COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

THOMAS HOPPENSTEADT,
Petitioner-Appellee

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,
Respondent-Appellant.

CR-22-0582

DECISION

Respondent Massachusetts Teachers' Retirement System (MTRS) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing MTRS' decision to exclude stipends petitioner Thomas Hoppensteadt received for serving as an advisor to his school's Environmental Club from his regular compensation. The appeal was submitted on the written papers pursuant to 801 C.M.R. 1.01(10)(c). Magistrate Yakov Malkiel admitted ten exhibits into evidence and issued a decision on October 27, 2023. MTRS filed a timely appeal to us.

After giving careful consideration to all the evidence in the record and the arguments presented by the parties, we adopt the magistrate's findings of fact 1 - 4 as our own and incorporate the DALA decision by reference. For the reasons discussed below and in our decision *Florio v. MTRS*, CR-18-509 (CRAB March 2025) issued today, we affirm the DALA decision. ***Affirm***.

Background

Thomas Hoppensteadt began teaching in Mashpee Public Schools in 1999 and retired in 2022.[1] From 2020-2022, he advised his school's Environmental Club.[2] The Collective

---

[1] Finding of Fact 1.
[2] *Ibid*.

Bargaining Agreements (CBA) covering Mr. Hoppensteadt during this period included a provision giving compensation ($1,127 for 2020, $1,138 for 2021, and $1,150 for 2022) to teachers who acted as "club advisor[s]" for the "full year."[3] Mr. Hoppensteadt received stipends for the amounts specified in his CBAs for advising the Environmental Club for each of the years at issue.[4] When Mr. Hoppensteadt retired in 2022, MTRS refused to classify these stipends as 'regular compensation' given that, even though his CBA made inclusive reference to a specific amount of compensation for all "club advisor[s]," the document did not specifically list the Environmental Club, prompting Mr. Hoppensteadt's appeal.

Discussion

This appeal turns on the sole question of whether teachers' CBAs must specifically identify the name of the extracurricular club a teacher will be paid for advising in order for such payment to qualify as 'regular compensation,' or whether instead it is sufficient for the CBAs to specify the exact amount of money that will be paid to a teacher who advises any extracurricular club at their school. G.L. c.32, s.1, defines "regular compensation" as "compensation received exclusively as wages by an employee for services performed in the course of employment for his employer," where wages are defined in the same section as including, for "a teacher employed in a public day school who is a member of the teachers' retirement system," "salary payable under the terms of an annual contract for additional services in such a school."[5]

MTRS has issued interpretive regulations for this provision that state that "*Regular Compensation* shall include salary payable under the terms of an annual contract for additional services so long as (a) The additional services are set forth in the annual contract; (b) The additional services are educational in nature; (c) The remuneration for these services is provided in the annual contract; (d) The additional services are performed during the school year."[6] MTRS argues that Mr. Hoppensteadt's compensation for advising the Environmental Club should not qualify as 'regular' given that the name of the club was not specifically referenced in his CBA, meaning that, in MTRS's view, it was not "set forth in the annual contract", nor did it have "remuneration" specifically "provided" for it, notwithstanding that the CBA specifically stated

[3] FF 2.
[4] FF 3.
[5] G.L. c. 32, s.1.
[6] 807 CMR 6.02 (1) https://www.mass.gov/doc/807-cmr-6-regular-compensation/download

that any teacher that served as a "club advisor" for a "full year" would be remunerated at a specific rate for identified years and that this was in fact the compensation Mr. Hoppensteadt received.

We do not find MTRS's argument persuasive. We note that this case turns on precisely the same issue of law we resolved in *Florio v. MTRS* and continue to believe the conclusions we came to there are correct. In *Florio*, we emphasized that the plain language of Chapter 32's "annual contract" provision, and MTRS's interpretive regulations of it, supported the notion that, when a CBA allots a specific amount of payment for a "club advisor" position, this payment should be considered 'regular compensation.' Like in Mr. Florio's case, Mr. Hoppensteadt's CBA explicitly and specifically "set forth" the "additional service[]" he performed as an advisor to the Environmental Club—namely, the service of advising a "club" for a "full year." Requiring CBAs to list the name of every club a teacher could be compensated for advising, as MTRS requests, would in no way further clarify the type of "services" an advising teacher would be performing given that the fundamental service (advising and supervising a club) would remain the same. This fact is particularly problematic for MTRS's appeal, given that, as the Superior Court held in *Fazio v. CRAB*, the statute and regulations' emphasis on the "services" a teacher provided imports the question of the function of a teacher's work, rather than the specific subgroup of the student body for which that work was performed.[7] Additionally, as we noted in *Florio*, the term "club" is itself sufficiently specific to qualify as having been "set forth in [an] annual contract," given that it refers plainly to a student group united by a particular interest that is recognized by the school and is designated an advising teacher— far from the type of vague, open-ended reference the statute and MTRS's regulations appear to have been intended to prevent.[8]

We continue to hold that, based on the principles of statutory construction mandated to us by the Supreme Judicial Court (SJC), our decision in this case should be controlled primarily by

---

[7] *Fazio v. Contributory Retirement Appeal Board* (Suffolk Superior Court Civil Action 17-664-D).

[8] MTRS argues that a decision for Mr. Hoppensteadt would set a precedent for the use of 'catchall' terms in CBAs (Appellant's brief, p.9). To the extent these terms are vague or open-ended—referring, for example, to 'Miscellaneous Duties' —they would not meet the regulatory definition of being 'set forth in the annual contract.' However, to the extent these terms refer to a specific "additional service" a teacher could provide, they are indeed, acceptable under Massachusetts law.

this interpretation of the statute's plain language. The SJC has held that only when a statute's plain language is unclear or ambiguous, or when a plain language reading would lead to "absurd or unreasonable" consequences, should we engage in speculation regarding the Legislature's intent.[9] Given that we do not find the language currently under dispute to be ambiguous, MTRS would need to show that the pragmatic consequences of an adverse holding would be sufficiently plausible and harmful that the Legislature clearly sought to avoid them when passing the statute, notwithstanding its failure to use any statutory language so indicating. Here appears the only significant difference between MTRS's argument in this case and in *Florio*. While in *Florio*, MTRS's appeal focused primarily on the financial burden the retirement system would suffer if teachers were able to advise additional clubs, MTRS emphasizes here the administrative burden the agency would have to undergo to verify that teachers advised a school-approved club. Specifically, MTRS argues that it would be forced to "embark on" an arduous "additional inquiry and verification procedure" to determine "whether the club at issue was approved by the district during the years at issue," citing decisions such as *Kozloski v. CRAB*, which required that an "additional service" and its "compensation…be explicitly set forth in the collective bargaining agreement" and that retirement boards should not have "to sift through a multiplicity of alleged oral or side agreements about which memories might well be hazy."[10] We disagree both with MTRS's contention that such an arduous procedure would be necessary, as well as with its reliance on *Kozloski*.

Beginning with the former, as the Superior Court noted in *Fazio v. CRAB*, "nothing in the [relevant] statute or regulation requires that the salary payable under the terms of an annual contract for additional services… be ascertainable solely from the four corners of the CBA."[11]

---

[9] *Bronstein v. Prudential Ins. Co. of America,* 390 Mass. 701 (1984) and *Sterilite Corp. v. Continental Casualty Co.,* 397 Mass. 837 (1986).

[10] Appellant's brief, p.9 and *Kozloski v. Contributory Retirement Appeal Bd.,* 61 Mass. App. Ct. 783 (2004).

[11] *Fazio v. Contributory Retirement Appeal Board* (Suffolk Superior Court Civil Action 17-664-D). For example, MTRS commonly contacts human resources or payroll personnel at a member's school to confirm that the member properly received longevity payments or step increases, or that they were required to work certain days for which they received compensation. See *Christensen v. Contributory Retirement Appeal Bd.,* 24 Mass. App. Ct. 54 (1997), *Lamkin v. Massachusetts Teachers' Retirement System,* CR-10-804 (CRAB Sept. 30, 2016), and *Whitmore & Hall v. Massachusetts Teachers' Retirement System,* CR-06-0620 and CR-06-0625 (CRAB July 22, 2010).

Further, MTRS must already routinely violate this 'four corners' standard when verifying that a teacher actually performed the club advising (or almost any other service specified in their CBA) they claim to have done—a task that is often accomplished by contacting payroll or HR personnel or obtaining other external evidence. [12] It is unclear, then, what, if any, additional verification work MTRS would be required to perform if CBAs were allowed to refer to a "club advisor" position without specifying each eligible club. If a teacher received compensation for having advised a particular club at their school, and their CBA states that they should receive this amount for being a club advisor, MTRS can—notwithstanding the additional verification procedures it would undergo regardless of this decision—count this compensation as regular. MTRS appears to rely in its argument on the assumption that there would exist shadow lists of 'approved' and 'unapproved' clubs, when a plain language reading of CBAs like Mr. Hoppensteadt's confirms that a reference to a set amount of compensation for a 'club advisor' in a CBA means that the school district and teachers' union have agreed that any club that the school compensates a teacher for advising would qualify as 'approved.' Even were MTRS required to engage in some additional verification measures based on our ruling, it has provided no evidence (other than general statements that the agency has a large workload) that such burdens would add substantially, let alone arduously, to its workload, nor that it could not merely apply its existing verification standards and procedures to this issue without relying on "alleged oral or side agreements." Thus, given that, as the Appeals Court held in *Christensen v. CRAB*, in order to win a claim that a particular interpretation of Chapter 32 is necessary to provide "a safeguard against the introduction into the computations of adventitious payments to employees which could place untoward, massive, continuing burdens on the retirement systems" (as MTRS seeks to here), a party must show "[]sufficient evidence to support a finding that the revised

[12] As the Superior Court noted in *Fazio*, "even if the CBA said 'Morning Jazz Club Director,' the MTRS would still need proof to identify what that position actually was, whether the services were actually provided in any given year and who provided those services, just as it must when assessing credit for services as a 'Fall Drama Technical Director'— a category that MTRS apparently finds sufficiently specific." *Fazio v. Contributory Retirement Appeal Board* (Suffolk Superior Court Civil Action 17-664-D). Further, note that MTRS already needs to have answers to each of the questions it asks in its appeal brief about the type of verification necessary to confirm that a particular club is 'approved.' For example, MTRS must already determine whether "the word of the payroll administrator [is] enough, or [if] verification need to be in writing" to determine whether an individual actually advised a club specified in their CBA. See Appellant's brief, p.10.

article" would actually "create[]" such "burdens" (rather than merely alleging they might occur), we cannot rule for MTRS here.[13]

Finally, as we noted in *Florio*, to the extent we seek to consider the harms the Legislature likely sought to avoid when passing the "annual contract" provision, we are most concerned by the plausible and significant danger of contravening its intent to meaningfully expand pensionable compensation for teachers to include all "salary" received "under the terms of an annual contract for additional services in such a school." Evaluating both the general structure of G.L c.32, s.1's definition of the term "Wages" and the Legislature's stated goal of "Granting Full Credit Under The Retirement Law For Compensation Earned By Teachers In Public Day Schools Under Annual Salary Contracts" when passing the "annual contract" provision, we emphasized that, given that clubs come in and out of existence far more frequently than CBAs are renewed, requiring CBAs to list the name of every club a teacher can be compensated in their pension for advising would hamstring teachers' ability to earn regular compensation for a function of their profession that both their union and their school board agreed they should perform and for which they were to earn specified remuneration (not to mention serving as a deterrent for the founding of these clubs in the first place).[14] Thus, any remaining concern we held regarding MTRS' administrative burden argument would be more than outweighed by our countervailing concern of unfairly limiting teachers' ability to have payments that their union and the school board intended to be regular and, as such, set out in their CBAs be counted in calculating their pensions.

Turning then to the latter prong of MTRS's appeal brief, as we held in *Florio*, we find the agency's reliance on *Kozloski v. CRAB* to be misplaced given that the question of law in that case is significantly from the one in the case currently at issue. In *Kozloski*, a science teacher's CBA—which contained no general clause providing a specific amount of compensation for all

---

[13] *Christensen v. Contributory Retirement Appeal Board*, 42 Mass. App. Ct. 544 (1997). In *Christensen,* the Appeals Court held that MTRS' determination that certain payments distributed to the plaintiffs were severance payments, rather than longevity payments, was erroneous. In so holding, the Court noted that CRAB's reliance on *Boston Assn. of Sch. Administrators & Supervisors v. Boston Retirement Bd.* was misplaced, given that "there was insufficient evidence to support a finding that the revised article created 'untoward, massive, continuing burdens on the retirement systems.'"

[14] H. 2037 (1952), "An Act Granting Full Credit Under The Retirement Law For Compensation Earned By Teachers In Public Day Schools Under Annual Salary Contracts." https://archives.lib.state.ma.us/items/77ce6034-9cc5-4215-b20d-8c17a654212a.

school club advising—originally contained an explicit reference to his position as advisor to the school's audiovisual club, but later versions of the document (apparently, accordingly to a later joint memorandum of agreement between the teacher's union and the school board, accidentally) excluded it. The Appeals Court held that the total lack of contemporaneous evidence that the CBA should have included the audiovisual club was fatal to Mr. Kozloski's appeal and that requiring MTRS to rely on "alleged oral or side agreements about which memories might well be hazy" was "untenable."[15] Unlike in Mr. Kozloski's case, though, Mr. Hoppensteadt's CBA contains clear contemporaneous evidence that his Environmental Club stipends were intended to be regular compensation and "explicitly set forth" his responsibility as advisor to the Environmental Club and the compensation for it by designating a specific rate of compensation for advising all clubs at the school. Mr. Hoppensteadt's CBA thus does not hoist any inappropriate administrative burden on MTRS or introduce any confusion into the pension system and is thus "regular compensation."

Conclusion

We affirm the DALA decision for the reasons set forth above and in our decision *Florio v. MTRS*, CR-18-509 (CRAB March 20205). Mr. Hoppensteadt's Environmental Club stipends were 'regular compensation' because they were specifically "set forth" in his CBA. ***Affirm***.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Uyen M. Tran

Uyen M. Tran
Assistant Attorney General
Chair
Attorney General's Appointee

Nicolle M. Allen

Nicolle M. Allen, Esq.
Governor's Appointee

Patrick M. Charles

Patrick M. Charles, Esq.

[15] *Kozloski v. Contributory Retirement Appeal Bd.*, 61 Mass. App. Ct. 783 (2004).

Public Employee Retirement Administration Commission
Appointee

Date: March 26, 2025