

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

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April 1, 2011

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Patricia Graney v. Bristol County Retirement System, CR-07-32

Dear Sir/Madam:

Enclosed is a decision in the above-captioned appeal. Massachusetts General Laws, Chapter 32, Section 16 (4) provides that this decision:

shall be final and binding upon the board involved and upon all other parties, and shall be complied with by such board and by such parties unless within fifteen days after such decision, (1) either party objects to such decision, in writing, to the contributory retirement appeal board, or (2) the contributory retirement appeal board orders, in writing, that said board shall review such decision ... (emphasis added).

A party objecting to the enclosed decision shall mail specific objections to David Guberman, A.A.G., Chair, Contributory Retirement Appeal Board, Office of Attorney General Martha Coakley, One Ashburton Place – 20th Floor, Boston, MA 02108. Copies must be sent to the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA 02114 and the other party or parties involved in the case.

The objecting party has an additional 30 days after the 15-day period to forward copies of the Exhibits (three sets of exhibits to CRAB c/o David Guberman and a set to the other party. Do not send a set to the Division of Administrative Law Appeals). The objecting party should number the exhibits as they were numbered at the hearing. CRAB will not put any case on its agenda until exhibits have been received.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Richard Heidlage
Chief Administrative Magistrate

RCH/jb

cc: David Guberman, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Patricia Graney,
Petitioner

v.

Docket No. CR-07-32
Date issued: Apr. 1, 2011

Bristol County Retirement System,
Respondent

Appearance for Petitioner:

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Boston, MA 02114

Appearance for Respondent:

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P.O. Box 479
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Administrative Magistrate:

Kenneth J. Forton, Esq.

SUMMARY OF DECISION

The Petitioner is not entitled to Group 2 status because she was not an employee of a municipal department who was employed as a fire or police signal operator or signal maintenance repairman. The majority of the Petitioner's duties as the Communications Director for the Town of Norton are those of neither a fire or police signal operator nor a signal maintenance repairman.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Patricia Graney, is appealing the December 15, 2006 decision of the Respondent, Bristol County Retirement Board,

denying her request to change her group status from Group 1 to Group 2. (Ex. 1.) The Petitioner filed a timely appeal. (Ex. 2.)

A hearing was initially scheduled for January 31, 2008. After one request for a continuance from the Petitioner and another request for a continuance from her attorney, a hearing was ultimately held on May 4, 2010 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston. I admitted eleven documents into evidence. (Exs. 1-11.) The parties stipulated to six facts, which were incorporated into the parties' joint prehearing memorandum. I have marked the memorandum as "A" for identification. The Petitioner testified on her own behalf and called two additional witnesses: Norton Fire Chief Richard Gomes and Cambridge Emergency Communications and 911 Director George L. Fosque. The Respondent called no witnesses. There is one cassette tape of the hearing.

The record closed upon receipt of the last of the parties' post-hearing memoranda on June 7, 2010.

FINDINGS OF FACT

1. Patricia Graney, d.o.b. 7/15/1950, was employed at the Norton Communications Center and Emergency Dispatch from March 23, 1987 until her superannuation retirement on November 25, 2006. (Stip. 1; Testimony Graney.)
2. From 1987 to 2002, she was a dispatcher and then the Communications Supervisor. From 2002 until her retirement in 2006 she was the Communications Director. (Testimony.)
3. When she was the Communications Director, the Petitioner reported to Norton Town Manager James Purcell. (Testimony Graney.)

4. From 2004 to November 2006, the Town of Norton and the Petitioner's union, SENA Local 9158-A, engaged in contract negotiations. The Town and the union negotiated a Memorandum of Agreement, which the Town's five-member Board of Selectmen signed on November 2, 2006 and the union signed on November 6, 2006. The Petitioner and two other employees signed the Memorandum of Agreement on behalf of the Union. (Ex. 7; Testimony Graney.)

5. Paragraph 24 of the Memorandum of Agreement states: "General: The Communications Director's job description shall be updated to reflect her Fire Signal Operator duties." (Ex. 7.)

6. Before the Memorandum of Agreement was signed, the Petitioner's job description did not include "Fire Alarm Signal Operator" in the job title. (Testimony Graney; *see* Ex. 7.)

7. On October 20, 2006, the Petitioner contacted the Bristol County Retirement System to inquire about retirement and about her group classification. (Ex. 4; Testimony Graney.)

8. On October 23, 2006, the Retirement System received a letter from the Petitioner along with a job description and a snippet of the *unsigned* Memorandum of Agreement. The snippet stated, in relevant part: "24. General: The Communication Director's job description shall be updated to reflect her Fire Signal Operator duties." (Ex. 4.; Testimony Graney.)

9. The enclosed job description lists "Communications Director (Fire Alarm Signal Operator, IT Coordinator)" under "Job Title." (Ex. 4.)

10. The "Duties and Responsibilities" listed in the job description are:

Responsible for the operation of the Emergency (911) Communications Center, which includes, but not limited to supervising, training and scheduling of staff. Responsible for Fire Alarm operation which includes but not limited to maintenance of all circuit boards. E911 Town Liaison, responsible for updating database daily with Verizon/ public; street changes, address changes, handicap updates and equipment. Responsible for maintaining, purchasing all communication equipment. Responsible for maintaining Town/School Centrex System; coordinating with vendors on ordering of lines, change orders, purchasing of phone equipment, review and maintenance of monthly phone bills in excess of \$40k. Responsible for filing and maintaining all FCC Licenses for Fire, Police and Public Works. Responsible for training and implementation of the Bristol County Task Force. Prepares required correspondence, reports and maintains proper records. Recommends innovative projects. Prepares, maintains bills warrants and payroll. Works with Boards, Committees, related Municipal Committees, other Public Safety personnel, and the public on a daily basis. Work closely with fire and police management updating policies and procedures as required. System manager for Fire/Police Computer System, Town's Information and Technology (IT) Coordinator.

(Ex. 4.)

11. The job description lists the following "Examples of Work:"

Prepares and presents budget \$4k+ to Town Manager and Finance Committee. Acts as liaison for all town communication needs. Maintain and change out fuses, circuit boards for fire alarm system; upgrade all system info including street boxes and master boxes. Speak to groups/youths regarding Enhanced 911. Responsible for coordinating and assisting where applicable all town IT needs. Maintains direct link with service providers. Maintain up to date listing of hydrant locations, box alarms, phone listings, street locations, police and fire logs and 911 print outs. Purchase supplies and equipment as needed.

(Ex. 4.)

12. The town's Fire Alarm Superintendent is responsible for the care and maintenance of the fire alarm systems located outside the Communications Center, which is located inside the town police station. (Testimony Graney.)

13. Lt. Paul Schleicher taught the Petitioner how to test the communications equipment in the Communications Center and change the equipment's circuit boards and fuses. (Testimony Graney.)

14. The Petitioner tested the equipment twice a day. Each test took a few minutes. She changed a fuse or circuit board whenever that component failed, which was infrequent: sometimes twice a week, sometimes once every three months. (Testimony Graney.)

15. The Petitioner does not hold an electrician's license. She did not have to cut the electricity to the equipment to replace a fuse or a circuit board, and she did not have to wear any protective gear while performing these duties. (Testimony Graney.)

16. Ms. Graney supervised the workers who reported to her one hundred percent of the time that she was on the job. (Testimony Graney.)

17. For the last few months of her employment with the town, she performed approximately two shifts of 911 dispatch work per week and filled in sporadically on an as-needed basis. (Testimony Graney, Gomes.)

18. Town of Norton Fire Chief Richard J. Gomes submitted a letter, dated November 6, 2006, supporting the Petitioner's classification in Group 2. In the letter he stated that Ms. Graney "for many years" "has been responsible for the fire alarm system that relates to dispatching and equipment operation." Further, he stated: "The fire alarm equipment includes all the circuit testing and operational functions, replacement of circuit control cards, and the swapping or changing out the fuses on the circuit boards. She also is the liaison with fire alarm repair companies. The dispatching of fire alarms is within the complete responsibility of the center." (Stip. 3; Ex. 5; Testimony Graney, Gomes.)

19. On November 29, 2006 the Board majority voted to deny the Petitioner's request for Group 2 classification. (Stip. 4; Ex. 1.)

20. By letter dated December 15, 2006 the Board notified the Petitioner of its decision. (Stip. 4; Ex. 1.)

21. On January 8, 2007, the Division of Administrative Law Appeals received the Petitioner's appeal letter, which was dated January 1, 2007. (Ex. 2.)

