

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

**Division of Administrative Law Appeals**

**Jane Siebecker,**  
Petitioner

v.

Docket No. CR-14-773  
Date: May 6, 2016

**Teachers' Retirement System,**  
Respondent

**Appearance for Petitioner:**

*Pro se*  
159 Elm Street  
Amesbury, MA 01913

**Appearance for Middlesex County Retirement Board:**

James H. Salvie, Esq.  
Massachusetts Teachers' Retirement System  
One Charles Park  
Cambridge, MA 02142-1206

**Administrative Magistrate:**

James P. Rooney, Esq.

**Summary of Decision**

Stipends a teacher received as dean of a specialized academy within a high school were properly excluded from treatment as regular compensation because neither the position nor the stipends for the position were listed in the applicable collective bargaining agreement. The agreement's listing of a stipend for a head teacher position does not alter the result because the two positions involved different responsibilities, and the stipends for the positions were different as well.

**DECISION**

Jane Siebecker, a retired teacher, appeals from the refusal of the Teachers' Retirement Board to treat as regular compensation the payments she received as Dean of STEM (Science,

Technology, Engineering, and Math) at Haverhill High School. I held a hearing on March 22, 2016 at the Division of Administrative Law Appeals, One Congress Street, Boston, Massachusetts. Ms. Siebecker was the only witness. I admitted thirteen exhibits into evidence (seven from Ms. Siebecker, five from the Board, and the appeal letter) and I recorded the hearing digitally. Both parties filed prehearing memoranda. I marked Ms. Siebecker's as Pleading A and the Board's as Pleading B. The Board moved for summary decision in its memorandum.

### **Findings of Fact**

Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. Jane Siebecker was born in 1955 and worked as a teacher at the Haverhill Public Schools from 1996 until her retirement in 2014. (Siebecker testimony; Bd. Ex. 1.)
2. In 2011, Haverhill established a number of specialized academies within the high school. In December 2011, Ms. Siebecker was appointed to the newly created position of Dean of STEM (Science, Technology, Engineering, and Math) at Haverhill High School. She was paid a \$2,000 stipend for the 2011-2012 school year and was paid the same annual stipend until her retirement. (Siebecker testimony; Pet. Ex. 6; Bd. Exs. 1 and 3.)
3. The posting for the positions of Dean of STEM and other newly-created dean positions in health and economics and business and informational technology stated that the deans were:

To raise standards of student achievement within their curriculum area and to monitor and support student progress.

To develop and enhance the instructional practices of all staff in their curricular area through mentoring, modeling, advising, providing research, etc.

To ensure that all staff within their Department is aware of and delivers appropriately broad, balanced, relevant and differentiated curriculum to ALL students using diverse activities, engaging lessons and research-based instructional practices designed to meet the various learning styles of all students.

To be a leader in developing curriculum in their area.

To advise the administration on the teaching assignment of teachers within their departments based on the strengths and certification/licensure status of the staff.

To serve as a member of the building and district leadership team.

(Pet. Ex. 4.)

4. The collective bargaining agreement for July 1, 2001 through June 30, 2014 did not list the dean position in Article XXXVI, which covered pay differentials for extra assignments teachers performed. It did list "head teacher" as an extra assignment for which a teacher would be paid \$2,700 annually plus \$225 per homeroom. (Pet. Ex. 1.)

5. The duties of a head teacher in the Haverhill Public Schools are to:

Act for the Principal as appropriate.

To motivate and lead all staff to achieve the highest professional standards.

Assist teachers and specialists in all program operations functioning in the school.

Develop positive communications and interaction with parents and guardians.

Assist new teachers in curricula requirements and in successful teaching methods.

Assist principals with routine reports, monthly meetings and requisitions.

To be sure that the school is a safe environment for all students as well as a safe workplace of all teachers and staff.

(Pet. Ex. 5.)

6. Ms. Siebecker was paid through June 30, 2014. She did not work that summer. She retired effective August 13, 2014. (Siebecker testimony; Bd. Ex. 1.)

7. On November 19, 2014, James F. Scully, the Superintendent of the Haverhill Public Schools wrote the Teachers' Retirement System concerning Ms. Siebecker's position as Dean of STEM. He stated:

The Dean positions were created in between the contract years. While [it] does not appear in the current contract [the 2011-2014 collective bargaining agreement], it is the intention of the school committee that . . . [the] contract language be revised for the next teacher's collective bargaining agreement.

(Pet. Ex. 3.)

8. The collective bargaining agreement that went into effect on July 1, 2014 listed five dean positions as receiving a \$2,000 pay differential. Head teacher was also listed in this agreement. The pay differential for head teachers remained at \$2,700 annually, plus \$225 per homeroom.

(Pet. Ex. 2.)

9. The Haverhill School System and the union representing Haverhill teachers have never agreed to reopen a collective bargaining agreement in between contract years, nor have they ever added memoranda to an existing collective bargaining agreement to reflect new teacher pay differentials. (Siebecker testimony.)

### **Discussion**

M.G.L. c. 32, § 5(2)(a) provides that a superannuation retirement allowance shall be “based on the average annual rate of regular compensation received by such member” during the member’s last three years, or the highest paid three consecutive years of service.

The statutory definition of regular compensation that applies depends upon the years in which a member worked. Because Ms. Siebecker worked as a teacher from 1996 to 2014, two different definitions apply, but, importantly, both identically describe the circumstances in which additional services performed by a teacher can be treated as regular compensation. Regular compensation earned from December 31, 1945 through June 30, 2009 includes:

the salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority, not including bonus, overtime, severance pay for any and all unused sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement. . . . In the case of a teacher employed in a public day school who is a member of the teachers' retirement system, salary payable under the terms of an annual contract for additional services in such a school.

M.G.L. c. 32, § 1. During any period subsequent to June 30, 2009, regular compensation is “compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.” Wages, defined in the same section include “in the case of a teacher employed in a public day school who is a member of the teachers' retirement system, salary payable under the terms of an annual contract for additional services in such school.” *Id.*

The Teachers Retirement System has by regulation further defined regular compensation to include “[s]alary payable under the terms of an annual contract for additional services” only 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).

The Appeals Court has upheld the regulatory requirement that the pay for additional teacher services must be set forth in an annual contract declaring:

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. Our courts have pointedly observed that, in reading G.L. c. 32, § 1, with 5(2)(a), “we find a safeguard against the introduction into the [retirement benefit] computations of adventitious payments to employees which could place untoward, massive, continuing burdens on the retirement systems. [Such a] safeguard is needed especially where the public entity that negotiates a collective [bargaining] agreement is not the one that will have to find the funds to pay the continuing retirement benefits above the avails of employee contributions. [ ]” *Boston Assn. of Sch. Administrators & Supervisors v. Boston Retirement Bd.*, 383 Mass. 336, 341, 419 N.E.2d 277 (1981).

*Kozloski v. Contributory Ret. App. Bd.*, 61 Mass. App. Ct. 783, 787, 814 N.E.2d 730, 733-734 (2004).

There is no dispute that Ms. Siebecker worked as a Dean of STEM for three school years from 2011-June 2014 and was paid an annual stipend of \$2,000. This service was educational in nature and was performed during the school year. But the dean position was not listed in the applicable 2011-2014 collective bargaining agreement and the stipend associated with that position was not listed either. For this reason, the \$2,000 annual stipend Ms. Siebecker received as Dean of STEM does not qualify under the Retirement System's regulations to be treated as regular compensation. Although the position was listed in a collective bargaining agreement that went into effect after the last school year in which Ms. Siebecker worked, this does not help her because it did not apply during the years when she worked as a dean. The local practice of school officials and the union to decline to modify a collective bargaining agreement during its term to reflect new positions, such as Ms. Siebecker's, does not trump the regulatory requirement that the positions and the pay associated with them be listed in annual contracts in order to count as regular compensation. The intention of the Haverhill School System to have the stipend for the dean position count as regular compensation count does not carry any weight either in the face of the regulation that specifically requires that such intent be set forth in an annual contract.

Ms. Siebecker contends that, even though no effort was made to modify the 2011-2014 collective bargaining agreement to reflect the newly created dean positions and the stipends associated with them, the contract still adequately listed a sufficiently similar position as head teacher and that this listing should be deemed sufficient to meet the regulatory requirement. Unfortunately for her, it does not. The head teacher is supposed to lead and assist all teachers throughout a school. A dean, on the other hand, is assigned to a particular specialized academy within the high school. The stipend for a dean is \$2,000, while the stipend for a head teacher is

\$2,700 plus \$250 per classroom. There is no evidence that deans are compensated per homeroom. Moreover, when the school system and the union negotiated a new collective bargaining agreement that listed the dean positions, it kept the listing for head teacher, and thus confirmed that the two positions were separate.

Because the applicable collective bargaining agreement did not list the dean position or its stipend and because the head teacher position it did list is for a different position, the Teachers' Retirement System is entitled to prevail as a matter of law. I therefore convert its motion for summary decision to a motion for directed decision. I grant a directed decision in favor of the Retirement System and hold that the annual stipends that Ms. Siebecker received as Dean of STEM were properly excluded from treatment as regular compensation.

So Ordered.

DIVISION OF ADMINISTRATIVE LAW APPEALS

---

James P. Rooney  
First Administrative Magistrate

Dated: May 6, 2016