

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

ISAAC PERRY	:	Docket No. CR-20-0132 ¹
ADAM MURPHY,	:	Docket No. CR-20-0133
<i>Petitioners</i>	:	
	:	Date: December 2, 2022
v.	:	
	:	
PLYMOUTH COUNTY	:	
RETIREMENT ASSOCIATION,	:	
<i>Respondent</i>	:	

Appearance for Petitioners:

Isaac Perry, *pro se*
197 Neck Road
Rochester, MA 02770

Adam Murphy, *pro se*
39 Alley Road
Rochester, MA 02770

Appearance for Respondent:

Timothy Smyth, Esq.
Law Office of Timothy J. Smyth, LLC
58 N Street
South Boston, MA 02127

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Plymouth County Retirement Association’s decision is affirmed. The Petitioners, a Harbor Master and Deputy Harbor Master, are not entitled to Group 4 classification because their job title is not included in the G.L. 32, § 3(2)(g) list of group 4 eligible positions. Additionally, they are not members of a police department “not classified in Group 1.”

¹ This matter was consolidated with *Connor v. Plymouth County Retirement Association*, CR-20-0142. Although the issue in that matter is the same—whether the Petitioner qualifies for group 4 status—because it involves a different position, I am issuing separate decisions.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioners, Isaac Perry and Adam Murphy (collectively “the Petitioners”), appeal a decision by the Plymouth County Retirement Association (“PCRA”) classifying them as members of group 1 under G.L. c. 32 § 3(2)(g). The case began when the Petitioners contacted PCRA requesting group 4 recognition. On February 4, 2020, PCRA denied the request. The Petitioners timely appealed. PCRA moved for an order of summary decision, which I denied on September 23, 2022.

Instead, on November 21, 2022, I conducted a hearing, in person, at the Division of Administrative Law Appeals (DALA) located at 14 Summer Street, 4th Floor, Malden, MA 02148. Officers Perry and Murphy testified on their behalf; Chief Richard Nighelli and Interim Town Administrator, Judith Mooney, testified for the Board. I was able to observe the witnesses’ demeanor throughout their testimony.

I entered 11 exhibits into evidence. At the end of the hearing, the parties presented summations, whereupon the administrative record was closed.

FINDINGS OF FACT

Based on the testimony and exhibits, I find the following facts.

1. The Petitioner, Isaac Perry, is the Harbor Master for the town of Marion. He has held that position since 2015; prior to that, he was the Deputy Harbor Master. (Perry Testimony.)
2. The Petitioner, Adam Murphy, is the Assistant (or Deputy) Harbor Master for the town of Marion. He has held that position since 2014. (Murphy Testimony.)
3. Their duties are essentially the same, except the Harbor Master has some additional supervisory and administrative responsibilities not relevant to this appeal. (Exhibit 4.)
4. They are responsible for, *inter alia*:

- Patrolling the town and adjacent waterways;
- Responding to emergency situations or serious crimes (including taking charge of the crime scene until relieved by other law-enforcement officials);
- Enforcing all relevant laws and by-laws, through arrests, searches and seizures, investigations, witness interviews, etc.;
- Performing duties of a firefighter and emergency medical assistant, when necessary;
- Checking, cleaning and maintaining department vehicles, equipment, and harbor facilities (such as docks, floats, piers).

(Exhibit 4; Perry and Murphy Testimony.)

5. They are not, however, part of the Marion Police Department. Instead, they are full-time employees of the Town of Marion Harbor Master Department. That is a stand-alone town department which reports directly to the Select Board (under the supervision of the Town Administrator). (Exhibits 2, 3, and 5; Nighelli and Mooney Testimony.)
6. They have their own budget, for which they are responsible, and is approved by the Select Board. (Mooney Testimony.)
7. The Harbor Master has its own office. (Mooney Testimony.)
8. Although they work alongside, and cooperatively, with the Police Department, they nevertheless operate independently of them. They answer to the Town Select Board, not the Police Chief. They do not, for example, notify the Chief if they are taking vacation days. (Perry, Murphy, and Nighelli Testimony.)
9. If a disciplinary issue arose, the Harbor Master department would handle it itself. The Police Department could get involved and investigate the matter if the Town referred it to them. (Nighelli Testimony.)
10. They are appointed by the Town Administrator, through the authority granted to her by the Select Board. *See* G.L. c. 102, § 19; (Mooney Testimony.)

11. Their powers as Harbor Masters are defined and limited by statute, G.L. c. 90B, *et seq.* (Perry and Murphy Testimony.)
12. Nevertheless, as Harbor Masters, they wear many different hats: they may have to perform the duties of a firefighter and, when necessary, an emergency medical assistant. (Exhibit 4; Murphy Testimony.)
13. In addition to being Harbor Masters, both Petitioners are Special Police Officers (“SPO”). An SPO is also appointed by the Town Administrator, through the authority granted to her by the Select Board. (Perry, Murphy, Nighelli and Mooney Testimony.)
14. Typically, an SPO is a part-time officer who fills in when full-time, regular officers are unavailable. The Town has approximately 16 full-time officers; they have 5 SPOs, which includes Officers Perry and Murphy. (Nighelli Testimony.)
15. Full-time police officers are also appointed by the Select Board, pursuant to the Chief’s recommendation. (Nighelli Testimony.)
16. Full-time police officers must have, *inter alia*, graduated from the basic recruit academy. (Nighelli Testimony.)
17. SPOs are like full-time police officers, but they have less training. They attend the reserve intermittent academy. (Nighelli Testimony.)
18. Accordingly, the Petitioners did not go to the full-time, basic recruit academy; they did receive training, but it was in the reserve intermittent academy. (Nighelli Testimony.)²

² Under recent reform legislation, reserve police officers who did not receive full-time officer training will have to enroll in the Bridge Academy so that all officers, regardless of designation, will have the same training moving forward. The Petitioners are subject to this requirement. (Nighelli Testimony.)

19. As SPOs, the Petitioners perform regular police functions. While they are not full-time, regular members of the police force, they act like them when called upon in this capacity. That is, they perform police duties beyond what they are authorized to do as Harbor Masters. (Perry, Murphy, and Nighelli Testimony.)
20. They have the power to detain, investigate, and arrest for crimes well outside of their jurisdiction as Harbor Masters. In fact, while acting as Harbor Masters, they are obligated to respond as any police officer would, should they come upon a situation requiring it. (Perry, Murphy, and Nighelli Testimony.)
21. At times, they are called to fill in for regular police officers on a day off; in that capacity, they are *only* acting as SPOs. In this scenario, they receive additional compensation on a *per diem* basis directly from the Police Department budget. Otherwise, even if they perform SPO functions while working as Harbor Masters, they are paid through the Harbor Master budget. (Perry, Murphy, Nighelli and Mooney Testimony.)
22. As Harbor Masters, they are not full-time police officers and not part of the Marion Police Department. (Nighelli Testimony.)
23. They are not members of the Marion Police union; only full-time patrolmen and sergeants are. (Nighelli Testimony).
24. On January 28, 2020, the Petitioners requested group 4 status. (Exhibit 9.)
25. On February 4, 2020, the PCRA denied their request.³ (Exhibit 9.)

³ On February 4, 2020, the Town sent a denial letter to Officer Murphy. Officer Perry indicated his denial letter was accidentally sent to a former employee of his department. Both Petitioners nevertheless filed appeals within 15 days of that letter. No one disputes Officer Perry sought the same classification as Officer Murphy and that he was denied that classification at the same time. Therefore, even though I do not have the denial letter, because Officer Perry filed a timely appeal, I have jurisdiction over his case.

26. On February 11, 2020, they each filed a timely notice of appeal. (Exhibits 10 and 11.)

CONCLUSION AND ORDER

Group classification is “properly based on the sole consideration of [a member’s] duties” and a member’s duties, in turn, are determined by consulting a member’s title or job description. *See Maddocks v. Contributory Retirement App. Bd.*, 369 Mass. 488, 494 (1975); *Gaw v. Contributory Retirement App. Bd.*, 4 Mass. App. Ct. 250, 256 (1976). “[T]he Legislature has consistently described employees falling within Group 4 by naming their positions or titles rather than by describing the type of work they perform.” *Gaw*, 4 Mass. App. Ct. at 254; *Hunter v. Contributory Ret. App. Bd.*, 80 Mass. App. Ct. 257 (2011). Thus, to prevail, the Petitioners must show that their job title is among those listed in G.L. c. 32, § 3(2)(g) as Group 4 eligible. *See id.*; *Blanchette v. Contributory Retirement App. Bd.*, 20 Mass. App. Ct. 479, 483 (1985).

The Petitioners do not dispute their job titles are Harbor Master and Deputy Harbor Master. Unfortunately for them, neither is among the jobs listed in Group 4. *See* G.L. c. 32, § 3(2)(g); *Savery v. Plymouth Ret. Bd.*, CR-97-1802 (Div. Admin. Law App., Mar. 30, 1999) (Plymouth County Harbor Master properly classified under group 1).⁴ Although the Petitioners submitted evidence about their duties, that is irrelevant in identifying whether the job title is enumerated in the statute. *See e.g. Comeau v. State Bd. of Retirement*, Docket No. CR-12-373

⁴ *Savery* alone might be dispositive. *Savery*, a Harbor Master for the town of Plymouth, was also denied group 4 status. *See also* Exhibit 8 (PERAC opinion letter, October 30, 1997, affirming Harbor Masters for the town of Plymouth are not entitled to group 4 classification). However, there appear to be factual differences between *Savery* and this case which warrant creating a detailed record here.

(Div. Admin. Law App., Dec. 15, 2017) (“Comeau’s position was not included in Group 4 by the Legislature and I may not expand the list of job titles.”).

I nevertheless granted a hearing to determine if, regardless of their job title, the Petitioners would qualify for group 4 status as members of a police department “not classified in Group 1.” *See* G.L. c. 32, § 3(2)(g). After a hearing, they have not met their burden. They are not members of the police department. It is not enough that they exercise police powers or that they train and work alongside the police department. They are appointed and overseen by the Town Select Board, not the police department (nor the chief of police). They are members of a stand-alone town department.

This is just another, in a long line of cases, where persons who perform law enforcement functions are nevertheless excluded from group 4 status. *See Larivee v. State Bd. of Ret.*, CR-18-0649 (Div. of Admin. Law App., Sept. 16, 2022) (State University Police); *Carroll v. MassPort Employees’ Ret. Bd.*, CR-10-814 (Div. Admin. Law App., Jan 9, 2014) (Captain, Massport Security Services); *Patton v. Falmouth Ret. Bd.*, CR-07-597 (Div. Admin. Law. App., Nov. 13, 2009) (Natural Resource Officer); *Cremins v. State Bd of Ret.*, CR-08-627 (Div. Admin. Law. App., June 18, 2009) (Campus Police Officer); *City of Boston v. Boston Ret. Bd.*, CR-06-408 (Div. Admin. Law. App., Apr. 4, 2008) (Boston School Police); *Dent v. Hampshire County Ret. Bd.*, CR-01-1065 (Div. Admin. Law. App., Feb. 3, 2004) (Police dispatcher); *Juliano v. State Bd. of Ret.*, CR-01-1085 (Div. Admin. Law App., Nov. 7 2002) (Director of Public Safety, Bunker Hill Community College); *Collins v. Middlesex Ret. Bd.*, CR-00-1067, (Div. Admin. Law App., Sept. 7, 2001) (Dog Officer); *Delmolino v. PERAC*, CR-96-939 (Div. Admin. Law App., Nov 7, 1997) (Clerk-Matron); *Orr v. Worcester County Ret. Bd.*, CR-90-968 (Div. Admin. Law App., Apr. 15, 1992) (Police Dispatcher/ Police Secretary/ Police Rape Officer).

On the other hand, there are two exceptions: both the Boston Municipal Police and the Boston Housing Authority Police Department have previously been granted group 4 status. *See Boston Housing Authority v. Boston Ret. Bd.*, CR-01-573 (Div. Admin. Law. App., May 25, 2001), *affirmed by CRAB*, Jan. 31, 2003); *McGuire v. Boston Retirement Board*, CR-98-841, (Div. Admin. Law. App., May 21, 1999).

There is a lot of overlap between the responsibilities and risks of the officers denied group 4 status and the officers in *Boston Housing Authority* and *McGuire*. However, one clear distinguishing line exists. In cases where group 4 status was conferred, those officers were either a stand-alone police department or incorporated into, and overseen by, a police department. Put another way, they were “persons who performed police functions *and* worked for a municipal police department.” *Patton, supra*, n. 1 (emphasis added). In cases where group 4 status was not conferred, the officers were, *inter alia*, hired and overseen by some local entity other than a police department, *e.g.* a town council. *See Patton, supra*, (explaining differences). Whether this is simply an artificially created line or not, it is nevertheless a consistent precedent I am bound to follow. *See Cain v. Milton Ret. Bd.*, CR-12-573 (Div. Admin. Law. App., Feb. 19, 2016).⁵

The Petitioners complain that the town is taking advantage of their status as SPOs and calling them to act as a police officer while they are on duty as Harbor Masters. Their point is well taken. They undoubtedly do things because they are SPOs that they could not do solely as Harbor Masters. But this case is only about whether Harbor Masters are entitled to group 4 status. They cannot bootstrap their powers as SPOs to elevate their group status as Harbor

⁵ *Boston Housing Authority* and *McGuire* are certainly outliers. Since they were decided, DALA has not used them to expand the group of persons entitled to group 4 status. I see no basis to do so here and find they are properly limited to their unique facts.

Masters. Many of the officers previously denied group 4 status were also SPOs. *See Larivee, supra; Dent, supra; Juliano, supra; cf. Ralph v. Civil Service Comm'n.*, 100 Mass. App. Ct. 199 (2021) (“special police officer” not a member of the regular police force for purposes of G. L. c. 31, § 59).

I sympathize with the Petitioners because so much of what they do is the kind of hazardous and arduous work group 4 status was intended to cover. *See Gaw* at 253. Nevertheless, because the Harbor Master is not listed in group 4, and it is a stand-alone department of the Town of Marion reporting directly to the Select Board, the PCRA properly classified the Petitioners within group 1. Its decision is affirmed.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate