

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kim Giampietro,
Petitioner

v.

Docket No. CR-22-0382

Date: Apr. 26, 2024

State Board of Retirement,
Respondent

Appearance for Petitioner:

Kim Giampietro, Esq., *pro se*

Appearance for Respondent:

Jennifer Hunt, Esq.
State Board of Retirement
One Winter Street
Boston, MA 02108-4747

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The State Board of Retirement properly applied the “anti-spiking” provision of G.L. c. 32, § 5(2)(f) when it reduced Petitioner’s regular compensation in 2019-2020 for the purpose of calculating her retirement allowance.

DECISION

Petitioner Kim Giampietro timely appeals under G.L. c. 32, § 16(4). She seeks to overturn Respondent State Board of Retirement’s application of the anti-spiking law, G.L. c. 32, § 5(2)(f), to the calculation of her retirement allowance. The Board concluded

that Ms. Giampietro's regular compensation for the pay period of 2019-2020 must be reduced.

On August 15, 2023, DALA informed the parties that Ms. Giampietro's appeal appeared to be one that could be resolved on written submissions under 801 CMR 1.01(10)(c) and ordered them to submit legal memoranda and proposed exhibits. Neither party objected to the magistrate's order. On September 13, 2023, the Board filed a memorandum and six attachments, labeled R1 through R6. On October 16, 2023, Ms. Giampietro filed a memorandum and two attachments, which I have labeled P1 and P2. On December 26, 2023, the Board filed a reply brief and attached the same exhibits as before plus two additional ones, which were labelled R7 and R8. I hereby admit these exhibits into evidence as proposed. (Exs. P1-2, R1-8.) I have also entered Ms. Giampietro's appeal letter and mailing envelope into evidence. (Ex. P3.)

FINDINGS OF FACT

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

1. Kim Giampietro entered state service on or around June 18, 1980. From May 30, 1987, until her retirement on April 23, 2022, Ms. Giampietro was employed with the Committee for Public Counsel Services (CPCS). (Ex. R1.)
2. Ms. Giampietro was a member of the State Retirement System at all times relevant to this appeal. (Ex. R1.)
3. At the time of her retirement and all times relevant to this appeal, Ms. Giampietro was a trial attorney in CPCS's public defender division. (Exs. R1, P2.)
4. On January 6, 2019, CPCS increased the salaries of all of its staff. (Exs. P1, P2.)

5. Ms. Giampietro's salary for the period of April 24, 2021, through April 23, 2022, was \$104,929.15. (Ex. R4.)

6. Ms. Giampietro's salary for the period of April 24, 2020, through April 23, 2021, was \$103,500.00. (Ex. R4.)

7. Ms. Giampietro's salary for the period of April 25, 2019, through April 23, 2020, was \$102,839.73. (Ex. R4.)

8. Ms. Giampietro's salary for the period of April 25, 2018, through April 24, 2019, was \$90,150.78. (Ex. R4.)

9. Ms. Giampietro's salary for the period of April 25, 2017, through April 24, 2018, was \$83,927.38. (Ex. R4.)

10. To determine Ms. Giampietro's yearly retirement allowance, the Board used the average annual rate of regular compensation of the last three years that she was working (2019-2020, 2020-2021, and 2021-2022), which were also her highest annual salary years. (Ex. R4.)

11. The Board determined that Ms. Giampietro's 2019-2020 regular compensation of \$102,839.73 exceeded the average of the prior two years (\$87,039.08) by more than 10% (110% of the prior two-year average being \$95,742.99). The Board applied the anti-spiking provision to the year 2019-2020, thus reducing by \$7,096.74 the salary used to calculate her benefit. (Ex. R4.)

12. On August 24, 2022, the Board informed Ms. Giampietro that it was required to apply the anti-spiking provision to the calculation of her retirement benefit. (Ex. R7.)

13. On September 6, 2022, Ms. Giampietro timely appealed the Board's decision. (Ex. P3.)

CONCLUSION AND ORDER

For members like Ms. Giampietro, who were members of a retirement system before April 2, 2012, § 5(2)(a) directs that a member’s yearly retirement allowance be calculated based on the highest average three-year period of regular compensation. For Ms. Giampietro, these were the years 2019-2020 at \$102,839.73; 2020-2021 at \$103,500.00; and 2021-2022 at \$104,929.15.

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.

The analysis here is straightforward, as the mathematical calculations are not in dispute. Ms. Giampietro’s salary from April 25, 2019, through April 23, 2020, was \$102,839.73. The average regular compensation for the two prior years, April 25, 2017, through April 24, 2019, was \$87,039.08. A 10% increase to this average would be \$95,742.99. Accordingly, the Board reduced the salary in the calculations by \$7,096.74.

There are a number of defined exceptions to the anti-spiking provision.¹ Ms. Giampietro does not argue that any of these apply. Instead, she argues that applying the anti-spiking law to her in these circumstances is contrary to the intent of the law. Her increase in salary came from an agency-wide increase to salaries, from which she infers

¹ The exceptions, listed at § 5(2)(f), are raises that result:

from an increase in hours of employment, from overtime wages, from a bona fide change in position, from a modification in the salary or a salary schedule negotiated for bargaining unit members under chapter 150E, from an increase in salary for a member whose salary amount is specified by law

that there was no intent to artificially inflate her individual salary. She claims that the anti-spiking provision is intended to stop public employees from artificially inflating their compensation to receive larger pensions.

While this description of the legislature’s intent may be accurate, the method that it chose to achieve this policy goal was to impose a mechanical limit to increases in salary by comparing it to the average salary for the preceding two years, the evident purpose of which is its ease of application. An intent to inflate a soon-to-be retiree’s pension is not required for it to take effect. The provision’s limits are imposed only if the limits are exceeded and none of the enumerated exceptions apply. *See Lam v. MTRS*, CR-17-170 (DALA Feb. 26, 2021); *see also Stanton v. State Bd. of Retirement*, CR-18-399 (DALA Aug. 20, 2021); *Dohan v. State Bd. of Retirement*, CR-22-0104 (DALA Dec. 8, 2023). To the extent that Ms. Giampietro seeks equitable relief, DALA cannot provide equitable relief contrary to specific statutory language. *See Early v. State Bd. of Retirement*, 420 Mass. 836 (1995).

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

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Apr. 26, 2024