

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Andrea Long,**  
Petitioner

v.

Docket Nos. CR-20-0440; CR-21-0287

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Andrea Long, *Pro Se*

**Appearance for Respondent:**

Yande Lombe, Esq.  
State Board of Retirement  
One Winter St., 8<sup>th</sup> Floor  
Boston, MA 02108

**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF DECISION**

The Petitioner appeals the decision by the State Board of Retirement to deny Group 2 classification for her prior administrative secretary and administrative assistant positions with the Suffolk County Sheriff's Department. The decision is affirmed. Although many of the Petitioner's duties required her to have frequent interactions with inmates, those interactions did not constitute the care, custody, instruction, or other supervision of inmates.

**DECISION**

The Petitioner, Andrea Long, appeals the decision of the State Board of Retirement ("the Board") to deny her request that three of her positions with the Suffolk

County Sheriff's Department be classified to Group 2. Ms. Long also appeals the Board's denial of her request that it reconsider the aforementioned classification decision.

I held a hearing on February 17, 2023 via the WebEx teleconferencing platform. The hearing was recorded via DALA's digital recording system, as well as via WebEx. I admitted into evidence Exhibits A-I. In addition to Ms. Long, I heard testimony from the following individuals:

- Clara Severin – Director, Inmate Legal Services, Suffolk County Sheriff's Office
- William Sweeney – Superintendent, Suffolk County House of Correction
- Joan Kennedy – former Director, Inmate Legal Services, Suffolk County Sheriff's Office

The Board submitted a post-hearing brief on April 21, 2023, at which point the record was closed. Ms. Long did not file a post-hearing brief.

### **FINDINGS OF FACT**

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Long has worked for the Suffolk County Sheriff's Department since January 1992. She has worked at the Suffolk County Jail and the Suffolk County House of Correction, both of which fall under the authority of the Suffolk County Sheriff's Department. (Long Test; Exhibit D).<sup>1</sup>
2. Ms. Long held the position of Administrative Secretary from January 6, 1992 through August 6, 1996, the position of Senior Administrative Secretary from August 7, 1996 through February 6, 2000, and the position of Senior Administrative Assistant from

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<sup>1</sup> Under G.L. c. 126, § 16, county sheriffs have custody and control of the jails and houses of correction in their counties.

February 7, 2000 through May 9, 2000. (Exhibit D). All three of these positions were with the Inmate Legal Services Division. (Long Test.).

Administrative Secretary & Senior Administrative Secretary Positions

3. Ms. Long's day-to-day duties for the Administrative Secretary and Senior Administrative Secretary positions were essentially the same. (Long Test.).
4. In both positions, Ms. Long worked at the Suffolk County Jail. (Long Test.; Kennedy Test.).
5. Because of concerns about overcrowding at the Suffolk County Jail, the Inmate Legal Services Division participated in a bail appeal project, in which pretrial detainees who had been denied bail could appeal that denial. These bail hearings took place every afternoon, Monday through Friday. These hearings took place in the holding area via teleconference with the Court. (Long Test.; Kennedy Test.).
6. Most of Ms. Long's duties in her Administrative Secretary and Senior Administrative Secretary positions were concerned with the bail appeal project. (Long Test.; Kennedy Test.).
7. Ms. Long's work activities in the morning were focused on preparations for that afternoon's bail hearings. (Long Test.; Kennedy Test.).
8. In the morning, Ms. Long participated in putting together the schedule for the afternoon bail hearings. Ms. Long would also prepare and assemble records and other paperwork for the hearings. Ms. Long would also field telephone calls from privately retained counsel who wished to schedule bail hearings for their clients. (Long Test.; Kennedy Test.).
9. In the morning, Ms. Long would also visit the detainees' housing units to tell them

that they would have a bail appeal that afternoon with their private counsel or to ask them if they wanted to appear for a bail hearing with one of the Inmate Legal Services attorneys. Ms. Long would also obtain signatures for paperwork required for the bail hearings. (Long Test.; Kennedy Test.).

10. Ms. Long's duties also included delivering documents to inmates and seeking clarification from inmates who made vague or illegible written requests to the Inmate Legal Services Division. (Long Test.; Kennedy Test.).
11. In the afternoons, Ms. Long arrived at the holding area at 1:00 pm. Ms. Long would explain to pretrial detainees the waivers required for the bail appeal to proceed via videoconference and would have them sign these waivers. Although Ms. Long could not specifically recall any other paperwork that she would discuss with inmates, I find that, on at least some occasions (and perhaps regularly), she obtained signatures on other paperwork related to the bail appeal process. This would take about five minutes per inmate. (Long Test.; Kennedy Test.).
12. The bail appeal proceedings would start at 2:00 pm. Ms. Long would be present during the proceedings and was responsible for noting the results until the hearings concluded in the afternoon. (Long Test.; Kennedy Test.).
13. Ms. Long, along with the other staff in the Inmate Legal Services Division, had some responsibility for organizing and maintaining files. (Kennedy Test.).

Senior Administrative Assistant Position

14. In a letter dated January 31, 2001, the Boston Retirement Board informed the Suffolk County Sheriff's Department that it had determined that the position of "Senior Administrative Assistant/Legal Services-Jail" met the criteria for inclusion in Group

2. (Exhibit F).
15. Ms. Long performed the duties of the Senior Administrative Assistant position at the Suffolk County House of Correction. (Long Test.; Severin Test.).<sup>2</sup>
16. The focus of Ms. Long’s duties in the Senior Administrative Assistant role was to respond to inmate inquiries and requests relating to their jail credits.<sup>3</sup> This duty required her to visit the housing units and obtain information from the inmates about their prior incarceration. These conversations would take perhaps twenty minutes per inmate, and would occur in the morning and part of the afternoon. (Long Test.; Severin Test.).
17. After visiting the housing units, Ms. Long did the paperwork associated with the jail credit requests and contacted correctional institutions to confirm what the inmates reported about their prior incarceration. This would generally take from one to two hours in the afternoon. (Long Test.).
18. Ms. Long’s duties also included visiting inmate housing units to seek clarification about inmate requests to the Inmate Legal Services Division that were illegible or otherwise confusing. (Long Test.).
19. Once or twice a week, in the afternoons, Ms. Long worked in the law library for a

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<sup>2</sup> The parties have submitted two different job descriptions for the Senior Administrative Assistant Position, Exhibit C (submitted by Ms. Long) and Exhibit G (submitted by the Board). Because I rely principally on Ms. Long’s and Ms. Severin’s testimony regarding Ms. Long’s duties in this position and, in any case, the two descriptions are not radically different, I need not determine which position description is the correct one.

<sup>3</sup> G.L. c. 279, § 33A provides: “The court on imposing a sentence of commitment to a correctional institution of the commonwealth, a house of correction, or a jail, shall order that the prisoner be deemed to have served a portion of said sentence, such portion to be the number of days spent by the prisoner in confinement prior to such sentence awaiting and during trial.”

couple of hours and assisted inmates in conducting legal research. (Long Test.; Severin Test.).

Group Classification Request

20. In August 2019, Ms. Long completed three Group Classification Questionnaires and asked that her Administrative Secretary, Senior Administrative Secretary, and Senior Administrative Assistant positions be prorated and classified as Group 2 positions.<sup>4</sup>
21. The Board denied Ms. Long's request for Group 2 classification for all of her prior positions at its meeting held September 24, 2020 and so notified her in a letter dated October 2, 2020. (Exhibit E).
22. In a letter dated October 6, 2020, Ms. Long appealed the Board's decision. (Exhibit E). That appeal was assigned Docket No. CR-20-0440.
23. Ms. Long requested reconsideration of its decision. The Board denied this request in a letter dated June 28, 2021. (Exhibit H). The record before me does not disclose the date of the request for reconsideration or its substance.<sup>5</sup>
24. In a letter dated July 12, 2021, Ms. Long appealed the denial of her request for

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<sup>4</sup> In her Group Classification requests, Ms. Long submitted position descriptions for the Senior Administrative Secretary and Senior Administrative Assistant positions, but not the Administrative Secretary position. The omission was explained in a letter she submitted to the Board by William Sweeney, who completed the Human Resources representative portion of the Group Classification Questionnaire. (Exhibit E). He explained that he could not locate a copy of the position description, but noted that the duties and responsibilities would have been almost identical to that of the Senior Administrative Secretary position. In connection with this appeal (and evidently her request for reconsideration), Ms. Long submitted a position description for the Administrative Secretary position, which bears a document creation date of August 16, 2001.

<sup>5</sup> The only information about Ms. Long's request for reconsideration is a statement in the Board's Pre-Hearing Memorandum that Ms. Long submitted the Administrative Secretary position description mentioned in footnote 4, above.

reconsideration to DALA. That appeal was assigned docket number CR-21-0287. (Exhibit I).

### **CONCLUSION AND ORDER**

As a threshold matter, Ms. Long argues that the Boston Retirement Board had already determined that the position of Senior Administrative Assistant was entitled to Group 2 classification. (See Exhibit F, January 31, 2001 letter from the Boston Retirement Board to the Suffolk County Sheriff’s Department). Although Ms. Long’s reliance upon this determination is understandable, the Board is correct that it is not bound by any prior classification decisions that may have been made by another Board. *Hunter v. CRAB*, 80 Mass. App. Ct. 257, 263 (2011). Accordingly, Ms. Long’s positions will be entitled to Group 2 classification only if such classification meets the requirements of Chapter 32.

Under Chapter 32, the retirement benefits of a Massachusetts public employee are shaped in part by the employee’s classification into one of four “groups.” G.L. c. 32, § 3(2)(g). For purposes of this decision the two pertinent groups are Group 1 and Group 2. Group 1 is a catch-all group: “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” G.L. c. 32, § 3. Group 2 includes employees “whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners.” G.L. c. 32, § 3.

Group 2 classification is “properly based on the sole consideration of [the member’s] duties.” *Maddocks v. CRAB*, 369 Mass. 488, 494 (1975). The member’s job title and job description are “key information,” *Wilber v. State Bd. of Ret.*, CR-09-340,

CR-09-541, at \*4 (DALA Mar. 27, 2015), but, in the Group 2 context, they are not the last word on Group 2 eligibility if the credible evidence shows that the member had duties different from (or additional to) those set forth in the job title and description. *Hayes v. State Bd. of Ret.*, CR-07-581, at \*4 (DALA Mar. 12, 2009). Here, I rely upon the testimony of Ms. Long and Attorneys Kennedy and Severin, which I found generally credible.

It was Ms. Long’s burden to establish that her regular and major job duties – that is, those she spent more than 50% of her working hours performing – required “the care, custody, instruction or other supervision of prisoners.” *Forbes v. State Bd. of Ret.*, Docket No. CR-13-146, at \*7 (CRAB January 8, 2020).

Two general principles articulated in prior decisions inform the Group 2 analysis for corrections professionals. First, exposure to the dangers attendant to employment in a correctional institution does not establish an entitlement to Group 2 classification. *Woodward v. State Bd. of Ret.*, CR-20-0359, at \*10 (DALA Dec. 17, 2021); *Kelley v. Boston Ret. Bd.*, CR-03-34, at \*8 (DALA Feb. 13, 2004) (affirmed by CRAB September 1, 2004); *Kalinkowski v. State Bd. of Ret.*, CR-12-506, at \*7 (DALA April 7, 2017). Second, mere contact with inmates, even if regular and recurring, is insufficient to ground Group 2 classification. *Kalinkowski*, at \*7; see *Pickett v. State Bd. of Ret.*, CR-06-447, 2007 WL 2580408, at \*4 (DALA Aug. 7, 2007) (discussing insufficiency of contact in the context of Group 2 classification for Department of Mental Health employee). What matters is that the interactions amount to “care, custody, instruction or other supervision of prisoners.”

Here, the record demonstrates that Ms. Long spent the majority of her workday interacting with inmates in her Senior Administrative Assistant position. That is less clearly the case with respect to the other two positions.<sup>6</sup> In any case, the record before me does not establish by a preponderance of the evidence that Ms. Long’s regular and major job duties required the “care, custody, instruction or other supervision of prisoners.”

First, Ms. Long did not exercise “care” of prisoners, as that term has been interpreted by decisional law for purposes of Group 2 classification. An oft-cited interpretation of “care” for purposes of Group 2 classification is recited in *Rebell v. CRAB*, 30 Mass. App. Ct. 1108 (1991) (unpublished disposition). The Court observed that the ordinary meaning of the term “care” connotes “charge, oversight, watchful regard, and attention.” *Id.* (quotation omitted). Although it is an unpublished opinion, numerous decisions have adopted this formulation. *See, e.g., Giard v. State Bd. of Ret.*, CR-08-347, at \*6 (DALA June 8, 2012).

Consistent with this characterization, in the medical context, “care” requires that the member “must shoulder a measure of responsib[ility] for ... the physical or psychological needs of the patients.” *Hong v. State Bd. of Ret.*, CR-17-843, 2022 WL 16921455, at \*3 (DALA May 6, 2022) (quoting *Sutkus v. State Bd. of Ret.*, CR-09-837 (CRAB Feb. 17, 2011)) (alterations in original). The social work context is similar. *See Burciaga v. State Bd. of Ret.*, CR-03-940, at \*4 (DALA March 25, 2005) (social worker’s

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<sup>6</sup> In considering the amount of time Ms. Long spent interacting with detainees in her first two positions, I do not count the time she spent physically present during the bail appeal proceedings, but was taking down the results rather than conversing or otherwise dealing with the detainees.

personal implementation of mentally ill clients' service plans was care for purposes of Group 2 classification).

