

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

David Tillinghast,
Petitioner

v.

Docket No. CR-22-0223
Date Issued: March 22, 2024

State Board of Retirement,
Respondent

Appearance for Petitioner:

David Tillinghast, *pro se*

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement
One Winter Street
Boston, MA 02108-4747

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

Executive Director of Public Safety and Chief of Police at Bridgewater State University is not entitled to Group 4 classification because his position is not listed under Group 4, and several administrative decisions have established that state university police officers and campus police officers are not considered “members of police . . . departments” for the purpose of group classification under G.L. c. 32, § 3(2)(g).

DECISION

Petitioner David Tillinghast appealed timely, under G.L. c. 32, § 16(4), the May 26, 2022, decision of Respondent State Board of Retirement denying his application for Group 4 classification. The Board classified him in Group 1.

On June 13, 2022, Mr. Tillinghast elected to waive an oral hearing and submit his case for decision on written materials under 801 CMR 1.01(10)(c). On June 14, 2022, DALA issued a scheduling order. On August 5, 2022, DALA received the Board's memorandum, with supporting documents. On August 12, 2022, DALA received Petitioner's rebuttal and supporting documents. I hereby enter 56 exhibits into evidence. (Exs. P1-P53; R1-R3.)

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. Petitioner David Tillinghast, born in 1965, entered state service on December 29, 1991. He is a member of the State Retirement System. (Ex. R1.)
2. Mr. Tillinghast is the Executive Director of Public Safety and Chief of Police at Bridgewater State University. (Ex. R1.)
3. Mr. Tillinghast was appointed under authority given to state university trustees to appoint police officers with most of the powers of a typical police officer. *See* G.L. c. 73, § 18; G.L. c. 15A, § 22.
4. As an Executive Director of Public Safety and Chief of Police, Mr.

Tillinghast's General Statement of Duties includes the following responsibilities:

Executive Director of Public Safety:

The executive director of public safety is the university's chief safety officer. Reporting directly to the president of the university, the executive director provides a unified approach to protecting the campus community and providing safety related services. The executive director leads a comprehensive campus safety and emergency response program including safety education, safety policies, emergency management, and enforcement of university policies. The executive director coordinates campus safety and emergency management functions with other university

divisions, department, and units, as well as external partners; chairs the university's Crisis Management Team; and chairs the university's Safety Committee. The executive director enacts the Campus Safety Improvement Plan. The executive director advises the president of the university in the areas of federal and state regulatory compliance and the development of safety related policies and procedures.

Chief of Police:

Overall command of police operations rests with the chief of police, who is the chief law enforcement officer and executive head of the Police Department. The chief of police supervises, plans, organizes, and directs the personnel and activities of the Police Department. The chief of police is administratively and operationally responsible for law enforcement, investigations, crime prevention, parking and traffic control, liaison with external public safety agencies, and collaboration with colleagues in university offices such as Residence Life and Housing and Community Standards. Departmental personnel include armed, uniformed and plainclothes sworn police officers, communication dispatchers, parking enforcement officers, parking lot monitors, administrative support staff, and student staff, all of whom help to ensure a safe learning and work environment with a high level of customer service. The chief of police position is considered to be a "working" position as well as administrative position, and the chief of police routinely patrols the campus and its environs and exercises police powers including arrest authority and the handling of prisoners.

(Ex. P19.)

5. The executive director of public safety and chief of police works under the general administrative direction of the president of the university, who reviews work for proper performance and conformance with laws, rules, regulation, instruction and procedures. (Exs. P5, P20.)

6. On March 4, 2022, Mr. Tillinghast filed a group classification application requesting Group 4 classification. (Ex. R1.)

7. In a letter dated May 31, 2022, the Board informed Mr. Tillinghast that he was not entitled to Group 4 classification. (Ex. R2.)

8. On June 3, 2022, Mr. Tillinghast timely appealed. (Ex. R3.)

CONCLUSION AND ORDER

When a member retires from public service, he may be entitled to a superannuation retirement allowance that is based on age, years of creditable service, an average of the highest three or five consecutive years of regular compensation, and group classification. *See* G.L. c. 32, § 5(2)(a). This case concerns group classification. *See* G.L. c. 32, § 3(2)(g).

Mr. Tillinghast is the “Executive Director of Public Safety and Chief of Police” of the Bridgewater State University Police Department, which is a state university police department established under the authority granted to state university trustees under G.L. c. 73, § 18 and G.L. c. 15A, § 22.¹ He is presently classified in Group 1, which includes, “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” *Id.* He seeks Group 4 classification, which includes “members of police and fire departments not classified in Group 1” and “any police officer of the Massachusetts Bay Transportation Authority,” as well as several other law enforcement, corrections, and fire job titles. *Id.*

Typically, when members seek Group 4 classification, they must have one of the listed job titles under Group 4. *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250, 254 (1976) (explaining that “the legislature has consistently described employees falling within Group 4 by naming their positions or titles, rather than by describing the types of work they perform”). In listing the categories to be classified in

¹ State University police and University of Massachusetts police are not the same in at least two respects. UMass police are appointed under different statutory authority, *see* G.L. c. 75, § 32A, and UMass police are classified in Group 2 for retirement purposes. G.L. c. 32, § 3(2)(g).

Group 4, G.L. c. 32, § 3(2)(g) makes no reference to the position of Executive Director of Public Safety or Chief of Police or state university police officer or campus police officer.² Mr. Tillinghast does not dispute that his job title is not listed in Group 4.

He argues instead that it is not necessary that his title be listed in Group 4 because he is a “member” of a “police department” who is covered by Group 4. He attempts to prove this proposition by arguing that a state university police department is a “police department” for group classification purposes and that his duties, powers, and work activities are analogous to those of a municipal police officer.

Mr. Tillinghast is not the first state university or campus police officer to make this argument. Several administrative decisions have established that, unless specifically included in Group 4, the position of campus police officer does not merit a Group 4 classification. *Ward v. State Bd. of Retirement*, CR-01-1092 (DALA Jan. 24, 2003). *Gaw* itself explained that these decisions “show the test for meeting Group 4 criteria with jobs involving police work, is difficult to satisfy.” 4 Mass. App. Ct. at 254.

The following decisions have denied Group 4 classification to campus police officers. In *Laukaitis v. State Board of Retirement*, CR-01-682 (DALA Apr. 12, 2002), Group 4 classification was denied to a Campus Police Officer at the Soldiers’ Home in Chelsea who patrolled buildings and grounds, exercised police powers, and worked alongside Chelsea Police Officers on the premises, and who faced potentially life-threatening situations. In *Sykes v. State Board of Retirement*, CR-01-1029 (DALA Nov.

² When analyzing this issue in the past, DALA’s decisions have generally referred to state university police officers (and several other non-municipal police officers) as campus police officers. *See, e.g., Agneta v. State Bd. of Retirement*, CR-18-0388 (DALA June 5, 2020).

26, 2002), Group 4 classification was denied to a Campus Police Officer at Taunton State Hospital who exercised police powers, did regular patrolling, and had responsibility for the safety and security of the facility, including addressing emergencies. In *Cremins v. State Board of Retirement*, CR-09-2009 (DALA June 18, 2009), Group 4 classification was denied to a Campus Police Officer at Holyoke Community College whose duties included patrolling campus buildings and adjacent areas; investigating crimes or other incidents; enforcing motor vehicle laws on campus; restraining or arresting suspects when necessary; responding to police and medical emergency calls; and providing assistance to courts or grand juries. In *Agneta v. State Board of Retirement*, CR-18-0388 (DALA June 5, 2020), Group 4 classification was denied to a Salem State University Campus Police Officer who performed regular police duties. Most recently, in *Larivee v. State Board of Retirement*, CR-18-0649 (DALA Sept. 16, 2022), a case that mirrored *Agneta*, supra, Group 4 classification was denied to another Salem State University Campus Police Officer who performed the same regular police duties as the petitioner in *Agneta*.

The police duties of a state university or campus police officer at Salem State University and Bridgewater State University are for all intents and purposes the same. As state university police departments, they are established under the same statutory authority. Therefore, there is no good reason to deviate from this valid DALA precedent, which places state university or campus police officers in Group 1.

This conclusion is consistent with the DALA decisions that have all held that, for purposes of group classification, “police department,” as used in Group 4, means a

municipal police department.³ In *Patton v. Falmouth Retirement Board*, CR-07-597, at *8 n.1 (DALA Nov. 13, 2009), for instance, the magistrate explained:

The Legislature was well aware that police functions are performed by individuals who do not work for municipal police departments. It listed the “public works building police, permanent watershed guards and permanent park police . . . and University of Massachusetts police” in Group 2. G.L. c. 32, § 3(2)(g). Thus, when it classified “members of police . . . departments” in Group 4, it meant to limit Group 4 status only to those persons who performed police functions and worked for a municipal police department.

The magistrate in *Ward* likewise explained that “[t]he designation of ‘officers in police departments who are not classified in Group 1,’ is a catch-all phrase for all municipal police departments such as are found in the cities and towns” *Ward*, supra, at *6.

There is no dispute that the Bridgewater State University Police Department is not a municipal police department.

Mr. Tillinghast sees no difference between his situation and that of the Boston Housing Authority Police in *Boston Housing Authority v. Boston Retirement Board*, CR-01-573 (DALA Apr. 25, 2001), aff’d CRAB (Jan. 31, 2003). Because the duties and functions of the Boston Housing Authority Police were consistent with other police departments, and because the Housing Authority Police were under the Boston Police Department’s jurisdiction, DALA re-classified them as “members of a police department” under Group 4. *Boston Housing Authority v. Boston Retirement Board*, CR-01-573 (DALA Apr. 25, 2001), aff’d CRAB (Jan. 31, 2003). However, as the magistrate in *Larivee* concluded, “*Boston Housing Authority*, which is not about campus police

³ Cf. *Wise v. State Bd. of Retirement*, CR-06-228 (DALA March 22, 2007) (Bridgewater State College Campus Police Department lieutenant did not qualify for the “Heart Law” presumption in G.L. c. 32, § 94, which covers “permanent member[s] of a police department.”)

officers, does not govern this case. *Agneta*, which is about a Salem State police officer, governs.” *Larivee*, supra, at *3. As was the case in *Larivee*, both *Agneta* and *Larivee* govern the instant appeal, as all the petitioners were State University Police Officers. Mr. Tillinghast has presented no good reason to treat him differently from the other State University Police Officers that DALA has consistently placed in Group 1.

For the above-stated reasons, the decision of the State Board of Retirement denying the Petitioner’s request to be reclassified from Group 1 to Group 4 is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: March 22, 2024