CONCLUSION AND ORDER

The decision of the Bristol County Retirement Board is affirmed. Patricia Graney is not entitled to classification in Group 2 for retirement purposes.

G.L. c. 32, § 3(2)(g), provides for a system of classification of employees for retirement purposes. Group 1 includes "[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." G.L. c. 32, § 3(2)(g). Group 2 includes, in pertinent part, "employees of a municipal department who are employed as fire or police signal operators or signal maintenance repairmen." *Id.*

Classification is "properly based on the sole consideration of [the member's] duties at the time of retirement." *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass. 488, 494 (1975). The member's duties are largely determined by consulting his or her title or job description. *See Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250, 256 (1976).

After careful consideration of all the testimony and documents presented in this case, I conclude that Ms. Graney was not employed as a fire or police signal operator or a signal maintenance repairman.

Ms. Graney argues that her dispatching duties and her duties testing and maintaining the equipment in the Emergency Communications Center qualify her as either a fire signal operator or a signal maintenance repairman or both for purposes of group classification. The Board argues that Ms. Graney's regular and major duties were not those of a fire signal operator or a signal maintenance repairman but rather those of a Communications Director, which is a managerial position. It further argues that the duties that Ms. Graney describes in support of her case are not the duties of a fire signal operator or signal maintenance repairman because the described duties are not the type of hazardous duties that entitle a member to Group 2 classification. *See Pysz v. Contributory Retirement Appeal Bd.*, 403 Mass. 514, 518 (1988) ("The type of employment classified in Group 2 tends to be considerably more hazardous than the employment in Group 1.") The Board finally argues that Ms. Graney and her employer participated in creating a "sham" job description in order to secure her Group 2 classification just before her retirement. *See id.* (group classification cannot be based on position at the time of retirement if the position held by member is a "sham" participated in by both the employee and the employer).

Ms. Graney was employed by the Town of Norton as the Communications Director in their Emergency Communications Center. To decide whether or not she is entitled to Group 2 classification, *Gaw* tells us that it is necessary to consult her title and job description. 4 Mass. App. Ct. at 256. In this case, this is difficult because I conclude that the job description that was submitted in support of her request for classification in

Group 2 is not reliable evidence. (*See ex. 4.*) The job description¹ submitted includes the rather long title “Communications Director (Fire Alarm Signal Operator, IT Coordinator).” Ms. Graney testified that the “Fire Alarm Signal Operator” language and some unspecified job duties were added as a result of a larger Memorandum of Agreement between the Town and her union, SENA Local 9158-A. She submitted the job description to the Retirement Board on October 20, 2006. The Board of Selectmen, however, did not sign the Memorandum of Agreement until November 2, 2006, and the union did not sign it until November 6, 2006. When she was questioned about this apparent inconsistency, Ms. Graney testified that she and Town Manager James Purcell had already agreed on some changes to her job description near the beginning of the negotiations over the Memorandum of Agreement and that it just took a while to get the necessary parties to sign the final version of the document. She was not clear in her testimony which pieces of the job description had been changed based on her supposed agreement with Mr. Purcell. In these circumstances, without any testimony from her supervisor, from someone in the town human resources department, or from some other reliable corroborating witness that the job description she submitted with her request for classification in Group 2 was the job description in effect upon her retirement, I find the document unreliable.

Plus, even if I accepted the job description as bona fide and accurate at the time of her retirement, I am left with another problem, *viz.*, defining the duties of a fire or police signal operator. Mr. Fosque, who was the Commissioner of the State 911 Commission at

¹ The Petitioner also submitted as Exhibit 9 a “Description of Duties in Detail,” which she claims more accurately reflect her actual job duties at the time of her retirement. I find this uncorroborated and self-serving list unreliable, and I have disregarded it in my analysis.

the time of the hearing, provided some job descriptions from a document called a "Municlass Manual," which appears to have been published by the Massachusetts Division of Civil Service, though it is unclear when. Mr. Fosque testified that the "signal maintainer" description in this document is what the Legislature meant by the title "signal maintenance repairman" and that the "fire alarm operator" description is what the Legislature meant by "fire or police signal operator." Particularly, he argued that Ms. Graney's duties testing and maintaining emergency communications equipment parallel some of the "fire alarm operator" duties in the "Municlass Manual": "Keeps records of all actions such as alarms received and transmitted, location and nature of fires, tests of circuits, condition of equipment, and battery voltage. Performs tests of fire alarm circuits, radio, and telephone lines. May perform minor preventive maintenance on batteries and equipment." The Municlass Manual also contains a "Dispatcher" job title, which indicates that whoever authored the Municlass Manual saw some difference between a dispatcher and a "fire alarm operator."

From this evidence I cannot conclude that the duties of a "fire alarm operator," as described in the Municlass Manual, and the duties of a "fire signal operator" referred to in G.L. c. 32, § 3(2)(g), are the same. But, *in order to simplify matters in this decision only*, I will assume *without deciding* that the duties of the two positions are the same.

Even if I *assume* that the job description that Ms. Graney submitted was true and accurate and I *assume* that the duties of a "fire alarm operator" are the same as a "fire signal operator" I nonetheless conclude that she is not entitled to Group 2 classification because she was not employed as a fire or police signal operator or a signal maintenance repairman. The job duties listed in the Communications Director job description are

largely managerial and supervisory. This only makes sense, since she was the Communications Director for the town, supervising line dispatchers, and was not employed as a line dispatcher herself. The fact that, during the last few months of her employment as the Communications Director, she worked a couple shifts a week as a dispatcher and sporadically filled in for other dispatchers does not change the fact that the majority of her duties were not fire or police signal operator or signal maintenance repairman duties.

The case of *Halper v. Boston Retirement Board*, CR-7225 (DALA), *aff'd* (CRAB 1984), illustrates this point well. Aaron Halper was employed in the signal service unit of the Boston Police Department. His job title was permanent Painter-Groundman; he serviced, refinished and painted police signal equipment. He also assisted another members of the Signal Service Unit "in a variety of capacities, many of which necessitated his involvement in activities that could be described as 'signal maintenance repair work.'" *Id.* at *8. In this capacity he came into contact with the same hazards of the signal maintenance repairmen—traffic problems, live electrical current, inclement weather, and gases. *Id.* He argued that he was entitled to Group 2 classification either because he was employed as a signal maintenance repairman or because he was exposed to the same hazards as signal maintenance repairmen were. Citing *Gaw*, DALA and CRAB concluded that Halper was not employed as a signal maintenance repairman, and thus was not entitled to Group 2 classification, because, although he did occasionally perform some signal maintenance repairman duties, he was employed as a Painter-Groundman. Being exposed to the same hazards as a signal maintenance repairman did not entitle Halper to Group 2 classification. Similarly, Ms. Graney was arguably engaged

in some of the duties of a fire signal operator or signal maintenance repairman, but she was not employed as one; she was employed to manage and run the entire Emergency Communications Center, and her job duties reflect that.

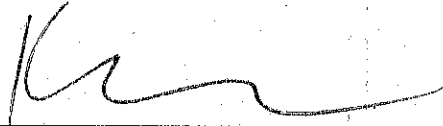
Gaw itself is also instructive. 4 Mass. App. Ct. 250. *Gaw* was the manager of the Reading Municipal Light Department; all employees ultimately reported to him, though there were several layers of management between him and the line workers. He claimed Group 4 classification based on his *supervision* of line workers at the Department. See G.L. c. 32, § 3(2)(g) (“employees of a municipal gas or electric 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*” entitled to Group 4 classification). The Court held that, even though *Gaw* personally engaged in the direct supervision of line crews on a number of occasions, the direct supervision was sporadic and secondary to the performance of his managerial functions as prescribed by his job description and specifications. *Id.* at 253. Being “engaged in” the work, the Court concluded, was not the same as being “employed as” a direct supervisor of the employees. Likewise, Ms. Graney may have been engaged in some dispatching work and equipment maintenance, but this work was sporadic and was secondary to the performance of her managerial functions, as listed in her job description.

Finally, I conclude that, while the last-minute change to Ms. Graney’s job description does not rise to the level of a “sham,” see *Pysz*, 403 Mass. at 518, this last minute change to the job description did not even square with her own testimony. Most glaringly, the dispatching duties that she claims she performed in the last few months of her employment are not listed in the job description.

For the foregoing reasons, I conclude that at the time of her retirement the Petitioner was not employed as a fire or police signal operator or a signal maintenance repairman. The decision of the Bristol County Retirement Board is therefore affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton, Esq.
Administrative Magistrate

DATED: Apr. 1, 2011