

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

Nancy Potter,
Petitioner,

Docket No.: CR-24-0380

v.

Dated: January 23, 2026

Massachusetts Teachers' Retirement System,
Respondent.

Appearance for Petitioner:

Daniel S. O'Connor, Esq.

Appearance for Respondent:

Salvatore Coco, Esq.

Administrative Magistrate:

Bonney Cashin

Summary

Although the Petitioner's position and stipend for additional duties were set forth in a 2019 Memorandum of Understanding, they were not included in the 2020-2023 collective bargaining agreement. Consequently, the stipends the petitioner received in the 2021/2022 and 2022/2023 school years are not regular compensation for retirement purposes.

DECISION

Petitioner Nancy Potter timely appealed under G.L. c. 32, § 16(4) a June 14, 2024 decision by the Massachusetts Teachers' Retirement System (MTRS) regarding the calculation of her regular compensation for retirement purposes. The parties agreed to have this matter decided on the written record under 801 C.M.R. § 1.01(10)(c). I admit into the record the 10 documents offered by the parties, which are identified in their pre-hearing memoranda.

(Exhibits 1-10.)

FINDINGS OF FACT

Based on the evidence in the record and the reasonable inferences drawn from it, I make the following findings of fact:

1. Nancy Potter is a member of the MTRS who retired on June 30, 2024. (Exhibit 9.)
2. Ms. Potter taught in the Dennis-Yarmouth School District until her retirement on June 30, 2024. (Exhibit 9.)
3. During the 2021/2022 and 2022/2023 school years, Ms. Potter served as Curriculum Leadership Council Leader (CLCL) in the District. (Exhibit 1.)
4. Her position was memorialized in a Memorandum of Understanding (MOU) signed on August 14, 2019, by the union president and the District Superintendent. (Exhibit 1.)
5. The MOU modified the 2019-2020 collective bargaining agreement (CBA) set to take effect on September 1, 2019 through August 31, 2020. It established a permanent CLCL position as of September 1, 2019, with a stipend of \$2,050. (Exhibit 1.)
6. The MOU also provided that the position would be added to the relevant CBA at its next printing. (Exhibit 1.)
7. When printed, the 2020-2023 CBA did not include the CLCL position or stipend. (Exhibits 5, 10.)

8. Ms. Potter was paid the stipend in the 2021/2022 and 2022/2023 school years. (Exhibits 2, 3.)¹
9. On June 14, 2024, the MTRS notified Ms. Potter by mail of its decision not to include as regular compensation the stipends she received in the 2021/2022 and 2022/2023 school years. (Exhibit 6.)
10. Ms. Potter timely appealed to DALA the MTRS decision by letter dated June 22, 2024, which DALA received July 1, 2024. (Appeal.)

DISCUSSION

“Regular compensation” as defined by G.L. c. 32, § 1 is, for periods beginning on or after July 1, 2009, “wages” or “base salary or other base compensation.” G.L. c. 32, § 1. It excludes payment for overtime, commissions, bonuses, or indirect payments. *Id.* An exception allows teachers to include as regular compensation salary payable under the terms of the annual contract for “additional services” in a public day school. *Id.*

807 C.M.R. § 6.02(1)(a)1-4 states:

The term regular compensation as defined by G.L. c. 32, § 1 and further defined by 840 CMR 15.03 shall include: (a) Salary payable under the terms of an annual contract for additional services so long as: (1) The additional services are set forth in the annual contract; (2) The additional services are educational in nature; (3) The remuneration for these services is provided in the annual contract; (4) The additional services are performed during the school year.

807 C.M.R. § 6.02(1)(a)1-4. The pertinent CBA is the “annual contract.” 807 C.M.R. § 6.01.

MTRS’s decision concerned the stipends Ms. Potter received in the 2021/2022 and 2022/2023 school years. The 2020-2023 CBA did not include the CLCL position or stipend.

¹ The 2024-2026 CBA included the CLCL position and stipend. MTRS included Ms. Potter’s stipend for the 2023/2024 school year as part of her regular compensation. (Exhibit 6.)

In *Kozloski v. Contributory Ret. App. Bd.*, 61 Mass. App. Ct. 783, 787-89 (2004), the court upheld the Contributory Retirement Appeal Board's decision that a stipend the plaintiff received for serving as a high school audio-visual coordinator did not qualify as regular compensation. The stipend could not be included as additional services in the computation of his retirement allowance because the additional services and compensation were not explicitly set forth in the CBA in effect for the plaintiff's unit, as required by the MTRS regulations.

The Appeals Court noted that the "obvious purpose" of the requirement that additional services be set forth in the CBA was to "provide clear records of approved stipends so as to avoid confusion and uncertainty at some late time when retirement boards are called upon to calculate pension benefits and would be in an untenable position if they had to sift through a multiplicity of alleged oral or side agreements about which memories might well be hazy." *Kozloski* at 787.

Ms. Potter points out that the MOU signed in 2019 established the position and the stipend for it before she started the position. Unlike in *Kozloski*, she argues, the documentation of the position and stipend was not memorialized retroactively and thus poses no risk of confusion or uncertainty. The risk of uncertainty sought to be avoided in *Kozloski*, however, is that posed by "a multiplicity of alleged oral or side agreements about which memories might well be hazy." *Id.* at 788; *Marshall v. Mass. Tchrs.' Ret. Sys.*, CR-19-460 (Div. Admin. L. App. Jan. 27, 2023).

The risk of uncertainty is still potentially present in a side agreement that is not retroactive. The 2019/2020 CBA was not offered in evidence. There is no direct evidence

whether it could be clarified, modified, or amended, and, if so, by whom and in what manner.²

MTRS would need to look to extrinsic evidence to assure itself that the MOU was properly authorized before relying on it.

Assuming for the moment that the MOU was properly authorized, this fact does not help Ms. Potter's argument. For the years at issue in this appeal, the MOU referenced a future intent to include the CLCL position and stipend in the next CBA, nothing more. That did not happen. The absence of Ms. Potter's CLCL position and stipend from the 2020-2023 CBA is decisive. The *Kozloski* Court approved a "bright line" when it stated approvingly that "CRAB reasonably took the view that the decisive fact under the regulations was that the audio-visual coordinator position was not included [in the CBA], rather than the reason it was not included." *Kozloski*, at 788.

CONCLUSION

MTRS's decision to exclude the CLCL stipends from Ms. Potter's regular compensation calculation for the 2021/2022 and 2022/2023 school years is affirmed.

Dated: January 23, 2026

Bonney Cashin

Bonney Cashin
Administrative Magistrate
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² The MOU here was signed by the union president and the school district superintendent. The 2020-2023 CBA was signed by the union president and the head of the school committee, and I infer the 2019-2020 CBA was also.