

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Gerald Nelson,
Petitioner

Docket No. CR-24-0342

v.

Chicopee Retirement Board,
Respondent

Dated: June 13, 2025

Appearance for Petitioner:

Pro se

Appearance for Respondent:

Michael Sacco, Esq.
Sacco & Collins, P.C.

Administrative Magistrate:

Bonney Cashin

Summary of Decision

Reserve and permanent intermittent police officers are civil service employees. *Medeiros v. State Bd. of Ret.*, No. CR-08-108 at *4 (Div. Admin. Law App. Apr. 16, 2010). Special police officers are not. *Id.* The petitioner has not offered evidence to show he was “on his respective list and was eligible for assignment to duty subsequent to his appointment....” G.L. c. 32, § 4(2)(b).

DECISION

Introduction

On June 3, 2024, Gerald Nelson timely appealed under G.L. c. 32, § 16(4), the May 22, 2024, decision of the Chicopee Retirement Board, which denied his application to purchase creditable service as a Chicopee police officer prior to his appointment as a full-time permanent police officer. The Board denied Officer Nelson’s request because it concluded he was a Special

Police Officer, not a reserve or permanent intermittent police officer, before his permanent appointment. The Board determined, therefore, that he was not eligible for creditable service under G.L. c. 32, § 4(2)(b).

The parties agreed without objection to have the case decided without a hearing under 801 CMR 1.01(10)(c). Officer Nelson submitted 16 proposed exhibits, and the Board objected to three of them. The Board's objections are overruled. The Board also filed seven proposed exhibits numbered 17-23. Officer Nelson filed a statement supporting the inclusion of the three exhibits the Board objected to. The Board responded to the statement and included copies of the documents Officer Nelson offered as Exhibit 16A-D. I admit the following documents into the record and mark them 1-23.

1. Chapter 314 of the Acts of 1896.¹
2. Chicopee Common Council meeting minutes, dated by hand June 7, 1897.
3. Chicopee City Charter, Chapter C: Article III, § 22, establishing a Police Department.
4. Two pages from "Chicopee Police Patrolmen's 1990 Centennial Yearbook."
5. Two pages from Chicopee Revised Ordinances, dated by hand 1942.
6. Chapter 175 of the Acts of 1960.
7. Chicopee Board of Aldermen meeting minutes, dated December 3 and 17, 1968.
8. Chicopee Board of Aldermen meeting minutes, dated by hand June 6, 1989.
9. Photo of Chicopee Police badges.
10. A-E. Mayoral Appointments of Petitioner as a Special Police Officer in 1990-1994.

¹ Now G.L. c. 147, § 11.

11. Petitioner's police training certificate dated December 7, 1986.
12. Petitioner's work history data.
13. A-G. Petitioner's W-2 forms for 1987-1990, 1992-94.
14. Petitioner's 35-Year Certificate.
15. A-I. Policemen's Concert and Ball pamphlet and various newspaper articles about the Chicopee Police Department.
16. City of Chicopee Law Department Memo dated July 20, 2023, with four attachments described therein.
17. New Member Enrollment Form.
18. Letter of Reference about Petitioner dated November 1, 1993.
19. Petitioner's appointment letter dated January 7, 1994.
20. Board's Executive Director's letter to Petitioner dated April 4, 2023.
21. Petitioner's undated response to April 4, 2023, letter.
22. Board decision letter dated May 22, 2024.
23. Petitioner's appeal dated June 3, 2024.

FINDINGS OF FACT

Based upon the evidence in the record and the reasonable inferences from it, I make the following findings of fact:

1. Gerald Nelson was appointed a full-time police officer to the Chicopee Police Department on January 13, 1994. He continues to be employed in that capacity. (Exhibit 19.)
2. Officer Nelson became a member of the Chicopee Retirement System, also on January 13, 1994. (Exhibit 17.)

3. Prior to his permanent appointment, Officer Nelson worked for the Chicopee Police Department on a part-time basis from December 2, 1986, until his permanent appointment on January 13, 1994. (Exhibits 12, 22.)

4. Officer Nelson was appointed to one-year terms as a “Special Police Officer” in 1990 through 1993. (Exhibit 10A-D.)

5. On January 13, 1994, Officer Nelson signed the same one-year appointment form he had signed in the previous three years with two modifications. His position was identified as “a Patrolman 0083A” and the phrase “for the term of 1 year” was crossed out. (Exhibit 10E.)

6. On May 22, 2024, the Board denied Officer Nelson’s application to purchase creditable service for his employment from December 2, 1986, until his full-time permanent appointment. (Exhibit 22.)

7. Officer Nelson filed a timely appeal with the Division of Administrative Law Appeals (DALA) on June 3, 2024. (Exhibit 23.)

8. None of the Exhibits filed in this appeal state or infer that Officer Nelson was placed on or appointed to a position from a certified list established under G. L. c. 31, § 60, during the period for which he now seeks creditable service. (Exhibit 9.)

DISCUSSION

Officer Nelson seeks to purchase creditable service under G.L. c. 32, § 4(2)(b), which provides:

the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment;... provided, further, that this sentence shall take effect in a city by vote of the city council in accordance with its charter

G.L. c. 32, § 4(2)(b). Officer Nelson has offered evidence and arguments purporting to support his position that an examination of historical documents shows that:

the City of Chicopee ... has never properly established a Special Police force, in violation of the 1942 ordinance, the city acknowledged that they were aware of this error and attempted to correct this error in 1989, which was DEFEATED, continuing the hiring of Reserve Officers in violation of Chapter 175, and falsely recognized the Reserve Police force as Special Police in violation of the 1989 vote[,] which was defeated. This error continued until 2020 when the Reserve/Special police were disbanded.

Petitioner's Prehearing Memorandum at 3. The Board faults Officer Nelson for a lack of original documentation to establish he was a reserve intermittent police officer from 1986 to January 13, 1994, and argues it has the sole discretion to determine what documents are acceptable.

The parties' arguments are unavailing. Whatever the historical record might show about Chicopee's use of Special Police and Reserve/Intermittent police in the past, a crucial, but missing, piece of evidence is necessary to establish Officer Nelson's entitlement to purchase service under G.L. c. 32, § 4(2)(b)—whether he was on a certification list during the period for which he now seeks creditable service.

A retirement board is required to allow up to five years of creditable service for the period during which “a reserve or permanent-intermittent police officer...was on his respective list and was eligible for assignment to duty subsequent to his appointment....” *Id.*

The “respective list” is the certification list referenced in G.L. c. 31, § 60, which provides that an original appointment of an intermittent or reserve police force shall be made from a certified list. G.L. c. 31, § 60.

Reserve and permanent intermittent police officers are civil service employees. *Medeiros v. State Bd. of Ret.*, No. CR-08-108 at *4 (Div. Admin. Law App. Apr. 16, 2010). Special police

officers are not. *Id.* Rather, they are appointed to a one-year term. This is what happened to Officer Nelson from January 1990 through December 31, 1993.

Officer Nelson has not produced any evidence that he was on a certified list during the period for which he now seeks creditable service. DALA (and the Contributory Retirement Appeal Board) are without authority to alter the statutory requirements of the retirement law.² See *Bristol Cnty. Ret. Bd. v. Contributory Ret. App. Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006), *Petrillo v. Public Emp. Ret. Admin.*, No. CR-92-731, at *1 (Contributory Ret. App. Bd. Oct. 22, 1993). As recently as 2024, CRAB has confirmed that “DALA and CRAB simply do not have the authority to provide equitable relief where it contravenes the retirement law.” *Banks v. State Bd. of Ret.*, No. CR-24-0068, 2024 WL 3770229, at *2 (Contributory Ret. App. Bd. Jul. 3, 2024).

CONCLUSION

The Board’s decision is affirmed on other grounds.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin
Administrative Magistrate

DATED: June 13, 2025

² Whether Chicopee had or had not accepted the civil service provisions at a given time is not the governing factor; the provisions of G.L. c. 32, § 4(2)(b) govern here.