

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Matthew Solazzo,
Petitioner,

No. CR-22-0177

Dated: March 29, 2024

v.

Newburyport Retirement Board,
Respondent.

ORDER OF DISMISSAL

A collective bargaining agreement entitles employees of the city of Newburyport to extra pay for days “on call.” In January 2022, Mr. Jerry Cronin sent the Newburyport Retirement Board a “formal request to have retirement funds deducted from employees who perform ‘On Call’ . . . duties.” Mr. Cronin is or was the president of the union of the city’s employees. The board wrote back in April 2022 that it had “voted . . . to deny [Mr. Cronin’s] request” The board described its letter as an appealable decision.

Petitioner Matthew Solazzo lodged this appeal soon thereafter. The case file indicates that he is a Newburyport employee and an executive board member of Mr. Cronin’s union.

The parties filed memoranda and exhibits. On the basis of those submissions, an interlocutory order directed the parties to show cause why the appeal should not be dismissed for lack of jurisdiction. The order observed that the board’s April 2022 letter was likely “not appealable at all, by anyone,” because its adverse pecuniary consequences may never materialize. *See Gloucester Ret. Bd. v. PERAC*, No. CR-21-217, 2022 WL 16921454, at *2 (DALA June 10, 2022). The order added: “It is even clearer that the board’s letter is not appealable by Mr. Solazzo in particular. . . .”

Both parties filed timely responsive briefs. They agree that Mr. Solazzo’s appeal is procedurally proper. But that agreement does not end the analysis. *See Sullivan v. State Bd. of Ret.*, No. CR-19-435, at *1-2 (CRAB Feb. 8, 2021).

An appeal under the retirement law may be brought only by a person “aggrieved” by a board’s decision. G.L. c. 32, § 16(4). The long and short of the matter is that Mr. Solazzo is not an aggrieved person here. Formally speaking, the board did not address its letter to him. Procedurally speaking, Mr. Solazzo did not take part in any proceedings before the board. Substantively speaking, the board did not consider the particulars of Mr. Solazzo’s case.

The substantive point merits amplification. The question before the board was whether certain payments to employees qualify as “regular compensation.” G.L. c. 32, § 22(1)(b).¹ To count as regular compensation, payments must be “ordinary, recurrent, or repeated.” *O’Leary v. Contributory Ret. Appeal Bd.*, 490 Mass. 480, 484 (2022). *See also* 840 C.M.R. § 15.03(3)(b). Individual details are key to the analysis of whether particular payments are recurrent or isolated, constant or vacillating, guaranteed or episodic. *Cf. Dillon v. Middlesex Cty. Ret. Syst.*, No. CR-21-330, 2023 WL 9190007, at *2 (DALA Dec. 15, 2023). Similarly labeled sums may be paid on an ordinary basis to one employee and on an extraordinary basis to another.

In the judicial courts, it is well established that “only parties to a lawsuit . . . may appeal from an adverse judgment.” *Corbett v. Related Companies Ne., Inc.*, 424 Mass. 714, 718 (1997). An exception arises “where a nonparty has a direct, immediate and substantial interest that has been prejudiced by the judgment, and has participated in the underlying proceedings to such an

¹ More specifically, the board was asked whether retirement contributions could be deducted from those payments. The computation of any member’s retirement allowance was not before the board. Nor could the board have tackled such a computation without the benefit of final pay data for the member’s decisive three or five years of pay. *See* G.L. c. 32, § 5(2)(a).

extent that the nonparty has intervened ‘in fact.’” *Id.* That exception is “rare.” *Id.* An analogous analysis is warranted here. Mr. Solazzo made no application or other submission to the board. He did not otherwise participate in the process that generated the board’s letter. The letter does not address or discuss him. An approach to G.L. c. 32, § 16(4) that would allow appeals by people in Mr. Solazzo’s circumstances would produce chaos and confusion, not fair and speedy decision-making. *See* G.L. c. 7, § 4H; 801 C.M.R. § 1.01(2)(b).

In view of the foregoing, it is hereby ORDERED that this appeal is DISMISSED. Obviously, this disposition leaves any disputed issues open for resolution in an appropriate future case. A notice of appellate rights follows.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Notice of Appellate Rights

G.L. c. 32, § 16(4) provides that decisions of the Division of Administrative Law Appeals such as the instant decision:

shall be final and binding upon the board involved and upon all other parties, and shall be complied with by such board and by such parties unless within *fifteen days* after such decision, (1) either party objects to such decision, in writing, to the contributory retirement appeal board, or (2) the contributory retirement appeal board orders, in writing, that said board shall review such decision

(Emphasis added.) A party objecting to this decision shall mail specific objections to Uyen M. Tran, Assistant Attorney General, Chair, Contributory Retirement Appeal Board, Office of Attorney General, One Ashburton Place, 18th floor, Boston, MA 02108. Copies must be sent to the Division of Administrative Law Appeals, 14 Summer Street, Malden, MA 02148, and to the other party or parties involved in the case.

Proceedings before CRAB are governed by standing orders, copies of which may be found at <https://www.mass.gov/administrative-appeals-process>. Pursuant to CRAB Standing Order 2008-1, ¶ 4(a)(2), the notice of appeal must include (a) the date of the DALA decision, (b) a copy of the DALA decision, and (c) a statement of the part or parts of the DALA decision to which objection is made.

The notice of appeal must be postmarked or delivered in hand to CRAB no later than fifteen days following the date of the DALA decision. Electronic submissions do not satisfy this filing requirement.

Pursuant to CRAB Standing Order 2008-1, ¶ 4(a)(3), within forty days following the date of the DALA decision, the appellant must supplement the notice of objection by filing with the chair of CRAB three copies, and serving on each other party one copy, of:

- (a) All exhibits admitted into evidence before DALA, numbered as they were numbered on admission;
- (b) A memorandum of no more than twenty pages containing a clear and precise statement of the relief sought and the findings of fact, if any, and legal conclusions to which objection is made, together with a clear and precise statement of the particular facts, with exact references to the record, and authorities specifically supporting each objection; and
- (c) If CRAB's passing on an objection may require a review of oral proceedings before DALA, the transcript of the relevant portion of those proceedings.

Do not send any such supplementary materials or exhibits to DALA. Failure to follow CRAB's procedures could lead to sanctions, including dismissal of the appeal.