

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Michael McDonough,
Petitioner,

Docket No.: CR-25-0526

Dated: September 25, 2026

v.

Plymouth County Retirement Association,
Respondent.

Appearances:

For Petitioner: Jordan E. Burke, Esq.

For Respondent: Michael Sacco, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a police captain, took on new duties relating to his police department's budgeting and finances. Instead of compensating the new duties through hourly overtime pay, the department agreed with the petitioner on a flat annual stipend. The stipend qualified as within the petitioner's regular compensation for retirement purposes.

DECISION

Petitioner Michael McDonough appeals from a decision of the Plymouth County Retirement Association (board) excluding certain stipends paid to McDonough by his employer from McDonough's regular compensation for retirement purposes. I held an evidentiary hearing on August 18, 2026. The witnesses were McDonough himself, Marshfield chief of police Philip Tavares, and former Marshfield town administrator Michael Maresco. I admitted exhibits marked 1-11 into evidence.

Findings of Fact

I find the following facts.

1. McDonough became a Marshfield police officer in 1994. He advanced through the ranks over the years and eventually was named the department's captain. His responsibilities were both operational and administrative. Among other things, he oversaw the department's hiring, training, scheduling, and general coordination. These duties more than occupied McDonough's assigned workweek of forty hours, nine-to-five, with the result that he typically worked another fifteen hours or so of paid overtime per week. (Tavares; McDonough; exhibit 3.)

2. The police department was funded not only through appropriations from the town but also through various state and federal grants. Traditionally, the department's budgets and finances were managed by the town treasurer/collector. Approximately at the end of 2022, the treasurer/collector resigned. The department was simultaneously transitioning to new financial software. Its finances became disorganized. Incoming monies were overlooked or assigned to incorrect accounts. Bills remained unpaid. The department began to receive collection notices. Chief Tavares was determined to restore the department's finances to good health. (Tavares; Maresco; McDonough; exhibit 9.)

3. McDonough's background included a bachelor's degree with a concentration in finance, a master's degree (in criminal justice), and experience running a real-estate business. As a longtime colleague, Chief Tavares believed correctly that McDonough had a talent for numbers and finance. Chief Tavares approached McDonough and asked him to take over the department's budgetary and financial operations. (Tavares; McDonough.)

4. After securing McDonough's tentative assent, Chief Tavares took his proposal to town administrator Maresco and to the town's human resources director. They both approved.

A collaborative discussion ensued over the compensation that McDonough would receive for his new responsibilities. (Tavares; Maresco; McDonough.)

5. The group agreed that the proposed new duties would exceed the scope of the police-captain position. The group therefore did not think that the arrangement implicated the police department's collective bargaining agreement or required the police union's involvement. They decided that McDonough would receive a flat, annual "finance stipend" on top of his existing pay. (Tavares; Maresco; McDonough; exhibit 9.)

6. McDonough estimated that his new duties would take up an average of three hours of work per week. He proposed that a fair rate of pay would be \$100 per hour, significantly less than his usual overtime rate. The group agreed and calculated the resulting annual stipend as \$15,000. McDonough was interested in finding out whether the new stipends would count toward his pension calculations. A town employee told him that the answer was yes, supposedly based on input from the board; but it seems that the board was not actually consulted. (Tavares; McDonough; exhibit 9.)

7. McDonough and the town executed a memorandum of understanding memorializing the new arrangement in January 2023. McDonough promptly began to discharge his new duties. Meanwhile, the memorandum of understanding was forwarded to town counsel Robert Galvin for his review. He granted his approval in May 2023, retroactively for the full year. (Tavares; Maresco; McDonough; exhibit 4.)

8. McDonough's new duties required him to prepare the department's annual budget. He then defended the budget before the town's capital budget committee, before its advisory board, and at town meetings. He signed off on the police department's various

purchases and expenditures, including its payroll. He analyzed and monitored the receipts into and outlays from the department's accounts, correcting misallocations and ensuring that the money was properly recorded and disbursed. His work was an unqualified success. (Tavares; Maresco; McDonough; exhibit 4.)

9. Included organizationally within the police department were seven specialized divisions: emergency operations, harbormaster, "clam flats," animal control, animal testing, beaches, and information technology. Each division maintained its own annual budget, its own line items in the town's annual budget, and its own financial accounts. As 2024 approached, Chief Tavares asked McDonough to assume responsibility for the financial operations of the specialized divisions as well. McDonough estimated that he would consequently be working a total average of eight hours per week on financial matters. The chief, the HR director, and the town administrator agreed to increase McDonough's finance stipend to \$40,000 per year. (Tavares; Maresco; McDonough; exhibit 4.)

10. By 2023, McDonough had accumulated nearly thirty years' worth of retirement credit. He had always planned to retire approximately upon "maxing out," i.e., becoming entitled to the highest possible pension rate. Chief Tavares was aware of this goal. As of 2023, McDonough and Chief Tavares both would have been able to predict that McDonough would max out roughly in mid-2026. They both imagined that McDonough might continue to perform his financial role even post-retirement. That said, there was no causal connection between McDonough's looming retirement and the town's decision to grant him new duties and new stipends, either in 2023 or thereafter. The police department needed McDonough's skillset

beginning in 2023 as a result of its acute bookkeeping problems, which McDonough was providently situated to alleviate. (Tavares; Maresco; McDonough; exhibits 3, 9.)

11. Each of McDonough's stipends was memorialized on a personnel action form executed by the chief, the HR director, the town administrator, and the payroll department. Each stipend was paid to McDonough biweekly. His pay stubs listed his police-captain salary and his finance stipend on separate lines. He continued to receive the \$40,000 annual stipend in 2025 and 2026. (McDonough; exhibit 4.)

12. Chief Tavares believed that McDonough's new financial duties would not actually lengthen his workweek: the chief thought that McDonough would manage to "do more" in the same working hours. This expectation was unrealistic, and McDonough did not share it. He was already fully occupied during his standard eight-hour workdays and paid overtime hours. His new duties naturally took up additional time. (Tavares; McDonough.)

13. Approximately in late 2024, McDonough and the board began to communicate about whether the finance stipends would be treated as "regular compensation" for purposes of calculating McDonough's eventual retirement benefits. The board collected written input from various individuals about the circumstances. In a letter, town counsel Galvin wrote: "I am informed and believe . . . that in lieu of overtime which he declined . . . Captain McDonough performed essential training and financial service[s] for his department." (McDonough; exhibits 4-9.)

14. In August 2025, the board issued a decision to McDonough stating that it would not treat the finance stipends as regular compensation. McDonough timely appealed. Although the original decision and appeal concentrated on McDonough's stipends in 2023 and

2024, the parties stipulated at the hearing that the pleadings should be treated as covering the similarly situated stipends of 2025 and 2026.¹ (Exhibits 1-2.)

Analysis

Massachusetts public employees make retirement contributions throughout their careers and become entitled to monthly allowances upon retirement. The amount of each employee's allowance is derived from the employee's "regular compensation" during a three-year or five-year period. G.L. c. 32, § 5(2).

Regular compensation is defined as "wages," which in turn are the employee's "base salary or other base compensation . . . for employment." G.L. c. 32, § 1. These definitions are designed to capture "ordinary, recurrent, or repeated payments not inflated by any extraordinary ad hoc amounts." *Public Emp. Ret. Admin. Comm'n v. Contributory Ret. Appeal Bd. (Vernava I)*, 478 Mass. 832, 835 (2018). Their fundamental purpose is to prevent "the introduction into the computations of adventitious payments . . . which could place untoward, massive, continuing burdens on the retirement systems." *Boston Ass'n of Sch. Adm'rs & Supervisors v. Boston Ret. Bd.*, 383 Mass. 336, 341 (1981).

A category of pay that the law specifically defines as non-regular is "overtime." G.L. c. 32, § 1. It is easy to see why. Overtime hours tend to ebb during some periods and spike during others. The pay for these hours likewise tends to rise and fall, often unpredictably, and typically at the whim of the employer and the employee. A retirement system possesses no means of predicting, monitoring, or accounting for the fluctuations. If overtime pay were to be

¹ Conversely, they agreed that any potential implications of the anti-spiking statute, G.L. c. 32, § 5(2)(f), are beyond the scope of this appeal.

included in the retirement calculations, the resulting allowances would run the risk of losing proportion to the retirement contributions. *See Gloucester Ret. Bd. v. Public Emp. Ret. Admin. Comm'n*, No. CR-21-217, 2025 WL 3617519, at *4 (Div. Admin. Law App. Dec. 5, 2025); *Barnes v. Essex Reg'l Ret. Syst.*, No. CR-21-469, 2023 WL 8526444, at *3 (Div. Admin. Law App. Dec. 1, 2023); *Doherty v. Revere Ret. Bd.*, No. CR-16-363, at *5 (Div. Admin. Law App. Oct. 22, 2021). *See also O'Malley v. Contributory Ret. Appeal Bd.*, 104 Mass. App. Ct. 778, 781 (2024).

The question presented is whether McDonough's finance stipends were within his regular compensation. The heart of the board's view is that the stipends must be treated as non-qualifying overtime, because they were paid—in Attorney Galvin's words—"in lieu of overtime." The parties spar in part over the accuracy of Attorney Galvin's account. The board has the better of this debate: although Attorney Galvin was not among the architects of McDonough's new arrangement, he correctly diagnosed the gist. Before 2023, McDonough was already working more than a full-time schedule. His new duties were destined to add additional hours to his schedule. It would have been natural for McDonough to be paid for the additional work at his hourly overtime rate.² The town took on the cost of McDonough's new stipends in lieu of an obligation to provide him with additional overtime pay.

A broad range of scenarios may be described as involving the adoption of one pay arrangement "in lieu of" another. Only some of those situations require the legal consequences of the old arrangement to carry over to the new one. The pivotal question is whether the new arrangement is substantively identical to the old, setting cosmetics aside; or

² The board suggests that pay at an hourly overtime rate would have been not only natural but mandatory under the labor laws. This point is discussed below.

whether the new arrangement substantively eliminates the shortcomings of the original.

Several illustrations drawn from the briefs follow.

Among the cases cited by the board is *Terenzini v. Worcester Regional Retirement Board*, No. CR-16-56 (Div. Admin. Law App. Dec. 7, 2018). A component of the member's monthly pay there tracked the cost of the employer's "health benefit plan." Healthcare benefits do not count as regular compensation, because "healthcare costs fluctuate." *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 654 (2012). See G.L. c. 32, § 1. The problem persists when an employee receives the same fluctuating sums under a different contractual heading.

Terenzini relies in turn on *Parente v. State Board of Retirement*, 80 Mass. App. Ct. 747 (2011). That case involved a different type of pay "irregularity": under the statutory definition, regular compensation must be paid "for employment," i.e., in return for the employee's job duties. Reimbursement for expenses does not satisfy this requirement. *Bulger v. Contributory Ret. Appeal Bd.*, 447 Mass. 651, 658 (2006). In *Parente*, instead of asking employees to seek reimbursement expense-by-expense, the employer granted them a flat annual allowance of \$7,200. These sums were "recurrent, regular, and ordinary." 80 Mass. App. Ct. at 751. But the new arrangement retained the original problem: the allowance still was "intended to be used for expenses." *Id.* at 752.

One last case cited by the board, *Brooker v. Hull Ret. Bd.*, No. CR-05-1324 (Contributory Ret. App. Bd. Mar. 14, 2008), *aff'd*, No. 2008-558 (Plymouth Super. Apr. 1, 2010), focuses on the statutory rule that lump sums paid "in lieu of . . . unused vacation or sick leave," G.L. c. 32, § 1, do not qualify as regular compensation. Such lump sums may involve unpredictable spikes in

pay; they also arguably are not exchanged for duties performed. Neither issue dissolves when a new name is given to a substantively identical sum.

The opposite type of situation arose in the recent matter of *Petruno-Goguen v. Massachusetts Teachers' Retirement System*, No. CR-23-321, 2026 WL 919049 (Div. Admin. Law App. Mar. 27, 2026). For several years, the member there received annual stipends of \$14,000 as reimbursement for her graduate-school tuition. When the member graduated, her employer increased her salary by the same sum of \$14,000 per year. The retirement board declined to treat even the post-graduation sums as regular compensation, calling them "carried-over tuition reimbursement benefit." The DALA magistrate reversed: in a nutshell, the original non-qualifying "reimbursement" was replaced by a qualifying "pay increase." See *Twohig v. Braintree Ret. Bd.*, No. CR-18-505, 2022 WL 16921472, at *4 (Div. Admin. Law App. May 20, 2022). The new arrangement eliminated the shortcomings of the old, because the member was now being paid for work rather than for expenses.³

The current case is another in which one pay arrangement adopted "in lieu of" another eliminates the other arrangement's deficiencies. Hourly overtime pay would have been a natural method of compensating McDonough for his new duties. That arrangement would have involved the classic downsides of non-regular compensation. McDonough's pay would have fluctuated unpredictably, with the potential for unaccounted-for burdens on the board's finances. McDonough and his employer rejected that option.

³ In a case reminiscent of *Petruno-Goguen*, the Appeals Court made the key point as clearly as can be: "While the benefits lost may not have been 'regular compensation,' the compensation package provided [instead] was." *Olsen v. Teachers' Ret. Bd.*, 70 Mass. App. Ct. 429, 435 (2007).

The annual stipends that McDonough received instead were “ordinary, recurrent, [and] repeated.” *Vernava I*, 478 Mass. at 835. Their amounts were predetermined and unvarying. The town had no freedom under the memorandum of understanding to withhold the stipends, reduce them, or increase them. The chronological span of the arrangement was open-ended rather than “limited or definite.” G.L. c. 32, § 1. *See Twohig*, 2022 WL 16921472, at *3. All in all, even if the town was compensating McDonough for additional “overtime work,” the stipends were not “overtime pay.” *Gloucester*, 2025 WL 3617519, at *4.⁴

In the circumstances presented, McDonough’s stipends also were not paid to him “as a result of the employer having knowledge of the member’s retirement.” G.L. c. 32, § 1. The board does not argue otherwise. The remainder of the board’s argument instead suggests that the stipends may have breached the wage and hour laws, the police department’s CBA, or both.⁵ These theories do not call for in-depth analysis. Intricate labor-law doctrines govern the interrelationships among employers, employees, and labor unions. They include rules about when an employee is exempt from the overtime statute, G.L. c. 151, § 1A(1)-(20); *Quazi v. Barnstable Cty.*, 70 Mass. App. Ct. 780, 785 (2007), and when an employer may “contract directly” with a union-member employee, *Horner v. Bos. Edison Co.*, 45 Mass. App. Ct. 139, 145 (1998). The statutes, regulations, and decisional-law doctrines that define regular

⁴ The board’s observation that overtime remains non-regular for retirement purposes even when it is “mandatory” (but still fluctuating) is true but immaterial. *See Cyrulik v. Adams Ret. Bd.*, No. CR-13-369, 2016 WL 11956847, at *1 (Contributory Ret. App. Bd. Feb. 26, 2016). As for the board’s position that “regularly performed” hours exceeding a typical workweek are properly characterized as “overtime,” the pertinent authorities are analyzed in *Barnes*, 2023 WL 8526444, at *3.

⁵ To the board’s credit, its closing brief mostly refocuses away from the labor-law arguments emphasized in the board’s prehearing memorandum and hearing presentation.

compensation do not wade into those areas. Allegations that an employment contract violated a member's rights as an employee or a union's rights as a collective-bargaining unit may be adjudicated elsewhere, presumably in proceedings to which the employer and the union are parties. *See Gloucester*, 2025 WL 3617519, at *5.

Conclusion and Order

The finance stipends that McDonough received beginning in 2023 were within his regular compensation for retirement purposes. The board's contrary decision is REVERSED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals