

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**John Twohig,**  
Petitioner,

No. CR-18-505

Dated: May 20, 2022

v.

**Braintree Retirement Board,**  
Respondent.

**Appearance for Petitioner:**

Leigh A. Panettiere, Esq.  
44 School Street  
Boston, MA 02108

**Appearance for Respondent:**

Michael Sacco, Esq.  
P.O. Box 479  
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**Appearance for the Public Employee Retirement Administration Commission:**

Judith A. Corrigan, Esq.  
5 Middlesex Avenue  
Somerville, MA 02145

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

A police department embarking on an accreditation process entered into collective bargaining agreements entitling its officers to biweekly “accreditation stipends.” The accreditation stipends were recurrent, predetermined, non-discretionary, and indefinite in duration. The respondent retirement board therefore erred in excluding the stipends paid to the petitioner, a department officer, from his “regular compensation” for retirement purposes.

**DECISION**

Petitioner John Twohig appeals from a decision of the Braintree Retirement Board excluding payments identified as “accreditation stipends” from the regular compensation used to compute Mr. Twohig’s retirement allowance. The Public Employee Retirement Administration Commission was impleaded, entered an appearance, but did not wish to file a memorandum.

An evidentiary hearing took place by WebEx on April 4, 2022. The witnesses were Deputy Michael Want and Sergeant Brian Cohoon. I admitted into evidence exhibits marked 1, 2, 3A, 3B, 3C, 3D, 4, 5, and 6. The parties arranged for a transcript and submitted closing briefs, at which point the record closed.

### **Findings of Fact**

I find the following facts.

1. The Massachusetts Police Accreditation Commission (MPAC) offers an accreditation process available on a voluntary basis to local police departments. Among other practical advantages, accreditation may reduce a department's exposure to liability in civil lawsuits. (Cohoon 69-70<sup>1</sup>; Exhibit 3B.)
2. The first stage of the accreditation process is a self-assessment. During this stage, department personnel review the department's policy documents, revise and supplement them as needed, and make physical changes to department facilities. (Want 38-40; Exhibit 3B.)
3. The second and third stages of the accreditation process are called "certification" and "accreditation," respectively. They both involve external evaluations of the department's compliance with various MPAC standards. Once a department is accredited, its continued accreditation requires a similar "reaccreditation" procedure every three years. (Want 40-44.)
4. On June 8, 2017 the Town of Braintree executed memoranda of agreement (CBAs) with the unions representing the town's patrol officers and superior officers, respectively. Each CBA supplemented an existing agreement. The effective term of each CBA was July 2016 through June 2019. (Exhibits 3C, 3D.)

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<sup>1</sup> Citations to the testimony are by witness name and transcript page.

5. Each CBA included an identical section 1(b), which stated:

All officers will receive an annual accreditation stipend as an acknowledgement of their continued cooperation and involvement toward accreditation of the Department. This stipend is payable regardless of whether the Town attains accreditation. The accreditation stipend will not be rolled into base pay and will be calculated from base pay only. The accreditation stipend will be payable bi-weekly.

The provision went on to quantify the accreditation stipend as 1% of base pay effective July 2016, 2% effective July 2017, and 3% effective July 2018. (Exhibits 3C, 3D.)

6. The CBAs' adjacent provisions also related to pay amounts. Each CBA's section 1(a) provided for an across-the-board pay raise calculated as a percentage of each officer's preexisting salary. Each CBA's section 1(c) provided for annual longevity payments stated in graduated dollar amounts for longevities of 20, 25, and 30 years. (Exhibits 3C, 3D.)

7. The Braintree Police Department (BPD) commenced its efforts to obtain accreditation in October 2017. It successfully achieved "certification" in June 2021. An assessment for "accreditation" is scheduled for June 2022. (Want 54-56; Exhibit 3B.)

8. In the wake of its self-assessment, the BPD dramatically increased the granularity of its written policies. The department prepared and provided training to its officers about the new and revised policies. These policies also necessitated modifications to the department's day-to-day operations. (Want 46-50, 82-94; Cohoon 71-74, 77.)

9. In accordance with the CBAs, the accreditation stipends were paid on a biweekly basis. The compensation amounts from which the accreditation stipends were calculated did not include overtime pay, holiday pay, longevity pay, or educational-incentive pay. Likewise, the accreditation stipends did not figure into calculations of eligible officers' overtime pay, holiday pay, longevity pay, and educational-incentive pay. (Want 56; Cohoon 61-64, 72.)

10. Mr. Twohig retired effective February 4, 2018, having served in the BPD for more than thirty years. For purposes of computing Mr. Twohig's retirement allowance, the board did not treat his accreditation stipends as "regular compensation." After corresponding about the issue with the unions and with PERAC,<sup>2</sup> the board restated its decision in an appealable letter. Mr. Twohig timely appealed. (Exhibits 1, 2, 3A, 3B, 4-6.)

### Analysis

The retirement allowance of a Massachusetts public employee is derived from the employee's "regular compensation," defined during the relevant period as "wages . . . for services performed in the course of employment." G.L. c. 32, § 1. "Wages" are the employee's "base salary or other base compensation." *Id.* They include "pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees." 840 C.M.R. § 15.03(3)(b).<sup>3</sup> They do *not* include "salary enhancements . . . which will recur for a limited or definite term." G.L. c. 32, § 1. Overall, the retirement law intends for pension computations to consider all "ordinary, recurrent, or repeated payments," while disregarding "extraordinary ad hoc amounts." *Pelonzi v. Ret. Bd. of Beverly*, 451 Mass. 475, 479 (2008).

The BPD's accreditation stipends easily satisfy most of regularity's fundamental attributes. They were predetermined by the CBAs. They depended on no contingencies or discretion. They were paid on a recurrent, repeated, biweekly basis. Their amount did not

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<sup>2</sup> The board asked PERAC primarily whether the accreditation stipends counted as "payments for holding . . . training, certification, licensing or other educational incentives." 840 C.M.R. § 15.03(3)(b). PERAC said no. (Exhibits 3A, 4.)

<sup>3</sup> A PERAC regulation states that wages include amounts "calculated as a percentage of base pay." 840 C.M.R. § 15.03(3)(b). An exegesis of this provision is not necessary for purposes of the instant appeal.

fluctuate. And they were equally available to all members of the BPD's two unions. *Cf. Bolles v. Boston Ret. Bd.*, No. CR-06-389, at 9-10 (DALA Sept. 14, 2007).

A subtler question is whether the accreditation stipends were non-qualifying “salary enhancements . . . which will recur for a limited or definite term.” G.L. c. 32, § 1. The record reflects no guarantee that the stipends would be paid forever. On the other hand, no such guarantee is required, or even logical: few forms of compensation, no matter how regular, are unalterable.

What the statute asks is whether a given type of payment is circumscribed to a “limited or definite term.” *Id. See Glenny v. MTRS*, No. CR-12-479, at 6 (DALA June 30, 2017); *O’Leary v. Lexington Ret. Bd.*, No. CR-15-30, at 9-10 (CRAB July 23, 2018). It is obvious that the CBAs did not restrict the accreditation stipends to any particular timespan. On close examination, the CBAs also did not provide that the stipends would terminate at the tail end of the accreditation process: indeed, the most pertinent contractual language promised that the stipends would continue “regardless of whether the Town attains accreditation.” Moreover, given that the project of *retaining* accreditation requires triennial reexaminations, it would make good sense for the accreditation stipends to remain in place indefinitely. The stipends thus were not confined to any “limited or definite term.” Their lifespan was instead left open-ended.

The board argues that the stipends are nevertheless not countable, because (the board says) they were not “base salary or other base compensation,” as the definition of “wages” requires. This argument relies on the CBAs’ statement that the stipends “will not be rolled into base pay.”

The statute and case law do not clearly delineate the “base salary” rubric. This term may or may not be congruent with the CBAs’ phrase “base pay.”<sup>4</sup> In any event, the accreditation stipends qualify at least as “other base compensation” for purposes of the “wages” definition. “There is a difference between ‘base salary’ and ‘base compensation’ or there would have been no need for the Legislature to include both terms.” PERAC Memo No. 33 / 2011 (Nov. 23, 2011). CRAB, DALA, and PERAC have all analyzed whether pay amounts are “other base compensation” by looking to the fundamental characteristics of regular compensation: pay amounts are *some* kind of “base compensation” if they are ordinary, recurrent, repeated, predetermined, non-discretionary, guaranteed, and indefinite in term. *See Marletta v. TRS*, No. CR-10-347, at 6 (CRAB Mar. 31, 2016); *Rafferty v. MTRS*, No. CR-14-391, at 7, 10 (DALA July 22, 2016); PERAC Memo No. 33 / 2011, *supra*. This approach forgoes hyperformalism in favor of careful compliance with the statute’s substantive directives. *Cf. Bulger v. Contributory Ret. Appeal Bd.*, 447 Mass. 651, 658 (2006) (analyzing the statutory phrase “other compensation in whatever form”). Here, the accreditation stipends’ attributes of ordinariness, recurrence, repetition, and so on suffice to make them “other base compensation.”

The board’s final argument is that the accreditation project imposed on BPD personnel no new duties, or at least none significant enough to warrant new, collectively bargained compensation.<sup>5</sup> This theory misreads the controlling standard. The retirement law requires

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<sup>4</sup> It appears that, in stating that the accreditation stipends would not be “rolled into base pay,” the CBAs intended to convey that the stipend amounts would not affect calculations of overtime pay, holiday pay, or the like. In this regard, the accreditation stipends paralleled longevity pay, which PERAC classifies as regular compensation. *See* 840 C.M.R. § 15.03(3)(b).

<sup>5</sup> As indicated in the findings of fact *supra*, the accreditation process did impose certain new responsibilities on BPD personnel. The parties have cited no authority suggesting that the retirement law’s computation of “regular compensation” hinges on a labor-law analysis of whether newly imposed duties were bargainable.

regular compensation to arise from “services performed in the course of employment.” G.L. c. 32, § 1. *See Public Emp. Ret. Admin. Comm’n v. Contributory Ret. Appeal Bd.*, 478 Mass. 832, 835-37 (2018). But *new* pay is not required to arise from *new* services. *See Olsen v. Teachers’ Ret. Bd.*, 70 Mass. App. Ct. 429, 434 (2007). In essence, a new pay amount that is ad hoc, extraordinary, or discretionary is an irregular “bonus,” whereas a new pay amount that is recurring, repetitive, and indefinite is a regular “pay increase.” *See Boston Ass’n of Sch. Administrators & Sup’rs v. Boston Ret. Bd.*, 383 Mass. 336, 342 (1981). The accreditation stipends therefore qualified as regular compensation irrespective of whether they rewarded new duties or preexisting ones.

**Conclusion and Order**

The accreditation stipends paid to Mr. Twohig were regular compensation for purposes of computing his retirement allowance. The board’s contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate