COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Richard Stanton,
Petitioner,

v.

State Board of Retirement,
Respondent.

No. CR-18-399

August 20, 2021

Appearance for Petitioner:
Richard Stanton (pro se)
660 S. Euclid Avenue
St. Louis, MO 63110

Appearance for Respondent:
Melinda E. Troy, Esq.
One Winter Street
Boston, MA 02108

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner stopped working for the Commonwealth in 2008. At that juncture, his "core reasonable expectations" from the contributory retirement system were generally protected by G.L. c. 32, § 25(5). However, the Legislature intended the "anti-spiking" provision of G.L. c. 32, § 5(2)(f) to override § 25(5)'s usual assurance. The respondent retirement board was therefore correct to apply the anti-spiking provision in its computation of the petitioner's retirement allowance. The petitioner's challenge to the constitutionality of this outcome cannot be litigated in an administrative tribunal.

DECISION

Petitioner Richard Stanton worked for the Commonwealth from 1977 to 2008. He applied for retirement benefits in 2017. In the interim, the Legislature enacted the "anti-spiking" provision of G.L. c. 32, § 5(2)(f). The State Board of Retirement (board) applied that provision in its computation of Mr. Stanton's retirement allowance, reducing the resulting allowance. Mr. Stanton appeals.

The parties filed multiple memoranda.[1] Neither wished to call any witnesses, and the appeal was therefore submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence the exhibits marked A-K (attached to Mr. Stanton's prehearing memorandum), 1-8 (attached to MTRS's prehearing memorandum), S2-S5 (attached to Mr. Stanton's July 22, 2021 supplemental memorandum), and S8 (same).[2]

Findings of Fact

I make the following findings of fact, none of which is in genuine dispute.

1. Mr. Stanton was a Massachusetts public employee from 1977 to 2008. For the last sixteen years of that period, he served as Deputy Chancellor for Administration and Finance at the University of Massachusetts Medical School. (Exhibits A, 3.)

2. Deputy Chancellor was an extremely senior position within the medical school. Mr. Stanton was heavily involved in the medical school's finances, human resources, construction projects, and intellectual-property licensing. (Exhibits C, D, E, F.)

3. In 2003, the late Medical School Chancellor Aaron Lazare described Mr. Stanton as his "strong strategic right arm." Chancellor Lazare offered this characterization in a letter seeking authority to increase Mr. Stanton's compensation and to "award[] him future increases." In a May 2005 report, Chancellor Lazare described numerous important accomplishments of Mr. Stanton and another top-ranking executive. (Exhibits B, D.)

---

[1] An order of July 26, 2021 authorized the parties to file stipulations. Apparently in response to this invitation, Mr. Stanton filed a "Proposed Statement of Relevant facts," which the board moved to strike. That filing largely recycles Mr. Stanton's prior assertions, and its marginal additions do not affect the outcome. The motion to strike is therefore denied.

[2] The board's objection on relevance grounds is overruled as to exhibit S5 and sustained as to exhibits S1, S6, and S7. The other exhibits are admitted without objection.

4. Around 2005-2006, Mr. Stanton led several major projects for the medical school. These included initiatives relating to the Massachusetts Biologics Laboratory, the Worcester City Campus Corporation, and a partnership between the medical school and an Indian pharmaceutical institution. (Exhibit H.)

5. In March 2007, UMass approved a five-year agreement for Mr. Stanton. Chancellor Lazare retired at around that time. In 2008, Mr. Stanton left UMass for a position at Washington University in St. Louis, where he still works today. (Exhibits E, G, I, J.)

6. In 2017, Mr. Stanton applied for Massachusetts retirement benefits. The relevant fiscal years for purposes of computing his retirement allowance are 2006-2008. (Exhibits A, 3.)

7. Mr. Stanton's compensation in 2006 exceeded his average annual compensation in the two preceding years by approximately 15%. His compensation in 2007 exceeded his average annual compensation in the two preceding years by approximately 13%. In its computation of Mr. Stanton's retirement allowance, the board applied the anti-spiking provision of G.L. c. 32, § 5(2)(f). Accordingly, the board adjusted Mr. Stanton's relevant compensation in 2006 and 2007 downward to 110% of his average annual compensation in the two preceding years. These downward adjustments reduced Mr. Stanton's average annual compensation for computation purposes by approximately $5,000. (Exhibits A, 6, 7.)

8. According to HR records at the medical school, Mr. Stanton did not undergo a "position change" in 2006. In general, occasional and inconsistently sized raises were commonplace for Mr. Stanton and his colleagues. (Exhibits B, C, 6.)

9. The board notified Mr. Stanton of its retirement-allowance computation in a letter dated June 21, 2018. Mr. Stanton filed an appeal by way of a FedEx mailing dated July 3, 2018. DALA acknowledged receipt of the appeal two days later. (Exhibits 1, 2, S5.)

Analysis

The retirement allowance of a Massachusetts public employee is calculated based on his or her compensation during a few short years. This methodology exposes the retirement system to disproportionate compensation increases, known as "spiking," into the pension-yielding years.

One of the ways in which Massachusetts combats spiking is by capping the compensation increases that pension computations consider. Specifically, the computations disregard pay amounts exceeding "the average of . . . the 2 preceding years by more than 10 per cent." G.L. c. 32, § 5(2)(f). This rule is subject to several exceptions. The dispute here centers on whether Mr. Stanton's retirement allowance is governed by § 5(2)(f)'s rule, its exceptions, or neither.

I

Several of the parties' arguments do not require lengthy discussion.

Mr. Stanton states that his pay raises in 2006 and 2007 did not result from any intentional pension-inflation scheme. It indeed appears that, at that juncture, neither Mr. Stanton nor his supervisors realized that Mr. Stanton was nearing the end of his UMass career. They would not have expected Mr. Stanton's compensation in 2006 and 2007 to shape his retirement benefits. Mr. Stanton has continued working (out of state) for more than a decade since. But § 5(2)(f)'s general rule imposes a mechanical cap on the pay increases countable in retirement-allowance computations. The provision's colloquial name does not control: the absence of subjective intent to spike typically does not make a difference. *See Healy v. MTRS*, No. CR-18-515, at 11 (DALA June 14, 2019).

Mr. Stanton also contends that, *if* § 5(2)(f) operates to reduce his pension, then that statute is unconstitutional. The vehicle for pursuing this claim is an action in the Superior Court. Administrative tribunals such as DALA are obligated to assume the constitutionality of the statutes on the Commonwealth's books. *See Pepin v. Div. of Fisheries & Wildlife*, 467 Mass.

210, 214 (2014); *Doe v. Sex Offender Registry Bd.*, 459 Mass. 603, 630 (2011); *Maher v. Justices of Quincy Div.*, 67 Mass. App. Ct. 612, 619 (2006); *Baker v. Dir. of Div. of Unemployment Assistance*, 83 Mass. App. Ct. 1105 (2013) (unpublished memorandum opinion).

The board, for its part, initially challenged the timeliness of Mr. Stanton's appeal. The board has appropriately retracted that argument. Because Mr. Stanton filed his appeal by a method other than U.S. Mail, the appeal is deemed filed on the date received at DALA. 801 C.M.R. § 1.01(4)(a). DALA issued a notice of receipt exactly fifteen days after June 21, 2018, the date on the board's decision letter. The inescapable conclusion is that the appeal was received at DALA, and deemed filed, within the statutory timeframe. G.L. c. 32, § 16(4).

II

Section 5(2)(f)'s cap on the pay increases countable for pension-computation purposes does not apply to a raise resulting from "a bona fide change in position." The parties disagree on whether this exception applies here.

A "bona fide change in position" does not necessarily require a new "official, payroll title." *Furst v. State Bd. of Ret.*, No. CR-14-521, at 6-7 (DALA June 29, 2018). The focus of the inquiry is, rather, on the employee's essential functions and responsibilities: it is a significant shift in this aspect of employment that rescues a sharp pay increase from being treated as a presumptive pension-inflation vehicle. For this purpose, "[a] few additional duties" are not necessarily enough. *Dacri v. State Ret. Bd.*, No. CR-17-627, at 6-7 (DALA May 31, 2019). Rather, an employee undergoes a "change in position" only if his or her new job duties rest outside the "sphere" of the responsibilities that he or she already shouldered. *Healey*, *supra*, at 10; *Jenal v. State Bd. of Ret.*, No. CR-17-1054, at 8 (DALA May 29, 2020).

It is clear that Mr. Stanton did not undergo a bona fide change in position going into 2006. What he experienced, instead, was a productive stretch in an already top-level position.

By 2003, Mr. Stanton already was entrenched as the Chancellor's "strategic right arm," immersed in the medical school's most important administrative projects. The Chancellor was already looking ahead to future increases in Mr. Stanton's compensation. By 2006, Mr. Stanton had served as Deputy Chancellor for more than a decade. The projects he oversaw around and after that time—relating to the Biologics Laboratory, the Worcester campus, and the medical school's partnership in India—were significant. But they were well within the "sphere" of Mr. Stanton's preexisting role.

III

In 1956, the Legislature amended G.L. c. 32, § 25(5) to repudiate the then-prevailing view that contributory retirement plans create mere "gratuities" that statutes may diminish at will. The resulting section reads as follows:

> *Effect of Amendments or Repeal*.—The provisions of [G.L. c. 32, §§ 1-28] shall be deemed to establish . . . membership in the retirement system as a contractual relationship under which members . . . are entitled to contractual rights and benefits, and no amendments or alterations shall be made that will deprive any . . . member or any group . . . of their pension rights or benefits . . . if such member or members have paid the stipulated contributions specified in said sections . . . .

See Acts 1956, c. 525.

Under this provision, "rights" to retirement benefits "vest" in public employees who have "worked for a legally significant period of time." *Opinion of the Justices*, 364 Mass. 847, 862 (1973); *Dullea v. Massachusetts Bay Transp. Auth.*, 12 Mass. App. Ct. 82, 94 (1981). Each such employee is entitled to indefinitely sustained enforcement of "the core of his reasonable expectations" out of the retirement system. *Id.* at 862. The "core" consists of the expectations "which can reasonably be said to affect an employee's decision to accept, and stay employed in, a position with the Commonwealth." *McCarthy v. Sheriff of Suffolk Cty.*, 366 Mass. 779, 784

(1975). Classic elements of this core are the amounts of an employee's contributions and the size of the corresponding retirement allowance. *Opinion of the Justices*, 364 Mass. at 860, 864.

An obverse formulation of the rule protecting "core expectations" states that the Legislature may make only "reasonable modifications" to the contributory retirement system. *Opinion of the Justices*, 364 Mass. at 862; *Madden v. Contributory Ret. Appeal Bd.*, 431 Mass. 697, 701 (2000). Reasonable modifications must bear "some material relationship to the theory of a pension system," and must offset new "disadvantage[s] to the employees" with "comparable new advantages . . . to the [same] individual[s]." *Opinion of the Justices*, 364 Mass. at 862 (quoting *Wisley v. San Diego*, 188 Cal. App. 2d 482, 485 (1961)). Legislation that is perfectly appropriate as applied to new hires may nevertheless violate core expectations of *existing* members. *Id.* at 866; *Colo v. Contributory Ret. Appeal Bd.*, 37 Mass. App. Ct. 185, 191 (1994).

Opinion of the Justices focused on § 25(5)'s constitutional consequences, stating that a new statute injurious to core retirement-system expectations would offend both due process and the impairment-of-contract clause. 364 Mass. at 863. Given that administrative tribunals assume the constitutionality of all on-the-books statutes, the constitutional perspective is irrelevant here.

But § 25(5) is also itself a binding statute. It provides legislative protection against reductions of members' "pension rights or benefits," at least those already paid for through "stipulated contributions." Administrative tribunals are required to apply and interpret this statute. When § 25(5) appears to conflict with another statute, principles of statutory interpretation determine the interplay between the two provisions.[3]

---

[3] A series of DALA decisions deemed a 2003 amendment to the retirement law inapplicable to retirees whose service predated the amendment. *Donovan v. State Bd. of Ret.*, No. CR-04-269 (DALA June 4, 2004); *Thompson v. State Bd. of Ret.*, No. CR-03-582 (DALA Sept. 10, 2003). In one such instance, CRAB discerned "a serious question as to the validity of

Mr. Stanton argues that the retirement allowance he earned as of 2008, when he left UMass, was protected by § 25(5) against diminution. Otherwise stated, he proposes that the anti-spiking provision should be interpreted—in light of § 25(5)—as applicable only to people whose vested retirement rights would not thereby suffer. This approach appears viable because the anti-spiking provision does not say it applies "notwithstanding any general or special law to the contrary." *See Pereira v. State Bd. of Ret.*, No. CR-16-558, at 10-11 (DALA Jan. 24, 2020); *Kennedy v. Stoneham Ret. Bd.*, No. CR-13-298, at 5 (DALA Sept. 6, 2019). The proposal's major benefit is that it would eliminate the question that otherwise could arise regarding the anti-spiking provision's constitutionality. *See SCVNGR, Inc. v. Punchh, Inc.*, 478 Mass. 324, 330 (2017) ("canonical" preference for interpretations that avoid constitutional doubts); *Myers v. Commonwealth*, 363 Mass. 843, 854 (1973) (same).[4,5]

Ultimately, however, it is clear that the Legislature intended the anti-spiking provision to override § 25(5)'s usual guarantee. A new statute may announce the temporal scope of its effect

---

the Magistrate's Decision" given that administrative tribunals eschew constitutional analyses. *Nadeau v. State Bd. of Ret.*, No. CR-04-11 (CRAB Oct. 20, 2004). That appeal was dismissed without briefing or a hearing: but the entire series of DALA decisions may be read comfortably as efforts to interpret the statutory interplay between § 25(5) and the subsequent amendment.

[4] The board contends that § 5(2)(f) is fiscally beneficial, and therefore satisfies the formulation of § 25(5) that allows for "reasonable modifications" to the pension system. *See Opinion of the Justices*, 364 Mass. at 862. But to be "reasonable" in the particular sense that it leaves "core expectations" intact, a new statute must offer comparable new advantages to the same members whose expectations are at risk. "[B]enefits to other employees cannot offset detriments imposed upon those whose pension rights have accrued." *Id.* at 862-63 (quoting *Wisley*, 188 Cal. App. 2d at 485).

[5] Other interpretive canons do not offer significant guidance. In particular, the board points to the "specificity" of § 5(2)(f)'s anti-spiking computation adjustments, by contrast to the "generality" of § 25(5)'s application to other pension rights. But it is equally accurate to describe § 5(2)(f) as a "general" rule addressed to system members at large, and § 25(5) as a "specific" exemption for particular members whose pension rights are imperiled after vesting.

in various ways. For instance, many statutes state a particular effective date. Other statutes say nothing at all about when they are to become effective. *See, e.g.*, Acts 1964, c. 738 (discussed in *Colo*, 37 Mass. App. Ct. at 186-88). The Legislature took a different approach with regard to the anti-spiking provision, stating that it "shall apply only to members retiring on or after April 2, 2012." Acts 2011, c. 176, §§ 18, 65.

"Statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature . . . ." *Commonwealth v. Hatch*, 438 Mass. 618, 622 (2003). The Legislature made a plain choice to define the application of the anti-spiking provision by reference to a specific group of people: "members retiring on or after April 2, 2012." In view of that choice, it is not plausible that the Legislature *actually* meant the anti-spiking provision to apply to a much smaller group of people, i.e., those who, as of April 2, 2012, had not yet acquired vested pension rights. *See Dullea*, 12 Mass. App. Ct. at 94 (pension rights vest when a person has worked "a legally significant period of time"); *MacLaurin v. City of Holyoke*, 475 Mass. 231, 244 (2016) (the Legislature is presumed to know the preexisting law). An interpretation of the anti-spiking provision to exempt retirees with vested pension rights is therefore untenable.

Mr. Stanton retired after April 2, 2012. The anti-spiking provision, on its terms—with constitutional questions set aside—therefore applies to him.

Conclusion and Order

The anti-spiking provision of G.L. c. 32, § 5(2)(f) applies to Mr. Stanton, and the exception for a "bona fide change in position" does not. The board's decision is therefore AFFIRMED. Subsidiary procedural rulings are stated *supra* at footnotes 1-2.

SO ORDERED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate