

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Scott Lennon,
Petitioner,

No. CR-23-0121

Dated: August 16, 2024

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Matthew L. Feeney, Esq.

For Respondent: Brendan McGough, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner served as an assistant superintendent in a county sheriff's office. His position was not a sham. He is consequently entitled to be classified in group 4 under G.L. c. 32, § 3(2)(g).

DECISION

Petitioner Scott Lennon appeals from the State Board of Retirement's denial of his request to be classified in group 4 under G.L. c. 32, § 3(2)(g). The appeal was submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-14.

Findings of Fact

I find the following facts.

1. Mr. Lennon began working for the Commonwealth in April 1995. Since July 2011, he has been employed by the Middlesex County Sheriff's Office. (Exhibit 2.)

2. Since December 2017, Mr. Lennon's job title has been "assistant superintendent." That title is reflected in the Commonwealth's human resources systems and on Mr. Lennon's pay

stubs. The website of the sheriff's office describes Mr. Lennon as "assistant superintendent/director."¹ (Exhibits 2-8, 10.)

3. Mr. Lennon's job duties revolve around human resources issues. He does not care for inmates, take custody of them, or engage in regular contact with them. (Exhibits 9, 14.)

4. In anticipation of his retirement, Mr. Lennon applied for classification in group 4 under G.L. c. 32, § 3(2)(g). In January 2023, the board denied Mr. Lennon's request. He timely appealed. (Exhibits 9, 11-13.)

Analysis

The statutory calculations of public retirement benefits draw on a four-part employee grouping system. G.L. c. 32, § 3(2)(g). Members who entered service before April 2012 are entitled to have their group determined based on the position that they held during their last year of employment. *Id.* § 5(2)(a); *Maddocks v. Contributory Ret. Appeal Bd.*, 369 Mass. 488, 494 (1975); *Lorrey v. State Bd. of Ret.*, No. CR-09-553, at *5 (CRAB Dec. 19, 2014).²

At a high level of generality, the purpose of the grouping system is to draw employees with hazardous duties into early retirement. *Pysz v. Contributory Ret. Appeal Bd.*, 403 Mass. 514, 518 (1988). In furtherance of this goal, certain statutory passages inquire into the specific responsibilities that specific employees actually discharge. But the provision concerning group 4 identifies eligible employees by "naming their positions or titles rather than by describing the type of work they perform." *Gaw v. Contributory Ret. Appeal Bd.*, 4 Mass. App. Ct. 250, 254

¹ If Mr. Lennon's formal job title had included the slash denoting the *type* of assistant superintendent he is ("director"), that detail would not have changed the analysis. *See Daly v. State Bd. of Ret.*, No. CR-01-647 (CRAB Jan. 31, 2003) ("correction officer/secretary"); *Mate v. State Bd. of Ret.*, No. CR-00-595 (DALA Mar. 27, 2001) ("correction officer/supply").

² Alternatively, such members may choose to receive prorated benefits derived from their "total years of service . . . rendered in each group." § 5(2)(a).

(1976). The result of this regulatory strategy is that group 4's edges are rough: it excludes some employees who perform dangerous duties and covers some others who do not. *See Retirement Bd. of Taunton v. Contributory Ret. Appeal Bd. (Blain)*, 56 Mass. App. Ct. 914, 915 (2002); *Fine v. Contributory Ret. Appeal Bd.*, 401 Mass. 639, 643 (1988). The Legislature was evidently willing to pay this price in exchange for a system that the boards can administer easily, speedily, and without elaborate factual inquiries.

Group 4 includes “the sheriff, superintendent, *assistant superintendent*, assistant deputy superintendent and correction officers of county correctional facilities.” G.L. c. 32, § 3(2)(g) (emphasis added). This provision is unambiguous. *See Harmon v. Commissioner of Correction*, 487 Mass. 470, 479 (2021). Its reliance on job titles rather than actual job duties is readily apparent. *See Hunter v. Contributory Ret. Appeal Bd.*, 80 Mass. App. Ct. 257, 260-61 (2011). Mr. Lennon held one of the positions that the Legislature deemed eligible.

The board emphasizes that Mr. Lennon did not engage in contact with inmates. But under *Gaw* and its progeny, group 4 membership does not depend on the character of the member's work. This principle often works against members: the case law and the board have steadfastly denied group 4 requests from correctional employees who perform dangerous duties but lack the prescribed job titles. *See Hunter, supra; Ball v. State Bd. of Ret.*, No. CR-05-443 (DALA July 5, 2006, *aff'd*, CRAB Jul. 05, 2006); *Agneta v. State Bd. of Ret.*, No. CR-18-388 (DALA June 5, 2020); *Cabral v. State Bd. of Ret.*, No. CR-03-150 (DALA Apr. 30, 2004). The meaning of the statute remains unchanged when the shoe is on the other foot.

The board also appears to suggest that Mr. Lennon is not a “real” assistant superintendent, because (the board says) that position by its inherent nature must entail some work with prisoners. *See Paula v. State Bd. of Ret.*, No. CR-13-335 (DALA Mar. 27, 2015). But

the theory that any particular job title carries inherent duties cuts against group 4's focus on formal "positions or titles." *Gaw*, 4 Mass. App. Ct. at 254. The board's approach would undermine the Legislature's chosen regulatory technique by requiring the boards to examine their members' day-to-day work after all. Such analyses would be implicated equally in cases of members who *lack* the requisite titles but arguably *do* perform the "inherent" duties of qualifying positions. Also, the fact that the group 4 statute reaches up to the highest level of the correctional hierarchy—the sheriff—suggests that this corner of the statute is among those that do now cover some members whose duties are not truly hazardous. *See Blain*, 56 Mass. App. Ct. at 915 n.2.

The case law has identified a narrow category of cases in which formal employment information cannot be allowed to dictate the member's group: when the member's job is a "sham." *Pysz*, 403 Mass. at 516-17. *See Spencer v. Civil Serv. Comm'n*, 479 Mass. 210, 220 (2018); *Public Emp. Ret. Admin. Comm'n v. Madden*, 86 Mass. App. Ct. 1107 (2014) (unpublished memorandum opinion). The term "sham" implies some form of fraud, falsehood, or fakery. *See Black's Law Dictionary* 1585 (10th ed. 2014). In the context of the grouping system, a sham is a formal appointment "designed to circumvent the statute." *Pysz*, 403 Mass. at 516. An employee may thus occupy a sham position if he or she is not actually expected to discharge the duties prescribed by his or her job description. *See Murphy v. State Bd. of Ret.*, No. CR-15-623, at *8 (DALA May 27, 2016).

Mr. Lennon's job was not a sham within the meaning of the foregoing case law. There is no dispute that he has discharged the duties assigned to him by his job description. He has done so for approximately seven years. No evidence suggests that Mr. Lennon's title was awarded to him for the purpose of circumventing the retirement law, or for any other duplicitous purpose.

Nor is there any evidence that the sheriff's office constructed the "assistant superintendent" position with pension manipulation in mind. *Cf. Lowrey v. State Bd. of Ret.*, No. CR-19-202, 2022 WL 16921459, at *2 n.2 (DALA Oct. 28, 2022).

Conclusion and Order

Mr. Lennon is entitled to be classified in group 4 under G.L. c. 32, § 3(2)(g). The board's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate