

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**John Ahern,**  
Petitioner,

No. CR-22-98

Dated: January 19, 2024

v.

**State Board of Retirement,**  
Respondent.

**Appearance for Petitioner:**  
John Ahern (pro se)

**Appearance for Respondent:**  
Teneshia C. Lewis, Esq.

**Administrative Magistrate:**  
Yakov Malkiel

**SUMMARY OF DECISION**

A “sergeant telecommunications/signal operator” did not qualify for group 2 under G.L. c. 32, § 3(2)(g) because he was not employed by a “municipal department.”

**DECISION**

Petitioner John Ahern appeals from a decision of the State Board of Retirement denying his request to be categorized in group 2 under G.L. c. 32, § 3(2)(g). The appeal was submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-8 and R1-R6 in DALA’s case file.

**Findings of Fact**

I find the following facts:

1. Mr. Ahern began working for the Barnstable County Sheriff’s Office in August 1998. He was originally a member of the Barnstable County Retirement System.

(Exhibits 1, R1.)

2. A statute enacted in 2009 brought the various sheriff's offices within the Commonwealth's control. As a result, Mr. Ahern became an employee of the Commonwealth and a member of the retirement system administered by the respondent board. (Exhibits 1, R1; Acts 2009, c. 61, §§ 13-14.)

3. In January 2022, Mr. Ahern retired for superannuation. He asked the board to classify him in group 2 under G.L. c. 32, § 3(2)(g), identifying his job title as "sergeant telecommunicator/signal operator." The board instead assigned Mr. Ahern to group 1. He timely appealed. (Exhibits 8, R1-R4.)

### **Analysis**

The retirement benefits of a Massachusetts public employee are based in part on the employee's classification into one of four groups. *See* G.L. c. 32, § 5(2)(a). Group 1 is a catch-all that covers "clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." G.L. c. 32, § 3(2)(g). Group 2 includes, among other individuals, "employees of a municipal department who are employed as fire or police signal operators or signal maintenance repairmen." *Id.*

Mr. Ahern's case is governed by the analysis stated in *Watson v. State Bd. of Ret.*, No. CR-21-105, 2023 WL 4846319 (DALA July 21, 2023). In essence, Mr. Ahern is not entitled to group 2 classification because he was not an employee "of a municipal department." § 3(2)(g). Instead, he was employed first by a sheriff's office, then by the Commonwealth. The distinction between municipal and other employees "not only is grounded in the explicit language of the statute but also . . . is supported by rational policy considerations." *Zenkus v. Retirement Bd. of Worcester*, 45 Mass. App. Ct. 1105, slip op. at \*1-2 (1998) (unpublished memorandum opinion).

Mr. Ahern relies on a 1999 regulation of the Barnstable County Retirement Board, which allowed “police, fire or emergency medical dispatchers whose job title is Emergency Telecommunications Dispatcher” to be considered “fire and police signal operators.” Barnstable County Retirement Board Supplemental Regulations, <https://www.mass.gov/info-details/barnstable-county-retirement-board-supplemental-regulations>.<sup>1</sup> Any entitlements that Mr. Ahern may have received under that regulation should have survived his transition into the Commonwealth’s employment, because the Legislature required the transition to occur “without impairment of seniority, retirement or other rights of employees.” Acts 2009, c. 61, § 17(a).

But the 1999 regulation did not entitle Mr. Ahern to group 2 status. It may not have applied to him at all, given that his job title was slightly different from “Emergency Telecommunications Dispatcher” (it was, by Mr. Ahern’s account, “sergeant telecommunicator/signal operator”). In any event, the 1999 regulation made no attempt to override the statutory requirement of employment in a “municipal department.”<sup>2</sup> That remains a requirement that Mr. Ahern did not satisfy. *See Watson, supra*.

### **Conclusion and Order**

The board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel  
Yakov Malkiel  
Administrative Magistrate

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<sup>1</sup> There may be reason to doubt this regulation’s validity. But on-the-books regulations cannot be annulled in administrative tribunals. *Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014).

<sup>2</sup> As in *Watson, supra*, the record does not reveal whether the 1999 regulation may have impacted individuals employed by the various municipalities within Bristol County.