

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Helen Gorman,**  
Petitioner

v.

Docket No. CR-22-0347

**Massachusetts Teachers' Retirement System,**  
Respondent

**Appearance for Petitioner:**

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**Appearance for Respondent:**

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**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF DECISION**

The Massachusetts Teachers' Retirement System ("MTRS") declined to treat the full amount of certain stipends received by the Petitioner as regular compensation. MTRS's decision is affirmed. Although the stipends were for an "additional service" set forth in the applicable collective bargaining agreements ("CBAs"), these CBAs did not set forth the remuneration associated with this service or provide a methodology through which the stipend could be determined. Instead, the CBAs listed the range of actual stipends received in prior years for the position. Even if this range constituted a "setting forth" of the remuneration, the Petitioner's stipend was above this range, and the MTRS reasonably capped the includable amount of the Petitioner's stipend to the upper end of the stated range.

## **DECISION**

This appeal concerns a decision by the MTRS declining to include the entire amounts of certain stipends received by the Petitioner, Helen Gorman, for purposes of calculating her superannuation retirement benefit.

This appeal was submitted on the papers. 801 CMR § 1.01(10)(c). I admit into evidence Petitioner's Exhibits 1-12.

## **FINDINGS OF FACT**

Based on the documentary evidence, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Gorman worked for the Beverly Public School System for twenty-one years as a high school adjustment counselor. For seventeen of those years, she also served as an (and often the only) equity coordinator at the high school. (Exhibit 5).
2. For the time periods relevant to this appeal, Ms. Gorman's employment was governed by two CBAs between the Beverly Teachers' Association and the Beverly School Committee: the September 1, 2017 – August 31, 2020 CBA ("the 2017 CBA") and the September 1, 2020 – August 31, 2021 ("the 2020 CBA"). (Exhibits 8 & 9).
3. The relevant portions of the 2017 and 2020 CBAs, which contain identical language regarding the equity coordinator stipend, recite a list of stipend positions, including the position of equity coordinator. They state that these stipend positions "are primarily funded through grants. As such the amounts are subject to funding levels which may vary from year [to year]. The parties

- recognize that this variation exists and that exact stipends will therefore be determined on an annual basis.” (Exhibits 8 & 9).
4. The 2017 and 2020 CBAs further note that the “[a]ctual stipends for previous years are shown below to give some indication of stipend amounts.” The accompanying chart lists the stipend for equity coordinator as having been between \$200 and \$2,050 for the 2017/2018, 2018/2019, and 2019/2020 school years. (Exhibits 8 & 9).<sup>1</sup>
  5. In 2016, the stipend range for the equity coordinator position had been raised from a range of \$200- \$2050 to a range of \$700-\$3,000. The failure of the 2017 and 2020 CBAs to reflect this increase was apparently an oversight. (Exhibit 6).
  6. For the 2018/2019 through the 2021/2022 school years, Ms. Gorman received a letter from the Superintendent confirming her appointment to the equity coordinator position and advising that she would receive a stipend of between \$700 to \$3,000, to be paid in June. The stipend depended on her caseload (the number of equity investigations completed during the school year). (Exhibit 7).
  7. The stipend amount was also affected by the school at which the equity coordinator served. High school equity coordinators had more complex investigations and a greater number of them, so they tended to receive payment at the higher end of the range as compared to, say, elementary school equity coordinators. (Exhibits 5 & 6).
  8. Ms. Gorman consistently received a stipend of \$3000 since 2016. (Exhibit 5).

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<sup>1</sup> The 2017 CBA was executed in January 2018 (Exhibit 8), so it is not entirely clear how the stipends listed for the 2019/2020 school year could represent the “actual” stipend for a “previous” year.

9. The increased stipend range of \$700-\$3,000 was set forth in the 2021-2024 collective bargaining agreement (“2021 CBA”). (Exhibit 6).
10. In a letter dated August 5, 2022, the MTRS advised Ms. Gorman that it would not include the full \$3,000 stipend she received for the 2019/2020 and 2020/2021 school years because that amount was not listed in the CBA and was therefore not includable “regular compensation” as defined in G.L. c. 32, § 1. Instead, the MTRS included \$2,050 for the 2019/2020 and 2020/2021 school years because those amounts were listed in the CBA. MTRS also included \$3,000 for 2021/2022 because that amount was recited in the 2021 CBA. (Exhibit 1).
11. Ms. Gorman timely appealed this decision. (Petitioner’s notice of appeal to DALA).

### **CONCLUSION AND ORDER**

When a member of MTRS retires, she is entitled to a superannuation retirement allowance based in part on the “average annual rate of regular compensation received by such member during any period of three consecutive years of creditable service for which such rate of compensation was the highest.” M.G.L. c. 32, § 5(2)(a). The term “regular compensation” is defined principally as “wages ... for services performed in the course of employment.” G.L. c. 32, § 1. “Wages,” in turn, are the employee’s “base salary or other base compensation.” *Id.* Base compensation is remuneration for an employee’s “regular job” or “core duties.” *Marletta v. MTRS*, CR-10-347, at \*4, \*6 (CRAB Mar. 31, 2016).

For public school teachers, however, regular compensation also includes “salary payable under the terms of an annual contract for additional services in such school.”

G.L. c. 32, § 1. Under MTRS regulations, the annual contract must identify the additional services, 807 CMR 6.02(1)(a)(1), as well as the “remuneration for these services.” 807 CMR 6.02(1)(a)(3). For teachers covered by a collective bargaining agreement, the “annual contract” is the collective bargaining agreement. 807 CMR 6.01.

I do not understand Ms. Gorman to be arguing that her equity coordinator stipends constituted base salary or base compensation. In any case, the record before me does not suggest that Ms. Gorman’s service as equity coordinator was her “main full-time job.” *Contrast Marletta, supra*, at 4 (stipend for service as Dean of Academic Affairs was “base compensation” because that was member’s primary position); *Moresi v. MTRS*, CR-07-410, at 9 (DALA Aug. 5, 2011) (pay for work as an administrative assistant was regular compensation, even if it was not identified in annual contract, because the work was “a full time job, not an additional duty”).<sup>2</sup>

I take Ms. Gorman’s primary argument to be that her stipends should be includable as payment for additional services because they are set forth in the 2017 and 2020 CBAs. The fact that the CBAs do not expressly provide for a \$3,000 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.” *Beford v. MTRS*, CR-18-493, 2021

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<sup>2</sup> To choose one example: a letter from Superintendent Suzanne Charochak written in support of Ms. Gorman’s appeal describes her as “an adjustment counselor who recently retired,” rather than as an “equity coordinator.” (Exhibit 6). Nothing in the record would support a suggestion that equity coordinator was Ms. Gorman’s primary job (an observation that is not intended to minimize its value or importance). As the point has not been argued, it requires no additional development.

WL 9583593, at \*5 (DALA Oct. 15, 2021). For example, in *Beford*, the collective bargaining agreement premised the stated stipend amounts on activities lasting ten weeks, but provided that activities that lasted shorter periods of time would be prorated. *Id.* at \*1-2.

Here, the applicable CBAs do not set forth a formula or methodology for determining the stipend amount for the equity coordinator position. The statement that the stipend “amounts are subject to funding levels which may vary from year [to year],” (Exhibits 8 & 9), is not a formula for determining the stipend amounts. Moreover, the stipend amount for the equity coordinator position was, in practice, based (at least in part) on the caseload. (Exhibits 5-7). Whether or not this would count as a formula, it is not one recited in the CBAs.

The CBAs do recite a stipend range of between \$200 and \$2,050 for “[a]ctual stipends for previous years” to give “some indication” of stipend amounts. (Exhibits 8 & 9). Unfortunately, this “indication” does not provide a methodology for determining whether a member is entitled to a stipend of \$200, \$2,050, or some amount in between --- let alone an amount outside of that range.<sup>3</sup> Accordingly, MTRS’s decision to decline to include the full amount of the \$3,000 stipend for the 2019/2020 and 2020/2021 school years was reasonable.

One final note. I accept the proposition that the failure to include the increased stipend range in the 2017 and 2020 CBAs was probably an oversight. Unfortunately, the

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<sup>3</sup> Because the CBAs do not provide a methodology for determining the stipend amounts, it is not obvious to me that the 2017 and 2020 CBAs set forth *any* amount for purposes of inclusion in the superannuation benefit calculation --- even the \$2,050 amount ultimately included by the MTRS for the 2019/2020 and 2020/2021 school years. As the MTRS has decided to include the \$2,050, however, there is no need to resolve that question.

reason *why* some position or stipend amount was omitted from a collective bargaining agreement is ultimately irrelevant; what matters is whether it has, in fact, been omitted.

*Kozloski v. CRAB*, 61 Mass. App. Ct. 783, 789 (2004).

For the reasons stated above, the MTRS's decision AFFIRMED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***/s/ Timothy M. Pomarole***

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Timothy M. Pomarole  
Administrative Magistrate

Dated: January 12, 2024