

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DANA FOWLER	:	Docket No. CR-21-0327
<i>Petitioner</i>	:	
	:	Date: September 8, 2023
v.	:	
	:	
STATE BOARD OF RETIREMENT	:	
<i>Respondent</i>	:	

Appearance for Petitioner:

Dana Fowler, *pro se*
Carver, MA 02330

Appearance for Respondent:

Yande Lombe, *Esq.*
State Board of Retirement
Boston, MA 02108

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a Criminal Identification Officer for the Plymouth County Sheriff’s department. He was originally classified as a member of group 4 by the Plymouth Retirement Board. However, after his membership was transferred to the State Board of Retirement, the State Board classified him as a member of group 2. The State Board was authorized to conduct an independent assessment of the Petitioner’s group status. Because the Petitioner’s position was not enumerated in G.L. c. 32, § 3(2)(g), the State Board’s classification is affirmed.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, appeals a decision by the State Board of Retirement (“SBR” or “the Board”) denying his request for Group 4 status.¹

DALA issued a scheduling order advising the parties that the matter would be decided without a hearing. *See* 801 Code Mass. Reg. § 1.01(10)(b). On April 27, 2022, the Petitioner submitted a memorandum with 13 exhibits; the SBR submitted a response on June 3, 2022 with two additional exhibits. I now admit all 15 exhibits into evidence.

FINDINGS OF FACT

Based on the exhibits, I make the following findings of fact:

1. The Petitioner was a Criminal Identification Officer (“CIO”) for the Plymouth County Sheriff’s department from March 5, 2005 until April 9, 2020. When he began his service, he was a member of the Plymouth County Retirement Association (“PCRA”). (Pet. Exs. 1 & 3.)
2. CIOs are duly appointed Deputy Sheriffs and certified law enforcement officers. They are experts in forensic investigation. Their duties involve, *inter alia*, gathering, analyzing, and identifying crime scene evidence. (Pet. Ex. 10.)
3. The PCRA historically classified CIOs in Group 4. (Pet. Exs. 3 & 13.)
4. Effective January 1, 2010, the Plymouth County Sheriff’s office was transferred to the Commonwealth. Its employees became employees of the Commonwealth; their

¹ On August 26, 2021, the Board voted to classify the Petitioner in Group 2 and sent him a letter reflecting its decision. (Pet. Ex. 2; Res. Ex. 1.) The next day, he filed a notice of appeal. On August 30, 2021, the Board sent a follow-up letter indicating it was taking “no action” on his request for Group 4 status. (Res. Ex. 2.) It is unclear why the Board felt the need to send a second letter; their classification of the Petitioner in group 2 was effectively a denial of his request for Group 4 status.

membership in the PCRA was transferred to the SBR. *See* Mass. Stat. 2009, c. 61 § 3.
(Pet. Ex. 7.)

5. The transfer statute contained the usual language that the transfer would not impair any “employment rights held on the effective date of this act,” including retirement. (Pet. Ex. 7.)
6. Also relevant to this case is legislation involving the Barnstable County Sheriff’s Department. Barnstable County also has a bureau of criminal investigation. It was created in 1953. *See* Mass. Stat. 1953, c. 124. (Pet. Ex. 8.)
7. In 1987, the Legislature passed a bill specifically giving CIOs from Barnstable County Group 4 status. *See* Mass. Stat. 1987, c. 260. (Pet. Ex. 9.)²
8. In August 2021, the Petitioner applied for Group 4 classification with the Board. The Board took up his application at its meeting on August 26, 2021. After hearing from the Petitioner, the Board took no action on his Group 4 classification. However, it approved Group 2 classification by unanimous vote. (Pet. Ex. 2.)
9. The petitioner filed a timely appeal. (Exs. 4 & 5.)

CONCLUSION AND ORDER

“[M]embers of the Massachusetts contributory retirement system are classified into four groups for retirement purposes.” *McLaughlin v. State Bd. of Ret.*, CR-19-0515, *7, 2022 WL 16921450 (DALA Oct. 14, 2022). “Group 2 is composed of a collection of job titles, including certain types of police, fire, and public safety workers not included in Group 4. Group 2 also includes employees of the Commonwealth “whose regular and major duties require them to have

² By all accounts, only Barnstable and Plymouth County have a bureau of criminal investigation. (Pet. Exs. 12 & 13.). There does not appear to be any specific legislation regarding Plymouth County’s bureau.

the care, custody, instruction or other supervision of prisoners ... or persons who are mentally ill.” *Id.* “Group 4 consists of public safety officers, officials, and employees, such as police officers, firefighters, and certain correction officers,” *Geller v. MTRS*, CR-05-1273, *17, n.5, 2009 WL 5966846 (DALA Oct. 16, 2009), including “employees of the department of correction who are employed at any correctional institution or prison camp under the control of said department and who hold the position of correction officer . . .” G.L. c. 32, § 3(2)(g).

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. CRAB*, 369 Mass. 488, 494 (1975); *Gaw v. CRAB*, 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. Thus, to prevail, the Petitioner must show that his job title is among those listed in G.L. c. 32, § 3(2)(g) as Group 4 eligible. *See id.*; *Blanchette v. CRAB*, 20 Mass. App. Ct. 479, 483 (1985).

The Petitioner does not dispute that his job as a CIO is not among the jobs listed in Group 4. *See* G.L. c. 32, § 3(2)(g). That typically ends the inquiry. *See Connor v. Plymouth Cty. Ret. Assoc.*, CR-20-0142, * 4-5, 2022 WL 18398943 (DALA Dec. 2, 2022). However, the Petitioner puts forth several well-reasoned arguments that, though ultimately unavailing, merit discussion.

First, he argues that because the PCRA had classified him in Group 4, the SBR cannot now change that classification. He points to the transfer legislation, that he insists was intended to maintain group classification and prevent additional loss of employee benefits. I understand the Petitioner’s frustration. But his argument is precluded, not supported, by *Hunter v. CRAB*, 80 Mass. App. Ct. 257 (2011)—a case he cites.

Hunter, an Essex Sheriff employee, suffered the same fate as the Petitioner. Hunter was classified in Group 4 by the Essex County Retirement Board. However, control of the Essex Sheriff's department was transferred to the Commonwealth and Hunter became a member of the state retirement system. The transfer legislation included the familiar language prohibiting any "impairment of rights." Nevertheless, the State Board conducted an independent assessment of his group status and found he belonged in group 2. The Appeals Court affirmed the decision:

Hunter argues that once the county board classified him in Group 4, even if it were error to do so, G. L. c. 34B, § 14(a) [the transfer legislation], prohibited the State board from later changing his classification. We disagree. We see no reason why CRAB cannot correct an erroneous classification.

Id. at 263; *Watson v. State Bd. of Ret.*, CR-21-0105, 2023 WL 4846319 (DALA Jul. 21, 2023).

Next, the Petitioner makes a clever argument regarding the Barnstable County legislation. He notes that Plymouth County CIOs have always been classified in Group 4. He believes the legislation in 1987 specifically making Barnstable CIOs members of Group 4 was enacted to align them with the benefits Plymouth CIOs were already receiving and that the 1987 legislation is therefore evidence Plymouth CIOs are in Group 4. Otherwise, as he correctly points out, there would be two equivalent positions (Barnstable and Plymouth CIOs) with the same job title and responsibilities, but which nevertheless have different group classifications.

However, that appears to be the case. A different interpretation of the 1987 legislation is that neither the Barnstable nor Plymouth CIOs were entitled to Group 4 classification, but the Legislature changed Group 2 classification just for Barnstable CIOs. The fact that there is presently a bill pending to reclassify Plymouth County CIOs into Group 4 is some evidence that Plymouth CIOs are not presently entitled to group 4 classification. *See* Senate Bill 1609 (2023).

Although it may seem unfair to the Petitioner, the Legislature is within its power to create (and fix) these disparities.³

The Board's decision denying the Petitioner group 4 status is **affirmed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

³ In 2020 and 2021, the SBR's Executive Director sent letters to the Legislature urging it to approve pending legislation which would do for Plymouth County CIOs what the Legislature had already done for Barnstable County—make them members of Group 4. (Pet. Ex. 13.) Those Bills were not enacted. But Senate Bill 1609, which is identical, is presently under consideration by the Legislature.