

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**DENISE WARD,**

**Petitioner-Appellant**

**v.**

**MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,**

**Respondent-Appellee.**

**CR-15-150**

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**DECISION**

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Petitioner Denise Ward appeals from a decision by an administrative magistrate of the Division of Administrative Law Appeals (DALA) affirming the decision of the respondent Massachusetts Teachers' Retirement System (MTRS) to exclude payments for her implementation of the Expanded Learning Time initiative from "regular compensation" in calculating her retirement allowance. The magistrate heard the matter on March 14, 2019, and admitted eighteen exhibits. The magistrate's decision is dated August 9, 2019. Ms. Ward filed a timely appeal to CRAB.

After reviewing the evidentiary record and considering the arguments presented by the parties, we adopt the magistrate's Findings of Fact 1-25 as our own and incorporate the DALA decision by reference. For the reasons discussed below, we affirm.

***Background***

Denise Ward was employed with Fall River Public Schools as the principal of the Silvia Elementary School.<sup>1</sup> Beginning in the 2007-2008 school year, Silvia Elementary received a grant to implement an optional Expanded Learning Time (ELT) initiative.<sup>2</sup> Principals of schools that participated in the ELT initiative were eligible to earn a bonus of up to \$10,000 annually,

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<sup>1</sup> DALA Findings of Fact 2.

<sup>2</sup> FF 3.

contingent upon meeting certain performance goals.<sup>3</sup> As principal, Ms. Ward worked under an individual contract, as opposed to a collective bargaining agreement.<sup>4</sup> Her contract did not mention additional work or additional compensation in connection with the ELT initiative.<sup>5</sup>

Ms. Ward did not receive an ELT bonus for the 2007-2008 or 2008-2009 school years.<sup>6</sup> She then received ELT bonuses of \$10,000 for the 2009-2010 school year,<sup>7</sup> \$9,000 for the 2010-2011 school year,<sup>8</sup> and \$10,000 for the 2011-2012 school year.<sup>9</sup> On March 7, 2013, Ms. Ward informed Fall River Public Schools via letter that she intended on retiring on September 7, 2013.<sup>10</sup> One week later, on March 12, 2013, Ms. Ward emailed the superintendent to ask whether her ELT bonuses could be put “on paper” in her new contract, which would retroactively cover the 2011-2012 and 2012-2013 school years.<sup>11</sup> On July 16, 2013, the Fall River School Committee met, and the superintendent raised the issue of Ms. Ward’s contract by stating that she wanted to address “one issue with Denise Ward who requested for the purpose of her last contract 2011-2013 to have her compensation for ELT folded into her base salary for retirement purposes.”<sup>12</sup> The school committee passed the motion, and Ms. Ward’s contract was signed on July 29, 2013;<sup>13</sup> the new contract did not mention ELT or Ms. Ward’s duties related to the ELT program.<sup>14</sup>

### *Discussion*

This appeal turns on the question of whether the MTRS properly excluded certain payments from “regular compensation” in calculating Ms. Ward’s retirement allowance. When calculating the “regular compensation” amount to be used in determining retirement benefits, payments specified under the terms of a contract for additional services shall be included “so long as: (a) The additional services are set forth in the annual contract; (b) The additional

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<sup>3</sup> FF 5.

<sup>4</sup> FF 6.

<sup>5</sup> FF 7.

<sup>6</sup> FF 8.

<sup>7</sup> FF 10.

<sup>8</sup> FF 11.

<sup>9</sup> FF 13.

<sup>10</sup> FF 14.

<sup>11</sup> FF 6, 11, 15.

<sup>12</sup> FF 17.

<sup>13</sup> FF 18.

<sup>14</sup> Exhibit F.

services are educational in nature; (c) The remuneration for these services is provided in the annual contract; (d) The additional services are performed during the school year.”<sup>15</sup> Ms. Ward’s ELT bonus payments, which are stipends awarded for the completion of additional services, cannot be included in regular compensation because the additional services and remuneration for such are not set forth in her employment contract with the City of Fall River School Department. When Ms. Ward sought to include the stipends in her annual contract, she did so “for retirement purposes,” which further disqualified the payments from being considered in regular compensation under 840 CMR § 15.03(3)(f).

“Regular compensation” is defined in M.G.L. c. 32 § 1 and further defined in 807 CMR 6.02 and 840 CMR 15.03. “‘Regular Compensation’, during any period subsequent to June 30, 2009, shall be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.”<sup>16</sup> Furthermore, “wages” does not include “bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans . . . or any other payment made as a result of the employer having knowledge of the member’s retirement . . .”<sup>17</sup> Regular compensation may, however, include “salary payable under the terms of an annual contract for additional services,” but only if the additional services and their remuneration are established in the annual contract that governs the employment.<sup>18</sup>

Massachusetts courts have interpreted this statutory language numerous times. In *Kozloski v. Contributory Retirement Appeal Bd.*, Petitioner Kozloski sought inclusion of a stipend allocated to him as extra compensation for his role as his school’s audio-visual coordinator as regular compensation to be included in the calculation of his retirement allowance.<sup>19</sup> The Appeals Court of Massachusetts affirmed the decisions by the Teachers’ Retirement Board, Contributory Retirement Appeal Board (“CRAB”), and Superior Court, ruling that the audio-visual coordinator stipend could not be included as “regular compensation” because it was not included in the collective bargaining agreement that served as Kozloski’s

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<sup>15</sup> 807 CMR 6.02(1).

<sup>16</sup> M.G.L. c. 32 § 1.

<sup>17</sup> 840 CMR 15.03.

<sup>18</sup> 807 CMR 6.02(1)(a), (c).

<sup>19</sup> *Kozloski v. Contributory Retirement Appeal Bd.*, 61 Mass. App. Ct. 783, 784 (2004).

annual contract.<sup>20</sup> Though a “memorandum of agreement” stating that the audio-visual coordinator stipend was inadvertently omitted from the relevant collective bargaining agreements was signed after the fact, CRAB and later, the courts, were not persuaded that a side agreement such as the memorandum of agreement should be considered alongside an annual contract.<sup>21</sup>

In the year following *Kozloski*, the Appeals Court stated that “regardless of the circumstances . . . stipends not specifically contained within the written collective bargaining agreement could not be credited toward a teacher’s retirement allowance.”<sup>22</sup> DALA and CRAB have issued countless decisions, both before and after the Appeals Court’s affirmations in *Kozloski* and *Duplessis*, that are in holding with this notion.<sup>23</sup>

Ms. Ward argues that her contract for the years 2011–2012 and 2012–2013 contained increased compensation reflecting her increased job duties under the ELT program. She also contends that around this time, the school district decided to move away from awarding “performance bonuses.” However, the facts in the record do not support these arguments. According to the DALA magistrate’s Findings of Fact ¶ 15, on March 12, 2013, Ms. Ward emailed the superintendent of Fall River schools regarding her desire to incorporate the ELT bonuses into her salary calculation in order for “the stipends [to] be put on paper.” Five days prior to this email, on March 7, 2013, Ms. Ward formally informed her superiors of her intent to retire effective September 7, 2013. When the Fall River School Committee met on July 16, 2013, the superintendent raised the issue of Ms. Ward’s March 12th email, stating that Ms. Ward

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<sup>20</sup> *Id.* at 784–86.

<sup>21</sup> *Id.* at 787.

<sup>22</sup> *Duplessis v. Contributory Retirement Appeal Board*, 63 Mass. App. Ct. 1122, 1122 (2005) (Unpublished).

<sup>23</sup> *E.g., Martin v. Mass. Teachers’ Ret. Sys.*, CR-24-0017 (DALA Jan. 10, 2025) (holding that petitioner’s international club stipend is not included as regular compensation because it was not set forth in the applicable collective bargaining agreement); *Fazio v. Teachers’ Ret. Sys.*, CR-14-99 (DALA Dec. 30, 2015), *aff’d* (CRAB Feb. 1, 2017) (holding that the stipends awarded to petitioner for advising the Jazz Choir could not be included as regular compensation because they were not adequately included in the governing CBA); *Natti v. Mass. Teachers’ Ret. Sys.*, CR-10-491 (DALA May 1, 2015), *aff’d* (CRAB Mar. 31, 2016) (holding that a side agreement listing petitioner’s stipend for serving as orchestra director was not set forth in the collective bargaining agreement, so the stipend could not be included in the calculation of regular compensation); *Boisseau v. Teachers’ Ret. Bd.*, CR-96-140 (DALA Feb. 25, 1997) (holding that appellant’s Drug Education Program Director stipend is not included as regular compensation because it was paid under a separate contract that was not included in appellant’s annual contract).

“requested for the purpose of her last contract 2011-2013 to have her compensation for ELT folded into her base salary for retirement purposes.” The School Committee then made and voted unanimously to pass a motion “to allow Denise Ward to roll in ELT compensation for retirement purposes.” The contract for this time period was fully executed on July 29, 2013 and did not include information about additional duties pertaining to the ELT program or renumeration for such. The contract states that it represents the entire agreement between the parties.

Any payments made to an employee as a result of the employer having knowledge of the employee’s impending retirement are not included in “regular compensation” under 840 CMR § 15.03(3)(f).<sup>24</sup> Though Ms. Ward was eligible for the ELT bonus payments before the school district became aware of her intent to retire, her annual contract only reflected an increased salary, apparently to incorporate the bonuses, once the district had knowledge of her retirement. In fact, the School Committee specifically labeled the modification to her contract as “for retirement purposes.” Further, despite the increase in her salary, the July 1, 2011–June 30, 2014 contract never set forth the additional services that were to be performed in connection with the ELT program in order to be eligible for the ELT bonuses. Accordingly, MTRS’s exclusion of payments for work on the ELT initiative from “regular compensation” was proper because neither the services performed under the ELT agreement, nor the renumeration for those services, were set forth in Ms. Ward’s annual contract with Fall River Public Schools until Ms. Ward sought to fold the ELT bonuses into her base salary “for retirement purposes.”

### ***Conclusion***

We affirm DALA’s August 9, 2019 decision affirming MTRS’s exclusion of the ELT payments from “regular compensation” for the reasons set forth above. ***Affirm.***

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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<sup>24</sup> *Berte v. Massachusetts Teachers’ Retirement System*, CR-14-627 (DALA Aug. 25, 2017), *aff’d* (CRAB Nov. 18, 2021).

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Date: April 16, 2025