COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss Division of Administrative Law Appeals

Karl Stinehart and Robert Landis,
Petitioners

v.

Docket No. CR-24-0605; CR-24-0625
Date issued: April 17, 2026

Hampden County Regional Retirement System,
Respondent

and

Public Employee Retirement Administration Commission,
Intervenor

Appearance for Petitioners:

Matthew L. Feeney, Esq.

Appearance for Respondent:

Edward M. Pikula, Esq.

Appearance for Intervenor:

Judith A. Corrigan, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

Deferred compensation received by a town administrator and a police chief pursuant to G.L. c. 32, §§ 108N and 108O, respectively, was regular compensation

because G.L. c. 44, § 67 specifically provides that deferred compensation "shall continue to be included as regular compensation."

DECISION

Petitioners Karl Stinehart and Robert Landis appeal from separate decisions of Respondent Hampden County Regional Retirement System (the board) not to treat certain deferred compensation they were entitled to under their individual employment contracts as regular compensation when calculating their retirement allowances. *See* G.L. c. 32, §§ 1, 16(4). On October 4, 2024, the board moved DALA to consolidate the appeals of Messrs. Stinehart and Landis and to invite the Public Employee Retirement Administration Commission (PERAC) to intervene. On April 10, 2025, I allowed both motions. At the parties' request, I held an evidentiary hearing on October 30, 2025. It was digitally recorded. Messrs. Stinehart and Landis testified on their own behalf. The board called Karen Martin, Executive Director of the board, and Karl Schmaelzle, Chairman and Treasurer of the board. I admitted into evidence 28 exhibits that the parties jointly proposed. (Exs. 1-28.) The parties filed closing briefs in December 2025.

<u>FINDINGS OF FACT</u>

Based on the testimony and documents in evidence, I make the following findings of fact:

Karl Stinehart

1. Karl Stinehart is 63 years of age. He began working for the Town of Southwick as what is now known as the Town's Chief Administrative Officer on May 8, 1989. He worked in that position for 35 years before he retired on May 10, 2024. (Ex. 1; Stinehart Testimony.)

2. During the course of his employment with the Town, his salary and other benefits were determined by a series of individual contracts that were agreed on by Stinehart and the Town. The contracts were entered into pursuant to G.L. c. 41, § 108N. (Exs. 1, 3, 6-10; Stinehart Testimony.)

3. At some point, the contracts began to include deferred compensation payments as part of the total compensation package for services performed in the course of his employment for the Town. Mr. Stinehart entered into five such contracts that ran consecutively for approximately 20 years. The first of these contracts began on July 1, 2004, and the last was scheduled to run through June 30, 2025, although he retired prior to the conclusion of that last contract. (Exs. 1, 6-10; Stinehart Testimony.)

4. Mr. Stinehart's 2004 contract provided him a salary of $72,000 that would increase incrementally, plus deferred compensation:

> The Town and Employee shall research, agree upon and implement a supplementary retirement plan whereby a separate dollar amount equivalent to 8% of Employee's annual gross wages will be deposited annually before each June 30th commencing FY04. Employee must stay with employer for three (3) years to qualify to be fully funded unless released by the Board [of Selectmen]. The Mechanics of how this section will work are set forth under MGL 44, Section 67.

(Ex. 6.)

5. Mr. Stinehart's 2007 and 2012 contracts included the same deferred compensation provision, except that it increased the rate to 9% and changed the funding of the account from annually to bi-weekly. His 2017 contract also included the same deferred compensation provision but increased the rate to 15%. His 2022 contract, which was his last, increased the rate again to 18%. (Exs. 7, 8, 9, 10.)

6. Each of the "Salary" sections of the five contracts provided that the salary amounts were dependent on the continuation of the contract's deferred compensation program. Otherwise, "the rates above are subject to an upward revision." (Exs. 6-10.)

7. There is no evidence that the Town was aware of Mr. Stinehart's retirement plans when the parties negotiated the deferred compensation. (Stinehart Testimony.)

8. The Town intended for these regular and recurring deferred compensation payments to be included in the calculation of his retirement allowance and so notified the board by letter dated February 16, 2005. (Exhibits 1, 2, 3, 26; Stinehart Testimony.)

9. The deferred compensation payments made to Stinehart were invested through the Massachusetts SMART Plan. (Exs. 13, 14, 15; Stinehart Testimony.)

10. The Town withdrew retirement deductions from the deferred compensation payments, and those deductions were sent to the board. (Exs. 1, 2.)

11. When Mr. Stinehart applied to retire, the board's retirement allowance calculation did not treat Mr. Stinehart's deferred compensation as regular compensation. This treatment of the deferred compensation was consistent with PERAC's treatment of it in its own calculation. Mr. Stinehart asked the board to recalculate his allowance to include treating his deferred compensation as regular compensation. (Exs. 11, 12.)

12. On September 16, 2024, the board notified Mr. Stinehart that it declined to re-calculate his retirement allowance to include his deferred compensation as regular compensation. Mr. Stinehart timely appealed. (Exs. 12, 26.)

Robert Landis

13. Robert Landis is 62 years old. He served as a police officer for 30 years, beginning at the end of 1993 working for the Deerfield Police Department and retiring on June 30, 2024, from Southwick Police Department. (Landis Testimony.)

14. He began working with the Town of Southwick in October of 1995. On July 1, 2021, he became the Southwick Chief of Police. (Landis Testimony.)

15. Chief Landis and the Town entered into an individual employment contract that ran from July 1, 2021, through June 30, 2024. The contract was entered into pursuant to G.L. c. 41, § 108O. (Ex. 19; Landis Testimony.)

16. As part of his compensation under the contract, he received a "base salary" in the first year of $108,662.00, with later years to be negotiated. An additional paragraph provided:

> [T]he Town and Employee shall establish a supplemental retirement plan whereby an amount equal to the difference between the CHIEF's 10% educational incentive and 25% over his base pay will be deposited in regular bi-weekly installments by the Town over the course of each contract year.

(Ex. 19; Landis Testimony.)

17. The contract was structured this way so that the prior police chief and Mr. Landis would be paid the same total compensation when Mr. Landis took over. The prior police chief had a master's degree and consequently received a 25% increase to his base

pay under the "Quinn Bill" as part of his total compensation. *See* G.L. c. 41, § 108L. Mr. Landis had an associate's degree, which entitled him to only a 10% increase to his base pay. *See id.* To raise Mr. Landis's compensation to the same level as the retired chief, the Town agreed to pay the difference of 15% of his base pay to the Massachusetts SMART Plan on Mr. Landis's behalf. (Exs. 19, 20, 21; Landis Testimony.)

18. There is no evidence that the Town was aware of Mr. Landis's retirement plans when the parties negotiated the supplemental retirement plan, or deferred compensation. (Landis Testimony.)

19. The Town withheld retirement deductions from the additional bi-weekly payments, and those deductions were sent to the board. (Ex. 20; Landis Testimony.)

20. On September 19, 2024, the board sent Mr. Landis a retirement allowance calculation estimate that did not treat the deferred compensation as regular compensation. Mr. Landis disputed the calculation. (Ex. 25.)

21. On October 4, 2024, the board denied Mr. Landis's request to treat the deferred compensation as regular compensation. Mr. Landis timely appealed. (Ex. 25.)

CONCLUSION AND ORDER

Upon retirement, members may receive a superannuation retirement allowance that is based in part on their "regular compensation" during certain years. G.L. c. 32, §§ 1, 5(2). Regular compensation for the relevant period is defined as "compensation received exclusively as wages by an employee for services performed in the course of employment for his employer." G.L. c. 32, § 1. "Wages" are defined in turn as "base salary or other base compensation of an employee paid to that employee for employment by an employer," not including overtime, bonuses, and other additional ad hoc forms of payment. *Id.*

The question in these appeals is whether compensation paid to Petitioners under their individual contracts that was transferred by their employer directly into a deferred compensation account with the SMART Plan was regular compensation. This is a question of first impression.

The parties take rather disparate approaches to resolving this question. The Petitioners argue that the payments are regular compensation because a statute, G.L. c. 44, § 67, explicitly defines compensation deferred under the program in that section as regular compensation. Under this logic, it does not matter if the deferred compensation fits the general definition of regular compensation, as generally, where statutes deal with the same subject, the more specific statute controls the more general one.

PERAC and the board take a more winding route. They argue that the treatment of deferred compensation as regular compensation in G.L. c. 44, § 67 has been superseded by the 2009 reforms to the contributory retirement law. *See* Acts 2009, c. 21, § 23. Therefore, to be considered regular compensation the deferred compensation must conform to the general definition of regular compensation in G.L. c. 32, § 1. PERAC and the board insist that the Petitioners' deferred compensation runs afoul of several exclusions from the general definition of regular compensation, and it therefore does not qualify. *See id.*

For the reasons explained below, I conclude that the 2009 reforms did not supersede G.L. c. 44, § 67's treatment of the Petitioners' deferred compensation as regular compensation; consequently, it is regular compensation. I further conclude that, even if G.L. c. 44, § 67 had been superseded, the Petitioners' deferred compensation still meets the general definition of regular compensation.

I start with the Petitioners' argument. G.L. c. 41, § 108N, authorizes any municipality, by approval of its legislative body, to

> establish an employment contract for a period of time to provide for the salary, fringe benefits, and other conditions of employment . . . for its town manager, town administrator, executive secretary . . . or the person performing such duties having a different title.

Mr. Stinehart, who served as the Southwick Chief Administrative Officer, and the town negotiated his contract under § 108N. Municipalities also are able to enter into those same types of contracts with police and fire chiefs, providing the same types of pay and benefits. G.L. c. 41, § 108O. Mr. Landis, who served as the Southwick Police Chief, and the town negotiated his contract under § 108O. Sections 108N and 108O provide that nothing contained in those sections shall "abridge the provisions" of G.L. c. 44, § 67. *See* G.L. c. 41, §§ 108N and 108O.

In turn, under G.L. c. 44, § 67,[1] a city or town may

> contract with an employee to defer a portion of that employee's compensation and may, for the purposes of funding a deferred compensation program for said employee, established in accordance with the U.S. Internal Revenue Code . . ., invest the deferred portion of the

[1] G.L. c. 29, § 64B provides the same deferred compensation program for government employees "not otherwise subject to any general or special law authorizing deferred compensation contracts with its employees,"—in other words, the tens of thousands of other Massachusetts government employees. Section 64B likewise provides that "[a]ny compensation deferred under such a plan shall continue to be included as regular compensation, as defined in section 1 of said chapter 32, for the purpose of computing any retirement and pension benefits earned by any such employee." *Id.*

> employee's income in a life insurance or annuity contract, mutual fund, or a bank investment trust.

The Petitioners' contracts provided that a certain portion of their compensation would fund deferred compensation accounts held for their benefit under the authority granted them in G.L. c. 44, § 67. In the Petitioners' cases, those accounts were held at the state SMART Plan. Then, to remove any doubt, section 67 specifically provides that compensation deferred under these programs "shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two." Therefore, under the plain language of G.L. c. 44, § 67, their deferred compensation is regular compensation.

If section 67 was the only statute that defined or treated regular compensation, that would be the end of the analysis. However, G.L. c. 32, § 1, provides a more general, comprehensive definition of regular compensation. This sets up a potential conflict that must be resolved. "[W]here statutes deal with the same subject, the more specific statute controls the more general one, so long as the Legislature did not draft the more general statute to provide comprehensive coverage of the subject area." *Wing v. Comm'r of Prob.*, 473 Mass. 368, 373–74 (2015). Here, G.L. c. 44, § 67, explicitly defines as regular compensation any compensation deferred under its authority. In contrast, G.L. c. 32, § 1, gives a general definition of regular compensation, which, as such, must yield to the more specific definition in section 67.

It is also clear that the Legislature did not draft the general definition to "provide comprehensive coverage" of regular compensation. The definitions section of the retirement law, section 1, where the general definition of regular compensation resides, makes room for different definitions to apply to the terms defined there. The section 1 definitions apply "unless a different meaning is plainly required by the context." Moreover, there are several statutes outside of section 1, in addition to section 67, that provide different meanings for terms generally defined in section 1. *See, e.g.*, G.L. c. 41, § 111F (injured-on-duty payments are regular compensation); G.L. c. 32, § 3(1)(a)(i) (members on authorized leaves of absence with pay receive regular compensation and creditable service); G.L. c. 32, § 14(1) (period a member receives total disability workers' compensation payments is creditable service). These provisions are examples of different meanings that are "plainly required" in their contexts.

Based on the analysis, supra, I conclude that the compensation deferred under the Petitioners' contracts pursuant to G.L. c. 44, § 67, is regular compensation.

I now turn to the arguments of PERAC and the board, which I do not find convincing. They contend that section 67's treatment of deferred compensation as regular compensation has been superseded by Acts 2009, c. 21, § 23, a provision of the 2009 reforms to the contributory retirement law, which provides:

> Notwithstanding any special or general law to the contrary, any amount, benefit or payment included in the definition of "regular compensation" by law or by regulation prior to the effective date of this act and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of "regular compensation" during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after June 30, 2012 shall not be considered regular compensation.

According to PERAC and the board, G.L. c. 44, § 67 is a general law that is contrary to the amended definition of regular compensation; therefore, at the latest, post-2012 deferred compensation is no longer regular compensation unless it satisfies the 2009 amended definition.

This argument is ineffective for two reasons. First, Acts 2009, c. 21, § 23 is merely trying to *continue* certain benefits that members have come to rely on as regular compensation because they were provided for in their contracts and the benefits qualified under the old definition, despite what the new definition of regular compensation and any special or general law to the contrary says. It is not trying to prospectively *end* the treatment of certain payments, like injured-on-duty benefits under G.L. c. 41, § 111F or deferred compensation under G.L. c. 44, § 67, as regular compensation. Section 67 is not a general or special law to the contrary of treating something as regular compensation—it is the law that affirmatively treats the payments at issue as such. Moreover, if the Legislature meant to abrogate the treatment of certain compensation as regular compensation outside of the core contributory retirement law, G.L. c. 32, §§ 1-28, it would have amended those statutes, not buried their termination in a session law like Acts 2009, c. 21, § 23.

Second, the Petitioners' deferred compensation *does* meet the 2009 amended definition of regular compensation. So, even if G.L. c. 44, § 67 did not define the Petitioners' deferred compensation as regular compensation, it still meets the 2009 amended general definition of regular compensation. The 2009 definition is "compensation received exclusively as wages by an employee for services performed in the course of employment for his employer," and wages are "base salary or other base compensation." G.L. c. 32, § 1. The Petitioners' contracts provide them a base salary plus "other base compensation" of some additional percentage of that base salary as deferred compensation that the Petitioners and the town agreed to have paid directly into the SMART plan.

PERAC and the board suggest that if the amounts paid as deferred compensation were paid to the Petitioners "directly" as salary and then, after they received the salary, the Petitioners elected to have a certain percentage of that pay transferred to a deferred compensation account like the SMART Plan, that amount transferred *would* be wages, and thus regular compensation, purely because it was first paid "directly" to the Petitioners as salary. Looking at the issue in a slightly different way, what is the difference, for present purposes, in placing deferred compensation into the SMART Plan versus not deferring a portion of the Petitioners' compensation and then making the same type of investment on their own? Under PERAC's reasoning, their full compensation would become regular compensation only if they were first paid directly and then invested part of it on their own rather than deferring a portion of that same compensation and having the state invest it through the SMART Plan. The Supreme Judicial Court expressly rejected this argument in *Bulger v. Contributory Retirement Appeal Board*, 447 Mass. 651, 655 (2006):

> The qualification that the compensation must be "received by [a] member" implies neither that all compensation received by a member must be treated as "regular compensation" nor, as argued by CRAB, that compensation must literally be received during the relevant pay period.

(Citation omitted.) There is no basis in law to exclude a regularly recurring payment to the Petitioners from their "wages" purely because of the formula used to calculate the Petitioners' total compensation.

PERAC and the board additionally argue that the Petitioners' deferred compensation falls under several exclusions from regular compensation listed in the G.L. c. 32, § 1 general definition.

First, they maintain that the payments were "indirect" or "in-kind" payments, possibly for annuities, which is excluded from the definition of regular compensation. *See* G.L. c. 32, § 1. As discussed, supra, the payments were not "indirect payments." PERAC suggests that because the contracts provide that payments to the SMART plan are done "on the behalf" of the Petitioners, the payments were indirect. The deferred compensation payments were no more "indirect" than any of the other pay deductions, such as health and life insurance, that the average member has deducted from their pay. As a convenience, the employer sends those deductions to the various recipients at the request of the member without first transferring the money to the Petitioner. That fact does not exclude those payments from regular compensation. Nor were the payments to the SMART plan in-kind payments, which "consist[] of something (such as goods or commodities) other than money." Merriam-Webster.com Dictionary (last visited April 14, 2026). The deferred compensation payments were money payments, and therefore not in-kind payments. Moreover, there is no evidence that the deferred compensation was invested in an annuity. Both members' deferred compensation was invested in the SMART Plan, a 457(b) plan that invests in mutual funds. *See* 26 U.S.C. § 457(b).

Second, PERAC and the board argue that Mr. Stinehart's deferred compensation was not "pre-determined" or "guaranteed," as required by 840 CMR 15.03(3)(b). This argument is based on the provisions in Mr. Stinehart's contracts that his salary amounts were contingent on the continuation of the deferred compensation program. If deferred compensation ended, Mr. Stinehart's salary was "subject to an upward revision." PERAC and the board read this to mean that the deferred compensation program could be terminated, and it was therefore not pre-determined or guaranteed. This is a peculiar reading of that contract provision. A more natural, and therefore more convincing, reading would be that Mr. Stinehart and the town considered his total pay to be base salary plus deferred compensation. If there was some change in the SMART plan that made him ineligible to further participate in the Plan, then Mr. Stinehart's salary could be renegotiated so that his total pay would not decrease. Contrary to PERAC's argument, this provision seeks to *guarantee* Mr. Stinehart's total compensation.

Finally, at the DALA hearing, PERAC and the board pressed the issue of whether anyone in the town knew the Petitioners' retirement plans. This is because "payment[s] made as a result of the employer having knowledge of the member's retirement" are excluded from regular compensation. G.L. c. 32, § 1.

In Mr. Stinehart's case, their suspicion appears to have been based on the rise in his deferred compensation from 8% of his base salary 20 years ago to 18% of his base salary in his final years. This is a marked increase, for sure, but there is no evidence that it was based on anything other than the negotiations between Mr. Stinehart and the town. It is possible that such a large increase may run afoul of the anti-spiking statute, G.L. c. 32, § 5(2)(f), but that is not at issue in this appeal. PERAC also finds suspicious that Mr. Stinehart requested retirement allowance estimates before he retired. It ignores reality to suggest that that bare act would bar any increase in pay that occurs after the request is made from being treated as regular compensation. Anyone reviewing our decisions would see that it is commonplace for members to obtain estimates of their retirement benefits from time to time, which is a sensible thing to do to make sure retirement plans are on track.

In Mr. Landis's case, their suspicion seemed based on his relatively short tenure as the police chief. I assume they see his large increase in pay when he took over as police chief as part of a retirement strategy, rather than a result of taking on the job as the highest ranking law enforcement officer in the town. But, even if Mr. Landis decided to take the job to increase his retirement numbers, there is no ban on doing so as long as the town was not aware of his plans—and there is no evidence that it was.

The few contributory retirement cases that involve deferred compensation are consistent with this decision. In *Cronin v. Milton Retirement Board*, CR-01-946 and CR-02-555, DALA (October 25, 2002) and CRAB (July 30, 2003) overturned the Milton Retirement Board's decision not to treat as regular compensation longevity payments and deferred compensation payments to Mr. Cronin, a former long-term town administrator. Although neither DALA nor CRAB cited G.L. c. 44, § 67, they stated that the payments were "regular and recurring" and also noted that the payments were not predicated on Mr. Cronin's retirement. *Cronin*, supra (CRAB), at *4. Similarly, in *Gorman v. Public Employee Retirement Administration Commission*, CR-01-492 (Contributory Ret. App. Bd. Jan. 31, 2003), CRAB concluded that deferred compensation payments were regular compensation for the purpose of calculating excess earnings under G.L. c. 32, § 91A.

For the reasons stated above, the board's decision is REVERSED. The Petitioners' deferred compensation payments are regular compensation for the purpose of calculating their retirement allowances.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: April 17, 2026