

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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TWENTY-SEVEN FORMER
BOSTON MUNICIPAL POLICE
OFFICERS, SERGEANTS AND
LIEUTENANTS,

Appellants

v.

D1-07-05 through D1-07-31

CITY OF BOSTON,

Respondent

Appellants' Attorney:

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Commissioners:

Christopher C. Bowman
John J. Guerin

DECISION

The Respondent abolished the titles of "Boston Municipal Police Officer", "Boston Municipal Police Sergeant" and "Boston Municipal Police Lieutenant" effective

December 31, 2006. Pursuant to G.L. c. 31, §35, the Respondent assented to – and the state’s Human Resource Division (HRD) approved – the transfer of 33 of these officers (not the Appellants) *from* the BMPD *to* the Boston Police Department. (See BPPA et al v. HRD, City of Boston et al, Docket No. G-07-33.) As part of the same process under G.L. c. 31, § 35, the City did not assent to the transfer of the 27 Appellants that are the subject of the instant appeal.¹

Pursuant to G.L. c. 31, §40, the Appellants seek to elect to transfer to a position with the Boston Police Department (hereafter “BPD”), without loss of seniority, retirement or other rights. In addition, the Appellants seek an order from the Commission making them whole for any lost wages and benefits since January 1, 2007.

The Appellants jointly filed one appeal document. The parties appeared for a pre-hearing conference before the Commission on January 19, 2007. At the pre-hearing, the City filed a Motion to Dismiss and simultaneously served said motion on the Appellants. The Appellants were allowed until February 5, 2007 to file an opposition to the Motion. Rather than rule on the City’s Motion, the Commission opted to proceed with a full hearing on the underlying appeals. The parties appeared before the Commission for a full hearing on February 16th and 23rd, 2007. At the outset of the hearing on February 16, 2007, the Appellants stipulated that their appeals presented no issues under G.L. c. 31 § 42 concerning the procedure the Appointing Authority utilized for affecting these lay

¹ Karen Ahern-Stalcup (Sgt.), D-07-05; Ulric Alfred, Jr., D1-07-06; Anthony Allen, D1-07-07; Darlene Arroyo-Francis, D1-07-08; James Bogiages, D1-07-09; Paul Bonaceto (Sgt.), D1-07-10; Rafael Centro, D1-07-11; Joseph Coppinger, D1-07-12; Paul Costello, D1-07-13; John Daley, D1-07-14; Joseph DeLeo, D1-07-15; Francis DeRosa (Lt.), D1-07-16; Thomas Doyle (Lt.), D1-07-17; Diego Flores, D1-07-18; Matthew MacDonald, D1-07-19, Annie McCormack, D1-07-20; John McGibbon, D1-07-21; Kevin McGrail, D1-07-22; Michael Mokler (Lt.), D1-07-23; Edward Murphy (Sgt.), D1-07-24; Kevin O’Loughlin, D1-07-25; Daniel Ring (Sgt.), D1-07-26; Albert Riva, D1-07-27; Joseph Robles (Sgt.), D1-07-28; Julia Rutledge, D1-07-29; Wayne Sallale, D1-07-30; Simone Sclafani, D1-07-31.

offs. Nor do the Appellants question the Appointing Authority's reasons for abolishing the armed portion of the Boston Municipal Police Department ("BMPD"). Nor do the Appellants seek to be restored to their previous positions and titles. Rather, as referenced above, the Appellants seek to be transferred to the Boston Police Department.

FINDINGS OF FACT

Sixty - one (61) exhibits² were entered into evidence. A stipulation between the parties was read into the record as follows:

1. The 27 Appellants were until December 31, 2006 patrol or superior officers of the BMPD, a division of the Property & Construction Management Department ("PCMD") of the City of Boston. On December 31, 2006 they were laid off by Respondent.
2. The Appellants are all police academy trained at an academy approved by the Massachusetts Criminal Justice Training Council.
3. The Appellants all have permanent civil service status by virtue of St. 1998, c. 282 or by virtue of the Commission's decision in G-06-113.

² At the conclusion of the hearing on February 23, 2007 the record was kept open for submission of further exhibits. Appellants submitted five (5) exhibits by letter dated February 26, 2007. Those exhibits are as follows: 1. City of Boston Special Police Officer Identification expires March 31, 1990. (Front and back) (Footnote continued on next page)

2. Memorandum dated July 25, 1994 from Deputy Superintendent Gerard McHale to Captain Thomas Doyle.
3. Memorandum dated December 14, 1994 from Deputy Superintendent Gerard McHale to Lieutenant Thomas Doyle. (Reduction in Rank)
4. Memorandum dated December 14, 1994 from Deputy Superintendent Gerard McHale to Lieutenant Thomas Doyle. (Shift Re- assignment)
5. Memorandum dated February 3, 1995 from Deputy Superintendent Gerard McHale to Lieutenant Thomas Doyle. (Reduction in Rank)

These exhibits are entered into evidence as Exhibits 62 - 66 respectively.

Respondent also submitted the attachments to the Supplemental Affidavit of Sally McNeely which had previously been entered into evidence as Exhibit 45. This document shall replace Exhibit 45.

4. During the course of their employment as Patrol or Superior Officers with the BMPD the Appellants performed a police function on property owned by the City of Boston.
5. BMPD Patrol and Superior Officers were accorded Group 4 status for purposes of retirement per G.L. c. 32.
6. The BPD will have hired 280 new police officers in 2006 and 2007.

In addition, based on the documents entered into evidence and the testimony of:

For the Respondent:

- Stephen J. Crosby, Respondent's Deputy Commissioner of Property and Construction Management;
- BPD Deputy Superintendent Kevin Foley;
- BPD Deputy Superintendent;

For the Appellants:

- BPD Deputy Superintendent Daniel Linskey;
- Officer Paul Hamilton, Former Boston Municipal Police Officer;
- Thomas Broderick, Senior Communications Supervisor, BMPD Operations Center;
- Officer Rafael Centeno, Former Boston Municipal Police Officer;
- Officer Wayne Sallale, Former Boston Municipal Police Officer;
- Lieutenant Tom Doyle, Former Boston Municipal Police Lieutenant.

We make the following additional findings of fact:

1. In 1979, the City established the Boston Municipal Security Force ("BMSF") within its Public Facilities Department.

2. In 1994, the City renamed the BMSF as the Boston Municipal Police Department and moved the newly-renamed entity from the Public Facilities Department to what is now the City's Property and Construction Management Department.
3. The BMPD contained two divisions: 1) unarmed site officers; and 2) armed patrol officers.
4. The Property & Construction Management Department of the City of Boston is the Appointing Authority with power to appoint or employ personnel in the civil service positions of the BMPD. (Exhibit 10)
5. The Boston Police Commissioner is the Appointing Authority with power to appoint or employ personnel in the civil service positions of the BPD. (Exhibit 4)
6. On December 31, 2006, Property & Construction Management abolished the armed portion of the BMPD. Property & Construction Management continues to provide unarmed security services via site officers to City-owned property through its division entitled, "Municipal Protective Services". (Exhibits 21 – 23; Testimony of Crosby)
7. Prior to December 31, 2006, the BPD invited employees in the title of Boston Municipal Police Officer, Boston Municipal Police Sergeant and Boston Municipal Police Lieutenant to apply, pursuant to G.L. c. 31 § 35, for lateral transfers to the BPD in the title of Police Officer. (Testimony)
8. Late in 2006, HRD received individual requests from 33 officers (not the Appellants) then employed by the BMPD to be voluntarily transferred to the BPD. The City had assented to the transfer of all 33 of these officers (unlike the Appellants in the instant appeal for whom the City did not assent to their transfer). On December 28, 2006,

HRD issued its decision to approve the transfer requests of these 33 other officers.
(Exhibit 2)

9. HRD's decision approved the transfer of these 33 other officers as having satisfied the terms of G.L. c. 31, s. 35 and it found that: 1) it had received requests to transfer 33 BMPD officers with the assent of the "relevant appointing authorities," which were Police Commissioner Edward F. Davis of the BPD and Mr. Michael J. Galvin, Commissioner of the Boston Property and Construction Management department; 2) the statute "permits any 'permanent employee in a [civil service] departmental unit' to request a lateral transfer to a different department unit" and that the 33 officers to be transferred are permanent civil service employees (20 of them pursuant to Chapter 282 of the Acts of 1998 and 13 of them pursuant to the Commission's decision in Certain Boston Municipal Police Officers and Sergeants v. City of Boston, et. al., G-06-113, Oct. 26, 2006); 3) "considerable documentation" over "several years" indicates that the requested transfers were "similar" positions from a variety of analytical standpoints, as supported by a previous Commission decision and the Appeals Court (citing Goncalves v. Boston, 66 Mass. App. Ct., 180, 185, n.11 (2006)); and 4) the city "provided sound and sufficient reasons" why the transfers are for the public good as they address the city's "urgent need for scores of additional police officers," the limitations of the pool of eligible police cadets, the few remaining residents on the open competitive list, the speed with which the 33 transferees could be further trained and on the streets, the benefits of a "unified command," consolidation of forces and other efficiencies. (Exhibit 2)

10. The majority of the Appellants in the instant appeal are individuals who sought a lateral transfer but were not selected because the Boston Police Department determined that they failed to meet the BPD's entrance requirements. As the City did not assent to their transfer, their names were not forwarded to the state's Human Resources Division pursuant to G.L. c, 35, unlike the above-referenced 33 officers who were ultimately transferred. (Exhibit 42)
11. Exhibit 42 is a list of all 27 Appellants who are the subject of the instant appeal with a one sentence description of the specific reason pertaining to each applicant that the City did not assent to their transfer request. None of the Appellants had seen this list prior to the start of the hearing before the Commission nor were they aware of the specific reasons why the City had not assented to their individual transfer requests. (Exhibit 42; Testimony)
12. According to Exhibit 42, 11 of the 27 Appellants failed a background check; 7 of the Appellants either failed or did not show for a physical abilities test and/or medical examination; 5 of the Appellants failed a psychological evaluation; and the remaining 4 Appellants either did not request and/or withdrew from the transfer process. (Exhibit 42)
13. The names of all of the Appellants currently appear on the statewide reemployment list for the position of Police Officer, with the exception of the names of Appellants Doyle and DeRosa, each of whom filed for retirement prior to December 31, 2006. (Exhibit 1)
14. In Certain Boston Municipal Police Officers and Sergeants, G-06-113 (the so-called "Chapter 310 Petition"), the Commission held that the Petitioners in the titles of

“Boston Municipal Police Officer” and “Boston Municipal Police Sergeant” would be made permanent in those positions. (Exhibit 20)

15. HRD has determined that the title of “Boston Municipal Police Officer” (Civil Service Code 0083P) is a different civil service classification from a “Boston Police Officer” (Civil Service Code 0083A). (Exhibit 45) (See also Exhibit 19) However, HRD approved lateral transfers of those BMPD Officers that met the BPD’s entrance requirements because the entrance requirements for both Appointing Authorities are the same and because “the additional requirements now being imposed by the City of Boston on the transferring officers are substantially similar to the requirements for original appointment to the BPD”. (Exhibit 2)
16. In deciding the above-referenced “Chapter 310 Petition”, G-06-113, the Commission admonished the BPD to ensure that lateral transfer applicants meet the BPD’s entrance requirements. The Commission concluded, “This order grants...provisional employees permanency in their respective positions within the Boston Municipal Police Department. While this permanency (within the police officer series) will eliminate one bureaucratic barrier to the possible transfer of the Appellants to the Boston Police Department, G.L. c. 31 § 35 specifically requires the City to demonstrate sound and sufficient reasons to show that the transfer will be for the public good. Inherent in that requirement is that the City ensure, through the use of its traditional background checks and interview process on a case-by-case basis, that any individual transferred meets the high standards required to serve as a Boston Police Officer. That decision, in regard to the possible transfer of these Appellants, rests with the Boston Police Department and HRD”. (emphasis added) (Exhibit 20)

17. In approving lateral transfers of the applicants who qualified, HRD stated that only the transfer of qualified individuals was consistent with the basic merit principles of civil service law. HRD noted the challenge of the Boston Police Patrolmen's Association in a related Superior Court case and stated that the screening of lateral transfer applicants ensured that the BPD process was consistent with basic merit principles. (Exhibit 2)
18. HRD noted, "in recent months, each of the transfer candidates has gone through (or will have gone through before beginning patrol) all of the City's internal requirements necessary for appointment to an entry-level police officer position with the BPD. They have undergone extensive background checks, thorough medical examinations, a written examination, and a psychological review. They have passed the Commonwealth's Physical Aptitude Test for municipal police officers. They have undergone extensive training and will be subject to several more weeks of training before beginning patrol duties. In short, they have undergone, over the past five months, the same rigorous screening and evaluation process applicable to any BPD recruit being processed from a civil service certification list". (Exhibit 2)
19. Considerable testimony was taken at the Commission hearing regarding whether the BMPD had been serving as a distinct force over the past several years (as the City argues) or whether the BMPD had been enveloped, both in terms of duties, functions and reporting structure, into the Boston Police Department.
20. The City entered Exhibits 21 and 22 to show that the BMPD and the BPD had separate chains of command and deployed separate police forces within the geographic boundaries of the same city. The BMPD protects City-owned property.

The jurisdiction of the BPD includes all property located within the City's boundaries (except property of the State or Federal government).

21. The Appellants pointed to Exhibit 39 to assert that the BMPD officers all had arrest powers including authority to arrest for a felony committed in their presence anywhere in the City of Boston. The record of arrests by BMPD Police Officers for the years 2003 - 2006 show that they made numerous arrests both on and off of City-owned property. (Exhibit 39)
22. In regard to chain of command and reporting structure, the Appellants testified that the BMPD was under the direct chain of command of the BPD. The BMPD was classified as "Area I" on the BPD organizational chart; the Deputy Chief of the BMPD reported to a Deputy Superintendent of the BPD; and the Commissioner of the BPD was responsible for granting police powers and firearms licensing to BMPD Police Officers. (Testimony; Exhibit 33)
23. The City argued that the PCMD and BPD are separate appointing authorities; the Boston Police Commissioner had no direct authority to hire, discipline, supervise, investigate or terminate the armed personnel of the BMPD; the two police forces had separate rank structures; and each police agency had separate facilities, equipment and administrative staff. (Testimony)
24. In regard to the above-referenced organization chart, the chart shows that that "Area I" was actually the "Special Police Division" which includes all persons to whom the BPD Commissioner has issued a license whether or not they are on the BMPD. (Exhibits 12 and 34)

25. In regard to duties and functions, the Appellants argued that the duties of a BMPD Police Officer were the same as any other police officer and included responding to radio calls for service assistance, safety checks of City owned property, enforcement of all laws and ordinances of the City, arresting persons who commit violations of law, insuring the maintenance of public order, appearing in court representing the Department in all arrests and other police related duties. (Testimony)
26. The Appellants testified that while the primary responsibility of the BMPD Police Officers revolved around providing an armed police function at City owned property, their functions were not solely limited in this regard. BMPD Police Officers regularly performed duties throughout the City including assisting motorists on the roadway, assisting in traffic control at the scene of a motor vehicle accident; making an arrest of any crime committed in their presence; and assisting with special events such as parades, conventions, etc. (Testimony, Exhibits 55, 56, 58, 59, 60)
27. As an example, the Appellants testified about an arrest made by former BMPD Police Officer Hamilton on Morton and Harvard Streets. Officer Hamilton and his partner received a call of shots fired. They pursued two suspects and made an arrest after discovering one of the individuals had possession of a sawed-off shotgun. (Testimony of Hamilton)
28. In his 19 years as a BMPD Police Officer, Hamilton made 1000 -1500 arrests. Of these 50 -100 were made off of City owned property. BMPD Police Officer Centeno made 50 - 100 arrests between 2003 - 2006. Approximately sixty per cent of those arrests were made off of City owned property. (Testimony of Hamilton)

29. On the issue of whether the two forces were distinct forces with different job responsibilities, the City showed that BMPD officer Paul Hamilton received a one-day suspension from BMPD Deputy Director Robert Francis for, among other things, initiating an “operation outside the geographical jurisdiction of the BMP”. (Exhibit 47)
30. The Commission also granted the City’s motion to take administrative notice of the Appeals Courts decision in Goncalves v. Boston, 66 Mass. App. Ct. 180 (2006). In Goncalves, the Appeals Court held, “While the duties of the two forces are ‘comparable in many respects’, they are nevertheless two distinct forces, with different hiring processes, job responsibilities, salary scales and benefits”. (Exhibit 19)
31. Regarding whether or not the functions previously performed by the BMPD officers were transferred to the Boston Police Department, the Appellants testified that when a call came into the BMPD dispatch center prior to January 1, 2007 a BMPD Police Officer would be dispatched directly by the dispatcher. Since January 1, 2007 when a call comes into the BMPD dispatch center, the BPD dispatch is called and a BPD Officer is dispatched. (Testimony)
32. The Appellants also testified that BMPD dispatch center also monitored the 600 alarms located at various City owned properties. When an alarm came into the BMPD dispatch center prior to January 1, 2007 a BMPD Police Officer would be dispatched directly by the dispatcher. Since January 1, 2007 when an alarm comes into the BMPD dispatch center the BPD dispatch is called and a BPD Officer is dispatched. (Testimony)

33. The Property & Construction Management operating budget for fiscal year 2007 includes \$ 2,083,912 in salary savings as a result of the elimination of the positions of “Boston Municipal Police Officer”, “Boston Municipal Police Sergeant” and “Boston Municipal Police Lieutenant”. (Exhibit 23 and Testimony of Crosby)
34. The BPD has had a need to hire additional police officers and will have hired a total of 280 additional police officers during the calendar years 2006 and 2007. (Exhibit 44) BPD would hire police officers for these budgeted positions whether or not Property & Construction Management abolished the armed portion of the BMPD. (Testimony of Crosby).
35. On November 14, 2006, BMPD employees met with Sally McNeely of HRD for a question and answer period. Stephen Crosby and Thomas Doyle both provided testimony regarding this meeting. Ms. McNeely responded to questions directly from BMPD employees. Attorneys for BMPD employees attended. According to Doyle, the meeting was well-attended. (Testimony of Crosby and Doyle)
36. Paul Hamilton, a former BMPD officer and former President of the Municipal Police Patrolmen’s Association testified that on previous occasions he told both Mayor Thomas M. Menino and Boston Police Commissioner Kathleen O’Toole that BMPD officers are under- utilized based on their limited jurisdiction. He advocated that BMPD officers be folded in to the Boston Police Department. (Testimony of Hamilton)

CONCLUSION

Applicability of Section 40

G.L. c. 31 § 40 provides in relevant part,

If the position of a permanent employee is abolished as the result of the transfer of the functions of such position to another department, division, board or commission, such employee may elect to have his name placed on the reemployment list or to be transferred, subject to the approval of the administrator, to a similar position in such department, division, board or commission without loss of seniority, retirement or other rights, notwithstanding the provisions of section thirty-three.

The Appellants argue that the evidence establishes that the positions held by Appellants with the Boston Municipal Police Department were abolished as a result of the transfer of the functions of their positions to the Boston Police Department.

In these circumstances, according to the Appellants, the clear and unambiguous language of §40 mandates that the Appellants be given an opportunity, by the municipal employer, to make an election to take a similar position in the department where the functions of their former positions have been transferred to. Again according to the Appellants, the City must afford the Appellants the right to make an election to transfer to the Boston Police Department as this is the department where the functions of their former jobs were transferred as a result of the abolition of their positions.

In their post-hearing brief, the City argues that the Appellants had no automatic right to transfer to the BPD under Section 40 as the BPD and Property & Construction Management constitute separate and distinct Appointing Authorities.³ The Boston Police

³ Under civil service definitions, an “Appointing Authority” may have several “departmental units”. The term “departmental unit” that appears in G.L. c. 31 § 39 is defined at G.L. c. 31 § 1 as, “a board, commission, department, or any division, institutional component, or other component of a department established by law, ordinance, or by-law”. Thus “departmental units”, themselves, may have several components. G.L. c. 31 § 1 defines an “Appointing Authority” as “any person, board or commission with power to appoint or employ personnel in civil service positions”. Thus, the “departmental units” of an “Appointing Authority” are those “department units” for

Department, the City argues, is a separate Appointing Authority from the Property & Construction Management, while the last paragraph of section 40 is limited to transfer of functions among departmental units within the same Appointing Authority. The Boston Police Commissioner is the only public official that fits the definition of “Appointing Authority” for the BPD. The City argues that nothing could be clearer than the language of the “Police Commissioner’s Statute” that states, “The police commissioner shall have the authority to appoint, establish and organize the police of said city . . .The police commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department and of the police force of the department . . .” Exhibit 4, (Police Commissioner’s Statute, St. 1962, c. 322)

The City challenges the Appellants’ reliance on the final paragraph of G.L. c. 31, § 40 as, according to the City, the Appellants were laid off pursuant to G.L. c. 31, § 39 when Property & Construction Management abolished their titles and positions.⁴ Hence, the City argues, the Appellants could not automatically transfer to BPD for the same reason that they could not bump less senior BPD Police Officers.

In Herlihy v. Civil Service Commission, 44 Mass. App. Ct. 835 (1998) rev. den. 428 Mass. 1104 (1998), a case cited by the City, the Appeals Court held that the Commonwealth’s Department of Mental Health could not terminate all senior-level psychologists at a particular mental health center without giving them the right to

which the Appointing Authority has the “power to appoint or employ personnel in civil service positions”.

⁴ G.L. c. 31, § 39 provides in part, “If permanent employees in positions having the same title in a departmental unit are to be separated from such positions because of lack of work or lack of money or abolition of positions, they shall, except as hereinafter provided, be separated from employment according to their seniority in such unit and

displace psychologists with less seniority at the Department's other centers. The Appeals Court rejected the Department's regulatory definition that "departmental unit" meant each individual facility under the Department's control because departmental units "must be established 'by law, ordinance, or by-law' rather than defined by regulations". Furthermore, expressing concern that the Department of Mental Health's narrow definition of "departmental unit" contravened the purpose of bumping rights, the Court said that, "[s]o long as the employee is governed by the same organizational statute, rules and regulations, transfer from one geographical area to another should not cause loss of a seniority rating".⁵

Here, in contrast, the City argues that the BPD and the Property & Construction Management Department were each established through separate organizational statutes and ordinances and there is no question that the Property & Construction Management Department and the BPD are two separate and distinct Appointing Authorities pursuant to G.L. c. 31, § 1. See Goncalves v. Boston, 66 Mass. App. Ct. 180 (2006). The Boston Police Commissioner is the Appointing Authority for the BPD as a matter of law. Exhibit 4, (Police Commissioner's Statute, St. 1962, c. 322). Property & Construction Management is the Appointing Authority for the BMPD, as Property & Construction Management was created through the Code of Ordinances legislated by the Boston City Council. See Exhibit 10 (Boston City Code-Ordinances, Section 11-7, "Property Management Department"). The Commission agrees. The Commissioner of Property &

shall be reinstated in the same unit and in the same positions or positions similar to those formerly held by them according to such seniority . . ."

⁵ See also Holman v. Town of Arlington, 17 MCSR 108, 109 (2004) ("The Town acted in accordance with the civil service laws in denying the Appellants the right to bump between departments").

Construction Management had no authority to hire BPD Police Officers and the Boston Police Commissioner had no authority to hire Property & Construction Management employees, including BMPD Police Officers. Further, the Commission concurs with the City that it is well settled that the departments of the City of Boston, established by statutes and municipal ordinances, are separate Appointing Authorities and that these Appointing Authorities may further subdivide into “departmental units”. For example, with respect to the City’s Department of Public Works (“DPW”) the Commission held in Barrett v. Department of Public Works, 6 MCSR 167, 167 (1993),

The four divisions of Boston’s DPW are established by ordinance. According to the Appointing Authority, and undisputed by the Appellant, the City of Boston Code, Chapter 5, Ordinance 11, Section 181 gave the Commissioner of DPW the power to divide the DPW into separate divisions.

The Property & Construction Management Department of the City of Boston is the Appointing Authority with the power to appoint or employ personnel in the civil service positions of the BMPD. The Chief of Public Property is a cabinet level position within the City of Boston’s municipal government. Property & Construction Management falls within this cabinet.

As such, the Commission concludes that the Appellants have no statutory right under Section 40 to be transferred to the Boston Police Department. Even assuming, *arguendo*, that the Appellants in this case did have such a right to transfer under Section 40, Section 40 explicitly makes that transfer subject to the approval of HRD. It is inconceivable that HRD, given the powers and responsibilities of a Boston Police Officer, would not first consult with the Boston Police Department prior to granting such approval. As such, any transfer request under Section 40 would be moot as HRD would not be expected to

approve of transfers regarding individuals who had failed a background check, physical abilities test or psychological examination conducted by the City. In fact, the Commission's own recent decision in Case No. G-06-113 admonished the City that any transfers from the BMPD to the BPD must be accomplished via Section 35, specifically stating in relevant part, "This order grants...provisional employees permanency in their respective positions within the Boston Municipal Police Department. While this permanency (within the police officer series) will eliminate one bureaucratic barrier to the possible transfer of the Appellants to the Boston Police Department, G.L. c. 31, § 35 specifically requires the City to demonstrate sound and sufficient reasons to show that the transfer will be for the public good. Inherent in that requirement is that the City ensure, through the use of its traditional background checks and interview process on a case-by-case basis, that any individual transferred meets the high standards required to serve as a Boston Police Officer. That decision, in regard to the possible transfer of these Appellants, rests with the Boston Police Department and HRD". (emphasis added)

Section 39

Having concluded that the Appellants have no right of transfer under Section 40, the Commission addresses whether the City has met its burden under G.L. c. 31, § 39, even though none of the Appellants are seeking reinstatement to their previous positions.

It is well settled that an appointing authority has the right to abolish any position which it deems to be either uneconomical or unnecessary. While any abolition must be undertaken in good faith and may not be done without proper cause, or as a pretext for depriving a particular person of his job, it must be emphasized that civil service provisions are not intended to, and do not on their face, preclude abolition of positions or

reorganizations of departments. See Gloucester v. Civil Service Commission, 408 Mass. 292, 557 N.E. 2d 1141 (1990); School Committee of Salem v. Civil Service Commission, 348 Mass. 696, 205 N.E. 2d 707 (1965).

The Civil Service Commission may not, in the guise of protecting an aggrieved employee, substitute its judgment for that of an appointing authority as to the wisdom of a particular reorganization plan undertaken for reasons of economy. Commissioner of Health and Hospitals of Boston v. Civil Service Commission, 23 Mass. App. Ct 410 (1987).

In this case, the BMPD and the BPD had separate chains of command, notwithstanding the Appellants' assertions to the contrary, and deployed separate police forces within the geographic boundaries of the same city. The BMPD protected City-owned property. The jurisdiction of the BPD includes all property located within the City's boundaries (except property of the State or Federal government). The City's action created efficiencies both in terms of the deployment of armed officers and with respect to administrative support services otherwise necessary to maintain two, separate police forces. Abolition of the armed portion of the BMPD resulted in a unified command over all armed police officers.

The City has also shown that the reorganization addressed other inefficiencies including the fact that each police agency had separate facilities, equipment and administrative staff. BPD is headquartered at Schroeder Plaza in Roxbury. BMPD was headquartered at 170 Hancock Street in Dorchester. The two police agencies did not share the same radio system. The BPD has an analogue radio system whereas the BMPD has a digital-audio radio system. The two systems are not interoperable. Nor did either

agency designate a radio channel for the other agency's use. Each agency had its own "Operations" division, consisting of call-takers and dispatchers. The armed personnel of each agency had separate collective bargaining representatives.

Finally, the abolition of the armed portion of the BMPD contained costs. The Property & Construction Management budget for fiscal year 2007 did not provide for BMPD armed police officers and superior officers after December 31, 2006. The PCMB operating budget for FY07 includes \$ 2,083,912 in salary savings as a result of the elimination of these positions.

The Appellants have presented no evidence for the Commission to conclude that the abolition of the armed portion of the Boston Municipal Police Department occurred for any reasons other than those that the Appointing Authority has expressed. The Commission finds that the Appointing Authority's express reasons are consistent with G.L. c 31, § 39.

On a final note, this consolidated appeal likely marks one of the last chapters of the Commission's involvement regarding appeals related to the now-defunct armed portion of the Boston Municipal Police Department. Many of the officers, including those laid off by the City and not offered employment as unarmed site officers, have attended and testified before the Commission. To a person, we find their testimony to be forthright and credible. Their attendance and active participation throughout the proceedings reminded the Commission of how high the stakes are for these individuals, including those veteran employees who have served the City with distinction and are now unemployed as a result of this reorganization. While each of these officers, with the exception of those who filed for retirement, have now been placed on a state-wide

reemployment list pursuant to G.L. c. 31, § 40 for the position of police officer, that is small comfort for those facing the immediate lack of income. On this point, the Commission is chagrined that the City, instead of engaging in a good-faith effort to identify other employment opportunities for all of these public servants, instead used strong arm tactics in which continued employment opportunities and benefits appeared to be used as a bargaining chip to cajole Appellants into withdrawing their appeals with the Commission. The Appellants involved in this well publicized appeal have already sustained enough collateral damage from specious remarks made to the media from third parties regarding the Appellants' qualifications. In contrast, one would think the Appellants could expect to receive better treatment from the City. They have not – and the City's behavior has not gone unnoticed by the Commission.

For all of the above reasons, the Appellants' appeals under Docket Nos. D1-05-5 through D1-07-31 are hereby *dismissed*.

Christopher C. Bowman, Commissioner

John J. Guerin, Commissioner

By a vote of the Civil Service Commission (Bowman, Guerin, Marquis, Commissioners [Taylor – Absent]) on March 28, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days

after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Robert J. Boyle, Esq.

Howard I. Wilgoren, Esq.

Michelle Heffernan, Esq. (HRD)