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COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2013-01212-A

BETH A. REUTER,
Plaintiff

vs.

METHUEN PUBLIC SCHOOLS and
CIVIL SERVICE COMMISSION,
Defendants

**MEMORANDUM AND DECISION ON PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

This review of the final decision of an administrative agency is before the court on plaintiff's motion for judgment on the pleadings, pursuant to Mass. R. Civ. P. 12(c). [D. 15]. Plaintiff Beth A. Reuter ("Reuter") seeks review under G. L. c. 30A of the June 27, 2013 final decision of the Civil Service Commission (the "Commission") upholding the Methuen Public Schools' ("MPS") termination of Reuter from her employment as custodian with MPS.¹ She also seeks declaratory relief consistent with her arguments in her Chapter 30A appeal. Now before the court

¹Although Reuter's complaint seeks review under Chapter 30A, this court's authority to review a final decision of the Civil Service Commission is contained in G. L. c. 31, § 44. The mis-citation is meaningless and will be ignored. Although Chapter 31 authorizes this appeal, the standard of review is essentially identical to that which governs the more frequently filed Chapter 30A appeals.

is Reuter's motion for judgment on the pleadings. [D. 15]. A non-evidentiary hearing was held on April 10, 2014. For reasons discussed below, Reuter's motion for judgment on the pleadings is **DENIED**.

BACKGROUND

Since September 6, 1988, until the termination of her employment in 2013, Reuter was employed by the MPS as a building custodian. On May 11, 2011, a criminal complaint issued from Lawrence District Court charging Reuter with multiple counts of larceny, in violation of G. L. c. 266, § 30. The criminal charges arose from allegations that Reuter stole property belonging to the Methuen Custodial Association. The MPS gave Reuter notice, and held a hearing on May 24, 2011 to consider whether just cause existed to discharge her from her employment. On May 26, 2011, Reuter was informed of the Superintendent's decision to terminate her from her employment with the MPS, effective immediately. Reuter timely appealed her termination to the Commission. A hearing was held on September 12, 2011, and the matter was taken under advisement by the Commission.

On November 10, 2011, before a decision issued from the Commission, Reuter and the MPS entered into a written settlement agreement pertaining to Reuter's termination. The purpose of the agreement was to resolve all of Reuter's claims against the MPS regarding her separation from employment, including the appeal

pending before the Commission, which Reuter agreed to withdraw with prejudice. Pursuant to the settlement agreement, the MPS agreed to withdraw its termination of Reuter and agreed to reinstate her under the following conditions: (1) an unpaid thirty-day suspension, effective from May 26, 2011, with all other time until her reinstatement considered as unpaid administrative leave; and (2) a demotion to the position of junior custodian for a period of one year, followed by reinstatement to the position of senior building custodian.

The following provision of the settlement agreement is the focus of this appeal:

Ms. Reuter and the MPS agree that this Agreement shall apply only to the instant matter and shall not, either in whole or in part, serve as precedent in any other matter or dispute between the parties. Except as may be required by M. G. L. c. 31, § 50, the MPS will not undertake any further disciplinary action against Ms. Reuter for the allegations contained in the Notice of Hearing for Civil Service letter dated May 17, 2011, which served as the basis of her termination and Civil Service Appeal. No party hereto shall introduce this Agreement into any other case for any reason at any time except to enforce its terms, or in the event that Ms. Reuter exercises her statutory rights.

On February 13, 2013, Reuter was convicted after a jury trial in the Lawrence District Court of larceny over \$250 by a single scheme. The conviction was for one of the criminal charges that had given rise to the May 26, 2011 termination of her employment. Reuter was sentenced that day to one year in the house of correction, thirty-days to serve, and the balance suspended with probation and probationary

conditions.² On March 1, 2013, MPS notified Reuter of a hearing at which the Superintendent would consider her termination from employment due to her conviction and sentence. The Superintendent informed Reuter that due to her conviction and sentence, and pursuant to G. L. C. 31, § 50, she was no longer eligible for employment with the MPS. A hearing was held on March 5, 2013, at which Reuter was represented by counsel. Reuter was informed by a March 7, 2013 letter from the Superintendent that her employment with the MPS was terminated, effective that date.

The termination decision was appealable to the Commission within ten days of receipt of written notice of the termination. G. L. c. 31, § 43. Reuter timely sought review before the Commission. The Commission decided the appeal under its summary decision procedure, denied Reuter's motion for summary decision and allowed the MPS' motion for summary decision.

The party moving for summary disposition of an appeal before the Commission is entitled to dismissal as a matter of law under the well-recognized standards of summary disposition, i.e., "viewing the evidence in the light most favorable to the non-moving party," the movant has presented substantial and credible evidence that

²The record is unclear as to the length of the suspended and probationary period, which is generally at least one year, but can be longer.

the opponent has “no reasonable expectation” of prevailing on at least one “essential element of the case,” and that the non-moving party has not produced sufficient “specific facts” to rebut this conclusion. See e.g. *Lydon v. Massachusetts Parole Bd.*, 18 MCSR 216 (2005). The standard is essentially identical to the summary judgment standard in a civil case.

DISCUSSION

1. Standard of Review

Judicial review of an appeal from an agency decision is limited to the administrative record. G. L. c. 30A, § 14(5); see also *Cohen v. Board of Registration in Pharm.*, 350 Mass. 246, 253 (1966). The party challenging the decision of the agency, here Reuter, bears the burden of demonstrating that the decision is invalid. *Merisme v. Board of Appeals on Motor Vehicle Liab. Policies & Bonds*, 27 Mass. App. Ct. 470, 474 (1989). An agency's decision will be set aside only if it is legally erroneous or not supported by substantial evidence. *Rotondi v. Contributory Retirement Board of Appeals*, 463 Mass. 644, 647 (2012). Where, as here, “the issue is ultimately one of statutory interpretation, however, we exercise *de novo* review as we do for all questions of law.” *Id.* at 648.

2. Analysis

The settlement agreement between Reuter and MPS resolved the then-pending

termination dispute “[e]xcept as may be required by M. G. L. c. 31, § 50. The determinative issues in this appeal are what that parties meant by use of the word “required” and what in fact does Section 50 require with respect to the continued employment of a person convicted and sentenced as Reuter was. The court rules as a matter of law that the Commission’s decision upholding Reuter’s termination must be affirmed because Section 50 required that she be terminated. Thus, it is not necessary to go further and determine the intentions of the parties by the use of the word “required.” Even using Reuter’s argued construction of the use of the word required, the termination must be upheld.

Section 50 of Chapter 31 of the General Laws provides in full:

No person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position, nor shall any person be appointed to or employed in any such position within one year after his conviction of any crime except that the appointing authority may, in its discretion, appoint or employ within such one-year period a person convicted of any of the following offenses: a violation of any provision of chapter ninety relating to motor vehicles which constitutes a misdemeanor or, any other offense for which the sole punishment imposed was (a) a fine of not more than one hundred dollars, (b) a sentence of imprisonment in a jail or house of correction for less than six months, with or without such fine, or (c) a sentence to any other penal institution under which the actual time served was less than six months, with or without such fine. Violations of statutes, ordinances, rules or regulations regulating the parking of motor vehicles shall not constitute offenses for purposes of this section.

Under the plain language of Section 50, Reuter could not be employed by the

MPS within one year of February 13, 2013 unless the sentence imposed on her fell within one of the categories that permitted the MPS to exercise discretion to retain her in its employ. Reuter does not come within any of the exceptions. She was not convicted of a motor vehicle offense. Her sole punishment was not a fine of not more than \$100. Her **sole punishment** was not a sentence of imprisonment in a jail or house of correction for less than six months, with or without a fine. Her punishment included a nine-month suspended house of correction sentence, and a period of probation with conditions, in addition to her thirty-day house of correction commitment. Her sole punishment was not a sentence to any other penal institution under which the actual time served was less than six months. Other penal institution means other than jail or house of correction mentioned in subsection (b), and she was sentenced to the house of correction. The district court does not have jurisdiction to sentence a defendant to state prison. The Women In Transition Program is a placement program run by the Essex County House of Correction, not a sentence to a penal institution other than a house of correction.

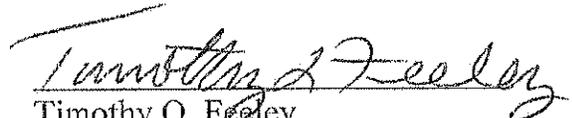
Thus, no prerequisites existed for the MPS to use its discretionary authority to retain Reuter in its employment after her conviction and sentence on February 13, 2013. As Section 50 required her termination, even under Reuter's construction of the settlement agreement, her termination must be upheld.

DECLARATION OF RIGHTS

1. Reuter's February 13, 2013 conviction and sentence required, pursuant to G. L. c. 31, § 50, her termination from employment with the MPS.
2. The Settlement Agreement did not preclude Reuter's termination based on her February 13, 2013 conviction and sentence.
3. The MPS did not breach the Settlement Agreement by terminating Reuter based upon her February 13, 2013 conviction and sentence.

ORDER

Reuter's motion for judgment on the pleadings [D. 15] is **DENIED**, and the final decision of the Commission is **AFFIRMED** for the reasons stated above. Judgment shall enter accordingly. Both parties to bear their own costs.


Timothy Q. Feeley
Associate Justice of the Superior Court

April 14, 2014