COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala

City of Methuen,
Petitioner

v. Docket No. CR-23-0420

Methuen Retirement System,
Respondent

and

Daniel Hardacre,
Intervenor

Administrative Magistrate:
Kenneth Bresler

RULING ON STANDING AND ORDER OF DISMISSAL

Introduction

Daniel Hardacre applied for a superannuation retirement allowance. The City of Methuen opposed it. When the Methuen Retirement Board granted his application, the City of Methuen appealed to the Division of Administrative Law Appeals. I asked the parties whether the City has standing, and they responded.

I now rule that the City of Methuen does not have standing.

Who may appeal

G.L. c. 32, § 16(4) allows "any person" who is "aggrieved" by any action or decision of a retirement board to appeal. Thus, standing has two prongs: person and aggrieved. (This discussion is aside from G.L. c. 32, §§15(2) and 16(1), which grant standing to government

employers.)

Is the City of Methuen a person under G.L. c. 32, § 16(4)?

The definition section of 801 CMR 1.01(2) does not include a definition for "person," but does rely on Chapter 30A for definitions. That chapter, in turn, states that "'Person'' includes all political subdivisions of the commonwealth." G.L. c. 30A, § 1(4). Thus, the City of Methuen is a person.

Mr. Hardacre, in arguing that the City of Methuen does not have standing, relies on *Woods Hole v. Town of Falmouth*, 74 Mass. App. Ct. 444 (2009). That case states that "the Commonwealth or a municipality…are not "persons" under c. 4, § 7, Twenty-third." *Id*. at 447. The case later states that

> both by virtue of the statutory definition of "person" used throughout the General Laws and by virtue of the case law, the term "person" has long been understood not to include governmental agencies, municipalities or municipal corporations.

Id. at 448.

However, the definition of "person" in G.L. c. 4, § 7, Twenty-third, applies when a statutory or regulatory scheme involves a person and lacks a definition of "person." That is not the case here.

If the Commonwealth, a municipality, or one of its entities could not be a person under G.L. c. 32, § 16(4), then such cases in which none of the parties was a live person, such as *City of North Adams v. North Adams Retirement Board and Public Employee Retirement Commission (PERAC)*, CR-01-1073 (DALA 2003), and *Boston Retirement Board v. PERAC*, CR-99-292 (DALA 2000), would not have proceeded.

Was the City of Methuen aggrieved?

840 CMR 10.05(2): In disability retirement cases, employer is always a party

840 CMR 10.05(2) reads in part:

> Parties to a proceeding for ordinary or accidental disability retirement include the member who files the application as well as the employer. If the application is filed by the employer, the employer and the member who is the subject of the application shall be parties to the application.

This provision has been in the Code of Massachusetts Regulations since July 8, 1983, according to the Social Law Library.

A party – and in disability cases, that includes the government employer – may appeal "[i]f the retirement board decides to deny an application for disability retirement." "[N]otice of the decision and right to appeal shall be sent to all parties," 840 CMR 10.13(1)(c).

The question remains: Can a government employer be aggrieved and therefore be a party in non-disability decisions?

> *Town of Southbridge*: Appeals Court assumed government employer can be an aggrieved person

The case of *Town of Southbridge v. Litchfield*, 47 Mass. App. Ct. 920 (1999), which the Methuen Retirement Board cites, assumed that a government employer can be an aggrieved person. There, a police officer applied for accidental disability retirement. The town that employed him opposed the application, asserting that parts of the application were false. The retirement board approved it. The Appeals Court stated, "The town did not take an appeal to the Contributory Review Appeal Board (CRAB) under G.L. c. 32, § 16(4)," implying that the town could have appealed. *Id*. at 920. The Appeals Court soon turned "could" into "should." it continued:

> Instead, the town commenced this action in the nature of certiorari, pursuant to G.L. c. 249, § 4. The defendants raised the town's failure to exhaust administrative remedies as a defense. A Superior Court judge, without reaching the merits, allowed the defendant retirement board's motion for judgment on the pleadings, ruling that the town lacked standing to bring this certiorari action. The town has appealed.

Id.

In this short rescript opinion, the court followed immediately with its ruling:

> Relief in the nature of certiorari does not lie in these circumstances. The town must exhaust all administrative remedies before seeking judicial relief under G.L. c. 249, § 4. [Citations omitted.] The town should have taken an appeal to CRAB under G.L. c. 32, § 16(4).

Id.

It is unclear how definitive a ruling this case is on whether a government employer can be an aggrieved person – in general, as opposed to cases that are not about disability retirement benefits. The case did not examine what an "aggrieved person" is or cite 840 CMR 10.05(2), which grants standing as a party to government employers in disability retirement benefits cases. The case seems to be more about certiorari and exhausting administrative remedies than about the nature of appeals under G.L. c. 32, § 16(4).

> *Jaskiewicz*: DALA ruled that government employers are not aggrieved persons – but incorrectly

In a separate case, DALA ruled:

> The Division of Administrative Law Appeals and the Contributory Retirement Appeal Board have consistently held that an employer (or in this case a former employer) is not a person aggrieved under the provisions of G.L. c. 32, §16(4). In this matter, the Town of Mashpee has failed to show that it is a person "substantially and specifically affected by the proceeding...[with] all the rights of ...a Party...". 801 CMR 1.0 1 (9)(d). See *Town of Stoneham v. Stoneham Retirement Board, PERA, and Dale Emery*[,] CR-95-563 [(DALA 1995);], *Robert Rufo v. PERA*, CR-95-549 [(DALA 1996)]; and *Town of Montague v. Montague Retirement Board*, CR-96-800 [(DALA 1997; PERAC 1998)]….

Walter Jaskiewicz v. Barnstable County Retirement Board, CR-98-089 (DALA 1998).

The case is not authoritative for three reasons and is ultimately incorrect. One, *Jaskiewicz* cites the *Rufo* case, in which Robert Rufo, as Sheriff of Suffolk County, appealed the granting of accidental disability retirement benefits to an employee of the sheriff's office. Both DALA and CRAB ruled that Rufo had no standing as an aggrieved person. On appeal to the Superior Court,

the court overturned both DALA's and CRAB's rulings. On remand, DALA ruled on the appeal's merits and CRAB affirmed. *Suffolk County Sheriff's Department v. Public Employee Retirement Administration Commission*, CR-95-549, (DALA, Nov. 6, 2000; CRAB, March 30, 2001).

Two, the ruling in *Jaskiewicz* that the Town of Mashpee was not an aggrieved person was followed by a ruling two years later on the merits. *Jaskiewicz*, CR-98-089 (DALA 2000). (The procedural history – how DALA ruled that the Town of Mashpee was not an aggrieved person and then ruled on the merits of its claim – is unclear. It *might* be due to the release of *Town of Southbridge v. Litchfield*, 47 Mass. App. Ct. 920, a 1999 case.)

Three, the standard to determine who is an aggrieved person, that is, who can appeal to DALA, is not whether the person is "substantially and specifically affected by the proceeding." 801 CMR 1.01(9)(d). Rather, that is the standard to determine who can intervene in an existing appeal. The words "the proceeding" refer to an existing appeal. The standard of "substantially and specifically affected by the proceeding" does not authorize an employer-government entity to initiate an appeal as a petitioner where no appeal would otherwise exist. *See Board of Health of Sturbridge v. Board of Health of Southbridge*, 461 Mass. 548, 556 n. 9, 557 n.22 (2012) (distinguishing between the right to intervene under G.L. c. 30A, § 14(2) and the right to initiate an appeal).

Finally, and most importantly, *Jaskiewicz* was wrong. *Jaskiewicz*, *Rufo*, *Town of Stoneham*, and *Town of Montague* were all accidental disability cases that were controlled by 840 CMR 10.05. *Jaskiewicz* did not mention the regulation, but all government employers in those cases were parties and had the right to appeal.

Board of Health of Sturbridge: SJC defined aggrievement under G.L. c. 30A

To seek judicial review under G.L. c. 30A, § 14, "a party must be aggrieved in a legal sense and show that substantial rights have been prejudiced." *Board of Health of Sturbridge v. Board of Health of Southbridge*, 461 Mass. 548, 557 (2012) (citations and internal quotation marks deleted).

Town of Montague: PERAC wrote about various ways for a person to be aggrieved

When any advocate or entity, including courts and the Division of Administrative Law Appeals, attempts to interpret language in Chapter 32 by examining language in statutes, regulations, and cases outside the chapter, the advocate or entity should do so with caution. Some attempts do not withstand scrutiny.

PERAC, in ruling on a municipality's appeal of a retirement board's grant of accidental disability retirement benefits, wrote:

> A person aggrieved is one whose legal rights have been infringed. *Circle Lounge & Grille v. Board of Appeal of Boston*, 324 Mass. 427, [430,] 86 N.E.2d 920 (1949). Not every person whose interests may be in some remote way injuriously affected by an administrative decision is a person aggrieved. *Shaker Community, Inc. v. State Racing Commission*, 346 Mass. 213, 190 N.E.2d 897 (1963). In order to be "aggrieved" an appellant must show that, substantial rights have been prejudiced. *Group Insurance Commission v. Labor Relations Commission*, 381 Mass. 199, 408 N.E.2d 851 (1980).
>
> Appellant has not established that it has been injuriously affected….

Town of Montague v. Montague Retirement Board, CR-96-800 (DALA 1997; PERAC 1998).

For some reason, PERAC did not go straight to its own regulation, 840 CMR 10.05. Instead, PERAC looked at various ways to determine who is an aggrieved person: One whose legal rights have been infringed. One whose substantial rights have been prejudiced. (The SJC used the previous standard 14 years later in *Board of Health of Sturbridge*.) And one whose

interests have been injuriously affected, that is injured, but more than remotely.

On examination, the various ways of determining whether a person is aggrieved seem close enough to each other so as not to differ in substance.

Shaker Community: SJC: "Aggrieved person" not to be construed narrowly

"[T]he words 'person…aggrieved' as used in [G.L. c. 30A,] § 14 are not to be given a narrow construction." However, "not every person whose interests may be in some remote way injuriously affected…a person 'aggrieved." *Shaker Community, Inc. v. State Racing Commission*, 346 Mass. 213, 216 (1963) (citations and internal quotation marks omitted).

The SJC instructed, in effect: Do not construe aggrievement narrowly. Do not construe remote injury to interests as aggrievement. Be moderate in determining aggrievement.

City of Methuen's position: Standards for aggrievement are "identifiable injury" and "pecuniary interest"

The City of Methuen argues that it is aggrieved because it has suffered an "identifiable injury" and has a "pecuniary interest" in Mr. Hardacre's application. (Supplemental Memorandum of the Petitioner at 3, 4). The City argues that the injury was the Methuen Retirement Board's approval of Mr. Hardacre's application. It argues that its pecuniary interest derives from its obligation to fund the Methuen Retirement Board under G.L. c. 32, §22(7)(c) and (d), and thus to fund Mr. Hardacre's retirement benefits. (Supplemental Memorandum of the Petitioner at 3, 4)

These arguments are unavailing for a few reasons. For the City of Methuen to say that it suffered an identifiable injury because the Methuen Retirement Board approved Mr. Hardacre's application is to state the City's position but does not prove it. The City has not represented that it in fact has had to fund the Methuen Retirement Board, may need to do so soon, is projected to need to do so, or will need to do so because of Mr. Hardacre's superannuation. The City relies on

civil cases about standing, which throw little light on the meaning of aggrieved person in G.L. c. 32, § 16(4) or the meaning of "aggrieved" in G.L. c. 30A, § 14. Pecuniary interest is a standard of aggrievement in probate and tax abatement cases, *e.g.*, *American Can Co. of Massachusetts v. Milk Control Board*, 313 Mass. 156, 161 (1943), but it is unclear how applicable the standard is in this context. Finally, identifiable injury and pecuniary interest are not the standards for aggrievement in *Board of Health of Sturbridge*, the SJC case that seems to be the most authoritative in this context. The standards in that case are "aggrieved in a legal sense" and "prejudice to substantial rights." 461 Mass. at 557.

Conclusion

In disability retirement cases, whether accidental or ordinary disability retirement benefits are at issue, a government employer is a party and may appeal a retirement board's decision. In non-disability retirement cases, such as superannuation, a government employer can appeal a retirement board's decision if the employer is aggrieved in a legal sense and can show that its substantial rights have been prejudiced. *Board of Health of Sturbridge*.

In this non-disability retirement case, the City of Methuen has not shown that it is aggrieved in a legal sense or that its substantial rights have been prejudiced. I dismiss its appeal.[1]

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: June 14, 2024

[1] The cover letter to this order advises the City of Methuen of its appeal rights. Such advice is not intended to convey substantive rights. *I.e.*, the advice of rights is not an implicit recognition that the City of Methuen is a party with standing.