

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**Glenn Pavlicek,**  
Petitioner

v.

Docket No. CR-21-0056

**Massachusetts Teachers' Retirement System,**  
Respondent

**Appearance for Petitioner:**

Glenn Pavlicek  
115 Smith Road  
Milton, MA 02186

**Appearance for Respondent:**

Salvatore Coco, Esq.  
Massachusetts Teachers' Retirement System  
500 Rutherford Avenue, Suite 210  
Charlestown, MA 02129

**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

Employer considered paying petitioner a retention bonus, but instead increased his base salary. Increased payments were regular compensation, not given in contemplation of the petitioner's retirement.

**DECISION**

The petitioner, Glenn Pavlicek, appeals the determination by the Massachusetts Teachers' Retirement System that two payments to him from the Milton Public Schools of \$2,500 each, one in Fiscal Year 2017 and one in Fiscal Year 2018, were not regular compensation.

I held a hearing on January 30, 2024 by Webex, which I recorded. Mr. Pavlicek represented himself, testified, and called one other witness, Joseph Emerson, who was counsel to the Milton School Committee at the relevant times.

At the hearing, I admitted Exhibits 1 through 5; 7 and 8; and 10 through 20. After the hearing, I admitted Dr. Pavlicek's appeal to DALA as Exhibit 21, and his letter, dated January 5, 2017 to Leroy Walker, chair of the Milton School Committee, as Exhibit 22.

The parties did not submit briefs, but instead relied on their prehearing submissions.

### **Findings of Fact**

1. Dr. Pavlicek was the Assistant Superintendent of Business for the Milton Public Schools. (Ex. 5)

2. On April 1, 2015, the Milton School Committee voted that Dr. Pavlicek receive a 3% salary increase and "a longevity increase" of an unspecified amount. (Ex. 7)

3. On July 1, 2015, the Milton School Superintendent wrote a memorandum to Dr. Pavlicek as follows:

I have made the following adjustment to your current contract effective July 1, 2015:

- A 3% increase in for the contract year July 1, 2015 through June 30, 2016.
- ...a one-time payment of \$5,000 will be made to you on January 1, 2016....This payment will not increase the base salary amount in FY16 or in subsequent years. The parties intend that this payment will be treated as "pensionable income" for the purpose of calculation of any applicable retirement benefit.

(Ex. 8)

4. Dr. Pavlicek received the \$5,000 payment. (Ex. 22) (MTRS later determined that this \$5,000 pay was not regular compensation; Dr. Pavlicek appealed the determination; and later dropped his appeal as related to this payment.)

5. On September 21, 2016, at a Milton School Committee meeting, the Superintendent recommended, as the minutes paraphrased,

each Assistant Superintendent for a 3% raise and a \$2,500 equity adjustment this year. In January 2018, the district would pay \$5,000 to each of them as a retention bonus. Pensionable, but not part of base salary.

(Ex. 10)<sup>1</sup> The School Committee adopted the recommendation, effective retroactively to July 1, 2016. (Ex. 10)

6. On November 16, 2016, the Milton School Committee voted to pay a \$5,000 retention bonus to Dr. Pavlicek in January 2018. (Ex. 11)

7. On January 5, 2017, Dr. Pavlicek wrote a letter to the chair of the Milton School Committee, expressing concern that the two \$5,000 payments, one that he had received and one that he would receive, would not constitute regular compensation. He proposed three ways to increase his compensation that would constitute regular compensation. (Ex. 22)

8. In his letter, Dr. Pavlicek wrote, “Even ‘longevity’ payments, which are pensionable, are questioned [by MTRS] when are newly applied to someone approaching retirement age.” (Ex. 22) Dr. Pavlicek did not further discuss his retirement.

9. On March 29, 2017, Dr. Pavlicek attended a meeting of the Milton School Committee. (Ex. 3)<sup>2</sup>

10. Dr. Pavlicek distributed to the School Committee his January 5, 2017 letter. (Ex. 3, p.

3) According to the meeting minutes:

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<sup>1</sup> The School Committee chair called the \$2,500 payment an “equity adjustment,” but Dr. Pavlicek does not know why. (Pavlicek testimony)

<sup>2</sup> Understanding the meeting minutes is hard for two reasons. One, they are not written clearly: It is not always clear when the minutes discuss current school committee actions and votes or previous ones; who is speaking; and what is being voted on. Two, Dr. Pavlicek was not present for the entire time that the school committee discussed him; he was asked to leave the room for executive sessions. Thus, he is not able to fully explain the minutes.

He reiterated that he does not intend to retire in the next 14 months. Dr. Pavlicek said that his only concern is to structure this money so that it is pensionable.

(Ex. 3, p. 3)

11. On March 30, 2017, the Milton School Superintendent wrote a memorandum to Dr. Pavlicek as follows:

I have made the following adjustment to your current contract effective July 1, 2016:

- 1) \$2500 Equity Adjustment to be added to the FY 16 Base Salary
- 2) FY 17 Merit Increase of 3% effective July 1, 2016 to be calculated on base salary after the equity adjustment....
- 3) Effective July 1, 2017, \$2500 Equity Adjustment to be added to the FY 17 Base Salary, with the Merit Increase for FY 18 to be determined.

(Ex. 12)

12. The School committee split the second \$5,000 that it intended to pay to Mr. Pavlicek into two \$2,500 payments for reasons of political expediency. (Emerson testimony)

13. In 2017, Mr. Emerson was not aware of any plan by Mr. Pavlicek to retire. Mr. Emerson was not aware that the School Committee was aware of any plan by Mr. Pavlicek to retire. (Emerson testimony)

14. On October 4, 2017, the Milton School Committee voted to increase Dr. Pavlicek's salary by \$2,500 and 3%. (Ex. 4, p. 2)

15. At the meeting, someone, probably the School Committee chair, expressed that "the original intent," probably of Dr. Pavlicek's \$5,000 stipend, "was to keep" him. (Ex. 3, p. 4) (quotations are the minutes' paraphrase of the meeting)

16. At the meeting, the School Committee appeared to have voted to rescind the November 2016 vote to pay a \$5,000 stipend to Dr. Pavlicek. (Ex. 3, pp. 4, 5) The purpose of the

vote was to restructure the \$5,000 to make it regular compensation. (Pavlicek testimony)

17. In September 2020, Dr. Pavlicek decided to retire. (Pavlicek testimony)

18. In or around October 2020 Dr. Pavlicek applied to MTRS for retirement. (Ex. 2, p. 5)

19. Dr. Pavlicek stated that December 11, 2020 was his intended date of retirement. (Ex. 2, p. 1)

20. When the Milton Public Schools filled out Part 2 of Dr. Pavlicek's application, it indicated that his salary had increased in both Fiscal Years 2017 and 2018 by "2,500 to base + 3% increase." (Ex. 2, p. 8)

21. On January 29, 2021 MTRS sent a letter to Dr. Pavlicek stating the following payments were not regular compensation:

- 1) \$2,500 Equity Adjustment in FY2018
- 2) \$2,500 Equity Adjustment in FY2017
- 3) \$5,000 One-time Payment in FY2016

(Pet. Ex. 1) (Dr. Pavlicek is no longer appealing MTRS's decision that the third payment was not regular compensation. (Pet. Prehearing Memo))

22. As reasons for its denial, MTRS stated:

Under M.G.L. c. 32, §1 and the regulations of the MTRS 840 CMR 15.03 and 807 CMR 6.02, anything paid as a result of giving notice of retirement or having knowledge of retirement are considered bonus payments and therefore cannot be considered as regular compensation. Additionally, regular compensation does not include incidental, one-time, non-recurring payments that are not part of base salary.

(Ex. 1)

23. On February 4, 2021, Dr. Pavlicek timely appealed. (Ex. 21)

24. In his appeal letter, Dr. Pavlicek stated that his appeal was based on two facts:

These payments were made in Fiscal Years 18, 19, and 20. I gave no notice of my retirement, and in fact did not decide to do so, until September of 2020, long after these payments were made. There was no knowledge of my impending retirement

either by the school system or, in fact, by myself at the times when these were approved.

All three of these payments were adjustments to my base salary as can be seen by the fact that subsequent cost of living adjustments include these amounts in my base salary. Consequently, they were neither “incidental,” “one-time,” nor “non-recurring.”

(Ex. 21)

### **Discussion**

The relevant definition of “regular compensation” is

compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.

G.L. c. 32, § 1; 840 CMR 15.03(3)(a).

The relevant definition of “wages” in turn is generally “the base salary or other base compensation of an employee paid to that employee for employment by an employer....” G.L. c. 32, § 1; 840 CMR 15.03(3)(b). Specifically excluded are bonuses. G.L. c. 32, § 1.

The \$5,000 that the Milton School Committee contemplated paying to Dr. Pavlicek but did not pay to him probably would have been a bonus, and therefore not regular compensation. However, the School Committee, acting under the relevant statute and regulation, restructured what began as a \$5,000 retention bonus (the second \$5,000 payment to him) into two \$2,500 increases to Dr. Pavlicek’s salary, and thus, his regular compensation. For an employer to have one intention (to pay a bonus) and instead to add to an employee’s base salary is not necessarily nefarious. Nor does an employer’s original intention, such as to pay a bonus to an employee, necessarily preclude its increase in that employee’s base salary, instead of a bonus, from being regular compensation.

As for the second ground on which MTRS determined that the two \$2,500 increases to Dr. Pavlicek’s base salary were not regular compensation, negligible evidence exists that when

the School Committee considered how to structure the second \$5,000 payment to Dr. Pavlicek, he intended to retire. No evidence exists that the School Committee *knew* that he intended to retire. If an employee expresses concern that payments to the employee be regular compensation and not bonuses, that is evidence that the employee is planning to retire eventually, but not necessarily evidence that the employee is contemplating retirement. Nor, in that situation, in which an employee expresses concern that payments be regular compensation, is an employer on notice that the employee is contemplating retirement.

### **Conclusion and Order**

MTRS's determination that the two \$2,500 increases in Dr. Pavlicek's salary were not regular compensation is reversed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: May 24, 2024