

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

STEVEN RUMBOLT
Petitioner

v.

MASSACHUSETTS TEACHERS'
RETIREMENT SYSTEM,
Respondent

Docket No. CR-21-0057

Date: September 29, 2023

Appearance for Petitioner:

Steven Rumbolt, *pro se*

Appearance for Respondent:

Salvatore Coco, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Massachusetts Teachers' Retirement System's determined that payments for the Petitioner's role as faculty manager were not regular compensation. The position, faculty manager, was not listed in the collective bargaining agreement ("CBA"). Its omission, while unintentional, could only be rectified by an amendment to the CBA which, *inter alia*, was signed by the parties authorized to amend the CBA: the school committee and the Teachers' union. In an effort to amend the CBA, the union signed a side letter of agreement with the Superintendent and not a member of the school committee. Because the Superintendent was not authorized to sign or amend the CBA, the side letter did not fix the contractual omission.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Steven Rumbolt, timely appeals a decision by the Respondent, the Massachusetts Teachers' Retirement System ("MTRS") that certain payments to him were not "regular compensation." On May 31, 2023, I conducted a hearing, in person, at the Division of Administrative Law Appeals ("DALA"). The Petitioner testified on his

behalf; the MTRS offered no witnesses. I entered seven exhibits into evidence. I kept the evidence open for the parties to submit additional exhibits and pleadings. The Petitioner submitted one additional exhibit, which I now mark and admit as exhibit 8; MTRS submitted four additional exhibits, which I now mark and admit as exhibits 9-12. Both parties submitted post-hearing briefs by September 8, 2023, after which the administrative record was closed.

FINDINGS OF FACT

Based on the exhibits and testimony, I find the following facts:

1. The Petitioner was an active member of MTRS between 1995 and 2020. (Ex. 1.)
2. He was a teacher at Wareham High School. Towards the end of his tenure, he was the Dean of Students. (Ex. 1; Testimony.)
3. In addition to teaching, he was a faculty manager from around 2010 until his retirement in 2020. (Testimony.)
4. A faculty manager is required to be present at certain high-impact sporting events. (Testimony.)
5. As a teacher, the Petitioner was part of the Wareham Educational Association, Unit A (the “union”), and covered by a collective bargaining agreement (“CBA”). (Ex. 4.)
6. From as far back as the Petitioner could remember, the CBA specifically listed the faculty manager in the appendix. It was listed under “Head Coach Salaries, Group V.” (Ex. 5; Testimony.)
7. According to the Wareham town charter, the Wareham school committee (“school committee”) is empowered to “fix the compensation of school department employees,

define their duties, and make rules concerning their employment status.”¹ The charter does not grant the school committee the power to delegate its authority to the Superintendent (or anyone else). (Exs. 9-12.)

- 8. The school committee and the union entered into a CBA effective between September 1, 2017, through August 31, 2020. It was signed by the union president, Brian Fitzpatrick, and a member of the school committee, Judith Whiteside. (Ex. 4.)
- 9. Article VII states that the agreement “may not be modified in whole or in part by the [school committee] or the [union] except by an instrument in writing duly executed by them.” (Ex. 4.)
- 10. The CBA automatically renewed for one year if neither party filed a written notice to modify or terminate its terms. (Ex. 4.)
- 11. Because neither party filed a written notice, the contract remained in effect through August 31, 2021.
- 12. The faculty manager position was not included in the CBA. (Ex. 4.)

Group V				
Fall Cheerleading Head	Step 1	\$1,898	\$1,955	\$2,014
Winter Cheerleading Head	Step 2	\$2,280	\$2,349	\$2,419
Physical Fitness Head	Step 3	\$2,659	\$2,739	\$2,821

- 13. The Petitioner retired effective October 2020. (Ex. 3.)
- 14. Before his application was finalized, Deanna Semple, the president of the union and Kimberly Shaver-Hood, the Superintendent of the Wareham Public Schools, sent a joint letter to MTRS. They explained they had spoken with members of the negotiating

¹ MTRS submitted copies of the Town Charter from 2016-2022. Although not updated every year, each version of the Charter contained this identical language regarding the school committee. (Exs. 9-12.)

committee and confirmed the exclusion of the faculty manager position was unintentional. (Ex. 5.)

15. Nevertheless, MTRS excluded the Petitioner’s faculty manager payments from regular compensation because these payments were “not listed in the collective bargaining agreement.” (Ex. 1.)
16. The Petitioner filed a timely appeal in January 2021. (Ex. 2.)
17. On February 23, 2021, Ms. Semple and Ms. Shaver-Hood entered into a “side letter of agreement” on behalf of the union and the school. (Ex. 6.)²
18. The agreement noted the “stipend for Faculty Manager was inadvertently removed due to a formatting error in the production of the contracts dated September 1, 2015 and beyond.” (Ex. 6.)
19. Therefore, they agreed the “following correction shall be reflective of the previous contracts through the present agreement.” The agreement added “Faculty Manager” to the Group V list of Head Coaches—although it did not add the stipend amount. (Ex. 6.)

Group V	Step	2017-18	18-19	19-20
Fall Cheerleading Head	1	\$1,898	\$1,955	\$2,014
Winter Cheerleading Head	2	\$2,280	\$2,349	\$2,419
Physical Fitness Head	3	\$2,659	\$2,739	\$2,821
Faculty Manager				

² “Generally, the parties enter into side letters of agreement following mid-term contract negotiations over issues not covered in their collective bargaining agreement. Side letters of agreement generally take the form of a memorandum of understanding or memorandum of agreement and are used to resolve both isolated, single-site issues, like promotions affecting a few bargaining unit members, and statewide issues affecting an entire bargaining unit.” *In the Matter of Local 509, Service Employees International Union*, 2002 WL 34459894, Case No. SUP-4487 (Mass. Labor Relations Comm. May 17, 2002).

20. In September 2021, the union and the school committee entered into another three-year CBA. The agreement was signed in late September 2021 but was retroactive to September 1, 2021. It was signed by the union president, Ms. Semple, and a member of the school committee, Joyce Bacchiocchi. (Ex. 7.)
21. The new CBA included a copy of the February 2021 side agreement, which I interpret to mean the parties intended to incorporate it into the new contract. (Ex. 7.)
22. The Petitioner also submitted a letter dated June 23, 2023 from Matthew D'Andrea, the current Superintendent, and Kevin Brogioli, the current school committee Chair. Their letter echoed the prior correspondence to MTRS. It recounted the history of the faculty manager position and added that they were “confident that [the Petitioner] served in this role sanctioned under Wareham Public Schools’ Unit A Collective Bargaining Agreement.” (Ex. 8.)

DISCUSSION

“The Petitioner has the burden of proving by a preponderance of the evidence that the [Retirement Board] has applied the law and[/]or its regulations incorrectly or has been culpable in perpetrating a correctible administrative mistake.” *Patterson v. State Bd. of Ret.*, CR-20-0324, 2023 WL 415581 (DALA Jan. 20, 2023), quoting *Byrne v. Mass. Teachers’ Ret. Sys.*, CR-15-609 (DALA Jan. 6, 2018).

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. For teachers, this also includes “salary payable under the terms of an annual contract for additional services in such a school.” *Id. See* 840 Code Mass. Reg. § 15.03(3)(f); 807 Code Mass. Reg. § 6.02(1). “Annual contract is the collective bargaining agreement for the unit which governs the

rights of that member.” 803 Code Mass. Regs. § 6.01. This provision has long been interpreted as requiring the “additional services” be written into the CBA; otherwise, regardless of the reason for the omission, the services will not be considered “regular compensation.” See *Baranowski v. MTRS*, CR-19-0450, 2023 WL 2806506 (DALA Mar. 31, 2023), citing *Kozloski v. CRAB*, 61 Mass. App. Ct. 783 (2004).

The issue in this appeal is relatively straightforward. For MTRS, all that matters is whether the position and stipend were listed in the CBA. It argues that, because the position and stipend were not in the applicable CBA when the Petitioner completed these services, the compensation he received for this additional service cannot be counted as “regular compensation.” The Petitioner disagrees, arguing that the side letter of agreement effectively amended the CBA to include his stipend.

The requirement that the “additional services” be written into the CBA has created some harsh results. In *Kozloski*, for example, the member’s position as an audio-visual coordinator had been listed in several CBAs; then, one year, it was omitted from the agreement.

[Thereafter], [w]hile the CRAB case was pending, a representative of the teachers’ union and a representative of the school board signed a “memorandum of agreement” which stated that “certain stipend positions were inadvertently omitted in the drafting of collective bargaining agreements,” namely, the audio-visual coordinator and a music enrichment lesson program instructor. The memorandum, dated April 28, 2000, postdated the expiration of the 1996 collective bargaining agreement and *Kozloski*’s June, 1999, retirement and recited that the position involved services of an educational nature and “should” have been listed in the collective bargaining agreement.

Id. at 785.

The Appeals Court was unsympathetic:

The regulations are designed to bring certainty and definiteness to the words “annual contract” as used in G.L. c. 32, § 1, the obvious purpose of which is to provide clear records of approved stipends so as to avoid confusion and uncertainty at some later 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.

Id. at 787.

The Court further explained why the facts of that case warranted the result:

The memorandum purporting to clarify the collective bargaining agreement was entered into six years after the last of the applicable collective bargaining agreements had been fully performed and the period to which it related had passed. Moreover, the two individuals who signed the memorandum of agreement, different from the individuals who had signed the collective bargaining agreement, were not shown to have knowledge of the negotiations at the time the collective bargaining agreements were entered into nor to have been authorized to speak for the school committee or the union even in 2000.

Id. at 788.

Kozloski has been applied in numerous cases holding additional services outside the original CBA were not regular compensation. *See, e.g., Vallente v. CRAB*, 62 Mass. App. Ct. 1122 (1:28 Decision Feb. 8, 2005); *Baranowski, supra*; *Brunell v. MTRS*, CR-15-764, 2017 WL 5195185 (DALA Aug. 25, 2017); *Natti v. MTRS*, CR-10-491 (DALA May 1, 2015). That said, I do not read *Kozloski* as holding a CBA can *never* be amended to include something previously excluded; indeed, the CBA in this case allowed the parties to amend it as long as the amendment was in writing and signed by them.

The problem for the Petitioner is that one of the persons who attempted to rectify the mistake here was not a party to the original agreement nor authorized to speak for that party. The union representative was, but the Superintendent was not—she was not a member of the school committee. The school committee is the only party authorized to speak for the town, enter into a CBA, and amend it. *See* G.L. c. 71, § 37; Wareham Town Charter, Article 3, § 3-3; *Watt v. Chelmsford*, 323 Mass. 697, 700 (1949) (“The school committee of a city or town has the absolute right to fix the salaries of public school teachers.”). The school committee, not the Superintendent, was a signatory to the 2017 CBA. The school committee essentially holds the

power of the purse, and the town charter does not allow these powers to be delegated; nor was there any evidence the school committee even attempted to authorize the Superintendent to speak on its behalf.

CONCLUSION AND ORDER

For these reasons, MTRS' determination that the Petitioner's compensation for his role as faculty manager was not regular compensation is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate