

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

SUSAN CONNOR,	:	Docket No. CR-20-0142 ¹
<i>Petitioner</i>	:	
	:	Date: December 2, 2022
v.	:	
	:	
PLYMOUTH COUNTY	:	
RETIREMENT ASSOCIATION,	:	
<i>Respondent</i>	:	

Appearance for Petitioner:

Susan Connor, *pro se*
550 Mill Street
PO Box 3
Marion, MA 02738

Appearance for Respondent:

Timothy Smyth, Esq.
Law Office of Timothy J. Smyth, LLC
58 N Street
South Boston, MA 02127

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Plymouth County Retirement Association’s decision is affirmed. The Petitioner, an Animal Control Officer, is not entitled to group 4 classification because her job title is not included in the G.L. 32, § 3(2)(g) list of group 4 eligible positions. Additionally, she is not member of a police department “not classified in Group 1.”

¹ This matter was consolidated with *Perry v. Plymouth County Retirement Association*, CR-20-0132, and *Murphy v. Plymouth County Retirement Association*, CR-20-0133. Although the issue in those matters is the same—whether the two Petitioners qualify for group 4 status—because they involve a different position, I am issuing separate decisions.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Susan Connor, appeals a decision by the Plymouth County Retirement Association (“PCRA”) classifying her as a member of Group 1 under G.L. c. 32, § 3(2)(g). The case began when the Petitioner contacted PCRA requesting group 4 recognition. On January 30, 2020, PCRA denied the request. The Petitioner timely appealed. PCRA moved for an order of summary decision, which I denied on September 23, 2022.

Instead, on November 21, 2022, I conducted a hearing, in person, at the Division of Administrative Law Appeals (DALA) located at 14 Summer Street, 4th Floor, Malden, MA 02148. Officer Connor testified on her behalf; Chief Richard Nighelli and Interim Town Administrator, Judith Mooney, testified for the Board. I was able to observe the witnesses’ demeanor throughout their testimony.

I entered 8 exhibits into evidence. At the end of the hearing, the parties presented summations, whereupon the administrative record was closed.

FINDINGS OF FACT

Based on the testimony and exhibits, I find the following facts.

1. The Petitioner, Susan Connor, is the Animal Control Officer (“ACO”) for the town of Marion. She has held that position since 1995 (Connor Testimony.)
2. As the ACO, she is responsible for, *inter alia*:
 - Enforcing state and local animal control laws and regulations;
 - Capturing and impounding dangerous and stray animals;
 - Investigating reports of animal cruelty and neglect;
 - Providing testimony and evidence in court cases and/or hearings;

(Exhibit 3; Connor Testimony.)

3. She is appointed by the Town Administrator, through the authority granted to her by the Select Board. *See* G.L. c. 140, § 151; (Mooney Testimony.)
4. She is a salaried employee of the town, paid through the town budget. (Mooney Testimony.)
5. Although the funds come from the Town, the Police Chief is responsible for the ACO budget. (Nighelli Testimony.)
6. The ACO falls under the Police Department’s organizational chart. Her office is in the police station. She is supervised by, and answers to, the Chief of Police. For example, she notifies him if she is requesting time off. (Connor and Nighelli Testimony.)
7. This structure has been in place for almost 10 years. (Nighelli Testimony.)
8. If a disciplinary issue arose, the Police Department would be responsible for investigating the matter under their internal rules and procedures. (Nighelli Testimony.)
9. In addition to being the ACO, she is also a Special Police Officer (“SPO”). An SPO is also appointed by the Town Administrator, through the authority granted to her by the Board of Selectmen. (Connor and Mooney Testimony.)
10. Typically, an SPO is a part-time officer who fills in when full-time, regular officers are unavailable. The Town has approximately 16 full-time officers; they have 5 SPOs, which includes the Petitioner. (Nighelli Testimony.)
11. Full-time police officers are also appointed by the Select Board, pursuant to the Chief’s recommendation. (Nighelli Testimony.)
12. Full-time police officers must have, *inter alia*, graduated from the basic recruit academy. (Nighelli Testimony.)

13. SPOs are like full-time police officers, but they have less training. They attend the reserve intermittent academy. (Nighelli Testimony.)
14. Accordingly, the Petitioner did not go to the full-time, basic recruit academy; she did receive training, but it was in the reserve intermittent academy. (Nighelli Testimony.)²
15. As an SPO, the Petitioner performs regular police functions. While she is not a full-time, regular member of the police force, she acts like them when called upon in this capacity. That is, she performs police duties beyond what she is authorized to do as the ACO. (Connor and Nighelli Testimony.)
16. She has the power to detain, investigate, and arrest for crimes well outside of her jurisdiction as ACO. In fact, while acting as the ACO, she is obligated to respond as any police officer would, should she come upon a situation requiring it. (Connor and Nighelli Testimony.)
17. As the only female police officer at times, she has been asked to investigate sexual assault cases, interview minors, and deal with female suspects. (Connor Testimony.)
18. In the past, she had been called to fill in for regular police officers on a day off; in that capacity, she was *only* acting as an SPO. In this scenario, she received additional compensation on a *per diem* basis directly from the Police Department budget. Otherwise, even if she performs SPO functions while working as the ACO, she is paid through the ACO budget. (Connor, Nighelli and Mooney Testimony.)

² Under recent Police reform legislation, reserve police officers who did not receive full-time officer training will have to enroll in the Bridge Academy so that all officers, regardless of designation, will have the same training moving forward. (Nighelli Testimony.) The Petitioner has completed this training. (Connor Testimony.)

19. She is not a member of the Marion Police Officer's union; only full-time patrolmen and sergeants are. (Nighelli Testimony.)
20. As the ACO, she is not a full-time police officer. (Nighelli Testimony.)
21. She is not a member of the Marion Police union; only full-time patrolmen and sergeants are. (Nighelli Testimony).
22. On January 28, 2020, the Petitioner requested group 4 status (Exhibit 4.)
23. On January 30, 2020, the PCRA denied her request. (Exhibit 4.)
24. On February 13, 2020, she mailed a timely notice of appeal. (Exhibit 5.)

CONCLUSION AND ORDER

Group classification is “properly based on the sole consideration of [a member’s] duties” and a member’s duties, in turn, are determined by consulting a member’s title or job description. *See Maddocks v. Contributory Retirement App. Bd.*, 369 Mass. 488, 494 (1975); *Gaw v. Contributory Retirement App. Bd.*, 4 Mass. App. Ct. 250, 256 (1976). “[T]he Legislature has consistently described employees falling within Group 4 by naming their positions or titles rather than by describing the type of work they perform.” *Gaw*, 4 Mass. App. Ct. at 254; *Hunter v. Contributory Ret. App. Bd.*, 80 Mass. App. Ct. 257 (2011). Thus, to prevail, the Petitioner must show that her job title is among those listed in G.L. c. 32, § 3(2)(g) as Group 4 eligible. *See id.*; *Blanchette v. Contributory Retirement App. Bd.*, 20 Mass. App. Ct. 479, 483 (1985).

The Petitioner does not dispute her job title is Animal Control Officer. Unfortunately for her, it is not among the jobs listed in Group 4. *See* G.L. c. 32, § 3(2)(g); *Collins v. Middlesex Ret.*

Bd., CR-00-1067, (Div. Admin. Law. App., Sept. 7, 2001).³ Although the Petitioner submitted evidence about her duties, that is irrelevant in identifying whether the job title is enumerated in the statute. *See e.g. Comeau v. State Bd. of Retirement*, Docket No. CR-12-373 (Div. Admin. Law App., Dec. 15, 2017) (“Comeau’s position was not included in Group 4 by the Legislature and I may not expand the list of job titles.”).

I nevertheless granted a hearing to determine if, regardless of her job title, the Petitioner would qualify for Group 4 status as a member of a police department “not classified in Group 1.” *See G.L. c. 32, § 3(2)(g)*. After a hearing, she has not met her burden. As she candidly admits, she is not a full-time member of the police department. It is not enough that she exercises police powers, that she is supervised by the Chief, or that she trains and works alongside the police department. *See Collins, supra*.

This is just another, in a long line of cases, where persons who perform law enforcement functions are nevertheless excluded from group 4 status. *See Larivee v. State Bd. of Ret.*, CR-18-0649 (Div. of Admin. Law App., Sept. 16, 2022) (State University Police); *Carroll v. MassPort Employees’ Ret. Bd.*, CR-10-814 (Div. Admin. Law App., Jan 9, 2014) (Captain, Massport Security Services); *Patton v. Falmouth Ret. Bd.*, CR-07-597 (Div. Admin. Law. App., Nov. 13, 2009) (Natural Resource Officers); *Cremins v. State Bd of Ret.*, CR-08-627 (Div. Admin. Law. App., June 18, 2009) (Campus Police Officer); *City of Boston v. Boston Ret. Bd.*, CR-06-408 (Div. Admin. Law. App., Apr. 4, 2008) (Boston School Police); *Dent v. Hampshire County Ret. Bd.*, CR-01-1065 (Div. Admin. Law. App., Feb. 3, 2004) (Police dispatcher); *Juliano v. State Bd. of Ret.*, CR-01-1085 (Div. Admin. Law App., Nov. 7 2002) (Director of Public Safety, Bunker

³ *Collins* alone might be dispositive. *Collins*, a Dog Officer for the town of Tewksbury, was also denied group 4 status. However, there appear to be some factual differences between *Collins* and this case which warrant creating a detailed record here.

Hill Community College); *Savery v. Plymouth Ret. Bd.*, CR-97-1802 (Div. Admin. Law App., Mar. 30, 1999) (Harbor Master); *Delmolino v. PERAC*, CR-96-939 (Div. Admin. Law App., Nov 7, 1997) (Clerk-Matron); *Orr v. Worcester County Ret. Bd.*, CR-90-968 (Div. Admin. Law App., Apr. 15, 1992) (Police Dispatcher/ Police Secretary/ Police Rape Officer).

On the other hand, there are two exceptions: both the Boston Municipal Police and the Boston Housing Authority Police Department have previously been granted group 4 status. *See Boston Housing Authority v. Boston Ret. Bd.*, CR-01-573 (Div. Admin. Law. App., May 25, 2001), *affirmed by CRAB*, Jan. 31, 2003); *McGuire v. Boston Retirement Board*, CR-98-841, (Div. Admin. Law. App., May 21, 1999).

There is a lot of overlap between the responsibilities and risks of the officers denied group 4 status and the officers in *Boston Housing Authority* and *McGuire*. However, one clear distinguishing line exists. In cases where group 4 status was conferred, those officers were either a stand-alone police department or incorporated into, and overseen by, a police department. Put another way, they were “persons who performed police functions *and* worked for a municipal police department.” *Patton, supra*, n. 1 (emphasis added). In cases where group 4 status was not conferred, the officers were, *inter alia*, overseen by some local entity other than the police department, *e.g.* a town council. *See Patton, supra*, (explaining differences). Whether this is simply an artificially created line or not, it is nevertheless a consistent precedent I am bound to follow. *See Cain v. Milton Ret. Bd.*, CR-12-573 (Div. Admin. Law. App., Feb. 19, 2016).⁴

This case presents a closer question than the consolidated cases of *Murphy* and *Perry*, decided today. Unlike the Harbor Masters, the Petitioner’s job falls under the organizational

⁴ *Boston Housing Authority* and *McGuire* are certainly outliers. Since they were decided, DALA has not used them to expand the group of persons entitled to group 4 status. I see no basis to do so here and find they are properly limited to their unique facts.

chart of the Marion Police Department and she is supervised by the Chief of Police. However, the fact remains that she was not hired as a full-time police officer by the Police Department. Were I writing on a clean slate, the result may very well be different. However, under *Collins* and progeny, her argument is legally precluded.

The Petitioner complains that the town is taking advantage of her status as an SPO and calling her to act as a police officer while she is on duty as the ACO. Their point is well taken. She undoubtedly does things because she is an SPO that she could not do solely as the ACO. But this case is only about whether the ACO is entitled to group 4 status. She cannot bootstrap her powers as an SPO to elevate her group status as the Animal Control Officer. Many of the officers previously denied group 4 status were also SPOs. *See Larivee, supra; Dent, supra; Juliano, supra; cf. Ralph v. Civil Service Comm'n.*, 100 Mass. App. Ct. 199 (2021) (“special police officer” not a member of the regular police force for purposes of G. L. c. 31, § 59).

I sympathize with the Petitioner because so much of what she does is the kind of hazardous and arduous work group 4 status was intended to cover. *See Gaw* at 253. Nevertheless, because an Animal Control Officer is not listed in group 4, and she is not a full-time police officer with the Marion Police Department, the PCRA properly classified the Petitioner within group 1. Its decision is affirmed.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate