COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

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JEANNETTE BERRIOS,
Appellant

v.

Case No.: D1-12-8

CITY OF HOLYOKE,
Respondent

Appellant's Attorney:

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Commissioner:

Cynthia A. Ittleman, Esq.

DECISION ON APPOINTING AUTHORITY'S MOTION TO DISMISS

On January 9, 2012, Ms. Jeanette Berrios (the "Appellant") filed an appeal with the Civil Service Commission (the "Commission") pursuant to G.L. c. 31, § 43 to contest the decision of the City of Holyoke ("City" or "Appointing Authority") to terminate her from her position in the City Personnel Department on January 3, 2012. On or about January 20, 2012, the City filed a Pre-Hearing Conference Report. On or about January 24, 2012, in response to the

Commission's request, the state Human Resources Division ("HRD") provided information relating to the Appellant's employment by the Appointing Authority ("HRD Letter"). On January 25, 2012, a Pre-Hearing Conference was held in Springfield, at which the Commission gave the parties a copy of the HRD Letter, and the City filed a Pre-Hearing Conference Report.

The City filed a Motion to Dismiss the appeal on or about February 17, 2012, alleging that the Commission has no jurisdiction to hear the appeal because the Appellant was not in a tenured civil service position when she was terminated from employment by the Appointing Authority. On or about March 19, 2012, the Appellant filed a Motion in Opposition to Respondent's Motion to Dismiss for Lack of Jurisdiction ("Opposition"). The Commission conducted a hearing on the Motion to Dismiss in Springfield on March 28, 2012. The hearing was digitally recorded.

Based on the Motion to Dismiss, Opposition, the HRD Letter and attachments[1] thereto, and arguments made at the hearing on the Motion to Dismiss, and taking administrative notice of all matters filed in the case as well as pertinent statutes, caselaw, policies and rules, including, without limitation, the Municlass Manual[2] and the Personnel Administration Rules ("PAR"), a preponderance of the evidence establishes:

1. The Municlass Manual lists a number of municipal employment groups, including the General Administrative, Clerical, and Office Services Group ("Administrative Group"), which is comprised of a number of job title series. (Municlass Manual, pp. 109-10)

[1] The attachments to the Appellant's Opposition are not numbered.
[2] The full title of the Municlass Manual is, "Municlass Manual, A municipal Classification Plan for Massachusetts, by the Massachusetts League of Cities and Towns in cooperation with the Civil Service Division, published in 1974, which is referred to herein simply as the "Municlass Manual." The first page of the Municlass Manual states that it is, "A Municipal Classification Plan for Massachusetts containing Civil Service Job Titles and Definitions Authority by Director of Civil Service and Approved by the Civil Service Commission." (Id.) There does not appear to be a more recent publication in this regard.

2. Within the Administrative Group in the Municlass Manual is the "Clerk and Typist Series," which is comprised of the following positions: Clerk and Typist, 0322A; Senior Clerk and Typist, 0322B, and Principal Clerk and Typist, 0322C. (Municlass Manual, p. 150, which refers to the Clerical Structure Classification Chart on p. 143)
3. Also within the Administrative Group in the Municlass Manual is the "Clerical Series," which is comprised of the following positions: Clerk, 0301A; Senior Clerk, 0301B; Principal, 0301C; Head Clerk 0301D; and Head Administrative Clerk, 0301E. (Municlass Manual, p. 144, which also refers to the Clerical Structure Classification Chart on p. 143)
4. The Municlass Manual also lists the Personnel Management and Labor Relations Group (the "Personnel Group"), which is comprised of the following municipal employment series: Personnel Management Series, Personnel Staffing Series, Personnel Classification and Pay Series, Labor Negotiation Series, and the Employee Development Series. (Municlass Manual, p. 109)
5. The following titles are in the Personnel Management Series of the Personnel Group: Personnel Director, 0201A; Assistant Personnel Director, 0201B; Personnel Technician, 0201C; and Personnel Assistant, 0201D. (Municlass Manual, pp. 139-40)[3]
6. On September 23, 1996, the Appointing Authority's Personnel Department appointed Ms. Berrios to the title of permanent fulltime Clerk and Typist from Certification number 960875. (HRD Letter (emphasis added))

[3] The remaining Personnel Group series are: 1) the Personnel Staffing Series (the positions of Personnel Technician (Recruitment), 0212A and Assistant Personnel Technician (Recruitment), 0212B) (Municlass Manual, p. 140); 2) the Personnel Classification and Pay Series (the positions of Personnel Analyst, 0221A and Assistant Personnel Analyst, 0221B) (Municlass Manual, pp. 140-41); 3) the Labor Negotiation Series (the position of Labor Negotiator, 0230A)(Municlass Manual, pp. 141); 4) the Employee Development Series (the positions of Employee Development Coordinator, 0235A and Employee Development Assistant, 0235B) (Municlass Manual, pp. 141-42).

7. Effective on or about January 1, 2003, the Appointing Authority's Personnel Department completed a form entitled, "Provisional Promotion (G.L.Ch. 31, Sec. 15), Form 15A 6/2002," from the Human Resources Division Civil Service Unit, stating that it was provisionally promoting the Appellant to the title of Principal Clerk. (HRD Letter (emphasis added)) David Lawrence, the Holyoke Personnel Director, appears to have signed the form as Appointing Authority and "certified" that there is, " … no employee in the next lower grade and willing to accept[]" the provisional promotion. (Id.)
8. There is no Principal Clerk title in the Clerk and Typist Series, although there is a Principal Clerk and Typist title in the Clerk and Typist Series. (Municlass Manual, p. 150)
9. The title Principal Clerk is in the Clerical Series. (Municlass, p. 144)
10. If the Appellant was provisionally promoted to the title Principal Clerk in the Clerical Series, the appointment skipped over the titles of Clerk and Senior Clerk in the latter series. (Municlass Manual, p. 144)
11. Even if the Appellant was provisionally promoted to the title Principal Clerk and Typist in the Clerk and Typist Series, the appointment skipped over the title Senior Clerk and Typist in that Series. (Municlass Manual, p. 150)
12. The January 2003 provisional promotion form provides that the person completing the form must indicate whether the position to which the employee is being promoted is or is not in the next higher grade and that if the appointing authority is not certain, he/she should "complete paragraph 2 to prevent any delay in processing." (Attachment to Opposition) Paragraph 2 of the same form states, in pertinent part, "The position to which promotion is requested is not in the next higher grade." (Id.) The person who

completed the form indicated that the position to which the promotion was requested was not in the next higher grade and indicated that the sound and sufficient reason the provisional promotion will be for the public good is that, "Ms. Berrios has accepted more responsibilities within the department and has been a conscientious employee[.]" (Id.) The same form asks for the, "Title of permanent position from which promoted:" and the person completing the form accurately inserted "Clerk & Typist[.]" (Attachment to Opposition; *see also* HRD Letter)

13. The Re-Employment/Reinstatement List Notification Form (Form 39) of HRD, dated June 16, 2003, states that the Appellant's "Permanent Civil Service Job Title" is "Clerk & Typist[.]" (Attachment to Opposition) The Form 39 includes a box stating, "FOR HRD USE ONLY: re-employment/reinstatement region _____ "(i.e., it is blank). (Attachment to Opposition)
14. Effective on or about June 30, 2003, the Appointing Authority laid off the Appellant from the title of Clerk and Typist, as indicated in an HRD form entitled, "Absence and Termination[.]" (Attachment to Opposition; HRD Letter; *see also* Appellant's Affidavit attached to the Opposition)[4] David Lawrence, the Holyoke Personnel Director, appears to have signed the form as Appointing Authority. (Id.)
15. Effective July 1, 2003, the Appellant began working at the Holyoke Police Department as a domestic violence Victims' Advocate, which position was funded by a federal grant for a specific period of time. (Attachment to Opposition)

[4] A letter dated May 20, 2003 from Mayor Sullivan to David Lawrence, the City of Holyoke Personnel Administrator, states that because of the fiscal deficiency it is necessary to reduce positions, specifically, "11521-51103, Principal Clerk, Jeanette Berrios …." (Attachment to Opposition) However, the letter does not constitute or replace the appropriate HRD form for purposes of reinstatement and, in fact, it contradicts the HRD reinstatement form which indicates that the Appellant was laid off from the position of Clerk and Typist. (Attachment to Opposition)

16. Effective on or about December 8, 2003, the Appointing Authority, *" ... reinstated Ms. Berrios to the title of Principle Clerk[sic]. HRD has not approved this reinstatement. Pursuant to M.G.L. c. 31, § 39, laid off employees '... shall be reinstated in the same unit and in the same positions or positions similar to those formerly held by them ...' The City of Holyoke Personnel Department laid off Ms. Berrios from the title Clerk and Typist."* (HRD Letter (italics in original, underline added)); *see also* Attachments to Opposition)
17. The Appointing Authority filled out a reinstatement form entitled, "Request for Reinstatement or Re-Employment" Form 10, 20M 6/87 of the Department of Personnel Administration. (HRD Letter; *see also* Attachment to Opposition)
18. There is a box on the reinstatement request form that states "APPROVED" and provides a line for the signature on behalf of the Department of Personnel Administration, to approve the reinstatement but it is unsigned. (HRD Letter; *see* fn 1 of the HRD letter; *see also* Attachment to Opposition)
19. Then-Mayor of Holyoke, Michael Sullivan, signed the reinstatement request form above the line on the form that states, "(Officer authorized by law to make appointments)". (HRD Letter; *see also* Attachment to Opposition)
20. The reinstatement form describes the "Duties of Position" of the Principal Clerk position to which the Appellant was purportedly being reinstated as, "Work under general supervision performing duties that vary. Clerical, Typing work of more than ordinary difficulty and responsibility, related work as needed." (Attachment to HRD Letter (emphasis added), Attachment to Opposition) However, the City laid-off the Appellant from the title Clerk and Typist. (Attachment to Opposition)

21. Effective on or about July 1, 2004, the Appointing Authority filled out the form entitled "Provisional Promotion (G.L. Ch. 31, Sec. 15), Form 15A 9/2003 of the Human Resources Division Civil Service Unit" to provisionally promote the Appellant to the title Head Administrative Clerk. (HRD Letter (emphasis added); *see also* Attachment to Opposition) This form requires the person completing the form to indicate the "Title of permanent position from which promoted" and the person who completed the form wrote that the person being promoted was in the permanent position of Principal Clerk even though the Appellant's permanent civil service title was Clerk and Typist. (Attachments to Opposition) The same form provides that the person completing the form must indicate whether the position to which the employee is being promoted is or is not in the next higher grade and that if the appointing authority is not certain, he/she should "complete paragraph 2 to prevent any delay in processing." (Attachment to Opposition) Paragraph 2 of the same form states, in pertinent part, "The position to which promotion is requested is not in the next higher grade." (Id.) The person who completed the form indicated that the promotion requested was not in the next higher grade, adding that the sound and sufficient reason the provisional promotion will be for the public good is that, "Ms. Berrios has accepted more responsibilities within the department and has been a conscientious employee[.]" (Id.) David Lawrence, the Holyoke Personnel Director, appears to have signed the form as Appointing Authority and "certified" that there is, " … no employee in the next lower grade and willing to accept[]" the provisional promotion. (Id.)
22. The title Head Administrative Clerk is in the Clerical Series, not in the Clerk and Typist Series; both series are in the Administrative Group. (Municlass Manual, pp. 144, 150).

Further, the position of Head Administrative Clerk is preceded by the position of Head Clerk, to which the Appellant was not promoted. (Municlass Manual, p. 144)

23. Effective on or about July 1, 2007, using the form entitled "Provisional Promotion", Form 15A 9/2003 of the Human Resources Division Civil Service Unit, the Appointing Authority provisionally appointed the Appellant to Personnel Assistant. (Attachment to Opposition; *see also* HRD Letter) This form requires the person completing the form to indicate the "Title of permanent position from which promoted" and the person who completed the form wrote, "Head Administrative Clerk" even though the Appellant's permanent civil service title was Clerk and Typist. (Attachments to Opposition) The same form provides that the person completing the form must indicate whether the position to which the employee is being promoted is or is not in the next higher grade and that if the appointing authority is not certain, he/she should "complete paragraph 2 to prevent any delay in processing." (Attachment to Opposition) Paragraph 2 of the same form states, in pertinent part, "The position to which promotion is requested is not in the next higher grade." (Id.) The person who completed the form indicated that the promotion requested was not in the next higher grade, adding that the sound and sufficient reason the provisional promotion will be for the public good is that, "Ms. Berrios has accepted more responsibilities within the department and has been a conscientious employee[.]" (Id.) David Lawrence, the Holyoke Personnel Director, appears to have signed the form as Appointing Authority and "certified" that there is, " … no employee in the next lower grade and willing to accept[]" the provisional promotion. (Id.)

24. The title Personnel Assistant is in the Personnel Management Series in the Personnel Group, not the Clerk and Typist Series and not in the Clerical Series, which are both in the Administrative Group. (Municlass Manual, pp. 139, 140, 144, 150)
25. In late 2007 or in 2008, David Lawrence, the Personnel Director, voluntarily left his job. (Appellant's Affidavit attached to Opposition; Affidavit of Mayor Pluta attached to Opposition)
26. For approximately one year, the Appellant was the only person employed in the Appointing Authority Personnel Department (Appellant's Affidavit attached to Opposition; Affidavit of Mayor Pluta attached to Opposition) [5]
27. In or about December, 2008, Mayor Sullivan appointed the Appellant to the title of Acting Personnel Director.[6] (Affidavit of Mayor Pluta attached to Opposition)
28. The title Personnel Director is within the Personnel Management Series within the Personnel Group; it is not within the Clerk and Typist Series or the Clerical Series, which are both in the Administrative Group. (Municlass Manual, pp. 139, 144, 150)
29. As Acting Personnel Director, the Appellant was paid the salary of a Personnel Director (Appellant's Argument, Hearing on Motion to Dismiss)

[5] The parties have not provided the precise dates the Appellant was the only person in the Personnel Department and the names, status, titles and seniority of employees in the Personnel Department when the Appellant was not the sole employee there.

[6] The applicable Holyoke ordinance, Article III, Division 2, Sections 2-311 – 2-314 (attached to the Opposition) refers to the position of head of the department of personnel as the "personnel administrator" and not "Personnel Director," which is the highest title in the Municlass Manual in the Personnel Management Series. (Municlass Manual, p. 139) However, Mayor Pluta also refers to David Lawrence, the former head of the personnel department and the Appellant's former supervisor, as "Personnel Director." Therefore, unless this decision is citing to the Ordinance, we understand that the two titles were treated by the Appointing Authority as interchangeable terms requiring the Appointing Authority's City Council confirmation pursuant to local ordinance Article III, Division 2, Section 2-311(a).

30. As Acting Personnel Director, the Appellant performed daily responsibilities of the Personnel Director and ran the Personnel office. (Appellant's Affidavit and Mayor Pluta Affidavit attached to Opposition)
31. When Mayor Pluta was elected, the Appellant continued as Acting Personnel Director. (Mayor Pluta Affidavit attached to Opposition)
32. Mayor Pluta attests that, "Unless Ms. Berrios was confirmed by the City Council, I never intended on notifying HRD of any change in her previous status as she was performing all the duties encompassed within her civil service job title." (Affidavit of Mayor Pluta attached to Opposition)
33. Mayor Sullivan and Mayor Pluta both expressed an interest in having the Appellant appointed to the position of Personnel Director but the City Council sent the matter to a subcommittee, which failed to send it to the Council for a full vote. (Appellant's Affidavit attached to Opposition; Affidavit of Mayor Pluta attached to Opposition)
34. Appointment to the position of head of a department requires confirmation by the City of Holyoke City Council. (Article III, Division 2, Section 2-311(a)(the "Ordinance"); *see also* Sections 2-311 – 2-314, Attachments to Opposition)
35. The Ordinance also provides, "The Personnel administrator shall have, prior to his appointment, at least five years' experience as a personnel director, assistant personnel director, public administrator, business administrator or similar position in a comparable field with knowledge of federal and state wage counseling, hour laws, affirmative action, labor laws, recruitment and compensation in public or business enterprises. The said administrator shall have at least a bachelor's degree in a related subject and preferably a

master's degree in a related subject." (Ordinance, Article III., Division 2, Sec. 2-311(c), attached to Opposition)[7]

36. The Ordinance further provides that the Personnel Administrator shall have a term of office of five years from the date of appointment. (Ordinance, Article III., Division 2, Sec. 2-311(c), attached to Opposition)

37. The Ordinance also provides, "The personnel administrator shall hold office until his successor has been appointed and sworn in, or until removed for cause." (Ordinance, Article III., Division 2, Sec. 2-311(d), Attachment to Opposition) In addition, the Ordinance provides, "The personnel administrator may be removed for cause by the mayor, subject to approval of the city council, upon written notice stating the reasons thereof (sic)." (Ordinance, Article III., Division 2, Sec. 2-314, Attachment to Opposition)

38. On November 8, 2011, Alex Morse was elected as Mayor of Holyoke.

39. On or about December 15, 16 and 26, 2011, then-Mayor-Elect Morse asked the Appellant to meet him at his election headquarters. (Appellant's Affidavit attached to Opposition)

40. On December 27, 2011, the Appellant met with Mayor-Elect Morse and then-City Attorney Adam Pudelko, at which meeting the Appellant's employment was terminated and she was told to remove her personal belongings from her office. (Appellant's Affidavit attached to Opposition) Mayor-Elect Morse had not told the Appellant that then-City Attorney Pudelko would attend the meeting. Id.

[7] The Commission is not in the position to determine the Appellant's qualifications to be Personnel Director/Administrator for the City and the Commission has not received evidence regarding her qualifications for the position, other than the letter dated January 3, 2012 from Mayor Morse to the Appellant stating that he is not reappointing her Acting Personnel Administrator and that she is not qualified for the position. (*See* Finding No. 44, *infra*.) Similarly, the Commission cannot assess whether the Applicant's employment termination was for "cause," as required by the Ordinance. Finally, the Commission has no knowledge of whether the City Council approved the termination pursuant to the Ordinance.

41. Mayor Pluta, whose administration preceded that of then-Mayor-Elect Morse, did not authorize then-City Attorney Pudelko to release information about the Appellant to any third party, to meet with anyone else regarding the Appellant's employment status or job performance, to play a role in the Appellant's termination, or to act on behalf of Mayor Pluta or the City of Holyoke to terminate or attempt to terminate the Appellant's employment. (Affidavit of Mayor Pluta attached to Opposition)
42. As Mayor, Mayor Pluta appointed and confirmed City Solicitor, Lisa A. Ball, and the law firm of Sullivan, Hayes & Quinn in Springfield, to handle all labor issues for the City of Holyoke. (Affidavit of Mayor Pluta attached to Opposition)
43. A few days after the Appellant met with then-Mayor-Elect Morse, the Appellant heard that then-City Attorney Pudelko would be Personnel Director. (Appellant's Affidavit attached to Opposition)
44. The Appellant was not afforded notice of her possible termination and the effect it may have on her civil service position as a permanent Clerk and Typist; nor did the City afford her a hearing regarding her possible termination. (Administrative Notice; see G.L. c. 31, §§ 41-44)
45. By letter dated January 3, 2012, Mayor Morse wrote to the Appellant,

> "This letter represents formal notice that I, Mayor Alex B. Morse, am not reappointing you as Acting Personnel Administrator for the City of Holyoke. I am also not appointing you as Personnel Administrator. As a result, you are no longer employed by the City of Holyoke, effective immediately.
>
> The position of Personnel Administrator is a Mayoral appointment subject to confirmation by the City Council. You are not qualified to serve in either the position of Personnel Administrator or the position of Acting Personnel Administrator. You have been serving as Acting Personnel Administrator for over three years without City Council confirmation and without otherwise meeting the requirements to become Personnel Administrator.

Please contact the Personnel Department for a full explanation of your benefits upon termination.

Thank you for your years of service with the City of Holyoke. I wish you well in your future endeavors."

(Attachment to Opposition)

46. On January 9, 2012, the Appellant filed the appeal in this case and notified the Appointing Authority of her appeal. (Administrative Notice)

47. During the Appellant's employment with the Appointing Authority, she was not reprimanded, disciplined or suspended. (Appellant's Affidavit attached to Opposition; *see also* Mayor Pluta's Affidavit attached to Opposition)

48. In her various job titles, the Appellant performed additional work but also performed functions of a Clerk and Typist. (Appellant's Affidavit attached to Opposition)

49. HRD's January 24, 2012 letter provides a number of details relating to the Appellant's employment by the Appointing Authority, some of which details are italicized. (HRD Letter) At the end of the letter, the HRD author states,

> "Please be advised that HRD has not updated Ms. Berrios' Municipal Employment History Record to reflect the italicized transactions provided above. HRD will update Ms. Berrios' record after HRD receives clarification from the City of Holyoke regarding Ms. Berrios' reinstatement in December 2003."

(Id.) The italicized matters are:

(1) the City's provisional promotion of the Appellant from the position of Clerk and Typist to the position of Principal Clerk in January 2003;

(2) following the Appellant's lay-off, the City's reinstatement of the Appellant in December 2003 in the position of Principal Clerk, instead of the position of Clerk and Typist from which the Appellant was laid-off;

(3) the City's provisional promotion of the Appellant to the position of Head Administrative Clerk in July 2004; and

(4) the City's further provisional promotion of the Appellant to the position of Acting Personnel Assistant in July 2007. (Id.)

50. An email message dated January 12, 2012 from Veronica Gross at HRD, Civil Service Unit, to Mr. Pudelko at the City Personnel Department states,

> "Would you kindly provide this office with a copy of the **employment file of a Ms. Jeanette Berrios as it pertains to personnel transactions** regarding her employment with the City of Holyoke?
> Additionally, can you provide copies of the Annual Section 67 Report for the City of Holyoke for the **past 5 years**?
> I am in receipt of the letter from Mayor Morse regarding your designation as the local Labor Service Director for the City.
> I will be your contact with the Massachusetts Human Resources Division regarding Civil Service matters for the City of Holyoke and I look forward to working with you."

(Attachment to HRD letter (provided to the parties)(emphasis added); G.L. c. 31, § 67 requires appointing authorities to submit annual civil service employee information; *see* discussion of section 67, *infra*)

51. In a letter dated January 24, 2012[8], HRD wrote to Attorney Rodriguez-Ross for the City, in pertinent part,

> "A review of the documents provided and related to the civil service employment history of Ms. Jeannette Berrios indicates the need for a corrected Form 10 for the reinstatement effective December 8, 2003. The title on the [reinstatement] Form 10 dated January 8, 2004 should be Clerk & Typist not Principal Clerk."
>
> (Attachment to HRD Letter)

DISCUSSION

The Legal Standard for Consideration of a Motion to Dismiss

The United States Supreme Court has held that in order to survive a motion to dismiss, the non-moving party must plead only enough facts to state a claim to relief that is plausible on

[8] The letter is dated January 24, 2011 but since the appeal in this case was not filed until January 9, 2012 and the related mail and email between persons related to these events is dated 2012, we understand that the 2011 date on the letter to then-Acting City Solicitor Elizabeth Rodriguez-Ross by HRD was sent in 2012.

its face. (*See* Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547 (2007)) Thus, the non-moving party must plead enough fact to raise a reasonable expectation that discovery will reveal evidence in support of the allegations. (*See* id. at 545) Similarly, the Massachusetts Supreme Judicial Court has held that an adjudicator cannot grant a motion to dismiss if the non-moving party's factual allegations are enough to raise a right to relief above the speculative level based on the assumption that all the allegations in the appeal are true, even if doubtful in fact. (*See* Iannacchino v. Ford Motor Co., 451 Mass. 623, 635-36 (2008)) The Standard Adjudicatory Rules of Practice and Procedure (the "Rules") govern administrative adjudication at the Commission. (801 CMR 1.01, *et seq*.) However, Commission policy provides that when such rules conflict with G.L. c. 31, the latter shall prevail; there appears to be no such conflict here. The Rules indicate that the Commission may dismiss an appeal in the event the appeal fails to state a claim upon which relief can be granted. (801 CMR 1.01(7)(g)(3)) The essence of the City's Motion to Dismiss is that the Commission lacks jurisdiction concerning the Appellant's appeal because the Appellant lacked civil service status pursuant to G.L. c. 31 when her employment was terminated. In opposition thereto, the Appellant asserts that the Commission has jurisdiction over her appeal because she was a tenured civil service employee under G.L. c. 31 when she was wrongly discharged.

Applicable Civil Service Statutes

G.L. c. 31 establishes that civil service employees are to be selected on the basis of merit. The statute defines "basic merit principles" in pertinent part as, " …(a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; … (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary

and capricious actions." (G.L. c. 31, § 1) The civil service statute defines a civil service appointment as, " … an original appointment or a promotional appointment made pursuant to the provisions of the civil service law and rules." (Id.) An original appointment is an appointment made, " … after certification from an eligible list established as the result of a competitive examination for which civil service employees and non-civil service employees were eligible to apply …" subject to statutory exemptions not applicable here. (G.L. c. 31, § 6) There are certain statutory exemptions from civil service law. For example, G.L. c. 31, § 48D exempts "heads of municipal departments" as well as "Officers whose appointment or election is by a city council, town council or subject to its confirmation." (Id.)

Pursuant to G.L. c. 31, § 8, an appointing authority can promote a municipal employee, with HRD approval, if the employee has been employed in the department unit[9] in a lower title as a permanent employee for not less than one year preceding the date of the promotion request. (G.L. c. 31, § 8) Such an employee may be promoted to the next higher title in the same series[10] if there is no other employee in the lower title or any other lower title in the series who has also been so employed, and if the employee passes an appropriate examination. (Id.; *see also* G.L. c. 31, § 7) These procedures can be used to make a temporary promotion appointment to fill a vacancy in a permanent position if HRD " … is satisfied that such vacancy is likely to become permanent within a reasonable period of time." (G.L. c. 31, § 8) Sections 12 and 13 of the civil service statute authorize provisional (original) appointments requiring, *inter alia*, the approval of HRD. *See* G.L. c. 31, §§ 12-14. Pursuant to a pertinent part of G.L. c. 31, § 15, an appointing authority can make a provisional promotion, " … of a civil service employee in one

[9] G.L. c. 31, § 1 defines a "departmental unit" as, "a board, commission, department, or any division, institutional component, or other component of a department established by law, ordinance, or by-law." (Id.; The same statute defines ""department" or "division" as HRD.)

[10] G.L. c. 31, § 1 defines a "series" as, "a vertical grouping of related titles so that they form a career ladder." (Id.)

title to the next higher title in the same departmental unit[,]" but only if it is approved by HRD and there is no suitable eligible list or if the list contains the names of less than three persons eligible for and willing to accept employment. (G.L. c. 31, § 15[11]) Section 15 of G.L. c. 31 further provides, "An appointing authority which makes a provisional promotion pursuant to this section shall report such promotion to the administrator." (Id.) A provisional promotion ends when the administrator establishes a certification of the names of three people eligible for, and willing to accept the promotion. (Id.) HRD may terminate a provisional promotion if the promotion was made in violation of civil service law and the person promoted is not qualified for the job. (Id.) A state civil service employee who is promoted to a managerial position but subsequently terminated from the managerial position, may, in appropriate circumstances, be restored to the civil service position from which he was so promoted. (G.L. c. 30, § 46D [12]) However, as noted above, a municipal employee who is appointed to the position of head of a municipal department or an officer "whose appointment or election is by a city council, town council or subject to its confirmation" are exempt from civil service.

Sections 41 through 44 of G.L. c. 31 impose requirements to provide civil service employees notice and an opportunity to be heard if they believe they have been wrongly disciplined. If civil service employees believe their employer has not afforded them the appropriate notice and opportunity to be heard, they may appeal to the Commission. Under section 42 of the statute, "" … [i]f the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the

[11] The same applies if there is an eligible list following an examination for an original appointment that the appointing authority requests to be filled by a departmental promotion examination or through G.L. c. 31, § 8. (G.L. c. 31, § 15)

[12] The Opposition refers to G.L. c. 31, § 46D but the correct citation is G.L. c. 30, § 46D. The correct statute, by its definitions and terms, applies to state employees, not municipal employees.

commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights."

When civil service employees are laid-off, section 39 of the civil service statute provides for their reinstatement under prescribed conditions. In addition, section 39 provides for the reinstatement of tenured employees also under prescribed conditions, such as, " … Employees separated from positions under this section shall be reinstated prior to the appointment of any other applicants to fill such positions or similar positions …." (G.L. c. 31, § 39) Further, section 39 provides that separation of tenured employees, " … shall be taken in accordance with the provisions of section forty-one[,]" which section prescribes procedures for addressing lay-offs but also disciplinary matters and appeals of local decisions to the Civil Service Commission in appropriate circumstances. (Id.) A tenured employee is a, " … civil service employee who is employed following (1) an original appointment to a position on a permanent basis and the actual performance of the duties of such position for the probationary period required by law or (2), a promotional appointment on a permanent basis." (G.L. c. 31, § 1)

Section 67 of Chapter 31 provides, *inter alia*, that each appointing authority is required to submit a report to HRD each year that lists all civil service employees, which list, " … shall specify the series and title of the position of each such employee and the seniority of such employee as determined pursuant to section thirty-three[]", shall be signed, dated, and posted by the appointing authority. G.L. c. 31, § 67. Further, section 67 provides, "Any appointing officer who neglects or willfully refused to post a copy of such list shall be punished by a fine …." (Id.)

Appointing Authority's Argument

In support of its motion, the City argues, *inter alia*, that the appeal in this case should be dismissed because the Appellant was appointed head of the Holyoke Personnel Department in

December 2008, exempting her from the protection of civil service according to G.L. c. 31, § 48. (*See* discussion of G.L. c. 31, § 48, *supra*) Further, the City argues, the Ordinance (Code 1972, section 2-310(a)) states that the head of the Personnel Department shall be appointed by the Mayor subject to confirmation by the City Council, which G.L. c. 31, § 48 also exempts from civil service. Therefore, the City avers, the Appellant is precluded from seeking a remedy at the Commission.

The City asserts that the facts of this case are similar to the facts in Ralph v. Town of Webster, 19 MCSR 10 (2006), in which the Commission granted Webster's Motion to Dismiss for lack of jurisdiction stating that when tenured Sergeant Ralph accepted a non-civil service position as Deputy Chief of Police in Webster, he effectively terminated his civil service status. This is true, the City avers, even when there is no document specifically advising the employee of this effect. The facts here, the City argues, also necessitate application of the rule in appellate caselaw providing that civil service rights are not personal but inherent in the position. McCarthy v. Civil Service Comm'n., 32 Mass.App.Ct. 166, 170-172 (1992). Moreover, as head of the Personnel Department, the City states, the Appellant should have been aware of this result.

Even if the Commission were to decide that the Appellant's position as head of the Personnel Department did not remove her from civil service protection, the City states, the case should be dismissed because the Appellant accepted a non-civil service position at the Police Department as a victim advocate after she was laid-off from the Personnel Department in June 2003 and she requested and received funds in buybacks for unused sick and vacation time from her form civil service position. In addition, the Appellant did not request a leave of absence while employed by the Police Department, as the appellant did in Ralph v. Webster, 19 MCSR 10 (2006). Therefore, the City argues, the Appellant did not retain civil service rights following

her termination in June 2003. Since the Appellant here obtained a different job that is "unprotected" the City argues that the court's ruling in McCarthy v. Civil Serv. Comm'n, 32 Mass.App.Ct. 166, 170-71 (1992) provides that the Appellant lost her civil service status. Further, the Appellant was not protected by the laws of civil service because when she later returned to work at the City Personnel Department, HRD did not approve the reinstatement, as required, and she was placed in the position of Principal Clerk, for which she had not taken an exam, rather than being reinstated to the tenured position of Clerk and Typist from which she was laid off. Finally, the City asserts it would undermine the ability of municipalities to manage non-civil service positions if the Commission fails to grant the Motion to Dismiss. Any other arguments the City may have asserted lack merit and, therefore, are not referenced here.

Appellant's Argument

The Appellant argues, *inter alia*, that although her job title changed over the years, she retained her tenured status as a civil service employee in the position of Clerk and Typist because she continued to do the work of a Clerk and Typist through the pertinent time period. The City, she argues, understood that she was a tenured employee when she was laid off because the notice indicated she was laid off from her position of Clerk and Typist even though the City provisionally promoted her to the position of Principal Clerk just months before she was laid off. The Appellant requested and received funds in buybacks for unused sick and vacation time from her civil service position because she was required to do so after having been laid off. When she was reinstated in December 2003, the Appellant avers, the City rightfully reinstated her to the title[13] she held before she was laid off. Further, when the Appellant's title was

[13] In the Opposition, the Appellant asserts that, " … rather than hire a different clerk-typist, the Respondent complied with the mandates of M.G.L. c. 31, § 39 by seeking to reinstate Ms. Berrios to the same position or position**s** similar to those formerly held by her by way of her civil service status." Opposition, p. 2 (emphasis added).

changed to Head Administrative Clerk, it was, " … only to provide the Appellant with a pay increase due to the excellent job she was performing for the Respondents." (Opposition, p. 3) She acknowledges that she took on additional responsibilities but asserts she still did not cease performing her job as a Clerk and Typist as indicated in Exhibit 12 of the Opposition. Further, the Appellant states that the provisional promotion forms completed in this regard state the reason for the provisional promotion was that, "Ms. Berrios has accepted more responsibilities within department and has been a conscientious employee." (Opposition (Exhibit attached thereto, HRD Form 15A, 6/2002, dated March 13, 2003)). Indeed, she asserts, her supervisor "never" informed HRD of her "additional responsibilities," as the HRD Letter indicates, because she also continued to perform her tenured duties. (Opposition, p. 4)

The Appellant distinguishes McCarthy and Ralph, upon which the City relies, asserting that unlike those cases, she cannot be considered to have been promoted to a different title (Acting Personnel Director) because the City Council did not confirm her appointment and because she never ceased performing the functions of her tenured position as a Clerk and Typist. In addition, the Appellant points out that, unlike the other cases, she was laid off from her position and reinstated. The Appellant relies on the Commission decision in McDowell v. City of Springfield, Case No. D-05-148 (February 11, 2010)[14] to assert that when an employee is provisionally promoted from a tenured title, the employee may appeal a discharge from the tenured title. Therefore, the Appellant argues, since she was tenured in the position of Clerk and Typist, she is entitled to appeal her termination here.

With respect to her title as the acting head of the Personnel Department, the Appellant states that the City Council never confirmed her appointment, as required by the Ordinance. In

[14] The Commission's decision in McDowell was affirmed by the Hampden Superior Court in City of Springfield v. Civil Service Commission and Joseph McDowell, Civil Docket No. HDCV-00697, May 4, 2012.

fact, the Appellant argues, the City acknowledges that the Ordinance requires approval of such appointments. Moreover, the Appellant asserts, the City did not intend to "disturb" her civil service status. (Opposition, p. 9 and attached Affidavit of Mayor Pluta). In fact, the Appellant continues, the City failed to notify HRD that the Appellant was no longer a civil service employee. (Opposition, p. 9; *see also* id., fn 5) Indeed, Mayor Pluta's affidavit states that, "Unless Ms. Berrios was confirmed by the City Council, I never intended on notifying HRD of any change in her previous status as she was performing all the duties encompassed within her civil service job title." (Finding of Fact 32; Affidavit of Mayor Pluta attached to Opposition) As further evidence that she retained her civil service status, the Appellant argues that when she was reinstated in the Personnel Department following a lay off in 2003, the Department did not hire a Clerk and Typist because she continued to do the work of a Clerk and Typist. (Opposition, p. 11). Even when the Appellant was later the acting Department head, she asserts, she was the only employee in the Department for nearly one year, during which time she continued performing her clerical and typist duties. However, the Appellant continues, if she was appointed Acting Personnel Director, under G.L. c. 30, § 46D, she should have been returned to her tenured position when she was separated from the appointed title. Finally, the Appellant argues that termination of her Acting Personnel Director job by Mayor-Elect Morse at his campaign office, in the presence of then-City Attorney Pudelko (who was subsequently appointed as Personnel Director), was unauthorized by the Appointing Authority and is the type of unbridled and unjustified conduct that civil service law was enacted to prevent. For these reasons, the Appellant argues, the City's Motion to Dismiss should be denied. Any other arguments the Appellant may have asserted lack merit and, therefore, are not referenced here.

Analysis

Civil service law is a detailed statute establishing a civil service system to ensure fairness in public employment. City of Somerville v. Somerville Municipal Employees Assoc., 20 Mass. App. Ct. 594, 597 (1985). In filling a vacancy, even a temporary one, appointing authorities are required, " … to follow the carefully prescribed requirements set forth in c. 31." Id. at 597. Chapter 31 of the General Laws further provides that a tenured civil service employee shall not be discharged, for example, without just cause and an appropriate hearing. G.L. c. 31, §§ 41 – 44. At issue here is the Appellant's employment termination following what appears to be a series of events, including her reinstatement after a lay off and provisional promotions in which the Appellant went from being a tenured Clerk and Typist to Acting Personnel Director.

The Motion to Dismiss argues, in effect, that the Appellant is not a tenured civil service employee and, therefore, she is not entitled to the protections of G.L. c. 31, including an appeal to this Commission, for allegedly having been wrongly terminated from her employment with the City. To this end, the Commission assesses the Appellant's civil service status. The Appellant was originally appointed and had tenure in the title of Clerk and Typist in the Holyoke Personnel Department in 1996. In the five-year period from 2003 to 2008, the Appellant was repeatedly promoted provisionally within the Personnel Department beyond the next higher grade in at least two other job title series because she had " … accepted more responsibilities within the department and ha[d] been a conscientious employee[]" and because the Appellant's employers sought to reward her for the work she was going. (Attachments to Opposition)

G.L. c. 31, § 15 authorizes provisional promotions in certain circumstances. (*See* discussion of G.L. c. 31, § 15, *supra*) It is well established that examinations for all but a limited number of civil service jobs have not been held for a long time due, resulting in many

provisional appointments and/or promotions. The Commission reiterates its longstanding admonishment to all appointing authorities and the state's Human Resources Division to end the unhealthy and improper reliance on provisional appointments and promotions because such conditions can yield the events established by a preponderance of the evidence in this case. As the Commission has noted before, the solution need not require the establishment of cost-prohibitive and often outdated paper-and-pencil tests. Rather the solution can include a selection process that emphasizes past performance, managerial evaluations and candidate interviews, for example. (*See, e.g.*, Holt v. Department of Revenue and DPA, CSC Case No. G-2463 (1994), and Porio, Shea and Trachtenberg v. Department of Revenue, CSC Case Nos. D-02-759, D-02-763 and D-02-715 (2006)).

There is no indication that HRD was advised of, or that it approved the Appellant's provisional promotions. Further, the Appellant was provisionally promoted from her tenured title of Clerk and Typist in the Clerk and Typist Series to the title Principal Clerk on 1/1/03 in the Clerical Series, both of which series are in the same Municlass department. The next higher title above Clerk and Typist was Senior Clerk and Typist, not Principal Clerk. In the summer of 2004, the Appellant was provisionally promoted to the title "Head Administrative Clerk," which title is in the Clerical Series, not the Clerk and Typist Series, both of which series are in the same Municlass department. Moreover, within the Clerical Series, the next higher title after "Principal Clerk" is "Head Clerk," not "Head Administrative Clerk." In addition, the 2004 provisional promotion form stated that the Appellant was being promoted from her permanent title as Principal Clerk, when she was not permanent in that title. On or about July 1, 2007, the Appellant was provisionally promoted to the title "Personnel Assistant," which is the lowest title in the Personnel Management Series, which is in the Personnel Group, and not within either the

Clerical Series or Clerk and Typist Series, both of which are in the Administrative Group. The 2007 provisional promotion form stated that the Appellant was being promoted from her permanent title as Head Administrative Clerk, when she was not permanent in that title.[15] In December 2008, the Appellant was provisionally promoted from Personnel Assistant, the lowest title in the Personnel Management Series of the Personnel Group, to the title of Acting Personnel Director in the same series and group. As Acting Personnel Director, the Appellant received the salary of, and performed functions of, Personnel Director.[16] Between the lowest and highest titles in the Personnel Management Series are the titles Assistant Personnel Director and Personnel Technician, to which the Appellant was not provisionally promoted.

The Appellant argues that notwithstanding her provisional promotions and appointment to the title of Acting Personnel Director, she retains her permanent Clerk and Typist title, which preserves her right to appeal her termination to this Commission. She asserts that G.L. c. 30, § 46D explicitly provides that a tenured employee who is promoted to a management retains their civil service status when they are promoted to a management position.

Section 46D of G.L. c. 30 states,

> Section 46D. Whenever it is deemed practicable in the judgment of the appointing authority and with concurrence with the secretary, where applicable, appointments to positions allocated to job groups M-I through M-IV, inclusive, of the management salary schedule shall be made by promoting employees of the commonwealth serving in positions assigned to the general salary schedule; and appointments to positions allocated to job groups M-V through M-XII, inclusive, in the management salary schedule shall be made by promoting managers of the commonwealth serving in positions allocated to job groups M-I through M-IV, inclusive, in the management salary schedule.
> In every instance of a manager or employee so promoted from a position classified under chapter thirty-one of the General Laws or from a position in which at the time of promotion he shall have tenure by reason of section nine A of this chapter, upon termination of his service in the position to which he was so promoted, the manager or employee shall, if he so requests, be restored to the position from which he shall have been promoted, or to a position

[15] The 2007 provisional promotion is dated April 8, 2008 but indicates that the effective date of the provisional appointment is nine months earlier (July 1, 2007). (Attachment to Opposition)
[16] There is no indication of the Appellant's salary in the other titles to which she was provisionally promoted.

> in the same state agency, without impairment of his civil service status or his tenure by reason of said section nine A or loss of the seniority, retirement and other rights to which uninterrupted service in such position would have entitled him; provided, however, that if his service in the position to which he was promoted shall have been terminated for cause, his right to be restored shall be determined by the civil service commission, in accordance with the standards applied by said commissioner in administering chapter thirty-one.

G.L. c. 30, § 46D (emphasis added) However, by its terms and the definitions provided in G.L. c. 30, section 46D applies to state employees, not municipal employees and, therefore, does not apply to the Appellant.

As a corollary theory, the Appellant asserts that even though she was repeatedly provisionally promoted, she continued to perform the work of a Clerk and Typist. To this end, the Appellant offers the affidavit of Mayor Pluta, which attests that she did not intend to change the Appellant's civil service status under the circumstances. (Finding of Fact 32). The reason for the Appellant's provisional promotions, as the Appellant's Opposition acknowledges, was to increase her salary for the good work she was doing, although the Appellant also acknowledges that at least at some point she was taking on additional responsibilities too. Opposition, pp. 2 – 4. Indeed, the provisional promotion forms state the reason for the promotions is that, "Ms. Berrios has accepted more responsibilities within the department and has been a conscientious employee." (Attachments to Opposition) However, HRD has not indicated that these title changes affected the Appellant's tenure as a Clerk and Typist. In fact, HRD's communications with the City in January 2012 simply indicates that it will update the Appellant's employment history record to reflect the provisional promotions when HRD receives clarification from the City that the Appellant's reinstatement effective December 8, 2003 is to the title Clerk and Typist, not Principal Clerk. (Findings of Fact 48 – 50; HRD has also requested annual personnel reports pursuant to G.L. c. 31, § 67 for the past five years, id.)

The Appellant relies on the Commission's decision in McDowell v. City of Springfield, *supra*, to argue that she is entitled to be returned to her permanent position after having been terminated from the title Acting Personnel Director. In McDowell, the Appellant was a tenured employee in a labor service position prior to his appointment to a provisional position in the official service. While in his provisional position, the Appellant and the City of Springfield entered into a one-year contract specifically excepting the Appellant from civil service coverage and inclusion in a collective bargaining agreement. The City of Springfield subsequently discharged McDowell. The Commission found the contract agreement unenforceable because it violated a strong public policy and found that, under the circumstances, an employee who had, " … tenured status in a previously held civil service position, may appeal to the Commission from a discharge or removal 'from' that tenured position." (McDowell, p. 4). The Appellant in the instant case did not suffer from an agreement precluding her coverage by civil service law or a collective bargaining agreement. However, neither was her provisional appointment to Acting Director of Personnel confirmed by the City. For the same reasons, the Commission's ruling in Ralph v. Town of Webster, D-04-110 (2006) is not controlling. As noted by the City, in Ralph, the Commission granted Webster's Motion to Dismiss for lack of jurisdiction stating that when tenured Sergeant Ralph accepted a non-civil service position as Deputy Chief of Police in Webster, he effectively terminated his civil service status. Since the Appellant in the instant case was not confirmed in the position of Acting Personnel Director, she cannot be deemed to have terminated her tenured civil service position. As noted in McCarthy v. Civil Service Comm'n., 32 Mass.App.Ct. 166, 170-172 (1992), civil service rights are not personal but inhere in the position. McCarthy v. Civil Service Comm'n., 32 Mass.App.Ct. 166, 170-172 (1992).

As further indicated in the January, 2012 communications from HRD to the City, the Appellant's position is confused by the manner in which the Appellant was reinstated after having been laid-off, though not fatally. The Appellant was laid off from the Clerk and Typist position in 2003 but reinstated into the position of Principal Clerk (a title above the next higher title and in a different series) roughly six months later. As noted above, section 39 of G.L. c. 31 requires that an employee who is being reinstated be reinstated in the permanent title from which he or she was laid-off. As noted in Findings of Fact 48 – 51, HRD indicates that it will update the Appellant's employment history record when it receives clarification from the City that the Appellant was reinstated properly into her tenured position.

The Appellant was appointed to the title of Acting Personnel Director in December 2008. As indicated above, pursuant to G.L. c. 31, § 38, heads of municipal departments, in addition to those whose appointments require confirmation by a municipal council, are exempt from civil service. However, the Appellant's appointment was not confirmed by the City Council. In addition, Mayor Pluta stated that the Appellant's appointment to the title of Acting Personnel Director was not intended to affect her civil service status and this is the reason she did not notify HRD of the appointment.

We take note of the manner in which the Appellant's employment was terminated. It is true that the " … underlying purpose of the civil service system [is] 'to guard against political considerations, favoritism and bias in governmental employment decisions.'" Falmouth v. Civil Service Comm'n., 447 Mass. 814, 823 (2006). The Appellant was called to the campaign office of then Mayor-Elect Morse in late December 2011 and told that her employment was terminated. After he was sworn into office, Mayor Morse sent the Appellant a letter stating the Appellant is not qualified for the position and confirming termination of her employment. (Attachment to

Opposition) Pursuant to the Ordinance (Article III, Division 2, section 2/311(d)), a Personnel Director is appointed for a term of five years and the Personnel Administrator holds office until his or her successor has been appointed and sworn in, or until removed for "cause." It is not clear what meaning the City gives to "cause" in the Ordinance but it is not determinative in regard to civil service matters. The City did not afford the Appellant, a tenured civil service employee, her rights to receive proper notice and the opportunity to be heard when terminated, as required by G.L. c. 31, §§ 41 through 44. As a tenured civil service employee whose rights were thus denied and who rights were prejudiced thereby, the Commissions is required to " … order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights."

Conclusion

As indicated above, the Appellant has raised sufficient facts to state a claim to relief. Specifically, the Appellant has offered enough facts to indicate that, notwithstanding her provisional promotions, lay-off, reinstatement, and then unconfirmed appointment as Acting Personnel Director, she retained her status as a tenured civil service employee. Further, there is no question that the City did not provide notice and afford the Appellant an opportunity to be heard regarding termination of her employment, pursuant to G.L. c. 31, § 41-44. Likewise, there are sufficient facts indicating that the Appellant having lost her job, under G.L. c. 31, § 42, has been prejudiced thereby. Therefore, the City's Motion to Dismiss is ***denied***.

Further, the facts establish that the Appellant is entitled to relief. Therefore, the City is hereby ***ordered***:

- to correct the Appellant's reinstatement effective January 1, 2003 forthwith to the permanent position of Clerk;
- to reinstate the Appellant in her tenured civil service position as a Clerk and Typist forthwith without loss of compensation or other rights as of January 3, 2012 as a result of the City having failed to afford the Appellant her rights under G.L. c. 31, §§ 41-44 when it terminated her employment on January 3, 2012; and
- by August 15, 2012, to provide the information sought by HRD in its January 2012 communications with the City.

Civil Service Commission

_____
Cynthia A. Ittleman, Esq.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners [Marquis – absent] on July 26, 2012.

A True Record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision as stated below.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days from the effective date specified in this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Shawn P. Allen, Esq. (for Appellant)
Elizabeth Rodriguez-Ross, Esq. (for Respondent)
John Marra, Esq. (HRD)