

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Diana Gross,
Petitioner,

No. CR-22-0156

Dated: February 16, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearance for Petitioner:
Kathryn Waters, Esq.

Appearance for Respondent:
Salvatore Coco, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a teacher, received extra pay for her work as an “enrichment club advisor.” That pay was calculated on an hourly basis. It therefore was not “salary” within the meaning of the provision that draws “salary . . . for additional services” into a teacher’s regular compensation for retirement purposes. G.L. c. 32, § 1.

DECISION

Petitioner Diana Gross appeals from a decision of the Massachusetts Teachers Retirement System excluding her pay for work as an “enrichment club advisor” from her regular compensation for retirement purposes. The appeal was submitted on the papers under 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-10.

Findings of Fact

I find the following facts:

1. Ms. Gross served as a Massachusetts teacher from 2001 until 2021, ending her career with the Monomoy Regional Middle School. She is now retired for superannuation.

(Exhibits 8-10.)

2. The parties agree that the schools years 2017-2018 (2018) and 2018-2019 (2019) are among the years to be considered in the calculation of Ms. Gross's retirement allowance.

According to the employer's portion of Ms. Gross's retirement application, she was paid in both of those years for work as an "enrichment club advisor." The pertinent pay amounts were \$3,400 in 2018 and \$2,448 in 2019. (Exhibits 9, 10.)

3. The work that Ms. Gross actually performed as an "enrichment club advisor" consisted of leading chorus-related activities. School documentation identifies nine such activities, bearing specific names such as "All Cape & Islands Chorus," "Advanced Chorus I," and "Advanced Chorus II." (Exhibit 8.)

4. The collective bargaining agreements governing Ms. Gross's work specified sums to be paid to teachers for "after school clubs." These sums were \$500 in 2018 and \$510 in 2019. The agreements added the note: "for ten (10) one (1) hour sessions." (Exhibits 6-7.)¹

5. The Monomoy school system interpreted the pertinent CBA provisions as "a point of reference." A school system administrator wrote to MTRS that, with authorization from the principal, teachers could "create the length/frequency of the club they want to offer." The administrator explained that, in the school system's view, the CBAs yielded "\$50/\$51/hr rates."

¹ The agreements also named sums that would be paid to the "chorus director" of each school. In the middle school, those sums were \$2,550 in 2018 and \$3,113.92 in 2019. Ms. Gross's "enrichment club" pay was not derived from these figures. (Exhibits 6-8.)

She added that teachers who “run the program longer . . . can [be] and are paid for each 1 hour session.” (Exhibit 8.)

6. Ms. Gross’s enrichment club pay was calculated in accordance with the foregoing approach. In 2018, the school system viewed Ms. Gross as running “after school clubs throughout the year at a \$50/hr rate.” The same was true for 2019, except that the rate was “\$51/hr.” Ms. Gross’s activities thus yielded the totals described in her retirement application through the following arithmetic:

Year	Club	Hours	Rate	Amount
2018	Southeast Districts—Chorus	17	\$50/hr	\$850
	Improvisation	17	\$50/hr	\$850
	SE Junior Districts and All Cape	17	\$50/hr	\$850
	All Cape & Islands Chorus	17	\$50/hr	\$850
			Annual total:	\$3,400
2019	Advanced Chorus AM	10	\$51/hr	\$510
	Advanced Chorus PM	8	\$51/hr	\$408
	Advanced Chorus I	10	\$51/hr	\$510
	Advanced Chorus II	10	\$51/hr	\$510
	Junior SE Districts	10	\$51/hr	\$510
			Annual total:	\$2,448

(Exhibit 8.)

7. For purposes of calculating Ms. Gross’s retirement allowance, MTRS declined to treat her “enrichment club” pay as “regular compensation.” Ms. Gross timely appealed.

(Exhibits 1-3.)

Analysis

The retirement allowance of a Massachusetts public employee is driven by the employee’s “regular compensation” in certain years. G.L. c. 32, § 5. Since 2009, regular

compensation means “wages . . . for services performed in the course of employment.” § 1. In turn, wages mean an employee’s “base salary or other base compensation.” *Id.*

In the special case of teachers, wages also include “salary payable under the terms of an annual contract for additional services.” § 1. The parties agree that Ms. Gross’s “enrichment club” work counted as “additional services.” *See generally Welsh v. MTRS*, No. CR-22-402, 2023 WL 6037359 (DALA Sept. 8, 2023). They focus their submissions on whether her pay for those services was “payable under the terms of an annual contract.” § 1.

It is not necessary to resolve that question, however.² In *Hallett v. Contributory Ret. Appeal Bd.*, 431 Mass. 66 (2000), the Supreme Judicial Court ascribed a specialized meaning to the term “salary” in the phrase “salary . . . for additional services.” The teacher in that case was paid an hourly rate for teaching driver’s education. The Court declined to view his pay as salary, holding that salary means “fixed periodical compensation . . . paid periodically as by the year, month, or other fixed period . . . rather than [by] the number of days or hours worked.” *Id.* at 68-69. On *Hallett*’s analysis, the archetype of salary is a “fixed annual . . . amount of pay,” and the archetype of non-salary is “hourly payments.” *Id.* at 68-70.³

² MTRS probably has the better of the argument, for essentially the reasons stated in *Ducomb v. MTRS*, No. CR-23-111, 2024 WL 413693, at *3 (DALA Jan. 26, 2024) (with respect to the CBAs’ failure to authorize stipend proration), and *Kozloski v. Contributory Ret. Appeal Bd.*, 61 Mass. App. Ct. 783, 788 (2004) (with respect to the suggestion that the CBAs’ deficiencies were unintentional).

³ Writing in 2000, the *Hallett* Court drew a contrast between “salary” and “wages,” describing the latter as “normally based on an hourly rate.” 431 Mass. at 69. Since 2009, the retirement statute defines “wages” very differently (as described above). To an extent, *Hallett*’s holding also may cut against the Legislature’s evident conception of the “additional services” rule as a teacher-specific *exception* to regular compensation’s usual demands. *Compare Hallett*, 431 Mass. at 70, *with Welsh*, 2023 WL 6037359, at *2 & n.1, *6 n.5.

With these principles in mind, Ms. Gross’s enrichment club pay was not “salary.” The sums she received were derived from hourly rates, namely “\$50/hr” in one year and “\$51/hr” in the other. *See supra* pp. 2-3 (¶¶ 5-6). The durations of her programs and the resulting total pay amounts were not predetermined. Ms. Gross was permitted to “run the program longer,” and thereby to be compensated for additional hours. *Id.* She in fact supervised programs of varying lengths (8-17 sessions) and pay amounts (\$408-\$850). *Id.* In short, Ms. Gross was paid in accordance with the “number of hours she worked in practice,” not “on a global basis.” *Beford v. MTRS*, No. CR-18-493, 2021 WL 9583593, at *3 (DALA Oct. 15, 2021). MTRS thus correctly declined to treat the pertinent sums as regular compensation.

Conclusion and Order

In view of the foregoing, MTRS’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate