**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss. **Division of Administrative Law Appeals**

**Anthony Contrino**,

Petitioner

 v. Docket No. CR-15-212

**Westfield Retirement Board**,

Respondent

**Appearance for Petitioner**:

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**Administrative Magistrate**:

James P. Rooney

**Summary of Decision**

Municipal utility Energy Supply Manager’s request to be classified in retirement Group 4 was properly is denied because he is not a direct supervisor of utility employees listed in Group 4 and he is not an “assistant manager,” as that term is used at M.G.L. c. 32, § 3(2)(g).

**DECISION**

Anthony Contrino, the Energy Supply Manager of the Westfield Gas & Electric Light Department, appeals under M.G. L. c. 32, §16(4) from a decision the Westfield Retirement Board declining his request to be classified in retirement Group 4. I held a hearing on April 5, 2016 that I recorded digitally. I admitted five documents into evidence. Mr. Contrino testified, as did Aaron Bean, the utility’s Operations Manager, and Elizabeth Burns, its Human Resources Coordinator/Records Manager. I marked Mr. Contrino’s prehearing memorandum as Pleading A and the Board’s memorandum as Pleading B. The parties filed closing briefs by July 19, 2016.

**Findings of Fact**

Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. The City of Westfield operates a municipal utility, the Westfield Gas & Electric Light Department. The Department, which was created under M.G.L. c. 164, is a participant in the Westfield Retirement System. (Pleading A.)

2. The Westfield Gas & Electric Light Department has a General Manager. There is no one with the title Assistant Manager. Reporting directly to the General Manager are the Business and Finance Manager, the Energy Supply Manager, the Operations Manager, and the Human Resources Coordinator/Records Manager. (Ex. 5.)

3. Anthony Contrino began working for the Westfield Gas & Electric Light Department in 2001. He started as an Operation Supervisor. In 2010, he was made the Energy Supply Manager. Throughout his career with the utility, Mr. Contrino has been classified in retirement Group 1. (Contrino testimony; Pleading A.)

4. The position description for Energy Supply Manager states that the general duties of the position are:

Responsible for managing the Department’s energy receipt stations, supply portfolios and customer rate tariffs under the direction of the General Manager.

The description lists eighteen specific duties including:

Responsible for the analysis and determination of the short and long range energy supply requirements of the Department.

Provide direction and oversight regarding the scheduling, construction and maintenance activities in support of the Department’s energy receipt stations.

Provide safety oversight of all personnel working within the scope of these responsibilities.

Responsible for the planning, organizing, staffing, and control of those areas under his/her direction.

Responsible for negotiation of short and long term energy transmission, transportation & supply contracts and proper administration and execution under the terms defined within each contract.

. . .

Direct all activities of Contractors hired by the Department to work within its energy receipt stations.

(Ex. 1.)

5. The utility’s “energy receipt stations” receive either gas or electricity from suppliers, and, in the case of electricity, transform the electricity received from 115,000 volts to 23,000 volts. Part of Mr. Contrino’s responsibilities include construction and maintenance of these stations. The work on electric receipt stations is performed by electric lineman employed by the utility; the work on gas receipt stations is performed partly by utility maintenance personnel or by outside contractors. Mr. Contrino supervises Jody Boucher and Mike Lee, Utility Supervisors, who supervise the lineman and other utility employees who work on the stations. Mr. Contrino goes to the stations to see how work is progressing. (Contrino testimony.)

6. Mr. Contrino directly supervises three people, two of whom are analysts while the third, Mr. Boucher, is a Utility Supervisor. (Contrino testimony; Ex. 5.) The position description for Utility Supervisor lists that person’s duties as including:

Schedule and supervise construction and maintenance activities involved in electric, natural gas and telecommunications receipt and distribution.

Manage the construction, maintenance and reporting requirements regarding the Department’s on-system electric generation an storage facilities.

(Ex. 4. ) Mr. Boucher directly supervises linemen, troubleshooters, and a electric station operator. Mr. Boucher and all the people he supervises are in Group 4. *Id*.

7. The utility hired an outside group to shadow employees and gather information about the demands of each position. This effort determined that linemen and electric station operators spend 67 - 100% of their time working outdoors and working in hot, cold, or wet surroundings, that Utility Supervisors spent up to one -third of their time in similar circumstances, and that these conditions were not applicable to the Energy Supply Manager’s job. (Burns testimony; Ex. 4.)

8. Mr. Contrino estimates that he spends about 90% of his time in the office and the other 10% in the field inspecting the work of the lineman. He also spends time in the field when there is a storm, helping to coordinate work and estimating the time repairs will take. If Mr. Boucher is out of the office, he directly supervises linemen. He also recalls directly supervising linemen during a storm on October 29, 2011. (Contrino and Bean testimony.)

9. On March 21, 2015, Mr. Contrino wrote to the Westfield Retirement Board asking that he be reclassified to Group 4. He emphasized his role overseeing the construction and maintenance of electric and gas receipt stations and his ultimate supervision over the employees who maintained those stations. (Ex. 1.)

10. The Retirement Board denied his reclassification request on May 1, 2015. It did so because it “could not see that you were supervising other Group 4 employees at this time.” (Ex. 2.) Mr. Contrino timely appealed. (Ex. 3.)

**Discussion**

The public employee retirement statute divides employees into four groups for retirement benefit purposes. M.G.L. c. 32, § 3(2)(g). The determination of the proper group classification of an employee for retirement purposes is based on the job held and the duties performed at the time of retirement. *See Maddocks v. Contributory Ret. App. Bd.*, 369 Mass. 488, 494, 340 N.E.2d 503, 507 (1976).

Group 1, in which Mr. Contrino is presently classified, includes “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” M.G.L. c. 32, § 3(2)(g). Mr. Contrino had the burden to show that his position should properly be classified in Group 4.

Group 4, as presently defined includes, in relevant part:

employees of a municipal gas or electric generating or distribution plant who are employed as linemen, electric switchboard operators, electric maintenance men, steam engineers, boiler operators, firemen, oilers, mechanical maintenance men, and supervisors of said employees who shall include managers and assistant managers.

M.G.L. c. 32, § 3(2)(g).

The meaning of this provision has been considered on three occasions by the Court of Appeals. The parties disagree as to whether these decisions establish that Mr. Contrino qualifies for Group 4 as either a supervisor or an assistant manager.

The first of these cases, *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250, 345 N.E.2d 908 (1976), was decided when Group 4 included only municipal utility supervisors, not managers or assistant managers. Mr. Gaw had been the manager of the Reading Municipal Light Department. In accordance with the statutory definition of a municipal utility “manager,”[[1]](#footnote-1) he was responsible for the overall management of the utility, with a few layers of supervisors between him and the linemen. He personally managed line crews occasionally, usually during emergences, but “those activities were sporadic and secondary to the performance of his managerial functions as prescribed by the specifications and by statute.” 4 Mass. App. Ct. at 252, 345 N.E.2d at 910. The Court held that the legislature intended that only certain public employees should be included in Group 4, and hence a restrictive interpretation of the Group 4 provision was warranted. Consistent with this approach, it narrowly interpreted “supervisors of said employees” to mean only the immediate supervisors of lineman and the other listed positions, not higher level supervisors like Mr. Gaw. The Court also interpreted the phrase “who are employed” to mean that the legislature intended to focus on “positions held rather than work performed,” and thus the “test for [Group 4] eligibility is largely the employee's title or job description.”  *Id*. at 255, 345 N.E.2d at 911. Thus, Mr. Gaw’s sporadic field supervision of linemen did not qualify him for Group 4.

In 1993, the legislature amended the Group 4 provision to include “managers and assistant managers” of municipal utilities. In *Retirement Board of Taunton v. Contributory Retirement Appeal Bd.*, the Court of Appeals held that this change “indicate[d] the Legislature's intent to include managers in Group 4, even when they only supervise the supervisors of Group 4 employees.” 56 Mass. App. Ct. 914, 915, 778 N.E.2d 536, 538 (2002)

The Court of Appeals returned to this provision a few years later when it considered whether a “Supervising Electrical Engineer” should be in Group 4. The engineer, Ronald Tabroff, supervised the Power Resource Management Division of the Peabody Municipal Light Plant. He reported to the Manager and the Assistant Manager, and supervised five Group 1 employees and a student. During regular business hours he was not responsible for supervising linemen, but his job description required him to be on call 24 hours per day and, when needed, to supervise linemen in non-business hours or in emergencies. The Court held that it was irrelevant, for classification purposes, that Mr. Tabroff did not supervise linemen during regular business hours. Rather, “because Tabroff's job description indicates that he, at times when necessary, supervises Group 4 employees, he is entitled to Group 4 classification.” *Tabroff v. Contributory Retirement Appeal Bd.*, 69 Mass. App. Ct. 131, 136, 866 N.E.2d 954, 958 (2011). Thus, although *Tabroff* broadens the category of supervisors who are in Group 4 to include those whose formal duties call for occasional supervision of linemen, it implicitly reaffirms the *Gaw* holding that supervisors, who are not managers or assistant managers, must directly supervise Group 4 employees to be part of Group 4 themselves.

The net result of these cases is that the title and job description of municipal utility managerial employees remain the key features used to determine whether a particular managerial employee is in Group 4. For managers and assistant managers, there is no requirement that they supervise Group 4 employees directly; all other supervisors must supervise Group 4 employees directly and that supervision must be part of their required duties.

Because Mr. Contrino does not supervise Group 4 employees directly as part of his assigned duties, as reflected in his job description, he has not demonstrated that he is a “supervisor” entitled to Group 4 classification. The parties agree that Jody Boucher, the Utility Supervisor who reports to Mr. Contrino, directly supervises Lineman and other Group 4 employees. His job description is not explicit on that point. It states that he “supervise[s] construction and maintenance activities involved in electric, natural gas and telecommunications receipt and distribution.” (Finding 6.) Nonetheless, because it can be inferred that supervising these construction and maintenance activities involves supervising linemen and other Group 4 employees, it is sufficient to demonstrate that Mr. Boucher is properly classified in Group 4. Mr. Contrino’s job description shows him to be somewhat removed from this direct responsibility. He is required to “[p]rovide direction and oversight regarding the scheduling, construction and maintenance activities in support of the Department’s energy receipt stations.” (Finding 4.) While this description is somewhat vague (how close must his oversight be, for example), when compared to Mr. Boucher’s description, it shows that Mr. Boucher directly oversees linemen, while Mr. Contrino provides more distant management. While I have no doubt that Mr. Contrino at times supervises linemen and other Group 4 employees, as he testified, and that he does so because he understands this to be part of his responsibilities, the *Gaw* holding that performing work that is not part of a job description is insufficient to qualify an employee for Group 4 appears still to be valid. Accordingly, even though Mr. Contrino occasionally supervises Group 4 employees, because this responsibility is not included, at present, in his job description, it is insufficient to make him eligible for Group 4 classification.

This leaves remaining only the question of whether Mr. Contrino is an assistant manager. While manager of a municipal utility is defined by statute, assistant manager is not. The utility Mr. Tabroff worked for had an employee whose title was Assistant Manager, presumably the immediate subordinate of the General Manager with the same breadth of responsibilities for the overall management of the utility. Such an employee would clearly be in Group 4, but are there others who might qualify for Group 4 ? Does a person with assistant manager in their title, but a narrower range of responsibilities count? Does a person with managerial responsibilities who reports to the general manager, but does not have assistant manager in his title, count? And must an assistant manager have at least some indirect role to play in supervising linemen?

The Contributory Retirement Appeal Board early on took the position that “assistant managers are classified by virtue of the position that they hold and not as the result of duties performed.” *Rucker v. Reading Retirement Bd.*, Docket No. CR-95-853 (CRAB, May 20, 1998) and *Murch v. Reading Retirement Board*, Docket No. CR-95-852 (CRAB, May 20, 1998). In the one case actually involving an assistant manager, the assistant general manager of the residential and commercial division of the Reading Municipal Light Department was held to be a member of Group 4. *Murch*, (Divis. of Admin. Law App., Oct. 6, 1997.) The magistrate who decided the case held that it did not matter whether Mr. Murch supervised lineman because all that counted was whether he had the title assistant manager. This holding was not essential to the decision, however, because the Mr. Murch in fact was responsible for supervising linemen.

The subsequent decided *Retirement Board of Taunton* decision took a different tack, holding that managers and assistant managers, even when they only supervise linemen indirectly, are members of Group 4. While the decision does not flatly hold that managers and assistant managers must have some responsibility for supervising of linemen and other Group 4 employees, the phrasing the legislature adopted when it added these two positions to Group 4 suggests as much. Instead of simply adding manager and assistant managers as separate types of municipal utility employees who are in Group 4, it treated them as species of supervisors declaring that “supervisors of said employees who shall include managers and assistant managers.” M.G.L. c. 32, § 3(2)(g). Managers and assistant managers, to the extent they have overall responsibility for a municipal utility, would necessarily have at least some indirect responsibility for supervising linemen and other Group 4 employees. A utility that did not have one assistant manger, but instead, like the Westfield Gas & Electric Light Department, had a number of mangers with specialized responsibilities reporting to the general manager presents a more difficult problem. Not all such individuals would necessarily have some responsibility for supervising linemen or other Group 4 employees. Ms. Burns, Westfield’s Human Resources Coordinator/Records Manager, does not. (Ex. 5.) Because the Group 4 provision, as phrased, treats assistant mangers as having some supervisorial responsiblity over Group 4 employees, then Ms. Burns, even if the phrase assistant manager were added to her title, would not appear to be the type of assistant manager the legislature meant to include in Group 4. The same could not be said about Mr. Contrino, who not only reports directly to the General Manager, but also indirectly supervises Group 4 employees.

But did the legislature mean for retirement boards to have to sort out whether senior mangers at a utility, who reported to the manager but were not titled assistant managers, nonetheless performed jobs that might be considered at the level expected of an assistant manager and also had some responsibility for supervising Group 4 employees? I think not. Had the legislature meant to include senior management at municipal utilities generally or all senior management with some responsibility for supervising Group 4 employees, it would likely have phrased the statutory amendment differently. I presume it meant to establish a category that could easily be applied by retirement boards – and knew that the language it chose would be read in the restrictive way that *Gaw* commands. Thus, when it referred to assistant managers, it meant to limit it to persons who are the assistant managers of the entire utility, who would necessarily have the supervisorial role over Group 4 employees that the legislature required.

I conclude, therefore, that although Mr Contrino has some responsibilities appropriate to an assistant manager, he was not titled an assistant manager and he was not the assistant manager of the entire municipal utility. He was therefore not an assistant manager as that phrase is used in the Group 4 category applicable to municipal utility employees.

Because I have determined that Mr. Contrino is neither a supervisor or an assistant manager, as those terms are used at M.G.L. c. 32, § 3(2)(g), I conclude that he has failed to demonstrate that he should properly be classifed in retirement Group 4. I therefore affirm the Westfield Retirement Board’s decision to deny reclassification and to continue to treat him as a member of Group 1.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

First Administrative Magistrate

Dated: May 19, 2017

1. Municipal utility managers are publically appointed officials who have “ full charge of the operation and management of the plant, the manufacture and distribution of gas or electricity, the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity and quality of the supply, the collection of bills, and the keeping of accounts.” M.G.L. c. 164, § 56. [↑](#footnote-ref-1)