

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Maureen Heiberger,
Petitioner,

No. CR-24-0561

Dated: April 25, 2025

v.

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

Appearances:

For Petitioner: Maureen Heiberger (pro se)

For Respondent: Ashley Freeman, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a teacher, supervised an extracurricular club. The pertinent collective bargaining agreement did not prescribe the sums payable to the petitioner for that service. Those sums therefore were not within the petitioner's regular compensation for retirement purposes.

DECISION

Petitioner Maureen Heiberger appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) excluding certain pay amounts from the calculation of her regular compensation for retirement purposes. The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-18.

Findings of Fact

I find the following facts.

1. Ms. Heiberger is a teacher by profession. She worked in the Foxborough public schools from 2013 to 2024, when she retired for superannuation. (Exhibit 2.)
2. The period pertinent to the calculation of Ms. Heiberger's retirement allowance includes the school years 2020-2024. During each of those years, on top of her regular teaching

duties, Ms. Heiberger also served as the faculty advisor to a mindfulness and meditation club (meditation club). She was paid the following sums for that responsibility: \$171 in 2020, \$400 in 2021, \$600 in 2022, \$800 in 2023, and again \$400 in 2024. (Exhibits 2, 8, 16.)

3. Ms. Heiberger's employment was governed by a series of collective bargaining agreements. The agreements pertinent here included schedules of compensation amounts payable to the supervisors of various extracurricular clubs. The clubs named in those schedules did not include the meditation club. (Exhibits 5, 6, 14.)

4. Each of the collective bargaining agreements provided for a "discretionary fund for new clubs." The stated amounts of the fund were \$1,273 in 2020, \$1,298 in 2021, and \$1,324 in the three remaining years. Each agreement added: "If a club doesn't run in a given school year . . . the principal may propose to use that stipend to support another club." A recent letter from the principal offers the following commentary:

The intent of [these provisions] is to support faculty as new clubs are developed The variance in payment is dependent upon the number of hours the club meets during the year, the total number of provisional clubs at any time . . . and the amount of money available.

(Exhibits 5, 6, 14, 17.)

5. In its calculation of Ms. Heiberger's regular compensation for retirement purposes, MTRS declined to include the sums she received for supervising the meditation club. Ms. Heiberger timely appealed. (Exhibits 1-4.)

Analysis

The retirement allowance of a Massachusetts public employee is derived from his or her "regular compensation." *See* G.L. c. 32, § 5. Regular compensation is defined as "wages," which are usually "base compensation." *Id.* § 1. In the case of teachers, wages also include "salary payable under the terms of an annual contract for additional services." *Id.* The parties

agree that Ms. Heiberger's meditation club was an "additional" service. The question is whether the pay she received was "payable under the terms of an annual contract." *Id.*

The "annual contract" is the collective bargaining agreement. *See* 807 C.M.R. § 6.01. Both the "additional services" and the corresponding "remuneration" need to be stated there. *See id.* 6.02(1)(a), (c). These rules are designed to relieve the retirement boards from time-intensive investigations into individual "oral or side agreements." *See Kozloski v. Contributory Ret. Appeal Bd.*, 61 Mass. App. Ct. 783, 787 (2004). Standing on its own two feet, the collective bargaining agreement must inform its readers that the employer and union agreed to remunerate the pertinent services in the amount that the teacher received. *See id.*

A recent decision of the Contributory Retirement Appeal Board holds that a collective bargaining agreement is not required to "identify the name of the extracurricular club a teacher will be paid for advising." *Florio v. Massachusetts Teachers' Ret. Syst.*, No. CR-18-509, at *2 (Contributory Ret. App. Bd. Mar. 26, 2025). It is instead "sufficient for the [agreement] 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." *Id.* *See also Fazio v. Contributory Ret. Appeal Bd.*, No. 17-664-D (Super. Ct. Jan. 2, 2018). The key problem with Ms. Heiberger's agreements remains that they did not state the "exact amount of money" payable to her. *See also* 807 C.M.R. § 6.02(1)(c). The fluctuating sums she received were derived not from the agreements themselves but from extra-agreement factors. *See Kozloski*, 61 Mass. App. Ct. at 787; *Beford v. Massachusetts Teachers' Ret. Syst.*, No. CR-18-493, at * 7 (Contributory Ret. App. Bd. Mar. 26, 2025). The conditions under which pay for additional services counts as regular compensation were therefore unsatisfied here.

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