

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

**Division of Administrative Law Appeals**

**Stephen Kennefick,**  
Petitioner

v.

Docket No. CR-12-317

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

*pro se*  
6 Katherine Road  
Pembroke, MA 02642

**Appearance for Respondent:**

Candace L. Hodge, Esq.  
State Board of Retirement  
One Winter Street, 8<sup>th</sup> Floor  
Boston, MA 02108

**Administrative Magistrate:**

James P. Rooney

**Summary of Decision**

Power plant supervisor at the Massachusetts Hospital School's request to be classified in Group 2 properly denied because his position is not specifically listed in Group 2 and because he did not have "care and custody" of any of the persons whose care and custody are described in the Group 2 provision of the public employee retirement statute. M.G.L. c. 32, § 3(2)(g).

**DECISION**

Stephen Kennefick, a retired power plant supervisor, appeals under M.G. L. c. 32, §16(4) from a decision of the State Board of Retirement declining his request to be classified in retirement Group 2. I held a hearing on December 6, 2016 that I recorded digitally. I admitted

seven documents into evidence. Mr. Kennefick was the only witness. I marked his prehearing memorandum as Pleading A and the Board's memorandum as Pleading B. I asked the Board to clarify post-hearing what group it had classified Mr. Kennefick in at the time of his retirement. The Board responded that he has been classified in Group 1. I marked this response Exhibit 8.

### **Findings of Fact**

Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. Stephen Kennefick began working at the Massachusetts Hospital School in 1989 as a 3rd class engineer. From 2004 to 2102, he was a 2nd class engineer and the Power Plant Supervisor at the school. (Kennefick testimony; Ex. 3.)
2. The Massachusetts Hospital School is a residential facility for physically challenged students. (Ex. 3.) It "provides medical, rehabilitative, recreational and educational services to approximately 99 children. These children range in age from 6 years to young adults (age 21) who are physically disabled." (Ex. 4.) The residents attend elementary school or high school there. The facility includes a gym and a pool. (Kennefick testimony.)
3. As the Power Plant Supervisor, Mr. Kenenfick was responsible throughout the year for the operation of a high pressure steam power plant at the school. It was his job to make sure the heating and cooling systems at the school were operating constantly, and to respond to any emergencies 24 hours per day. He supervised a staff of six 3rd class engineers. (Kennefick testimony; Exs. 4 and 5.)
4. The power plant was to be operated in a manner that kept the students safe and comfortable. There were particular safety concerns with some of the students, such as those kept

alive by iron lungs. (Kennefick testimony.)

5. In his role as Power Plant Supervisor, Mr. Kennefick did not have police powers. He also did not have care and custody of any of the children. (Kennefick testimony.)

6. In January 2012, Mr. Kennefick filed for superannuation retirement. He listed his retirement group as Group 4, a group that includes certain power plant employees. (Ex. 7.)

Having heard that those who had previously served in his position had been classified as Group 2 and having received advice that such a classification would increase his retirement benefit beyond the benefits available were he to retire in Group 4, he requested that he be classified in Group 2. (Kennefick testimony.)

7. The State Board of Retirement denied Mr. Kennefick's request to be classified in Group 2. (Ex. 1.) It retired him in Group 1. (Ex. 8.) Mr. Kennefick appealed the denial of his request to be reclassified to Group 2. (Ex. 2.)

### **Discussion**

The public employee retirement statute divides employees into four groups for retirement benefit purposes. M.G.L. c. 32, § 3(2)(g). The determination of the proper group classification of an employee for retirement purposes is based on the job he held and the duties he performed at the time of retirement. *See Maddocks v. Contributory Ret. App. Bd.*, 369 Mass. 488, 494, 340 N.E.2d 503, 507 (1976).

Group 1, in which Mr. Kennefick is presently classified, includes “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” M.G.L. c. 32, § 3(2)(g). Mr. Kennefick had the burden to show that his position should be classified in Group 2.

The description of the employees in Group 2 is considerably longer than the description of Group 1 employees. Group 2 members include:

Public works building police; permanent watershed guards and permanent park police; University of Massachusetts police; employees of the Massachusetts Port Authority, comprising guards, guard sergeants, head guard and chief of waterfront police; officials and employees of the department of public safety having police powers; employees of a municipal department who are employed as fire or police signal operators or signal maintenance repairmen; ambulance attendants of a municipal department who are required to respond to fires and perform duties assigned to them; employees of a city or town who are employed as licensed electricians and elevator maintenance men employed by a county; employees of Cushing hospital; employees of the trial court of the commonwealth who hold the position of chief probation officer, assistant chief probation officer, probation officer in charge or probation officer, chief court officer, assistant chief court officer or court officer; officers and employees of the general court having police powers; employees of the commonwealth or of any county, regardless of any official classification, except the sheriff, superintendent, deputy superintendent, assistant deputy superintendent and correction officers of county correctional facilities, whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners; employees of the department of children and families holding the title of social worker A/B, C or D or successive titles who have been employed in such titles for 10 years or more; and employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children and employees of Cushing hospital.

*Id.* Most of the employees in Group 2 are described by their position titles. Some are also described by the roles they play involving care and custody of specified types of persons.

Mr. Kennefick observes that the jobs listed in Group 2 typically involve public safety. He contends that because he was responsible as Power Plant Supervisor for maintaining a safe environment at the Massachusetts Hospital School, his job should also be classified in Group 2.

This is not a sufficient basis to classify his position in Group 2. This group does not include all public safety-related jobs, only those jobs specifically listed in the statute. Neither the Power Plant Supervisor at the Massachusetts Hospital School specifically nor power plant

supervisors generally are listed in Group 2.<sup>1</sup>

Mr. Kennefick is also not eligible for Group 2 as an employee exercising care and custody. It is conceivable that a power plant employee could exercise care and custody, and indeed a power plant engineer who supervised an inmate work crew was deemed to be a member of Group 2 because, in conformance with the statutory language, his “regular and major duties require[d him] to have the care, custody, instruction or other supervision of prisoners.”

*Chapman v. State Retirement Board*, CR-96-1131 (Mass. Div. of Admin. Law App., Dec. 15, 1997). Mr. Kennefick’s circumstances are not the same. The “care and custody” employees listed in Group 2 are only those employees with care and custody of “prisoners . . . parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children.”

M.G.L. c. 32, § 3(2)(g). Care and custody of disabled children, such as the children who reside at the Massachusetts Hospital School, is not a type of care and custody described in Group 2.

The only children listed in the statute are delinquents and wayward children. The legislature has

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<sup>1</sup> As previously noted, Group 4 does include certain types of power plant employees. Among the jobs listed in Group 4 are:

employees of a municipal gas or electric generating or distribution plant who are employed as linemen, electric switchboard operators, electric maintenance men, steam engineers, boiler operators, firemen, oilers, mechanical maintenance men, and supervisors of said employees who shall include managers and assistant managers; employees of the Massachusetts Port Authority who are employed as licensed electricians, utility technicians, steam engineers, watch engineers, boiler operators, or steam firemen, and supervisors of said employees, at an electrical generating or distribution plant.

M.G.L. c. 32, § 3(2)(g). Because Mr. Kennefick requested only that his position be reclassified as in Group 2, the State Board of Retirement did not consider whether his position was in Group 4. As a consequence, that issue is not before me. I note, however, that power plant employees who are classified in Group 4 are limited to those who work for municipal gas or electric generating or distribution plants or the Massachusetts Port Authority. There is no evidence that Mr. Kennefick worked for any such entity.

repealed the definition of wayward children, and as a consequence, the care and custody of wayward children has ceased to be a valid Group 2 category. *Forbes v. State Bd. of Retirement*, CR-13-146 (Mass. Div. of Admin. Law App., Dec. 23, 2016.) In any event, disabled children are not *per se* delinquent or wayward. Furthermore, Mr. Kennefick, by his own admission, did not have care and custody of the children at the Hospital School.

Because Mr. Kennefick has failed to present evidence to show that his position as Power Plant Supervisor at the Massachusetts Hospital School fit within the jobs listed in Group 2, I affirm the State Board of Retirement's refusal to reclassify his position in Group 2.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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James P. Rooney  
First Administrative Magistrate

Dated: February 17, 2017