

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

Patricia Myers,
Petitioner,

Docket No.: CR-21-0015

v.

Massachusetts Teachers' Retirement System,
Respondent.

Appearances:

For Petitioner: Haidee Morris, Esq.

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner, a long-time teacher, agreed to step in as the District's STEM coordinator for a few years. The position was considered administrative, but the teachers' union had negotiated additional pay (in the CBA) for teachers temporarily working in these types of administrative positions. The Petitioner's job as the STEM coordinator was a full-time job, not in addition to, but instead of, her regular teaching. Accordingly, even though the pay she received for this position was a little unusual, it was still regular and recurrent and should be counted as regular compensation.

INTRODUCTION

The Petitioner timely appealed a decision by the Massachusetts Teachers' Retirement System (MTRS) that it was not considering certain payments as regular compensation.

Magistrate Melinda Troy held hearings on November 13, 2023, and October 3, 2024. There were four witnesses: Ms. Myers, Paul Georges, the Director of Employer Services for MTRS,

Amanda Dupont, the Internal Auditor for the Lowell Public Schools, and James Hall, the Chief Operating Officer (and former Legal Counsel) for the city of Lowell. Magistrate Troy admitted exhibits 1-28. The parties then submitted closing briefs. Magistrate Troy left DALA before issuing a decision, and the appeal was reassigned to me. The parties have agreed that a new hearing was not necessary and that I may decide the matter on the existing record.

FINDINGS OF FACT

Background

1. The Petitioner was an active member of the MTRS from October 1985 to September 2020. She was primarily a teacher for the Lowell Public Schools (District). (Ex. 3; Myers.)
2. As a teacher, she worked under the teachers collective bargaining agreement (CBA). School administrators had their own CBA. The teachers' union was known as Unit A; the administrators' union was known as Unit B. (Ex. 5; Hall.)
3. The District had a Science, Technology, Engineering, and Math (STEM) coordinator. This was an administrative, Unit B position. (Hall.)

History of CBA contracts

4. The teachers' union entered into a CBA that was in effect from June 2014 until June 2016. Prior to its expiration, in March 2016, the parties negotiated a one-year extension with some new articles. Among those was one about teachers working temporarily in Unit B positions.

Teachers who agree to temporarily assume the duties and responsibilities of Unit B positions will receive their normal natural pro rata daily pay plus seventy-five (\$75.00) per day for each day working in the position (retirement eligible). Such teachers will retain Unit A status and seniority and, upon completion of the temporary Unit B assignment, will be returned to their previous school, subject taught, and classroom.

(Exs. 5 & 6; Hall.)

5. The idea behind this new provision was that the District believed some Unit B positions would be better staffed by teachers. This allowed teachers to perform Unit B positions “temporarily,” meaning, not for the rest of their careers but for a year (or a few), and then go back to teaching. “Temporarily” thus did not mean part-time or half-day. (Hall.)
6. The extension was in effect through June 2017 at which point the parties negotiated a new CBA. The new CBA ran from July 2017 through June 2020. It contained the same article regarding teachers temporarily assuming the responsibilities of a Unit B position. (Ex. 7; Hall.)
7. Teachers are paid somewhat unusually, compared to other full-time employees. Their rate of pay is based on working 181 days a year, which is considered a school year. Some teachers take that salary and spread it out over 52 weeks; others opt to get paid only during the school year, over the course of 42 weeks (which is when they work their 181 days). (Dupont.)
8. In theory, the teachers are only being paid for the 181 days they work (including permissible days off such as sick or bereavement days). When they work a full year, their salary is evenly split across the 42 or 52 weeks. The impact of being paid for working 181 days really matters only if a teacher does not work the whole school year. If, for example, they retire halfway through the school year, they are paid only for the number of school days they worked up until that point. They are not paid for holidays or weekends. (Dupont.)

9. Because of the unusual way teachers are paid, for teachers temporarily working in Unit B positions, the parties decided to divide the difference in salaries between a Unit B position and a Unit A position by 181 days. The difference in the rate of pay here was \$13,575. Dividing that by 181 equals \$75 (per day). (Exs. 13-16; Hall; Dupont.)
10. This way, teachers working in a Unit B position were paid the same salary as administrators working in those same positions. If they stopped working in a Unit B position, they would revert to their teaching position and be paid whatever salary was owed under the teachers' CBA. (Hall.)

The STEM Coordinator position

11. Around December 2016, the District's STEM coordinator went out on leave. Ms. Myers was asked to step in for her, which she did. She took over the role for the remainder of the 2016-2017 school year. (Myers.)
12. The STEM coordinator was not something Ms. Myers did in addition to being a teacher. Rather, it was a totally different, full-time job. She worked the same days and hours as a teacher, but she worked out of the central office. Her tasks involved, among other things, coordinating the STEM program district wide. But while the STEM coordinator, she was not teaching. (Myers.)
13. At the end of that school year, the prior STEM coordinator decided to retire. Ms. Myers was asked to stay on and she agreed. (Myers.)
14. After agreeing to take on the role for the 2017-2018 school year, on September 7, 2017, Ms. Myers received a copy of a change of status form to reflect the additional \$75 per day that would be paid from August 28, 2017 through June 13, 2018. The form also

reflected she would receive retroactive pay (presumably for the half-year she had already worked as the STEM coordinator). (Ex. 10; Myers.)

15. At the end of that school year, Ms. Myers asked whether the position was still going to be funded. She was told it was and agreed to continue as the STEM coordinator. Ms. Myers had the same conversation for the next school year (2019-2020) and again agreed to stay on. In effect, Ms. Myers was the STEM coordinator from January 2017 – July 2020. (Myers.)
16. Ms. Myers retired in September 2020, even though she had not originally intended to retire then. However, because of the changes brought on by the COVID pandemic, she did not wish to work remotely and therefore retired before the start of the 2020-2021 school year. (Myers.)

Ms. Myers' payments for her role as the STEM coordinator

17. Starting when MTRS processed Ms. Myers's retirement application, and during this litigation, there has been some confusion about Ms. Myers's payments while STEM coordinator. Primarily, it was initially unclear whether Ms. Myers was paid only on the days she worked or even for days in which she was out, such as on sick or bereavement leave. Indeed, even Ms. Myers was confused about this. The confusion seems to stem from the kind of account used to pay Ms. Myers the extra money she earned on top of her usual teacher's salary.
18. To compensate for the new position, a teacher working in a Unit B position was paid \$75 every day of the school year for 181 days. (Exs. 10, 13-15; Dupont; Hall.)

19. Ms. Myers was paid \$75 every day of the school year including when she was out for whatever reason, e.g. sick time, bereavement, or personal days. Indeed, throughout her time as the STEM coordinator, she took days off. But her pay never varied. (Ex. 12; Myers; Hall.)
20. For some reason, Lowell could not just increase her teacher's salary by that amount. Rather, to facilitate these payments, Ms. Myers's paycheck reflected the amount for her teacher's salary and the additional amount for working as the STEM Coordinator. The additional amount was paid out under "pay code 663," which was traditionally used for anyone performing duties outside of their regular job. (Hall; Dupont.)
21. For example, when Ms. Dupont, now the auditor, was the finance clerk, she would be paid under code 663 for days spent filling in for the internal auditor. (Dupont.)
22. Ms. Dupont originally believed anyone paid under code 663 received that pay only when they worked and not, for example, when they were out sick. She filled out Ms. Myers's retirement applications and e-mailed with MTRS with that understanding in mind. However, she later learned that was not the case for everyone paid under code 663. It turns out some people who are subject to certain agreements, like Ms. Myers, do get paid under that code regularly, even when they are out sick or for some other reason. (Exs. 3 & 8; Dupont.)
23. Ms. Dupont candidly admitted she was originally mistaken about these accounts, and her misunderstanding was based on her own experience. (Dupont.)
24. Ms. Myers was led to believe she was not paid when out sick and likewise sent in some documents early in this appeal that reflected that understanding. She misunderstood

because that is what HR told her, and she never really looked at her paycheck. She too corrected this in her testimony after the witnesses and documents in the case clarified how she was paid. (Myers.)

25. Thus, Ms. Myers's pay as the STEM Coordinator was simply her teacher's salary plus the \$13,575 Unit B differential added together (and divided over 181 days). (Exs. 13-15; Hall; Dupont.)
26. There is at least one other employee (and there may have been a few others) who was paid under code 663 regardless of whether they took time off. (Hall; Dupont.)
27. Having reviewed the payroll records, it appears Ms. Myers's teacher's salary was spread out over 52 weeks, but her Unit B add-on was spread out over 42 weeks. Thus, the records show Ms. Myers receiving the \$75 payment only on the 181 days that make up the school year, even though she was also receiving her teacher's salary on those days but also over the summer months. (Exs. 13-15.)
28. This discrepancy does not change my analysis. But it helps explain yet another reason MTRS and Ms. Dupont may have misunderstood how Ms. Myers was paid.

Ms. Myers's did not intend to retire in 2018.

29. On January 24, 2017, a representative of the Lowell School Administrators Association and the Lowell School Committee signed a memorandum of agreement. The memorandum acknowledged that Ms. Myers took over as the STEM coordinator because the prior coordinator retired. It then stated "Ms. Myers has provided the School Committee with notification of her retirement as of June 30, 2018." Because of this, the

parties agreed not to post the position for this school year but would post and fill it permanently for the 2018-2019 school year. (Ex. 11.)

30. Ms. Myers did not sign this agreement, nor did anyone from the Teachers' union. (Ex. 11.)

31. Ms. Myers had never seen this document before this appeal. She never told anyone she intended to retire in 2018—primarily because she never intended to retire in 2018. Rather, Ms. Myers had always intended to retire in 2021, after she had accumulated 35 years of service. (Myers.)

32. There was no other evidence presented to explain the origin of this document or the idea that Ms. Myers ever said she intended to retire in 2018.

33. However, someone clearly believed Ms. Myers may have intended to retire because In December 2017, an employee from Lowell's Human Resource Division contacted Ms. Myers about her retirement. She told Ms. Myers she had not yet received her retirement paperwork. But Ms. Myers explained that she would not be retiring at the end of the 2017-2018 school year and intended to stay on as the STEM coordinator. (Myers.)

34. Importantly, Mr. Hall, who helped negotiate the CBAs, had no information that Ms. Myers intended to retire at any point. (Hall.)

35. I find Ms. Myers did not intend to retire in 2018.¹

¹ Ms. Myers did sell her home in Lowell and bought a home in New Hampshire around December 2017. MTRS points to this as evidence that she intended to retire back then. But Ms. Myers explained she continued to rent and live in Lowell and did not move to New Hampshire full time until 2020. (Myers.)

DISCUSSION

I. **The \$75 a day payment was not made because Ms. Myers gave notice of her retirement.**

A member's retirement allowance is based, in part, on the amount of regular compensation they received prior to retiring. Among other things, payments made "as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement" do not count as regular compensation. G.L. c. 32, § 1; 807 Code Mass. Regs. § 6.02(2)(f). This exclusion is "a safeguard against the introduction into the [retirement] computations of adventitious payments to employees which could place untoward, massive, continuing burdens on the retirement systems." *Rowell, et al. v. MTRS*, CR-06-420, (Div. Admin. Law Apps. Mar. 13, 2009), *quoting Boston Assoc. of School Administrators & Supervisors v. Boston Ret. Bd.*, 383 Mass. 336, 341 (1981).

In cases in which DALA and the Contributory Retirement Appeal Board (CRAB) have excluded payments in this context, there have been factual findings tying the payments to the member's retirement. *See e.g. Ward v. MTRS*, CR-15-150, 2025 WL 1675989 (Contributory Ret. App. Bd. Apr. 16, 2025); *Cannava, et al. v. MTRS*, CR-11-300 & 339, 2016 WL 11956817 (Contributory Ret. App. Bd. Mar. 31, 2016); *McCaw v. MTRS*, CR-15-423, 2018 WL 1782785 (Div. Admin. Law Apps. Jan. 12, 2018). But not all payments made after someone gives notice of retirement are excluded. Rather, it is only those payments made "as a result of" the employer having notice.

For example, in *Christensen v. Contributory Ret. App. Bd.*, 42 Mass. App. Ct. 544 (1997), the teachers there received longevity bonuses after they gave notice of retirement; moreover, the amount was negotiated into the CBA, also after they gave notice. Yet, the timing of the payment and negotiation was irrelevant. What mattered, instead, was whether there was a “link between the payments and the plaintiffs’ final years of employment.” *Id.* at 548. Because there was no such factual link, the payments were not excluded as regular compensation. *Id.*

Here, the evidence overwhelmingly shows the payments to Ms. Myers for her time as the STEM coordinator had nothing to do with her retirement. The article regarding these extra payments was negotiated into the CBA before the prior STEM coordinator had even taken leave and before Ms. Myers started in that position; Mr. Hall, who negotiated the CBA, had no information about Ms. Myers’ retirement; and Ms. Myers had always intended to retire in 2021, not sooner.

The only evidence that Ms. Myers may have intended to retire before that was the mysterious memorandum of understanding of which she had no knowledge and that no one could explain. I do not view that document as evidence that she intended to retire in 2018. Whatever the source of this information, it did not come from Ms. Myers.

Regardless, what matters is whether the District decided to funnel these extra payments to Ms. Myers *because* it knew she was retiring. There is nothing to suggest any improprieties of that sort here. Ms. Myers took a position she was asked to take after the parameters for payment had already been established and when she had absolutely no intent to retire.

II. The payments were regular compensation.

That leaves the question of whether these payments were regular compensation. Generally, regular compensation means “wages ... for services performed in the course of employment.” G.L. c. 32, § 1. This definition is designed to capture “recurrent or repeated amounts of compensation not inflated by extraordinary ad hoc payments.” *Boston Ass’n of Sch. Administrators, supra*, at 341. Wages means “the base salary or other base compensation of an employee,” with the added proviso that for teachers, any “salary payable under the terms of an annual contract for additional services . . . shall be regarded as “regular compensation” rather than as bonus or overtime[.]” *Id.*; 840 Code of Mass. Regs. § 15.03(3)(b).

This definition basically breaks down teacher payments into two categories: base compensation for one’s “regular job” performing “core duties” and payments for “additional services” for duties beyond one’s regular job. *See Fonseca v. MTRS*, CR-12-164, at *4 (Contributory Ret. App. Bd. Aug. 10, 2020); *Marletta v. MTRS*, No. CR-10-347 (Contributory Ret. App. Bd. Mar. 31, 2016); *see also Welsh v. MTRS*, CR-22-402 (Div. Admin. Law Apps. Sep. 8, 2023). Payments for additional services *may* count as regular compensation in certain situations. *Id.* (explaining additional requirements necessary for additional services to count as regular compensation).

But the issue here is not whether these were “additional services.” Rather, the issue is whether the payments were regular and recurrent. The STEM coordinator was a full-time position that required Ms. Myers to perform the “core duties” of that job and only that job. Everything she was paid was to compensate her for her job as the STEM coordinator. Ms. Myers was not a teacher who also performed some additional STEM coordinator duties after school

and was paid \$75 for each day she provided that supplemental work. In fact, during her time as STEM coordinator, she did not teach at all.

To be paid what the STEM coordinator was owed, the District had to devise a way to increase her salary but without hiring her as the permanent STEM coordinator. And it had to pay her without simply increasing her teacher's salary in her paycheck (because for some unclear reason it couldn't). It landed on using pay code 663 and simple math calculating how much more she would be owed if she were the permanent STEM coordinator. That arrangement was captured in the CBA's article concerning these positions.

MTRS jumps on the word "temporary" in the teachers' CBA to say that shows this was not a regular or recurrent payment. But the word temporary here does not mean part-time, half-day or anything along those lines. Instead, it means it was just a position she would do for some amount of time and then return to teaching one day. Here, she was in the position for over three years before deciding to retire.²

MTRS also couches these payments as *per diem* because true *per diem* payments are not considered regular compensation. See *MacDonald v. MTRS*, CR-10-710, (Div. Admin. Law. Apps. Feb. 20, 2015). But just because the District calculated her additional payment for being the STEM coordinator over 181 days does not make it a *per diem* payment. It was still payment for her core duties, paid as a salary, for every school day, regardless of whether she was out sick or for some other reason. She was paid as the STEM coordinator the same way she was paid as a

² It is of no moment that she retired while the STEM coordinator because that was not what she intended when she took that position. She only retired because COVID fundamentally changed her work environment so much that she did not want to work under those circumstances.

teacher; the only difference is her salary as STEM coordinator came from two different accounts. The only way she would cease to receive these payments is if she ceased to be the STEM coordinator altogether. That is another way of saying that her payments for being the STEM coordinator were regular and recurrent, not temporary or *ad hoc*.

CONCLUSION

Ms. Myers's payments for her role as the STEM coordinator were regular compensation.

MTRS's decision is reversed.

Dated: December 26, 2026

Eric Tennen

Eric Tennen, Magistrate
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