

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Brian A. Hyde,

Petitioner,

v.

Docket No. CR-22-0148

Massachusetts Teachers'
Retirement System,

Date: June 21, 2024

Respondent.

Appearances:

For Petitioner: Brian A. Hyde, pro se

For Respondent: Salvatore Coco, Esq.

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The annual payments the petitioner received when he was superintendent of Mashpee Public Schools were made in recognition of his length of service and were paid in pre-determined and equal amounts to all employees of the school district. The payments were therefore "longevity payments" that are considered as "regular compensation" for purposes of calculating the petitioner's retirement allowance, under G. L. c. 32, § 1, and 840 Code Mass. Regs. § 15.03(3)(b).

DECISION

The petitioner, Brian Hyde, received annual "longevity" payments for his service as superintendent of Mashpee Public Schools. The Massachusetts Teachers' Retirement System concluded that those payments do not qualify as "regular compensation" for purposes of calculating his retirement allowance. Hyde appeals that decision.

I held an evidentiary hearing on March 21, 2024, over Webex. Hyde was the only testifying witness. I admitted twelve exhibits into evidence. The petitioner filed a post-hearing brief on April 29, and the respondent filed a brief on May 1, 2024, whereupon the hearing record closed.

FINDINGS OF FACT

Based on the testimony and documentary evidence presented at the hearing, I make the following findings of fact:

1. Hyde worked for Mashpee Public Schools for over twenty-six years. He began working for the school district in 1989. He first worked as a teacher, then as a high school administrator, and then as superintendent. (Testimony; Exhibit 7.)
2. Hyde was superintendent of Mashpee Public Schools from July 1, 2013, to June 30, 2016. (Testimony; Exhibits 4, 8.)
3. After he completed fourteen years of service as a teacher, Hyde became eligible to receive annual longevity payments in addition to his salary. He continued to receive longevity pay

as a teacher and as a high school administrator, under the terms of his collective bargaining agreements. (Testimony; Exhibit 11.)

4. The teachers' collective bargaining agreement (effective July 1, 2010, through June 30, 2013) provided in pertinent part:

XXV. LONGEVITY

Teachers who have worked in the Mashpee school system for a number of continuous years will be awarded a bonus upon completing the school year according to the following schedule:

Effective July 1, 2007:

14-19 years of continuous years of service in Mashpee school system: \$1100.00

20 or more continuous years of service in Mashpee school system: \$1500.00

Effective July 1, 2008:

14-19 years of continuous service in Mashpee school system: \$1300.00

20 or more continuous years of service in Mashpee school system: \$1750.00

(Exhibit 11.)

5. Separate collective bargaining agreements covering administrators and paraprofessionals included identical provisions for longevity payments. (Testimony.)
6. When Hyde was superintendent, all Mashpee public school employees were entitled to longevity payments after completing the requisite years of continuous service. (Testimony.)
7. Effective July 1, 2013, the longevity payments to eligible Mashpee school employees increased to \$1,525 for 14-19 years

of service and to \$1,975 for 20 or more years of service.

(Exhibit 12; see also Exhibit 9, p. 5.)

8. Hyde entered into a separate employment contract with the Mashpee School Committee for his service as superintendent. Under the terms of his contract, Hyde was paid a base salary of \$145,000 for the 2013-2014 school year, \$148,000 for the 2014-2015 school year, and \$154,000 for the 2015-2016 school year. (Exhibits 4, 5, 6.)

9. Hyde's employment contract does not contain a provision for longevity payments. It does, however, entitle him to "all other employee benefits . . . received by any other District employee." (Exhibit 4.)

10. Hyde received longevity payments of \$1,975 in June 2014 and \$1,975 in June 2015. (Testimony; Exhibits 7, 10.)

11. Retirement contributions were withheld from Hyde's longevity payments. (Exhibit 10.)

12. Hyde entered into a separation agreement with the Mashpee School Committee before the end of the 2015-2016 school year. Among other things, the agreement provided for Hyde's resignation, effective June 30, 2016, and that the superintendent's duties for the remainder of school year be fulfilled by an interim or acting superintendent. (Exhibit 8.)

13. From August 2016 until his retirement in April 2022, Hyde worked as a business manager for Uxbridge Public Schools.

(Exhibit 7.)

14. On January 26, 2022, Hyde filed an application for superannuation retirement. The application indicated an intended retirement date of April 15, 2022. (Exhibit 7.)

15. Uxbridge Public Schools and Mashpee Public Schools submitted service and salary verification to MTRS in connection with Hyde's application. Hyde's salary during his final three years of employment with Mashpee was used to calculate his retirement allowance because it was higher than his salary from his subsequent employment with Uxbridge.

(Exhibit 7.)

16. Mashpee's salary verification indicated that Hyde received two "longevity" payments of \$1,975, one for the 2013-2014 school year and one for the 2014-2015 school year. (Exhibit 7.)

17. On April 6, 2022, MTRS notified Hyde of its determination that the longevity payments do not qualify as regular compensation because they "were not listed in [his] individual contract." (Exhibit 1.)

18. On April 11, 2022, Hyde timely appealed this decision.

(Exhibit 9.)

DISCUSSION

The retirement allowance of a Massachusetts public employee is "based on the average annual rate of regular compensation received by such member" during the member's last three years of employment, or the during the highest paid three consecutive years of service. G. L. c. 32, § 5(2)(a). The "regular compensation" of a member is defined by statute as "compensation received exclusively as wages by an employee for services performed in the course of employment for his employer."¹ G. L. c. 32, § 1. "Wages," in turn, is defined as "the base salary or other base compensation of an employee paid to that employee for employment by an employer," which does not include overtime, bonuses, or various other forms of additional compensation. *Id.* A regulation promulgated by the Public Employee Retirement Administration Commission (PERAC) further provides:

"wages" shall mean the base salary . . . including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees, provided, that "wages" shall include payments made . . . because of the employee's length of service

840 Code Mass. Regs. § 15.03(3)(b).

The longevity payments Hyde received as superintendent were made "because of [his] length of service" and meet the criteria for "regular compensation" under PERAC's regulation. The

¹ This definition of "regular compensation" applies "during any period subsequent to June 30, 2009." G. L. c. 32, § 1.

payments were made to all Mashpee public school employees who completed the required years of continuous service and were thus made to "similarly situated employees." The amounts he received for longevity were consistent with the amounts provided to teachers, administrators, and paraprofessionals under their collective bargaining agreements, i.e., \$1,975.00 per year for employees with twenty or more consecutive years of service. The payments were nondiscretionary, and the only requirement for eligibility was completion of the requisite years of service.² The payments were repeated annually upon successful completion of the school year.

As MTRS concedes, there is no requirement for longevity payments to be listed on the member's employment contract to qualify as regular compensation. See *Collins v. Massachusetts Teachers' Retirement Bd.*, CR-05-166, at *2 (CRAB Dec. 29, 2005) (concluding that longevity payments made to an assistant superintendent constituted regular compensation even though the payments were not included in her employment contract and were inconsistent with the contract's integration clause); *Sierpina*

² The collective bargaining agreement's characterization of longevity pay as a "bonus" does not necessarily make such payment ineligible for consideration as regular compensation. See, e.g., *Lucia v. Massachusetts Teachers' Retirement Sys.*, CR-18-608, at *2, 4 (DALA Aug. 13, 2021) (concluding that a "longevity bonus" paid to a school principal was "regular compensation").

v. *Massachusetts Teachers' Retirement Sys.*, CR-08-616, at *9 (DALA Apr. 25, 2014) (reaching the same conclusion as to longevity payments to school principal). Its original justification for excluding those payments from Hyde's regular compensation is therefore flawed. The additional grounds MTRS has raised on appeal for excluding Hyde's longevity pay are based on information it received from a Mashpee human resources employee by e-mail messages in April 2022 and April 2023, which report that Mashpee does not have any "supporting documents to back up Hyde receiving the longevity payment in his time as superintendent" (Exhibit 3), and that there was "no district policy (of any kind) to pay the stipends listed in the teacher's Collective Bargaining Agreement ("CBA") to Administration personnel who had individual employment contracts" that applied during the school years that Hyde received the longevity payments as superintendent (Exhibit 2). I do not find this evidence to be credible and therefore do not accept MTRS's further reasons for excluding the longevity payments from Hyde's regular compensation.

Among other things, the human resources employee who sent these e-mail messages introduced herself as "the new Ellen DeMello" in her April 4, 2022, message, which suggests she was a new hire, and it is questionable what knowledge she would have of Mashpee school district policies regarding longevity payments

that were in effect 7-8 years prior or its documentation of such payments made during that time. And if she did not have personal knowledge of such matters, then it is unknown with what information or on what basis her statements were made.

Additionally, I note that the *original* Ellen DeMello had certified on behalf of Mashpee that Hyde did in fact receive the longevity payments at issue when she signed and submitted the employer's service and salary verification to MTRS. The Town of Mashpee also provided supporting documentation of the longevity payments to Hyde (i.e., payroll reports), which directly contradicts the assertion that no such documentation exists (Exhibit 10). Her statements are also inconsistent with Hyde's employment contract, which states that he was to receive the same benefits as other Mashpee employees, all of whom were entitled to the same longevity payments after completing the required years of service. See *Sierpina*, CR-08-616, at *8 (principal received longevity payments under contract provision granting him "all monetary fringe benefits" received by other school employees under collective bargaining agreement). See also *Lucia*, CR-18-608, at *4 (district policy entitling school principals to longevity pay is not required).

CONCLUSION AND ORDER

The longevity payments to Hyde when he was superintendent of Mashpee Public Schools were within regular compensation under

the criteria established by G. L. c. 32, § 1, and 840 Code Mass. Regs. § 15.03(3)(b). MTRS's decision to the contrary is therefore REVERSED.

Division of Administrative Law Appeals

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate