

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

2009-P-1959

CITY OF BEVERLY & another¹vs.MASSACHUSETTS CIVIL SERVICE COMMISSION & another.²ORDER

Sean Bell applied to be a police officer in the city of Beverly, and he passed the requisite exam. The city refused to hire him because its background check revealed that he had been fired from a job as a hospital security guard for accessing the private voicemails of other employees. He appealed the city's decision to the Civil Service Commission (the Commission) pursuant to G. L. c. 31, § 43. After conducting an evidentiary hearing, the Commission issued a three-to-two ruling reversing the city's decision. In short, the Commission ruled that the city failed to demonstrate a "reasonable justification" for bypassing Bell ("the applicant"), because the city did not prove to the Commission's satisfaction that he in fact had engaged in the misconduct for which he had been fired.³

¹ Beverly Police Department.

² Sean Bell.

³ The plaintiff, whom a majority of the Commission found credible, denied the misconduct and claimed he was fired for other reasons.

On the city's appeal taken pursuant to G. L. c. 30A, § 14, a Superior Court judge reversed the Commission's ruling. He concluded that "[v]iewing the evidence before the Commission as a whole, this court concludes that the Commission erroneously substituted its judgment for that of the Appointing Authority in determining the Appointing Authority's decision had no reasonable justification to bypass [the applicant]." (A. 25) On the appeal before us, the applicant argues that the Commission's ruling was supported by substantial evidence and that the judge was therefore bound to accept it.

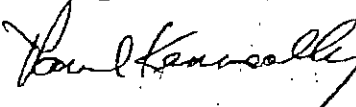
Although the underlying facts were contested at the hearing before the Commission, the city conceded at oral argument that it was not challenging the factual findings made by the Commission. Rather, the applicant and the city have briefed and argued the case as essentially posing a question of statutory interpretation regarding the Commission's role vis a vis the appointing authorities whose decisions the Commission reviews. Having reviewed the briefs and heard oral argument, we invite the Attorney General to submit a brief on behalf of the Commission in light of the nature and potential significance of the statutory interpretation issues raised.⁴ We would accept a brief submitted

⁴ The Office of the Attorney General sent a letter dated January 14, 2010, to the court on behalf of the Commission indicating that it did not intend to participate in this appeal because it was only a "nominal party." According to the letter, "[t]he Commission's role in this matter was primarily to

by the Commission if submitted on or before close of business,
July 7, 2010.

So ordered.

By the Court (Green, Dreben &
Milkey, JJ.)


Assistant Clerk

Entered: June 7, 2010

adjudicate a dispute between the other parties to this action,
all of whom are represented before this Court."