

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Gayle Valiant,**  
Petitioner,

Nos. CR-20-330, CR-20-427

Dated: November 3, 2023

v.

**Massachusetts Teachers' Retirement  
System,**  
Respondent.

**Appearance for Petitioner:**  
John Becker, Esq.

**Appearance for Respondent:**  
Marko Samardzic, Esq.

**Administrative Magistrate:**  
Yakov Malkiel

**SUMMARY OF DECISION**

A school psychologist's collective bargaining agreement entitled her to up to ten years' worth of "senior teacher" salary increases. She also received a one-time stipend for serving as a "mentor" to newer staff members. These pay amounts were not "regular compensation" for retirement purposes.

**DECISION**

In two decisions, the Massachusetts Teachers' Retirement System declined to treat components of Dr. Gayle Valiant's pay as "regular compensation" for retirement purposes. Dr. Valiant's two appeals were consolidated and submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-10 and stipulations numbered 6, 7, and 25-27 as appearing in MTRS's memorandum.

**Findings of Fact**

The following facts are not disputed.

1. Dr. Valiant served as a school psychologist in the Melrose Public Schools from 2004 until her retirement in 2020. She was a member of MTRS throughout that period. The school years pertinent to the calculation of her retirement allowance are 2018, 2019, and 2020. (Exhibits 4, 5; Stipulations 6, 7.)

2. An applicable collective bargaining agreement, in a provision captioned “Senior Teacher Salary Increase,” provided as follows:

An employee who is forty-five (45) years of age or older, is on the top step of the salary schedule . . . and has at least one hundred (100) days of accrued, unused sick leave may elect to receive an additional one thousand dollars (\$1,000) per year in base salary for a period of up to ten (10) years . . . in recognition of his/her years of service to the profession. If an employee who receives this Senior Teacher Salary Increase also is eligible for a departure incentive payment . . . the amount of such departure incentive payment will be reduced by the amount of the Senior Teacher Salary Increase . . . .

The “departure incentive payment” mentioned in this paragraph was available to teachers who, among other things, had reached age fifty-five. (Exhibit 1, article XXXIX, sections 9, 13.)

3. Another provision of the CBA, within a series of sections about “Extracurricular Activities,” stated:

Extracurricular . . . duties and services shall be compensated in accordance with the provisions of [certain other provisions]. The enumeration of such positions or . . . duties . . . is [not] intended to exclude payment for any other extracurricular duties not specifically included therein.

(Exhibit 1, article XL, section 1.)

4. During each of the school years 2018, 2019, and 2020, Dr. Valiant requested and received the “senior teacher” salary increase of \$1,000 per year. During the 2020 school year, she was also paid an additional stipend of \$1,200 for her service as a “mentor” to newer staff members. (Exhibits 2-5.)

5. For purposes of calculating Dr. Valiant's retirement allowance, MTRS declined to treat her "senior teacher" salary increases and her "mentor" stipend as "regular compensation." Dr. Valiant filed two timely appeals, which were subsequently consolidated. (Exhibits 6-10; Stipulations 25-27.)

### Analysis

The retirement allowance of a Massachusetts public employee is derived from his or her "regular compensation." G.L. c. 32, § 5. Overall, regular compensation is intended to cover "ordinary, recurrent, or repeated payments," while disregarding "extraordinary ad hoc amounts." *Pelonzi v. Ret. Bd. of Beverly*, 451 Mass. 475, 479 (2008).

For periods after 2009, the retirement law defines regular compensation as "wages," namely "base salary or other base compensation." G.L. c. 32, § 1. A PERAC regulation characterizes wages as "pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees." 840 C.M.R. § 15.03(3)(b). The regulation adds that wages include "payments made by the employer . . . because of the employee's length of service." *Id.*

Pay amounts that satisfy the general definition of regular compensation are pensionable "unless otherwise excluded from the definition." *Cronin v. Milton Ret. Bd.*, No. CR-01-946, at \*4 (CRAB July 30, 2003). The statute's list of exclusions from the definition is long. Among other things, it includes "amounts derived from salary enhancements . . . which will recur for a limited or definite term," "lump sum payments . . . for unused vacation or sick leave," and "any . . . payment made as a result of the employer having knowledge of the member's retirement." G.L. c. 32, § 1. *See* 840 C.M.R. § 15.03(3)(f).

The "senior teacher" salary increases awarded to Dr. Valiant do not qualify as regular compensation under these principles. The CBA made those salary increases available "for a

limited or definite term,” i.e., up to ten years total, elected one year at a time. *See generally Twohig v. Braintree Ret. Bd.*, No. CR-18-505, 2022 WL 16921472, at \*3 (DALA May 20, 2022). The salary increases were not altogether regular and guaranteed, given that their availability depended on the member’s continued compliance with the 100-accrued-sick-days threshold. It is also hard to escape the impression that these payments were designed to serve as advances against teachers’ impending “departure incentive payments.” Payments geared toward a member’s retirement are the archetype of the system-threatening, “ad hoc” amounts that the regular compensation rules hope to exclude. *See Boston Ass’n of Sch. Administrators & Sup’rs v. Boston Ret. Bd.*, 383 Mass. 336, 339-41 (1981).

A slightly different analysis applies to Dr. Valiant’s one-time stipend for serving as a “mentor.” She concedes that that pay amount was not “regular” pay. *See Stevens v. MTRS*, No. CR-13-332 (DALA Sept. 1, 2017). Instead, Dr. Valiant relies in this context on a special provision applicable only to “teachers,” a term within which the retirement law includes school psychologists. G.L. c. 32, § 1.

The teacher-specific provision draws into regular compensation any “salary payable under the terms of an annual contract for additional services.” G.L. c. 32, § 1. To satisfy this rule, both the “additional services” and the corresponding “remuneration” must be “set forth in the annual contract,” namely the “collective bargaining agreement.” 807 C.M.R. §§ 6.01, 6.02(1)(a), (c). The point of these requirements is allow the retirement board to concentrate its analysis on a single document—the CBA—rather than “sift[ing] through a multiplicity of alleged oral or side agreements about which memories might well be hazy.” *Kozloski v. Contributory Ret. Appeal Bd.*, 61 Mass. App. Ct. 783, 787 (2004).

Dr. Valiant recognizes that no provision of her CBA addressed pay for mentoring work. She relies on the CBA's statement that its various provisions were "[not] intended to exclude payment for any other extracurricular duties." But a CBA that does not prohibit or "exclude" a given stipend does not suffice to make that stipend pensionable. The pages of the CBA itself must affirmatively authorize the pertinent services and the amount of the corresponding remuneration. See *Marshall v. MTRS*, No. CR-19-460, at \*8 (DALA Jan. 27, 2023). The governing regulations are not satisfied by "the equivalent of 'miscellaneous,'" *Fazio v. Contributory Ret. Appeal Bd.*, No. 17-664-D, at \*6 n.3 (Suffolk Super. Jan. 2, 2018), or by "what amounts to a 'blank check,'" *Caruso v. MTRS*, No. CR-09-367, at \*2 (CRAB Dec. 2, 2015).

### **Conclusion and Order**

For the foregoing reasons, MTRS's decisions are both AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate