COMMONWEALTH OF MASSACHUSETTS

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

**D. Lyn Stevens**

Petitioner

v. Docket No.: CR-13-332

 Date Issued: Sept. 1, 2017

**Massachusetts Teachers’**

**Retirement System**

Respondent

**Appearance for Petitioner**

 *Pro se*

 2 Oscar’s Road

 Spencer, MA 01562

**Appearance for Respondent**

James H. Salvie, Esq.

 550 Rutherford Avenue, Suite 210

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**Administrative Magistrate**

**Kenneth J. Forton, Esq.**

**SUMMARY OF DECISION**

 The MTRS correctly decided that a one-time payment of $1,000 made pursuant to a collective bargaining agreement is not regular compensation, as defined in G.L. c. 32, § 1 and 840 CMR 15.03, because it was not a regular and recurring payment. An alleged drafting error in the CBA calling the payment a “bonus” and not a “stipend” does not change the nature of the payment. The retirement deductions that were taken from this payment shall be refunded to the Petitioner.

**DECISION**

The Petitioner, D. Lyn Stevens, appealed under G.L. c. 32, § 16(4) the decision of the Respondent, Massachusetts Teachers’ Retirement System, to treat a one-time payment of $1,000 as a bonus rather than regular compensation.

I held a hearing on June 20, 2017 at the Division of Administrative Law Appeals, 1 Congress Street, Boston. I admitted 12 exhibits into evidence. (Exs. 1-12.) After the hearing, I marked the Petitioner’s appeal letter Exhibit 13. The Petitioner testified on her own behalf. The Respondent called no witnesses. There is one digital recording of the hearing.

**FINDINGS OF FACT**

Based on the testimony and documents submitted by the parties, I make the following findings of fact:

1. D. Lyn Stevens began teaching in the Oxford Public Schools in 1983. She retired in July 2013. (Testimony; Ex. 3.)
2. Ms. Stevens worked pursuant to collective bargaining agreements. The 2009-2012 CBA provided that all teachers with 20 years of experience, like Ms. Stevens, were entitled to a longevity payment of $1,200.00. Ms. Stevens received the $1,200.00 payment in school years 2010-2011 and 2011-2012. MTRS included these payments in regular compensation when calculating Ms. Stevens’s retirement allowance. (Exs. 2, 5.)
3. Under the 2012-2015 CBA, all teachers with 25 years of service, like Ms. Stevens, were entitled to a longevity payment of $2,500.00. Ms. Stevens received the $2,500.00 payment in school year 2012-2013. MTRS treated this payment as regular compensation. (Exs. 2, 6.)
4. In the 2010-11 school year, Ms. Stevens also received a one-time payment in the amount of $1,000.00. This payment was made pursuant to the 2009-2012 CBA, which provided: “For the academic year 2010-2011, all unit members who have reached the ninth (top) step on the salary schedule, . . . prior to July 1, 2010, shall receive a one time bonus payment of One Thousand ($1,000.00) Dollars. Such payment to be made in a single check.” The 2012-2015 CBA made no provision for a similar payment. (Exs. 5, 6.)
5. Ms. Stevens received the one-time $1,000.00 payment in one check on November 24, 2010. Retirement deductions were taken from the payment. (Exs. 7, 9.)
6. A document called “Salary Notification and Information Verification” generated by the Oxford Schools for Ms. Stevens and the other teachers calls the $1,000.00 payment a “One time adjustment.” (Ex. 4.)
7. Kathleen Martinello, HR Director for the school system, explained in a letter dated June 13, 2017: “For several years, the collective bargaining agree[ment] included zero COLA. When steps/lanes were reactivated, those teachers on step 9 were awarded a one-time stipend of $1,000.00 to compensate for no contractual increase for several years.” She further explains: “During negotiations, it was clear that this $1,000.00 was to be a ‘stipend’. However, the lawyer who drew up the contract language inserted the word ‘bonus’ instead of ‘stipend.’ ” (Ex. 7.)
8. By letter dated June 6, 2013, the MTRS explained to Ms. Stevens that the one-time $1,000.00 payment was not regular compensation “because it was not paid for the performance of service but rather as a bonus since you were at the maximum step and could not move up any further.” (Ex. 1.)
9. By fax received June 16, 2013, Ms. Stevens appealed MTRS’s decision to DALA. (Ex. 13.)

**CONCLUSION AND ORDER**

 After careful consideration of the evidence presented, the Massachusetts Teachers’ Retirement System’s decision to exclude Ms. Stevens’s one-time payment of $1,000 from regular compensation is affirmed.

 During the period relevant to this appeal, “regular compensation” is defined as “compensation received exclusively as wages by an employee for services performed in the course of employment for the employer.” G.L. c. 32, § 1. “Wages” are “the base salary or other base compensation of an employee paid to that employee for employment by an employer . . . .” *Id.* The Public Employee Retirement Administration Commission (PERAC) further defines regular compensation in its regulations, which we are required to enforce. *See* 840 CMR 15.03. To be considered regular compensation, the compensation to an employee must, among other requirements, be “ordinary, normal, recurrent, repeated, and of indefinite duration” and “be made on a non-discriminatory basis and be generally available for employees who are similarly situated relative to the purpose of the payment (e.g. a longevity payment made recurrently to all employees in a bargaining unit having attained a specific length of service).” 840 CMR 15.03(1)(a)(3) and (5). PERAC’s regulations specifically include “any amounts paid for length of service” in regular compensation as long as the payments meet the other requirements for regular compensation. 840 CMR 15.03(1)(d)(5). The regulations also specifically *exclude* “any amounts paid as bonuses . . . , provided that any payment to an employee or group of employees which will not recur or which will recur for only a limited or definite term will be considered a bonus” unless the payment is made under a salary augmentation plan or salary enhancement program provided for in a collective bargaining agreement.

In this case, Ms. Stevens received a one-time $1,000.00 payment pursuant to a collective bargaining agreement between her union and the school district. The agreement describes the payment as a “one time bonus payment” and retirement contributions were withheld by the school district.

 This payment is a “bonus” and not regular compensation for the following reasons. First, the payment does not meet the general statutory and regulatory requirements for regular compensation. It is not “ordinary, normal, recurrent, repeated, and of indefinite duration.” 840 CMR 15.03(1)(a)(3). It is extraordinary, ad hoc, one-time, and of finite duration.

 It is arguable whether this payment is a “longevity” payment, which, if it meets the general requirements in 840 CMR 15.03(1)(a) through (c), would be considered regular compensation. 840 CMR 15.03(d)(5) (amounts paid for length of service). The $1,000.00 payment is for all teachers who have reached the top step in the salary schedule prior to July 1, 2010 (though that is not strictly tied to the teacher’s length of service). However, one-time, non-recurring payments like this are bonuses specifically *excluded* from regular compensation because they “will not recur.” 840 CMR 15.03(2)(c). Moreover, Ms. Stevens was already receiving separate longevity pay of $1,200.00 in the same school year based on her more than 20 years of service. It is not likely that the parties would negotiate two recurring longevity payments for the same school year.

 Finally, Ms. Stevens argues that the lawyer who drafted the contract made an error in calling the payment a bonus and not a “stipend.” If Ms. Stevens is arguing that calling the payment a stipend in the collective bargaining agreement would have controlled the Board’s treatment of it because some stipends for teachers are regular compensation, she is mistaken. Public employers do not decide whether certain employee payments are regular compensation; retirement boards make those decisions pursuant to the retirement law. If a payment is not regular compensation under the retirement law, employees and public employers cannot privately agree that it will be treated as regular compensation. *See, e.g., Tramontana v. Teachers’ Retirement System*, CR-06-592 (DALA 2008) (two one-time payments to school nurse based only on her payroll status not regular compensation, despite agreement between union representative and school committee member that the payments were regular compensation); *Lashua v. State Bd. of Retirement*, CR-08-790 (DALA 2008) (*ad hoc*, one-time payment to correction officer based on payroll status not regular compensation, even though CBA called the payment regular compensation). The Supreme Judicial Court has explained that chapter 32’s definition of regular compensation is “a safeguard against the introduction into the computations of adventitious payments to employees which could place untoward, massive, continuing burdens on the retirement systems.” *Boston Ass’n of School Adm’rs and Supervisors v. Boston Retirement Bd.*, 383 Mass. 336, 341 (1981). “The safeguard is needed especially where the public entity that negotiates a collective agreement,” here the local school committee, “is not the one that will have to find the funds to pay the continuing retirement benefits above the avails of employee contributions.” *Id.*

 For the above-stated reasons, the one-time $1,000.00 payment in this appeal is a bonus and not regular compensation. Accordingly, the Board’s decision not to include that payment in its calculation of the Ms. Stevens’s retirement allowance is affirmed. The deductions that were taken from this payment shall be refunded to Ms. Stevens.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Kenneth J. Forton, Esq.

Administrative Magistrate

DATED: Sept. 1, 2017