

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

Division of Administrative Law Appeals

Fran Surkin,
Petitioner

v.

Docket No. CR-21-0552
Date issued: February 20, 2026

**Massachusetts Teachers'
Retirement System,**
Respondent

Appearance for Petitioner:

Fran Surkin, pro se

Appearance for Respondent:

Salvatore Coco, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

Petitioner appeals MTRS's decision not to include certain payments she received in her regular compensation calculation. She was paid a \$2,000 stipend for "Music" duties. The applicable CBA provides that the payment for "Music" duties would be \$1,750. In cases when the stipend paid and the stipend provided in the CBA do not match, the amount in the CBA serves as the maximum that may be counted as regular compensation. See 807 CMR 6.02(1)(a), (c); 807 CMR 6.01; *DiCarlo v. Teachers' Ret. Bd.*, CR-99-744 (Contributory Ret. App. Bd. May 15, 2001). Therefore, \$1,750 of the stipend she received is regular compensation.

DECISION

Petitioner Fran Surkin appeals Respondent Massachusetts Teachers' Retirement System's (MTRS) decision not to treat certain stipends that she received for additional services as regular compensation when calculating her retirement allowance. See G.L. c. 32, §§ 1, 16(4). I held a hearing on November 25, 2025. It was digitally recorded. Ms. Surkin testified on her own behalf. MTRS subpoenaed Lynn Schools's payroll manager, Ashley Casey, who also testified. I admitted into evidence Petitioner's Exhibits P1-P4 and Respondent's Exhibits R1-R7. The parties filed closing briefs on January 16, 2026.

FINDINGS OF FACT

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

1. Fran Surkin is a music teacher with a bachelor's degree in music education and a master's degree in vocal performance. She worked as a teacher at various Massachusetts schools for over 20 years. She became an MTRS member in 1984. (Surkin Testimony; Ex. R3.)
2. Ms. Surkin was employed as a teacher with the Lynn Public Schools at all times relevant to this appeal. In 2004, she moved to Pennsylvania and continued teaching music there. (Surkin Testimony; Ex. R3.)
3. At all times relevant to this appeal, certain teachers, including Ms. Surkin, were members of a collective bargaining unit represented by the Lynn Teachers Union. (Ex. R6.)
4. Ms. Surkin did not retire in 2004 when she left Massachusetts. She deferred her retirement until 17 years later. In April 2021, Ms. Surkin filed her

retirement application with MTRS. She chose an effective retirement date of October 27, 2021. (Ex. R3.)

5. The three years for which Ms. Surkin was most highly compensated for her teaching were 2001-2002, 2002-2003, and 2003-2004. (Ex. R3.)

6. The subject of this appeal is whether a stipend that Ms. Surkin received in the 2003-2004 school year should be treated as regular compensation when calculating her retirement allowance. *See* G.L. c. 32, § 1; 807 CMR 6.01; 807 CMR 6.02(1)(a), (c).

7. On Ms. Surkin's retirement application, Lynn initially listed a few stipend payments. One of these payments was \$2,000 for "Chorus Manager Stipend" in 2003-2004; this stipend is the disputed payment. The rest of the stipend payments are not in dispute. (Exs. P1, R5, R3.)

8. Ms. Surkin's final paycheck for the 2003-2004 school year, dated June 24, 2004, shows that she was paid one \$2,000 stipend. (Ex. R7.)

9. Appendix B of Ms. Surkin's collective bargaining agreement (CBA) listed additional services for which teachers were compensated and their accompanying stipends. One of the stipends listed was "Music," which provided a \$1,750 stipend. (Exs. R3, R6.)

10. Additionally, Article III, Section M of the CBA contains the following statement:

The Principal and Union Building Committee shall meet in September and jointly determine the extra-curricular activities for the school year and submit the same to the School Business Administrator. Individual building needs and interests may affect the designation of activities and positions[;] however, these may not exceed the overall totals as indicated in Appendix B.

(Ex. R6.) (Emphasis added.) It was not uncommon for Lynn to pay teachers stipends for extra-curricular activities that were not specifically listed in the CBA. (Ex. R7, pp. 22-25.)

11. It was customary for the principal to re-allocate funding for extracurricular activities. Each year, the principal assessed the building and school needs and then redistributed the resources based on his findings. Therefore, teachers saw nothing odd in the fact that the payments they received sometimes did not match exactly what was listed in Appendix B of the CBA. (Surkin Testimony; Ex. P3.)

12. As the Music advisor, Ms. Surkin directed the school's choral groups. She taught the students how to sing their parts, helped plan the groups' tours, organized performances at the school and in the community, and arranged joint concerts. (Surkin Testimony.)

13. In Ms. Surkin's retirement application, Lynn initially described the \$2,000 stipend as a "Chorus Manager Stipend." This title was not listed in Appendix B of the CBA. (Surkin Testimony; Ex. R3.)

14. MTRS attempted to ascertain why Lynn listed "Chorus Manager" in Ms. Surkin's retirement application when the CBA did not include that stipend. Lynn explained that it made a mistake on the retirement application. On October 27, 2021, Lynn amended the application, changing the \$2,000 "Chorus Manager" stipend to two separate payments: a \$1,000 payment for "Chorus Manager" and a \$1,000 payment for "Dance Step Team." The \$1,000 stipend for "Dance Step Team" was not listed in the CBA either. (Exs. R4, R6, P3, R7.)

15. On October 28, 2021, MTRS notified Ms. Surkin that it would not treat her 2003-2004 stipends for “Chorus Manager” and “Dance Step Team” as regular compensation because they were not included in the CBA. (Ex. R1.)

16. On November 9, 2021, Ms. Surkin timely appealed MTRS’s decision. (Ex. R2.)

17. Ms. Surkin later submitted a letter, dated November 30, 2022, from Lynn’s Payroll Manager, Ashley Casey, addressed to whom it may concern, stating: “The payroll clerk who filled out the retirement application for Fran Surkin had incorrectly listed her extracurricular activities for the 2003-2004 [school year] as Chorus Manager Stipend. This should have been noted on the retirement as ‘Music.’” (Casey Testimony; Ex. P4.)

CONCLUSION AND ORDER

Upon retirement, teachers may receive a superannuation retirement allowance that is based in part on their “regular compensation” during certain years. Regular compensation for the relevant period is defined as the “full salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority.” 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.* This definition describes wages as “recurrent or repeated amounts of compensation not inflated by extraordinary ad hoc payments.” *Boston Ass’n of Sch. Adm’rs & Sup’rs v. Boston Ret. Bd.*, 383 Mass. 336, 341 (1981).

However, there is an exception to this definition for teachers whose “salary payable under the terms of an annual contract for additional services” is considered regular compensation. G.L. c. 32, § 1. An MTRS regulation requires that both the “additional services” and the “remuneration” for them must be “set forth in the annual contract.” 807 CMR 6.02(1)(a), (c). Another MTRS regulation defines “annual contract” as the applicable CBA. 807 CMR 6.01.

The purpose of these requirements is to “provide clear records of approved stipends so as to avoid confusion and uncertainty . . . when retirement boards are called upon to calculate pension benefits.” *Kozloski v. Contributory Ret. Appeal Bd.*, 61 Mass. App. Ct. 783, 787 (2004). The Appeals Court is concerned that boards not have to “sift through a multiplicity of alleged oral or side agreements about which memories might well be hazy.” *Id.*

The dispute here is over whether the stipend that Ms. Surkin received in the 2003-2004 school year was “set forth” in her CBA and is therefore regular compensation. Several issues must be resolved to answer this question.

First, it is undisputed that Ms. Surkin received \$2,000, but I must determine what duty she was compensated for. Lynn first stated that she received \$2,000 for being the Chorus Manager. Later, after having been questioned by MTRS, Lynn revised her stipend to two stipends: \$1,000 for Chorus Manager and \$1,000 for Dance Step Team; Ms. Surkin concurred with this revision. Then, after MTRS made its decision and it was appealed, Lynn’s payroll manager stated that the payroll clerk who filled out the retirement

application for Ms. Surkin incorrectly labeled her stipend Chorus Manager and that it should have been labeled “Music” instead.

A preponderance of all of the evidence that existed at the time of the hearing supports the conclusion that she was paid \$2,000 for Music.¹ The current payroll manager, Ms. Casey, testified that the correct label for the stipend was “Music,” which is supported by the fact that Ms. Surkin received one stipend payment for \$2,000 at the end of the 2003-2004 school year, not two separate \$1,000 payments. There is no evidence that Ms. Casey and Ms. Surkin colluded in any way; in fact, at the hearing Ms. Surkin was still under the impression that she received two separate \$1,000 stipends. I place more weight on the employer’s representation. The employer has no incentive to misrepresent the stipend and its considered assessment of its own payroll records is more likely to be accurate. The \$2,000 stipend she received did not match the amount listed in the CBA, but this comes as no surprise considering the principal’s practice of changing up the stipends each year after the CBA was signed. See discussion, *infra*.

The next issue is whether the “Music” stipend was “set forth” in the CBA. Appendix B of the CBA lists a Music stipend for \$1,750. Ms. Surkin also submitted two additional lists of stipends that were not part of the CBA. One list includes stipends of \$1,000 for a dance step team, \$1,000 for music; the other lists one stipend of \$1,000 for music and does not mention dance step team. It appears that these additional lists were

¹ MTRS urges me to disregard evidence that it did not have access to before it made its decision, but this position is incorrect. “[T]he statutory scheme assigns to CRAB the primary function of ascertaining the facts of the case, *Namay v. Contributory Ret. Appeal Bd.*, 19 Mass. App. Ct. 456, 461–62 (1985), presumably as they exist at the time of its own proceedings.” See *Kozloski*, 61 Mass. App. Ct. at 788.

likely created under the powers given to the principal discussed in Article III, Section M of the CBA. That section essentially states the principal and the union building committee can revise the stipend list as long as the total amount of stipends does not exceed the total listed in Appendix B of the CBA.

MTRS argues that these two additional lists should be ignored in my analysis because they are side agreements, which are not recognized as part of the CBA. Ms. Surkin counters that these two additional lists were created under powers granted to the principal under the CBA, so they are part of the CBA.

In *Kozloski v. Contributory Retirement Appeal Board*, the Court explained that the MTRS

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.

61 Mass. App. Ct. at 787. Ms. Surkin is asking MTRS to do exactly what the Appeals Court decided was not required of retirement boards in this situation: sort through additional lists, assure their authenticity (which is unclear here), compare them to each other, compare them to the CBA, and then choose whether to treat one of the lists or the CBA as the final authority. As the Court noted, this approach sows “confusion” and “uncertainty,” exactly what the Board’s regulations are designed to avoid. *Id.* Explicitly providing for side agreements, as this CBA appears to do, does not relieve the retirement board of any of the confusion and uncertainty that considering side agreements

creates.² I therefore conclude that only the additional duties listed in Appendix B of the CBA are “set forth” in the annual contract. See 807 CMR 6.02(1)(a), (c); 807 CMR 6.01.

MTRS argues that “Music,” even though it is listed in is not descriptive enough to qualify as an additional duty. To be “set forth,” “does not require a detailed specification of the item ‘set forth’ or a determination of ‘adequacy’ or ‘sufficiency’ by CRAB.” *Fazio*, supra. It is only the “service” that must be set forth, not the title, position or other information. *Id.* at *6-8. Instead, “[w]hat matters is that the agreement, standing on its own two feet . . . reassure a reasonable reader that the bargaining parties agreed” to the services and their remuneration. *Martin v. Massachusetts Teachers’ Ret. Sys.*, CR-24-0017, at *2 (Div. Admin. L. App. Jan. 10, 2025). When a CBA makes an “encompassing reference” to a club or extracurricular activity, that is sufficient to describe what is being set forth. *Florio v. Massachusetts Teachers’ Ret. Sys.*, CR-18-509, at *5 (Div. Admin. L. App. May 7, 2021), aff’d (Contributory Ret. App. Bd. Mar. 26, 2025); see also *Fazio*, supra, at *6 n.3 (finding the “named position” of “Student Activity Advisor” has “sufficient description by itself” to set forth the service rendered).

“Music” is sufficiently descriptive for a reasonable reader to understand that the duty covers activities that typically fall under the general category of music: marching band, concert band, orchestra, choral groups, perhaps musical theater, to name a few.

² Allowing the Lynn principal to completely revise the additional duty list, including the duties themselves and all of their stipends, goes well beyond the situation in *Fazio*, where the CBA granted the principal the power to pay an \$825 stipend to advisors of “5 clubs selected by the principal.” *Fazio v. Contributory Ret. App. Bd.*, Memorandum and Order on Cross-Motions for Judgment on the Pleadings, Docket No. 17-664-D, at *6 (Superior Ct. Jan. 2, 2018). The *Fazio* CBA placed a strict limit on the principal’s discretion and lists a specific stipend amount.

Ms. Surkin credibly testified that she managed a choral group, describing in some detail what she did.³ It is beyond cavil that managing a choral group easily fits under the title “Music.”

Finally, MTRS argues that Ms. Surkin’s duties are not “set forth” because the stipend amount in the CBA does not match the stipend that she received. A CBA listing a specific amount, as in Ms. Surkin’s case, supports “the Legislature’s intent to . . . generally ensure ‘compensation’ is ‘explicitly set forth in the collective bargaining agreement.’” *Florio* (CRAB), *supra*, quoting *Kozloski*, 61 Mass. App. Ct. at 783. In cases in which the stipend provided in the CBA and the stipend the member received are not the same, the amount listed in the CBA is treated as the maximum amount that qualifies as regular compensation. *See DiCarlo v. Teachers’ Ret. Bd.*, CR-99-744 (Contributory Ret. App. Bd. May 15, 2001), *aff’d* 63 Mass. App. Ct. 1122, Memorandum and Order Pursuant to Rule 1:28 (2005) (“the portion of the stipends that [the member] had been paid for” is regular compensation); *Fonseca v. Massachusetts Teachers’ Ret. Sys.*, CR-12-164 (Div. Admin. L. App. Jan. 28, 2022), *aff’d* (Contributory Ret. App. Bd. Feb. 14, 2024) (when the CBA lists a prorated pay rate for 10 or fewer evaluations, the pay for 10 evaluations is the maximum the MTRS can treat as regular compensation). Here, the \$1,750 listed in the CBA is the maximum that can qualify as regular compensation. Ms. Surkin received

³ Ms. Surkin also testified that she advised a dance step team that was listed in one of the side agreements she presented into evidence. Because these side agreements are not part of the CBA, I determine that any compensation she received for the dance step team (the record is unclear as to this fact) does not qualify as regular compensation.

\$2,000. Under *DiCarlo*, therefore, this means that she is entitled to have \$1,750 of her stipend treated as regular compensation.

For the reasons stated above, MTRS's decision is REVERSED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: February 20, 2026