COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Susan Martin**,

Petitioner

v. Docket No. CR-09-1065

**State Board of Retirement**,

Respondent

**Appearance for Petitioner**:

Susan Martin

6 Cunningham Road

Sagamore Beach, MA 02562

**Appearance for Respondent**:

Candace L. Hodge, Esq.

State Board of Retirement

One Winter Street, 8th Floor

Boston, MA 02018

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

The State Board of Retirement’s classification of the petitioner in Group 1, rather than Group 2, is affirmed. The petitioner supervised people who engaged in the care, custody, instruction or other supervision of prisoners and detainees, but she did not engage in those things directly. In addition, Group 2 is for employees engaged in the care, custody, instruction or other supervision of prisoners, not detainees.

**DECISION**

 The petitioner, Susan Martin, appealed the denial by the State Board of Retirement (SBR) of her request to be classified in Group 2.

 I held a hearing on August 23, 2016, which I recorded digitally. Ms. Martin represented herself and was the only witness. I accepted into evidence eight exhibits.

 The State Board of Retirement submitted a post-hearing brief. In lieu of a brief, Ms. Martin gave an oral argument at the hearing.

**Findings of Fact**

 1. From January 18, 2009 through January 19, 2010, when she retired, Ms. Martin was Superintendent of the Massachusetts Alcohol Substance Abuse Center (MASAC), a Department of Correction facility. (Exs. 1, 5; testimony.)

 2. MASAC housed criminally sentenced, minimum-security male inmates, and civilly committed male detainees in a 30-day detoxification and substance abuse program under G.L. c. 123, § 35. (Ex. 5, testimony.)

 3. When Ms. Martin retired, MASAC had 80 inmates and 150 detainees. (Testimony.)

 4. As Superintendent, Ms. Martin was a supervisor. She developed and managed a $7 million budget. She supervised 172 people and was responsible for all personnel decisions, including, hiring, training, promoting, disciplining, and firing employees. (Testimony.)

 5. Ms. Martin, a registered nurse, oversaw the medical care of inmates and detainees, but did not provide nursing care to them directly. (Ex. 5.)

 6. Ms. Martin conducted daily morning meetings about detainees sent by courts for detoxification. Detainees were not present. (Testimony.)

 7. In appropriate circumstances, Ms. Martin could have detainees’ custody rescinded. (Testimony.)

 8. Ms. Martin’s office was inside the facility’s perimeter. (Testimony.)

 9. Ms. Martin observed inmates. They sometimes approached her with grievances. (Testimony.)

 10. Ms. Martin supervised the care, custody, instruction, and other supervision of inmates and detainees, but did not herself engage in it. (Testimony.)

 11. On October 15 and 26, 2009, Ms. Martin asked to be classified in Group 2. (Exs. 4, 5.)

 12. On November 24, 2009, the State Board of Retirement voted to classify her position in Group 1. On December 2, 2009, it informed her of its decision. (Ex. 1.)

 13. On December 7, 2009, Ms. Martin timely appealed. (Ex. 2.)

**Discussion**

 For retirement purposes, employees are placed in Groups 1 through 4. Group 1, where Ms. Martin was placed, is the general category. G.L. c. 32, § 3(2)(g). Group 2, where Ms. Martin seeks to be placed, is for various employees, including “employees of the commonwealth...

whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners.” G.L. c. 32, § 3(2)(g). (An exception exists but does not apply: “except the sheriff, superintendent, deputy superintendent, assistant deputy superintendent and correction officers of county correctional facilities.” G.L. c. 32, § 3(2)(g). The exception does not apply because Ms. Martin was a superintendent for a Commonwealth facility, not a county facility.)

 Ms. Martin does not belong in Group 2. She was a supervisor. She supervised people who engaged in care, custody, instruction or other supervision of prisoners, but she did not do so directly. By her own admission, she did not engage in hands-on care. The following factors, or a combination of them, do not prove Ms. Martin engaged in care, custody, instruction or other supervision of prisoners: having an office within the perimeter of a fenced facility; observing inmates; or being available to inmates to hear and possibly resolve their grievances. (Testimony.)

 Ms. Martin’s theory, which she expressed at the hearing, seems to be two-fold: Inmates and detainees were in Massachusetts’s custody; she was the Superintendent; therefore, she had custody of them. And if she could have detainees’ custody rescinded, they were in her custody.

At the hearing, Ms. Martin said, “I guess I looked at custody differently.” She did not explain from what or whom she viewed custody “differently.” As I explained at the hearing, I must base my decision on the law, not on how Ms. Martin views custody.

 An additional problem exists with Ms. Martin’s view that being able to have detainees’ custody rescinded means they were in her custody: Group 2 is for employees who work with *prisoners*, not detainees.

 Ms. Martin distinguished between inmates and detainees, indicating that not everyone inside MASAC’s perimeter was an inmate. (I assume that “inmates” and “prisoners” are synonymous for purposes of this appeal.) Chapter 32 does not define “prisoner.” G.L. c. 32, § 1. And Chapter 123, § 35 does not refer to prisoners or otherwise indicate that committed people are prisoners or inmates. The section uses variations of the words “commit,” “treat,” and “house,” but not “imprison,” “incarcerate,” or a similar word. Even if alcoholics and substance abusers are committed to prisons, the section specifies twice they are to be separated from convicted criminals, indicating that they are not prisoners or inmates. The daily morning meetings that Ms. Martin attended and that are a major basis for her appeal were about detainees, not inmates.

 Even if Ms. Martin’s regular and major duties required her to engage in hands-on

care, custody, instruction, or other supervision of detainees, it would not qualify her for Group 2.

**Conclusion and Order**

 Ms. Martin was properly classified in Group 1, not Group 2. The SBR’s classification is affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: November 2, 2016