

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

William Saffie,
Petitioner

v.

Docket No. CR-21-0020

State Board of Retirement
Respondent

Appearance for Petitioner:

William Saffie, *Pro Se*

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement
One Winter Street, 8th Floor
Boston MA 02108

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The State Board of Retirement correctly assigned the Petitioner to Group 1. His position as a highway maintenance foreman is not one of the job positions included by name in Group 2, and the Petitioner's major duties did not require him to exercise care, custody, instruction, or other supervision over any population identified in Group 2, such as prisoners. Although the Petitioner's work may entail serious hazards, the dangerousness of a position is not a controlling criterion for Group 2 classification.

DECISION

The petitioner, William Saffie, appeals the decision of the State Board of Retirement ("the Board") to classify his position as Group 1 rather than Group 2.

I held a hearing on May 9, 2023 at the Division of Administrative Law Appeals, 14 Summer Street, Fourth Floor, Malden, MA, 02148. The hearing was recorded. Mr. Saffie was the only witness. I admitted into evidence Petitioner's Exhibits 1-15 and Respondent's Exhibits 1-5.

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. Mr. Saffie began his employment with the Massachusetts Department of Transportation ("MassDOT") on or around January 30, 2000. (Respondent's Exhibit 2).
2. Mr. Saffie's position title is "Contract Specialist II." (Respondent's Exhibits 2 and 3).
3. Mr. Saffie's functional position is "Highway Maintenance Foreman IV." (Saffie Test.; Respondent's Exhibits 4 and 5).
4. Under the "General Statement of Duties and Responsibilities" listed on the Form 30, the primary duties stated are: "Monitor and/or participate in the activities of a work crew engaged in the upkeep, maintenance and repair of MassDOT highway, roadsides and facilities." The Form 30 further states that "[t]he basic purpose of this work is to oversee the maintenance, repair, and upkeep of highway and roadway surfaces, roadside areas and facilities." (Respondent's Exhibit 3).
5. Mr. Saffie's principal job tasks include patrolling the highways, picking up items out of the highways, closing travel lanes, and assisting motorists. (Saffie

- Test.).
6. Mr. Saffie and his colleagues are also often called upon to perform a variety of roads-related tasks, such as clearing homeless encampments. (Saffie Test.).
 7. Mr. Saffie testified credibly about the various hazards entailed by his work. Retrieving debris from the middle of a busy highway, for example, is quite dangerous. It is made all the more perilous by speeding motorists (who may also be texting or otherwise distracted) and the fact that motorists frequently pay scant heed to the flashing yellow lights of MassDOT vehicles. Mr. Saffie credibly reports that motorists have crashed into MassDOT vehicles, equipment, and staff. (Saffie Test.; see also Petitioner's Exhibits 2 and 15).
 8. Mr. Saffie himself has been hit by a car and, on another occasion, he had to leap out of the way of an oncoming vehicle, resulting in his hamstring being ripped off the bone. (Saffie Test.).
 9. Mr. Saffie has suffered multiple concussions over the course of his career. (Saffie Test.).
 10. Road closures performed by Mr. Saffie have sometimes occurred in the context of crowd control and public safety emergencies. (Saffie Test.).
 11. The hazards and risks do not end with the risk of getting hit by a vehicle. Mr. Saffie has had to dispose of human waste, dead animals, needles, and human body parts. Mr. Saffie has performed weed-whacking on the side of highways and struck bags of human waste (evidently thrown to the side of the road by truck drivers), resulting in human waste getting all over him. (Saffie Test.).
 12. Mr. Saffie has often had to work long shifts, including some shifts spanning

more than one day without sleep. (Saffie Test.; see also Petitioner’s Exhibit 5). Mr. Saffie has testified, and common sense would suggest, that sleep deprivation while working busy roadways heightens the dangers of such work and, when chronic, can have a deleterious effect on one’s health. (Saffie Test.).

13. On or around June 8, 2020, Mr. Saffie completed a Group Classification Questionnaire requesting a Group 2 classification. (Respondent’s exhibit 2).
14. In a letter dated November 30, 2020, the Board denied Mr. Saffie’s request to classify his position as Group 2. (Respondent’s Exhibit 1).
15. Mr. Saffie did not receive the Board’s letter until December 15, 2020, because he had moved and the Board had not updated his address. (Respondent’s Exhibit 5).
16. On December 18, 2020, Mr. Saffie appealed the Board’s decision. (Respondent’s Exhibit 5).¹

CONCLUSION AND ORDER

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 appeal, the two relevant 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.

¹ Mr. Saffie’s appeal letter was furnished to the Board at the hearing and admitted as Respondent’s Exhibit 5. In its post-hearing submission, the Board does not dispute the timeliness of Mr. Saffie’s appeal.

32, § 3. As for Group 2, the statute identifies the employees included in Group 2 “by naming their positions or titles rather than by describing the type of work they perform.” Gaw v. CRAB, 4 Mass. App. Ct. 250, 255 (1976) (describing Group 4 categorization and observing that Group 2, for the most part, follows the same approach). For example, “permanent watershed guards and permanent park police” are included by name in Group 2. There are also some Group 2 employees categorized on the basis of their work duties, namely: certain employees “whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners . . . parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children.” G.L. c. 32, § 3.

As the Board correctly remarks, Mr. Saffie’s position is not one of the positions identified by name under Group 2. Nor do Mr. Saffie’s “regular and major duties” require him to have the “care, custody, instruction or other supervision of prisoners . . . parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children.”²

Mr. Saffie does not appear to seriously dispute either of these points. Instead, the *gravamen* of his appeal is that his position should be classified as Group 2 because it involves hazards comparable to (or perhaps, in some cases, exceeding) those entailed by

² In prior years, Mr. Saffie had worked with inmate work crews from the Bristol County House of Correction. (Saffie Test.). The last time he did so was about five years ago. The approximately five or so inmates were escorted by a correctional officer, and there is no detail in the record outlining the nature, duration, and frequency of Mr. Saffie’s interactions with the inmate workers. Because these interactions occurred outside the window for assessing Group 2 eligibility and there is no evidence in the record that Mr. Saffie exercised care, custody, instruction or other supervision of the prisoners --- let alone that these were “regular and major” duties within the meaning of the statute --- this prior work does not establish Group 2 eligibility.

positions falling within Group 2.³ For the reasons set forth below, this argument is unavailing.

“Statutory text is the principal source of insight into the legislative purpose.” Johnson v. School Committee of Sandwich, 81 Mass. App. Ct. 812, 815 (2012) (citation and internal quotation marks omitted). And where the statutory language is clear and unambiguous, there generally is no need to look beyond it. State Board of Retirement v. Boston Retirement Board, 391 Mass. 92, 94 (1984). Nor is it generally permissible to “read into [a] statute a provision which the Legislature did not see fit to put there, whether the omission came from inadvertence or of set purpose.” King v. Viscoloid Co., 219 Mass. 420, 425 (1914).

Here, the Legislature did not “see fit,” King, 219 Mass. at 425, to include Mr. Saffie’s position. It is true that the Appeals Court has observed that the “type of employment classified in Group 2 tends to be considerably more hazardous than the employment in Group 1.” Pysz v. CRAB, 403 Mass. 514, 518 (1988). But this is a characterization of the statutory criteria --- dangerousness is not, itself, a statutory criterion for inclusion in Group 2. See Baron v. State Bd. of Retirement, CR-08-409, at 7 (DALA Dec. 14, 2012) (dangerousness “is not a statutory Group 2 criterion”); Borucki v. State Bd. of Retirement, CR-12-683, 2016 WL 3476348, at *4 (DALA April 22, 2016) (“Exposure to dangerous situations is not a controlling factor for eligibility in Group 2”).

³ Mr. Saffie has also opined that Group 1 employees are office workers, whose non-hazardous duties bear little resemblance to his own dangerous work responsibilities. This is not correct. Although “clerical” and “administrative” employees are included in Group 1, other employees, such as “laborers,” are classified to Group 2 as well. G.L. c. 32, § 3. More importantly, Group 1 includes “all others not otherwise classified.” Id.

The Legislature could have stated that Group 2 membership will be based on job-associated hazards, but it did not.

Mr. Saffie also opines that it is “illogical to offer members of the State Retirement System a path through the application process to change groups then to claim in court that it has to be done through legislation.” It appears that Mr. Saffie may be conflating (1) the *criteria* by which a group designation is made; with (2) the determination of whether a particular member *meets* those criteria. The statutory criteria are set by the Legislature and may be changed only via legislation; deciding whether a particular member meets those established criteria, on the other hand, may require individualized consideration, which is why members are accorded an opportunity to apply for a change in their classification and appeal an adverse determination.

The decision of the State Board of Retirement is affirmed.⁴

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: July 7, 2023\

⁴ Although Mr. Saffie is not entitled to Group 2 classification, this decision is not intended in any way to minimize the hazards Mr. Saffie and his colleagues face in undertaking their duties.