

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Brian McCann,
Petitioner

v.

Docket No. CR-22-0424

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

Brian McCann
18 Hunt Drive
Rehoboth, MA 02769

Appearance for Respondent:

Lori Curtis Krusell, Esq.
Massachusetts Teachers' Retirement System
500 Rutherford Avenue, Suite 210
Charlestown, MA 02129

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

School principal's contract awarded him annual payments of up to \$500 for attaining two goals to be set later. Such payments were bonuses and therefore not regular compensation that could be counted toward his pension.

DECISION

The petitioner, Brian McCann, appeals the decision by the Massachusetts Teachers' Retirement System (MTRS) that \$500 payments in each of his last three years as a high school principal were not regular compensation.

I held a hearing on December 12, 2023 by Webex, which I recorded. Mr. McCann represented himself, testified, and called no other witness.

I admitted five exhibits, the four exhibits that MTRS mailed (or remailed) on December 28, 2023 (both parties had the documents at the hearing), and Mr. McCann's letter of May 30, 2023. At the end of the hearing, the parties, in effect, waived closing argument and post-hearing briefs and agreed to rely on their previous submissions. I note, too, that Mr. McCann presented some argument during his testimony.

Findings of Fact

1. On February 13, 2018, Mr. McCann and the Swansea School Committee agreed to a three-year contract, from July 1, 2018 through June 30, 2021, for Mr. McCann as a high school principal. (Ex. 4)

2. The contract set Mr. McCann's salary and also included this provision:

GOALS. The high school building principal shall have the option of pursuing additional compensation in the forms of non-cumulative merit pay as follows: in each fiscal year, the PRINCIPAL may earn up to \$500 dollars by successfully attaining two (2) goals, one of which shall be set by the Superintendent and the other shall be set by mutual agreement pursuant to discussions between the high school principal and the Superintendent. Payment shall be in the amount of two \$250 per goal attained, payable upon attainment.

(Ex . 4)

3. On April 1, 2021, Mr. McCann and the Swansea superintendent of schools agreed to a similar a one-year contract, from July 1, 2021 through June 30, 2022, for Mr. McCann as a high school principal. (Ex. 4)

4. The contract set Mr. McCann's salary and included a similar "Goals" provision. (Ex. 4)

5. In the school years 2019-20, 2020-21, and 2021-22, Mr. McCann met the goals that

were set and received \$500 each year. (Testimony) The record did not reveal what the goals were.

6. The \$500 payments were at the discretion of the superintendent. (Testimony)

7. Mr. McCann had received a \$500 bonus in each school year since 2000. (Testimony)

8. On September 22, 2022, MTRS informed Mr. McCann in a letter that \$500 in the school years 2019-20, 2020-21, and 2021-22 were bonuses and not regular compensation. (Ex. 1)

9. On October 6, 2022, Mr. McCann timely appealed. (Ex. 2)

Discussion

The relevant definition of “regular compensation” includes wages. G.L. c. 32, § 1. The definition of “wages,” in turn, excludes bonuses. G.L. c. 32, § 1; 840 CMR 15.03(3)(f).

[W]hile there is no single definition of the term “bonus,” it is generally characterized as something that is “extra” and contingent, either subject to the discretion of the employer or based on individual past performance.

David Myette et al. v. Wakefield Retirement Board, CR-09-394 through 09-437 (DALA 2010).

See also Boston Association of School Administrators & Supervisors v. Boston Retirement

Board, 383 Mass. 336, 342 (1981) (“The payments promised are not ‘regular compensation’ but have the character of premiums to particular individuals, beyond such compensation, which conform to the idea of a ‘bonus’ in the common understanding of that term”).

Mr. McCann’s contract provided that he could receive \$500 “merit pay” for his attaining two goals. That money was extra to his salary. It was contingent on his attaining the two goals subject to the superintendent’s discretion. *Myette*. Therefore, each \$500 payment was a bonus and not regular compensation.

Regular compensation also excludes “[a]ny amounts paid for special projects involving tasks which are not performed on a year to year basis.” 807 CMR 6.02(2)(a). The record does not

reveal what goals Mr. McCann attained to be eligible for each \$500 payment. However, if the goals were about special projects involving tasks that Mr. McCann did not perform yearly, then the payment was not regular compensation.

The record does not reveal if the goals that Mr. McCann attained would count as additional services under G.L. c. 32, § 1, 840 CMR 15.03(3)(f), and 807 CMR 6.02(1).

That the Swansea Public Schools deducted money from Mr. McCann’s payments for retirement does not mean that the payments were regular compensation that could be counted toward retirement. “Public employers do not decide whether certain employee payments are regular compensation; retirement boards” – such as MTRS – “make those decisions pursuant to the retirement law.” *D. Lyn Stevens v. Massachusetts Teachers’ Retirement System*, CR-13-332 (DALA 2017). The Swansea Public Schools constitute a separate entity from MTRS, and MTRS is not bound to accept an incorrect decision by it.

Conclusion and Order

MTRS’s decision that the three \$500 payments that Mr. McCann received were not regular compensation is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: April 12, 2024