

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

James Fletcher,

Petitioner,

v.

Docket No. CR-20-0491

State Board of Retirement,

Date: January 12, 2024

Respondent.

Appearance for Petitioner:

Michael Manning, Esq.

Appearance for Respondent:

Yande Lombe, Esq.

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The petitioner's service as a dispatcher or telecommunicator for the Barnstable County Sheriff's Office does not qualify for Group 2 classification. Although a retirement board's regulation may have entitled him to be treated as a "fire and police signal operator," the statute governing group classification limits Group 2 status to "fire or police signal operators" who are "employees of a municipal department." See G. L. c. 32, § 3(2)(g). The petitioner was employed by a county and then by the Commonwealth, and therefore did not satisfy this requirement.

DECISION

The petitioner, James Fletcher, appeals the decision of the State Board of Retirement (Board) to deny his application for Group 2 classification under G. L. c. 32, § 3(2)(g). I held an

evidentiary hearing via Webex on February 7, 2023, which was recorded. Mr. Fletcher was the only witness. I admitted into evidence exhibits marked 1-19.

FINDINGS OF FACT

Based on the evidence presented at the hearing, I make the following findings of fact:

1. On February 21, 1986, James Fletcher began working as a full-time Radio Dispatcher for the Barnstable County Sheriff's Office. (Exhibit 1.)
2. On July 27, 1999, the Public Employee Retirement Administration Commission approved a supplemental rule of the Barnstable County Retirement Board. The supplemental rule states:

“Full-time employees who serve as full-time police, fire or emergency medical dispatchers whose job title is Emergency Telecommunications Dispatcher have replaced the job titles of Fire and Police Signal Operators, as listed in G.L. c. 32, § 3(2)(g) Group 2, provided that no member who attains age sixty-five (65) while classified in Group 1 may thereafter be classified in Group 2.”

(Exhibits 2, 3.)
3. On August 29, 1999, Mr. Fletcher was promoted to the position of Operator, First Class/Telecommunicator. (Exhibit 4.)
4. On August 14, 2000, Mr. Fletcher was promoted to the position of Senior Dispatcher. (Exhibit 5.)
5. On February 22, 2007, Mr. Fletcher was promoted to the position of Lieutenant Dispatcher. (Exhibit 6.)
6. Mr. Fletcher's responsibilities as a Telecommunicator/Dispatcher included “monitoring a variety of radio channels and telephone lines, processing emergency and non-emergency calls for service, and performing ministerial duties relative to public-safety communications.” (Exhibit 11; Stip. at Hearing.)
7. Effective January 1, 2010, the Barnstable County Sheriff was transferred to the Commonwealth of Massachusetts, pursuant to the Legislature's enactment of Acts 2009,

Chapter 61. As a result, Mr. Fletcher became an employee of the Commonwealth and a member of the state retirement system. (Exhibit 7, §§ 13-14.)

8. On October 23, 2011, Mr. Fletcher was promoted to the position of Assistant Chief Deputy of Communications. (Exhibit 8.)
9. In June 2020, Mr. Fletcher submitted an application to the State Board of Retirement seeking Group 2 classification for his service with the Barnstable County Sheriff's Office from February 21, 1986, to October 23, 2011 (i.e., his service prior to being promoted to Assistant Chief Deputy of Communications). (Exhibit 11.)
10. By letter dated November 2, 2020, the Board notified Mr. Fletcher that it denied his request for Group 2 classification. (Exhibit 12.)
11. On November 13, 2020, Mr. Fletcher timely appealed the Board's decision. (Exhibits 13, 18.)
12. On May 27, 2021, Mr. Fletcher sought reconsideration of the Board's denial of his request for Group 2 classification. (Exhibits 15-a, 15-b.)
13. On November 1, 2021, the Board confirmed its prior decision to classify Mr. Fletcher's service in Group 1. (Exhibit 16-b.)

DISCUSSION

Under G. L. c. 32, § 3(2)(g), members of the Massachusetts contributory retirement system are classified into four separate groups for retirement purposes (i.e., Group 1, 2, 3, or 4). Among other things, a member's group classification affects the amount of the member's retirement allowance through the corresponding retirement age factor used in calculating the

allowance under G. L. c. 32, § 5(2)(a). By default, members whose positions do not meet the criteria for Groups 2, 3, or 4 are classified in Group 1.¹

Group 2 includes, among others, “employees of a municipal department who are employed as fire or police signal operators.” G. L. c. 32, § 3(2)(g). The petitioner contends that he qualifies for Group 2 under this provision because, under the Barnstable County Retirement Board’s supplemental regulations, the job title of “Emergency Telecommunications Dispatcher” replaced the job titles of “Fire and Police Signal Operators” as listed in G. L. c. 32, § 3(2)(g). The Board argues that Mr. Fletcher does not qualify for Group 2 because his position is not among those identified in the statute under Group 2 and, even if his position was equivalent to a fire or police signal operator, he was not employed by a municipal department.

I agree with the Board’s latter argument, i.e., that Mr. Fletcher does not qualify for Group 2 as a fire or police signal operator because he was not employed by a municipal department. Mr. Fletcher was employed by Barnstable County through 2009, and then by the Commonwealth of Massachusetts. Neither of those employers is a municipal department. The Barnstable County Retirement Board’s supplemental regulation may entitle Mr. Fletcher to be treated for some purposes as a fire and police signal operator, but it does not override the statute’s requirement that employees in that position must be employed by a “municipal department” to qualify for Group 2 classification.² *Watson v. State Bd. of Retirement*, CR-21-0105, at *4-5 (DALA July 21, 2023) (telecommunicator employed by Barnstable County Sheriff’s Office did

¹ Group 1 includes: “Officials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” G. L. c. 32, § 3(2)(g).

² We have consistently rejected efforts by emergency dispatchers and 911 operators to be classified in Group 2. See, e.g., *Sanger v. Essex Reg. Retirement Bd.*, CR-11-771 (DALA Mar. 27, 2015); *Graney v. Bristol Cty. Retirement Sys.*, CR-07-32 (DALA Apr. 1, 2011).

not qualify for Group 2 because he was not employed by a municipal department). See *Baker v. State Bd. of Retirement*, CR-01-778, at *4 (CRAB Oct. 21, 2002) (electrician employed by a county did not qualify for Group 2, which includes only electricians employed by a city or town); *Caton v. State Bd. of Retirement*, CR-16-470 & CR-16-471, at *15 (DALA June 14, 2019) (signal maintenance repairman did not qualify for Group 2 because he did not work for a municipal department). See also *Zenkus v. Worcester Retirement Bd.*, 45 Mass. App. Ct. 1105 (June 26, 1998) (electricians employed by the Worcester Housing Authority did not qualify for Group 2 because they were not “employees of a city or town”) (Rule 1:28 decision).

ORDER

The State Board of Retirement’s decision denying the petitioner’s application for Group 2 classification is affirmed.

Division of Administrative Law Appeals

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate