

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Diana Rossetti,
Petitioner

Docket No. CR-24-0530

v.

**Massachusetts Teachers' Retirement
System,**
Respondent

Dated: June 13, 2025

Appearance for Petitioner:

Nathan Robinson, Esq.

Appearance for Respondent:

Salvatore Coco, Esq.

Administrative Magistrate:

Bonney Cashin

Summary of Decision

Petitioner's core duties did not include her work as a CPI Specialist. The stipend she received for that work in 2023-2024 does not qualify as regular compensation for additional services under 807 CMR 6.02(1)(a)1 because neither the CPI Specialist position nor its remuneration were set out in the applicable CBA. The Board's decision is affirmed.

DECISION

Introduction

On August 13, 2024, petitioner Diana Rossetti timely appealed under G.L. c. 32, § 16(4), the August 9, 2024, decision of the Massachusetts Teachers' Retirement System (MTRS).¹ MTRS denied Ms. Rossetti's request that it consider her Crisis Prevention Intervention Specialist

¹ An Order of Dismissal concerning the same parties and assigned Docket No. CR-24-0527 is also issued today.

stipend for the 2023-2024 school year as “regular compensation” when calculating her retirement benefit.

The Division of Administrative Appeals determined that this appeal could be resolved on written submissions pursuant to 801 CMR 1.01(10)(b), and the parties did not object. They submitted proposed evidence and their argument. I admit Exhibits 1-10, described in the petitioner’s memorandum² filed October 11, 2024, and Exhibits 15-23 and 25 identified in the respondent’s memorandum filed November 29, 2024.³

FINDINGS OF FACT

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

1. Diana Rossetti, now a retired MTRS member, was employed by the Plymouth Public Schools from September 1992 until June 30, 2024. (Exhibit 17.)
2. Beginning in March 2004, Ms. Rossetti became the Elementary Special Education Department Head. In addition to her base teacher salary, as Department Head she received a stipend established under the applicable collective bargaining agreement. (Exhibits 1, 17, 19.)
3. Ms. Rossetti was likely certified as a District-wide Crisis Prevention Intervention (CPI) Specialist in 2004. She served as the CPI Specialist until she retired. (Exhibits 9, 18.)
4. She coordinated the crisis intervention program throughout the district and trained special education staff in non-violent crisis intervention. (Exhibit 2.)

² Exhibit 6 is Ms. Rossetti’s service credit application, not her retirement application, which is Exhibit 17.

³ The excluded exhibits are duplicates, the Receipt of Appeal issued by DALA, and a stipend agreement for school year 2024-2025.

5. The job description provided for the Special Education Department Head position (dated October 20, 2003) did not require one to be a CPI Specialist or to agree to become certified for it to be eligible for the Department Head position. None of the job responsibilities refer to the position or require any crisis intervention duties. (Exhibit 19.)

6. Ms. Rossetti's positions as Department Head and as CPI Specialist are concerned with promoting a safe and appropriate learning environment for young children with special needs. (Exhibits 2-5, 19.)

7. Beginning in the 2019-2020 school year and ending when she retired in 2024, Ms. Rossetti received a \$2,500.00 annual stipend for her role as the CPI Specialist. (Exhibits 2-5, 7, 18.)

8. Ms. Rossetti signed an agreement in each of the five school years she received the CPI Specialist stipend. Each agreement contained a clause allowing the Plymouth Schools to terminate the agreement for any "pertinent cause." (Exhibits 2-5, 7.)

9. The collective bargaining agreement in effect from July 1, 2021 through June 30, 2024, does not refer to a stipend for a "CPI Specialist" or to another title with similar responsibilities. None of the listed stipends for elementary school are \$2,500.00. (Exhibits 18, 25.)

10. After Ms. Rossetti retired, the Plymouth Public Schools posted a notice seeking a District-wide Crisis Prevention Facilitator. The position provided a \$2,500.00 stipend, and its duties were like those Ms. Rossetti performed as CPI Specialist. CPI Trainer certification was required, as it was for Ms. Rossetti. (Exhibit 20.)

11. On August 9, 2024, MTRS denied Ms. Rossetti's request that it consider her CPI stipend for the 2023-2024 school year as "regular compensation" when calculating her retirement benefit. (Exhibit 10.)

12. On August 13, 2024, Ms. Rossetti timely appealed the August 9, 2024, MTRS decision. (Exhibit 15.)

DISCUSSION

"Regular compensation" as defined by G.L. c. 32, § 1 is, for periods beginning on 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. G.L. c. 32, § 1.

Core Duties

According to 840 CMR 15.03(3)(b), wages include pre-determined, non-discretionary payments paid by the employer to similarly situated employees. The Contributory Retirement Appeal Board (CRAB) has determined that for payments to constitute wages, they must be paid for performing a core responsibility of the position. *Marletta v. Massachusetts Teachers' Ret. Sys.*, No. CR-10-347 (Contributory Ret. App. Bd. Mar. 31, 2016). Ms. Rossetti's wages included her base teacher salary and her stipend as Department Head.

In a recent decision, *Fonseca v. Massachusetts Teachers' Ret. Bd.*, No. CR-12-164 (Contributory Ret. App. Bd. Feb. 14, 2024), CRAB identified several important factors to distinguish between core duties and additional services. CRAB looked at whether the compensation the member received for the duties performed was pre-determined, non-discretionary, and given to similarly situated employees as required by 840 CMR 15.03(3)(b).

The amount of time spent on the duties in question is another factor. *Marletta, supra*, at 3, 7.

CRAB also considered the relationship between the duties in question and the remainder of the individual's job responsibilities. *Marletta, supra*, at 7; *Rafferty v. Massachusetts Teachers' Ret. Sys.*, No. CR-14-391 (Div. Admin. Law App. Mar. 31, 2016). Finally, CRAB found that a core duty must be a required part of the job and cannot be discretionary. *Fonseca, supra*, at 4.

Ms. Rossetti's "core duties" as Department Head were set out in her job description, which did not refer to her role as CPI Specialist. She did not receive a stipend for the CPI Specialist role for the first 15 years she performed it. The stipend's amount remained the same in each of the five years she received it. It was predetermined in that the amount was established in the agreement at the beginning of each school year. The Plymouth Public Schools, however, could terminate the agreement for any "pertinent cause," which suggests wide discretion. No evidence was offered about similarly situated employees or the amount of time Ms. Rossetti spent on any of her work responsibilities. Her roles as Department Head and as CPI Specialist were related in that both are concerned with promoting a safe and appropriate learning environment for young children with special needs.

The weight of the evidence leans toward a conclusion that Ms. Rossetti's CPI Specialist role was not a core duty of her Department Head role. She was not paid the stipend for the entire time she held the position. When she did receive it, the Plymouth Public Schools had discretion to end the agreement. The posting for her replacement did not limit applicants to Department Heads.

Additional Services

807 CMR 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 CMR 6.02(1)(a)1-4. The pertinent collective bargaining agreement is the “annual contract.”

807 CMR 6.01.

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

The Court observed 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.” *Id.* at 788. In the more than 20 years since *Kozloski* was decided, CRAB has not altered its view. The reasons argued here for why the position and stipend amount for the CPI Specialist were omitted from the CBA are not relevant, the decisive fact is that they were omitted. A recent CRAB decision brings the point home:

In the year following *Kozloski*, the Appeals Court stated that “regardless of the circumstances . . . stipends not specifically contained within the written collective bargaining agreement could not be credited toward a teacher’s retirement allowance.” *Duplessis v. Contributory Ret. App. Bd.*, 63 Mass. App. Ct. 1122, 1122 (2005) (Unpublished). DALA and CRAB have issued countless decisions, both before and after the Appeals Court’s affirmations in *Kozloski* and *Duplessis*, that are in holding with this notion.

Ward v. Massachusetts Teachers’ Ret. Bd., No. CR-15-150, at *4 n.23 (Contributory Ret. App. Bd. Apr. 16, 2025)(collecting cases). See *Florio v. Massachusetts Teachers’ Ret. Sys.*, No. CR-18-509, at *7-8 (Contributory Ret. App. Bd. Mar. 26, 2025)(distinguishing *Kozloski*, and finding

that where Mr. Florio’s CBA “explicitly set forth” his responsibility as advisor to the EMT Club and his compensation by assigning a specific rate of compensation for advising all clubs other than the ones for which the CBA set out specific compensation rates).

CONCLUSION

Ms. Rossetti’s core duties do not include her work as the CPI Specialist. The stipend she received for that work in 2023-2024 does not qualify as regular compensation for additional services under 807 CMR 6.02(1)(a)1 because neither the CPI Specialist position nor its remuneration were set out in the applicable CBA. The Board’s decision is therefore affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin

Administrative Magistrate

DATED: June 13, 2025