the board's motion. With the parties'

assent, the appeal was submitted on the papers under 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-17.

Findings of Fact

I find the following facts.

1. Galvin served as a firefighter in the North Reading fire department. He became the deputy chief of the department in 2011. Over the years, all of the department's firefighters except for the chief were members of the same union, which negotiated serial collective bargaining agreements with the town. (Exhibits 1, 3, 4.)

2. Each CBA prescribed the salaries of four ranks: firefighters, lieutenants, captains, and the deputy chief. A CBA effective in 1996-1999 prescribed a "rank differential"—i.e., a pay increase from each rank to the next—of 10.5%. A CBA effective from July 2020 to June 2024 implemented the same essential scheme through detailed pay charts. For example, as of July 2023, employees with maximal longevity were entitled to the following hourly rates: \$33.73 as firefighters; \$37.24 as lieutenants (an increase of 10.4%); \$41.11 as captains (an increase of 10.4%); and \$45.48 for the deputy chief (an increase of 10.6%). (Exhibits 3, 4.)

3. Each CBA entitled the department's employees to annual pay raises described as cost-of-living adjustments (COLA increases). As pertinent here, under the CBA effective from July 2020 to June 2024, the employees became entitled in July 2023 to a COLA increase of 2.5%. (Exhibit 4.)

4. The town and the union negotiated a new CBA during 2024, signing it in October of that year. Galvin was not involved in the negotiations. The new agreement covered the period from July 2024 to June 2027. It granted raises to each of the department's ranks. It also

made changes to the department's staffing arrangements: the department was to appoint four new lieutenants—a rank that apparently had gone unfilled over the years; and upon the lieutenants' arrival, the salary of the department's captains was to increase by 8%.

(Exhibits 2, 5, 6, 14.)

5. The town and the union executed a separate memorandum of agreement about certain matters. Among other things, they agreed to create the new position of “day officer” at the rank of lieutenant (with an extra stipend). They also agreed to exclude the deputy chief position from the union's bargaining unit as of early 2025. They agreed that they would first collectively negotiate the “initial wage and job description” of the newly non-unionized position. (Exhibit 2.)

6. After several months of subsequent negotiations, the town and the union agreed that the new starting salary of the deputy chief position would be \$157,600 per year. Although the exact math is not in the record, the agreed-upon sum was meant to exceed the annual pay of captains with maximal longevity, after their forthcoming 8% pay bump, by approximately 10.5%. (Exhibits 2, 5.)

7. Traditionally, fire-prevention efforts made up a significant portion of the deputy chief's job. The town and the union agreed to reassign this responsibility to the newly appointed day officer. The newly negotiated description of the deputy chief's job instead emphasized the role's operational aspects, such as hiring and supervising department personnel, constructing long-term policies and priorities, communicating with the media, and administering the department's budgets. (Exhibits 7-10.)

8. Once the deputy chief position was removed from the bargaining unit, Galvin and the town negotiated an individual employment agreement for him. They agreed on an annual salary of \$158,000, namely \$400 above the “starting” salary negotiated between the town and the union. The agreement took effect in April 2025. (Exhibit 12.)

9. Galvin retired for superannuation effective in September 2025. His replacement as deputy chief was hired at a starting salary of \$157,600, namely the same starting salary negotiated between the town and the union. (Exhibit 16.)

10. The board analyzed Galvin’s last years of regular compensation for purposes of calculating his retirement allowance. In his third-to-last and next-to-last years of work, Galvin’s regular compensation was approximately \$123,000 and \$128,000, respectively. In his last year of work, Galvin’s regular compensation was approximately \$144,000. That sum combined six months of pay under Galvin’s individual agreement with six earlier months under the expiring CBA. (Exhibits 1, 4, 12.)

11. The board concluded that, for purposes of its calculations, it was required to adjust Galvin’s final year of regular compensation downward under the anti-spiking provision of G.L. c. 32, § 5(2)(f). In December 2025, the board stated its conclusions in a formal decision letter. In January 2026, PERAC issued its own letter agreeing with the board’s analysis. In the meantime, Galvin timely appealed. (Exhibit 1; administrative record.)

Analysis

The retirement benefits of each Massachusetts public employee are derived from only a few years’ worth of “regular compensation.” *See* G.L. c. 32, § 5(2)(a). Under this arrangement, sharp pay increases during an employee’s pension-facing years tend to produce benefits

disproportionate to the employee's career-long contributions. A statute responsive to this concern provides that, for purposes of the benefit calculations, an employee's "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 per cent." *Id.* § 5(2)(f).

This rule is tempered by a substantial set of exceptions. Each exception describes a category of pay "increase" to which the rule "shall not apply," *id.*, meaning that the amount of the increase will count as regular compensation notwithstanding its effect on the total, retirement-determining figures.¹ The primary exceptions are:

an increase in [pay] that results from an increase in hours of employment, from overtime wages, from a bona fide change in position, from a modification in the salary . . . negotiated [collectively] for bargaining unit members . . . , from an increase in salary for a member whose salary amount is specified by law, from a bona-fide increase in salary related to eliminating wage differentials . . . or from an employer's systemic wage adjustments

Id. Roughly speaking, these rubrics involve objective circumstances that reduce the likelihood that a pay spike resulted from "artificial inflation." *Willette v. Somerville Ret. Bd.*, No. CR-20-282, 2023 WL 11806174, at *6 (Contributory Ret. App. Bd. Nov. 16, 2023). *See Stanton v. State Bd. of Ret.*, No. CR-18-399, 2023 WL 11806178, at *2 (Contributory Ret. App. Bd. Oct. 11, 2023).

¹ On this plain reading, the statute allows for the possibility that the calculations will "not include" one or more of an employee's pay increases in a given year, even as the rule will "not apply" to one or more other pay increases. § 5(2)(f). PERAC expresses the contrary view, namely that whenever "the anti-spiking provision . . . is triggered," the calculations are "limited to 110% of the average of the two preceding years." The point—which came up in connection with Galvin's six months of pay under the expiring CBA, including its final COLA increase—is moot given the remainder of this decision's analysis.

Galvin's individual employment agreement, effective during his last six months of work, caused his final year of pay to exceed the average of the two preceding years by more than 10%. The question presented is whether this pay increase is covered by any of § 5(2)(f)'s exceptions. On balance, the answer is yes: the case lands within the exception for "an increase in [pay] that results . . . from an employer's systemic wage adjustments." *Id.*²

The exception for systemic wage adjustments was added to the statute by St. 2024, c. 141, § 3. It has not yet been analyzed by the courts or by CRAB. Under several DALA decisions and a PERAC memorandum, a wage adjustment is "systemic" when it "tackle[s] a general, collective issue, as opposed to individual facts," by adjusting salaries "across an employer or segment of the employer." *Mahoney v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-24-683, 2026 WL 1931807, at *4 (Div. Admin. Law App. June 26, 2026); *Coelho v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-24-498, 2026 WL 714130, at *2 (Div. Admin. Law App. Mar. 6, 2026); *Celona v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-23-395, 2024 WL 4815149, at *2-3 (Div. Admin. Law App. Oct. 25, 2024); PERAC Memo No. 21 / 2024 (Aug. 14, 2024).

With these authorities in mind, Galvin's final increase in pay resulted from a systemic wage adjustment. The wage-adjustment effort was triggered by the expiration of the

² Galvin's exceptional pro se brief points less compellingly to two other exceptions. The causal relationship between his pay increase and those of the "bargaining unit members" arguably may have been too attenuated to trigger the exception for collectively bargained raises. See *Solomon v. Methuen Ret. Bd.*, No. CR-21-371, 2023 WL 6037354, at *7 (Div. Admin. Law App. Sept. 8, 2023); *Levine v. State Bd. of Ret.*, No. CR-17-224, 2022 WL 16921436, at *5 (Div. Admin. Law App. July 15, 2022). Likewise, even assuming that Galvin underwent a qualifying "change in position" when the department appointed a day officer, see *Stanton*, 2023 WL 11806178, at *3, the record does not disclose a causal connection between that change in position and Galvin's contemporaneous pay raise.

department's CBA for 2020-2024. The wage-adjustment process revolved around negotiations between the firefighters' union and their employer. As part of the process, every employee in the department received a raise; four employees received the extra raises associated with appointments as lieutenants; and the department's captains received extra raises of 8%. On a fair and commonsensical view of the facts, the pay raise awarded to the newly non-unionized deputy chief was part of the fabric of the same project. The city agreed that the deputy chief's pay should rise commensurately with the pay of the lower ranks, preserving the traditional rank differential of approximately 10.5%. The new "starting" deputy chief salary remained in place when Galvin retired. Apart from his individually negotiated extra \$400 per year,³ Galvin's final pay raise was not rooted in his "individual facts"; the raise flowed from a "collective issue" involving salary increases "across [the] employer." *Mahoney*, 2026 WL 1931807, at *4 (quoting *Coelho*, 2026 WL 714130, at *2).

Conclusion and Order

In view of the foregoing, Galvin's regular compensation for retirement purposes does not need to be adjusted downward under G.L. c. 32, § 5(2)(f). The board's contrary decision is REVERSED.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals

³ With Galvin's individual contract out of the analysis, it is reasonably clear that no anti-spiking adjustment is triggered either by his six months' worth of the \$400 annual sum or by his six months of pay with the benefit of the July 2023 COLA increase. At any rate, the respondents do not suggest otherwise.