Care, then, is not merely conferring a benefit or performing some discrete service, but taking on responsibility for some aspect of an individual's well-being. Ms. Long's work duties were important, and certainly of benefit to detainees and inmates, but they did not constitute care as that term has been interpreted for purposes of Group 2 classification.

As for custody, the record contains no evidence that Ms. Long exercised any authority or control over the movements or the physical persons of detainees or inmates. Such authority or control is required for purposes of establishing custody for Group 2 classification purposes. *Kalinkowski, supra*, at \*7; *Colon v. State Bd. of Ret.*, CR-12-622, at \*5-6 (DALA April 7, 2012).<sup>7</sup>

Instruction is a somewhat closer call. For purposes of Group 2 classification, instruction may take place outside the classroom and include guidance and information concerning a broad range of subjects. *See Burciaga, supra*, at \*5 (social worker instructed clients "in hygiene skills, in social skills, in budgeting their financial needs, and in helping them with filling out job applications and in interviewing for work.").

In her Administrative Secretary and Senior Administrative Secretary positions, it is possible that Ms. Long provided instruction when she gave detainees information about the waivers and other paperwork they were required to sign in order to participate in a bail hearing. *But see Colon v. State Bd. of Ret.*, CR-12-622, at \*4 (DALA April 7, 2017) ("Providing [inmates] with legal services or translating for them does not entail

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<sup>7</sup> The detainees/inmates were in the custody of the correctional officers.

instructing or supervising them.”). It is difficult to say, however, because there was little testimony explaining what was involved in the brief discussions Ms. Long had with detainees about the bail appeal process. It is not necessary to resolve this question, however, because the record does not indicate that the one hour per day Ms. Long spent when combined with similar interactions she may have had with detainees in the mornings, amounted to more than half of her workday, as required for Group 2 classification. *See Forbes, supra*, at \*7.

As for the Administrative Assistant position, Ms. Long’s efforts to elicit information *from* inmates about their prior incarceration (important though that work may have been) did not, itself, constitute “instruction.” If instruction was provided during the course of Ms. Long’s inmate colloquies, the record does not disclose its nature, extent, or duration; most likely, the course of these conversations likely revolved principally around the provision of information from the inmate to Ms. Long rather than the furnishing of instruction from Ms. Long to the inmate.

Although Ms. Long’s work in the law library perhaps entailed some instruction, those duties occupied far less than half of her working time.

In sum, Ms. Long’s regular and major work duties did not require the care, custody, or instruction of prisoners. That does not quite end the inquiry because the phrase “or other supervision” in “care, custody, instruction or other supervision of prisoners” is a residual or catch-all clause that encompasses work responsibilities that may not meet the particular and individual requirements for care, custody, or instruction, respectively, but which nevertheless reflect certain characteristics that care, custody, and instruction tend to have in common. In a recent decision, I characterized those qualities

as “personal and direct” interactions with a Group 2 population, “breadth and depth” of responsibility, and “watchfulness and attention.” *McKinney v. State Bd. of Ret.*, CR-17-230 and CR-17-868, at \*19-20 (DALA Sept. 29, 2023).

Here, Ms. Long had personal and direct interactions with detainees and inmates and perhaps needed to employ a measure of watchful attention in order to elicit information and promote productive cooperation with the completion of paperwork. I do not need to consider those qualities any further, however, because Ms. Long’s duties (at least as far as the record before me reveals) lack the combination of depth and/or breadth of responsibility that generally characterizes Group 2 positions. Ms. Long, to be sure, had important responsibilities – but she was not responsible *for* detainees/inmates, in the way, for example, a clinician is responsible *for* the physical or mental well-being of her patients or custodial personnel are responsible *for* the safety and movement of their charges. Nor did Ms. Long’s duties couple detainee/inmate interactions with decision-making or other such authority. *Contrast, McKinney, supra*, at \*21 (“Ms. McKinney’s classification duties required her to have substantive interactions with inmates, and determinations arising (at least in part) from those interactions had an impact on fundamental aspects of inmates’ custody, including security levels, housing, and institutional operations.”).

Because the regular and major duties of the Administrative Secretary, Senior Administrative Secretary, and Senior Administrative Assistant positions did not require the “care, custody, instruction, or other supervision of prisoners,” the decision of the Board is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Timothy M. Pomarole*

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Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: October 13, 2023