

HEARING OFFICER'S REPORT

RE: LOCAL RULE ESTABLISHING GROUP 2 CLASSIFICATION
FOR DISPATCHERS

A petition for determination of group classification was presented to the Board seeking a determination from Barbara Hood, a public safety dispatcher, for the Town of Andover Police Department. The reason for this request stems from a claim by the Methuen Retirement Board ("Methuen") seeking modification of its §3(8)(c) reimbursement of Ms. Hood's pension benefits. Methuen contends that Andover has improperly classified Ms. Hood in Group 2, when she should be in Group 1; therefore, her pension benefit is improperly calculated and that improper calculation results in a higher payment under M.G.L. c. 32, §3(8)(c) to Methuen than it would be had the pension properly been calculated under Group 1.

The process for the Board is to determine whether its prior determination relative to the group classification of Barbara Hood and by extension, public safety dispatchers, is appropriate. Second, the Board must determine how to implement its determination in situations where the impact of the Board's determination may impact another Retirement System which does not classify its public safety dispatchers in Group 2.

The Board appointed a Hearing Officer to review all of the available materials and provide a Hearing Officer's Report with recommendations addressing both of the outstanding issues.

As Hearing Officer I met with the Board and obtained an outline of the process previously undertaken by the Board including all available correspondence, job descriptions, testimony relative to the nature of the daily activities of the public safety dispatchers, minutes of Board meetings, correspondence to PERAC and testimony of Barbara Hood. Giving full and fair consideration to all of the available evidence, I make the following findings of facts and recommended decision.

1. I find that Barbara Hood retired as a public safety dispatcher on February 7, 2008.
2. I find that Barbara Hood had previously been employed by the Methuen Police Department.
3. I find that based upon her employment, her pension is subject to a §3(8)(c) contribution.
4. I find that the position from which Barbara Hood retired was public safety dispatcher, Police Department.
5. I find that public safety dispatchers are under the general supervision of the Dispatch Supervisor or the officer on duty. Dispatchers respond to E911 and business calls to the combined Police/Fire Public Safety Communications Center, dispatch police, fire and

E911 personnel, respond to burglar and fire alarms, monitor police and fire radios, holding cell monitor, and assist other departments as needed.

6. I find that the essential duties of public safety dispatchers include:

“Serve in the capacity of a fire and police signal operator. Answer multiple telephone lines . . . acquire information . . . management of callers in stress; prioritize all calls for proper responses . . .

Analyze information from multiple alarm systems, given signals, messages, codes and data, so that the information is properly interpreted in preparation for response.

Monitor and respond to multiple public safety radio channels; relay information . . . Assess the priority of service requests.

Prepare data for dispatch or referral by evaluating, categorizing, formatting and documenting the incident or service-related information.

Dispatch public safety personnel . . .

Generate correct, complete and concise records of public safety service request

. . .

Maintain communication records . . .

Assist police officers and shift supervisor with arrests and bookings through LEAP computer searches . . .

Assist citizens at the station . . .

Perform related duties as required.

MINIMUM QUALIFICATIONS

Skills, Knowledge and Abilities

. . .

Ability to make decisions and judgments based on training, procedures, manuals and common sense.

Ability to maintain composure in stressful situations and to reassure distraught callers.

...

PHYSICAL ELEMENTS

... prolonged periods of sitting, continuous telephone and radio calls, interruptions and high noise level.

...

Urgent, emergency calls, emotional callers and short response deadlines produce recurring intervals of high stress.”

7. I find that at the monthly meeting of the Andover Contributory Retirement Board on Friday, March 31, 1995, where the subject of group classification for dispatchers was discussed:

“Russell Calahane, representing the dispatchers, made a presentation to the Board with an update on the dispatchers attempt to be put into Group 4. The Board instructed the Secretary to get a job description from Personnel and see if it can be matched up to Group 2 or 4 definitions in MGL Ch 32, S3(g). Also, the Board instructed the Secretary to obtain from PERA their interpretation of fire and police signal operators as described in MGL, Ch 32, Sec 3.”

8. I find that the Andover Contributory Retirement Board received a letter dated May 15, 1995 from John J. McGlynn in response to its letter regarding group classification of uniformed central dispatchers within a public safety department:

“... You have asked what function of fire and signal operators who are classified in Group would differentiate them from uniformed central dispatchers within a public safety department, who would be classified in Group 1.

...

A member’s job title alone would not be determinative if the title that is given to the position is totally inconsistent with the duties that the person holding the position is required to perform. If the uniformed central dispatcher is the title given by the Town of Andover to the position of fire or police signal operator or signal

maintenance repairman, it would be appropriate to classify the holder of the position in Group 2 . . . the retirement board has the responsibility for Group classification decisions.”

9. I find and rule that:

“ . . . test for eligibility for such group (Group 2) is largely employee’s title or job description . . . M.G.L.A., c. 32 § 3(2)(g)

. . .

. . . the Legislature has consistently described employees falling with Group 4 by naming their positions or titles rather than by describing the type of work they perform . . . Subject to two exceptions, the same is true of those included in Group 2, who also enjoy an advantageous retirement status . . . Those exceptions, which appear in the last two classes of employees enumerated in Group 2 . . .

‘Whose regular and major duties *require* them to perform certain tasks of a hazardous nature . . . eligibility for classification in Group 2 under the two clauses may depend largely on the job description of his position.’”

See Maddocks v. Contributory Retirement Appeal Bd., 340 N.E.2d 503, referred to in Doris A. Gaw v. Contributory Retirement Appeal Board, 345 Mass. 908 (1976).

10. I find that at the monthly meeting of the Andover Contributory Retirement Board held on Wednesday, May 31, 1995:

“Other business brought before the Board:

(A) Letter of 5/15/95 from PERA responding to Board request for opinion on group classification of fire or signal operators - The Board instructed the Secretary to invite the Town Manager to the June meeting to discuss the possibility of changing the job title of Dispatcher to Signal Operator.”

11. I find that at the monthly meeting of the Andover Contributory Retirement Board held on Friday, September 29, 1995:

“Russell Cahalane and Buzz Stapczynski joined the meeting to discuss changing the dispatchers from group 1 to group 2. Chairman Downs explained that it is the opinion of the Board, based on MGL, Chapter 32 definition of group 2 that our dispatchers definitely [*sic*] fall into that category. Chairman Downs then made a motion to change dispatchers from group 1 to group 2 employees, and that the Board notify PERA that we have done so. Mrs. Lyman seconded the motion and the Board voted 3-0 to approve the change.”

12. I find that John J. McGlynn wrote to the Andover Contributory Retirement Board on October 26, 1995:

“We have received your letter dated October 3, 1995 whereby the Andover Retirement Board has notified this Division of its decision to classify dispatchers in Group 2. You have indicated that this change is to be ‘effective immediately unless we receive objections from PERA’ . . .”

13. I find that at the monthly meeting of the Andover Contributory Retirement Board held on Monday October 30, 1995:

“The Board instructed the Secretary to send a letter to Russell Cahalane, president of the Dispatchers union informing him of the change to group 2 category.”

14. I find that at the monthly meeting of the Andover Contributory Retirement Board held on Wednesday, November 29, 1995:

“The Secretary informed the Board that dispatchers were notified regarding the group change.

- a. Letter of 10/25/95 from PERA
- b. Memo of 11/8/95 to Russ Cahalane”

15. I find that Rodney P. Smith, Secretary Ex-Officio, forwarded a memorandum to Russell Cahalane, Dispatchers, subject: Group Change, date November 8, 1995 stating:

“At the regular monthly meeting held on September 29, 1995, the Andover Contributory Retirement Board voted unanimously to change Andover dispatchers from Group 1 to Group 2 according to MGL 32 regulations.

. . .”

16. I find that PERAC wrote to Elena Kothman, Retirement Administrator, seeking information on Barbara Hood in order to analyze the Methuen Retirement Board §3(8)(c) contribution.
17. I find from my discussions with the members of the Retirement Board that the decision in 1995 to change the group classification of public safety dispatchers to Group 2 was done in good faith after seeking the advice of its supervisory agency.
18. I find that the public safety dispatchers have been classified since 1995 in Group 2.
19. I find that prior to the Retirement Board making the change of public safety dispatchers from Group 1 to Group 2, the Retirement Board held an informal hearing and obtained evidence as to the job duties of public safety dispatchers. From the information presented, the determination was made that the work was emotionally stressful, the duties went from calm to stressful in an instant with the potential of adverse impact on blood pressure, the stress of the pace of the calls, the severity of the issues, the level of tragedy that the dispatchers had to cope with, the change the job duties from administrative in nature to hazardous, that the employees were subject to the apprehension of not knowing what the next call would bring, and that in some cases the calls reflected the conditions suffered by the dispatchers themselves. The work provided the potential of stress-related physical and psychological responses. The pace of the work, the need for quick decision making, the second guessing of decisions made, the feeling of guilt in situations beyond the dispatcher's control that resulted in tragedy, the overwhelming magnitude of potential from highly-charged situations, the intensity which could occur with each and every shift make the job of a public safety dispatcher unique. The Board determined that these employees' regular and major duties require them to perform certain tasks of a hazardous nature to be eligible for classification in Group 2 is based upon substantial evidence.
20. I find that in order to determine a member's group classification, we rely upon the job title, job description and job duties actually performed and by doing so the Andover Contributory Retirement Board is justified in establishing its public safety dispatchers in Group 2.
21. I find that although there has been much discussion and several decisions concerning the group classification of public safety dispatchers, the decision on group classification remains with the Retirement Board.
22. I find that the Retirement Board has the statutory authority to create local rules, M.G.L. c. 32, §21(4), Promulgation and Approval of Rules and Regulations:

“He (PERAC) or his agent shall approve any by-laws, rules, regulations, prescribed forms or determinations of any board in order to effectuate such purpose.”

M.G.L. c. 32, §20(5) General Powers and Duties of Board:

“Any such board may adopt by-laws and make rules and regulations consistent with law, which shall be subject to approval as provided for in subdivision (4) of section twenty-one. It shall provide for the payment of retirement allowances and other benefits . . . under the applicable provisions of sections one to twenty-eight inclusive . . .”

23. I find that when the legislature established the group classification for fire or police signal operators or signal maintenance repairmen, the nature of the position differed in that the function was mechanical. The system simply provided notice of the existence of an incident requiring a response. Signals were by alarm boxes located within the area of coverage by the Police and Fire Departments to provide service. Now the process has changed, with the upgrading of the telephone systems, police and fire radios and computers. With these changes came a shift in the hazard from having to handle repairs around electric currents and other hazards to the new hazard of handling the calls from individuals in stressful situations attempting to gather appropriate evidence to direct required services in a limited time frame, attempting to gain control over the situation to prevent the situation from escalating, providing medical advice to assist the individual or individuals at the scene and to provide emergency treatment which may make the difference between life and death. Having to handle domestic abuse calls with the ramifications, motor vehicle accidents with all forms of outcome, these positions are subject to stress on a daily basis which constitutes unique hazards which can shorten employees' careers.
24. I find that the Retirement Board performed its own research and obtained background information concerning the classification of dispatchers. The information demonstrates that individuals performing dispatch duties are classified in Groups 1, 2 and 4. Police dispatchers who work along side of civilian dispatchers are classified in Group 4, while the civilians are in either Group 1 or 2. The research indicates the meaning of signal operator language:
 - a. Three general job functions are covered by the phrase 'fire or police signal operators or signal maintenance repairman':
 - i. Fire Signal Operators
 - ii. Police Signal Operators
 - iii. Signal Maintenance Repairmen
 - b. Signal Maintenance Repairmen are generally persons who repair fire, police, traffic or other signaling equipment and cabling plant.

They are not dispatchers, although in some city jurisdictions they may fill-in for dispatchers under some conditions.

c. Fire Signal Operators are persons who receive, dispatch and manage signals from fire-related incidents and can be locally titled Fire Alarm Operators, Emergency Telecommunications Dispatchers, Emergency Dispatchers, Fire Dispatchers, Public Safety Dispatchers as well as other titles.

d. Police Signal Operators are persons who receive, dispatch and manage signals of police-related incidents and can be locally titled Police Alarm Operators, Emergency Telecommunications Dispatchers, Emergency Dispatchers, Police Dispatchers, Public Safety Dispatchers as well as other titles.

e. A reading of the titles included in Group 2 reveals that, on balance, they represent the other sub-groups that - combined with Groups 4 and 3 - fill out the ranks of the public safety and criminal justice system (e.g., court personnel, probation officers, other corrections personnel, electricians, parole personnel, ambulance attendants, etc.). Thus it is logical and consistent that public safety dispatchers - the true first-responders - are included in this list.”

The legislature approved Chapter 641 on July 16, 1968:

“ . . . St.1968, c. 516, in Group 2 of par. (g) of subd. (2), inserted, ‘employees of cities and towns who are employed as fire and police signal operators or maintenance repairmen or as licensed electricians.’ St.1968, c. 516, returned by the Governor to the House of Representatives with his objections thereto, was passed by the House of Representatives on July 8, 1968, and by the Senate on July 9, 1968, and thereby has ‘the force of a law’. St.1968, c. 541, § 1, approved July 9, 1968, . . .”

“ . . . ‘fire or police signal operators’ . . . are persons who work inside dispatch centers operating signaling equipment, whereas the latter [signal maintenance repairmen] work outside repairing fire alarm and other signaling cable, boxes, and related equipment . . . ‘signal operators’ who never have and never will perform the duties of ‘signal maintenance repairmen’.”

The history of the 1968 legislation was that Rep. Lawrence P. Smith amended the legislation to add signal operators separately from both signal maintainers and licensed electricians. PERA Commissioner McGlynn has determined:

“ . . . the definition of Group 2 includes ‘employees of a municipal department who are employed as fire or police signal operators or signal maintenance repairmen.’ He [McGlynn] went on to state that if the uniformed central dispatcher is the title given by a town to the position of fire or police signal operator or signal maintenance repairmen, it would be appropriate to classify the holder of the position in Group 2.”

25. I find that the Board has received substantial evidence to support its decision to classify public safety dispatchers in Group 2. The evidence supports job site hazards that are not common to all walks of life.
26. I find that the Board, by statute, has the authority to establish the group classification of its members and while people can differ on the matter, each Retirement System is an equal, autonomous entity with the power to regulate the benefits to its members. This position is supported by O’Connor v. Bristol County, 439 Mass. 741, 110 N.E.2d 492 (1953).
27. I find that a Retirement Board does not have the power to establish a regulation that would impact the sovereignty of another Board. For this reason, if the Board adopts this Hearing Officer’s Report, the Board’s rule should include a provision for employees who have been members of other Systems, in the position of dispatcher, where that System does not recognize Group 2 classification for that position, that any applicable §3(8)(c) contribution from the other System will be based upon that System’s classification of its former employee and Andover will assume the difference in the pension calculation.

Conversely, if a member of the Andover System who functions as a public safety dispatcher transfers to a System that does not recognize Group 2 classification, then Andover’s §3(8)(c) liability will be determined as if the employee had been classified in Group 1.

28. I find that the Board’s prior decision to classify public safety dispatchers in Group 2 was within its authority. The policy has been in place and the purpose of the process now being followed is to codify the prior action into a local rule which will relate back to the time of the establishment of the policy.
29. I find that to the extent that PERAC does not approve the rule dating back to the adoption of the Board’s policy, the employees who would be affected by this decision are entitled to relief under M.G.L. Chapter 32 §20(5)c) and, therefore, the Board should consider any potential overpayment be forgiven.

CONCLUSION

After a complete review of the history of the Board's review, the available evidence including the Board's reliance upon PERA correspondence, the nature of the job duties of the public safety dispatchers, the work location, the existing substantial evidence to support the Board's prior action to establish Group 2 classification for its public safety dispatchers, and the members' reasonable expectation of a pension benefit based on being classified as Group 2, I recommend that the Board vote to adopt the proposed local rule hereto attached and incorporated herein by reference.

Respectfully submitted,

James H. Quirk, Jr.
JAMES H. QUIRK, JR., P.C.
Post Office Box 268
Yarmouthport, MA 02675-0268
(508) 771-0084
BBO #409780

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