

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.  
SUCV2006-4617  
SUCV2007-1220

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

*Filed January 8, 2008*  
*Nancy E. Goldrick*  
*attest*  
*Brassard J*

\*\*\*\*\*  
Boston Police Patrolmen's Association et al,  
Plaintiffs

vs.

MA Civil Service, City of Boston et al,  
Defendants  
\*\*\*\*\*

*Memorandum of Decision*

HEARING BEFORE BRASSARD, J.

December 18, 2007

NOTICE SENT  
01.08.07  
S.G.S. H.+D.  
P.N.B.  
B.D.  
J.M.B.

MASS. A.G.  
R.L.Q. Jr.

S.C.M.  
K.H.H.  
J.M.S.

R.+B.  
J.G.D.

Suffolk County Superior Court  
Three Pemberton Square  
Boston, Massachusetts 02108

COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

2008 JAN 11 A 11: 29

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(LAT)

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DECISION

1  
2  
3 THE COURT: I am going to affirm all of  
4 the decisions of the Civil Service Commission here  
5 largely, although not entirely, for the reasons set  
6 out in the papers of the so-called State defendants  
7 - the Civil Service Commission, the human resource  
8 director, and the individual State defendant, I  
9 believe, Mr. Dietl - as well as for the reasons set  
10 out again largely, but not entirely, in the papers  
11 put forward by the so-called City of Boston  
12 defendants. With respect to the issue of standing  
13 to appeal the Commission's decision permitting the  
14 transfer of the 33 officers from the Boston  
15 Municipal Police Department to the Boston Police  
16 Department, I note the following:

17 The standing issue before me today is different  
18 from the standing issue that was before me about a  
19 year ago in connection with the application for  
20 preliminary injunction. There I took a look at  
21 standing law in general as it has been developed by  
22 our appellate courts and by others over the years.  
23 I also examined more briefly some of the issues  
24 looked at or raised by the statute, Chapter 31,

1 Section 2B, and related provisions of Chapter 31.  
2 But my decision, both explicitly and clearly, had to  
3 be and was grounded in general standing law. What  
4 was before me was a declaratory judgment.

5 The standing issue before me today is  
6 significantly more narrow. It relates to the set of  
7 persons who may take an appeal to the Commission  
8 pursuant to Section 2B. That statute narrows  
9 significantly the set of potential plaintiffs who  
10 have standing otherwise under general principles of  
11 standing. Specifically, 2B requires that an appeal  
12 may be taken only by a person aggrieved. Further,  
13 the statute expressly states that such a person must  
14 specifically allege actual harm to one's employment  
15 status. I perceive no concrete allegation of actual  
16 harm to anyone's employment status.

17 I have listened with care to the arguments  
18 advanced by the Boston Police Patrolmen's  
19 Association with respect to overtime, with respect  
20 to so-called competition for advancement, and also  
21 with respect to safety. I do not think that  
22 concepts of overtime that might be foregone or  
23 competition for advancement with others are within  
24 the zone of interest or the statutory intent as to

1           harm to one's employment status.

2           Safety is a more difficult issue in the sense  
3           that it may well be within the sweep of the  
4           statute's concept of harm to one's employment  
5           status. Even if it is, I perceive on this record no  
6           indication of a threat to safety toward the  
7           plaintiff group here, either the ten taxpayers, or  
8           the Boston Police Patrolmen's Association, or the  
9           body of officers whom that association represents.

10          Among other reasons, the 33 officers in  
11          question have all had significant police experience  
12          working for the Boston Municipal Police Department.  
13          That experience has been found by a specialized  
14          agency of the State government, the Civil Service  
15          Commission, to be similar experience to the work  
16          done by the Boston Police Department.

17          Furthermore, each of those 33 officers has  
18          been, as has been pointed out here, carefully  
19          screened in terms of background, psychological  
20          fitness, physical fitness, and the other  
21          requirements for becoming a Boston Police officer.  
22          Furthermore, each of those 33 officers has attended  
23          not only training within the Boston Municipal Police  
24          Department, but also Boston Police Academy training.

1 In every respect, on the record before me, there is  
2 no indication whatsoever that any of these 33  
3 officers stands in any different relationship to the  
4 membership of the Boston Police Patrolmen's  
5 Association than does any other newly graduated  
6 member of the Boston Police Department, that is to  
7 say newly graduated from the Boston Police Academy.

8 So with respect to the contested issues as to  
9 transfer of the 33 officers, I think the decision of  
10 the Commission is altogether respectful of our law  
11 as to standing, is not in violation of any of those  
12 laws, is certainly not arbitrary or capricious, and  
13 is certainly not an abuse of discretion.

14 Furthermore, I will add, although it doesn't bear  
15 precisely on standing issues, but it might, that  
16 nothing about that decision is inconsistent with the  
17 theme of merit principles that are at the heart of  
18 Chapter 31 of the General Laws.

19 The plaintiffs here have asserted there's an  
20 independent ground for jurisdiction and there's an  
21 independent basis to challenge the transfer  
22 decisions, and that this may be done in the form of  
23 a ten taxpayer challenge. My conclusion is that it  
24 may not be so done. I accept the position of the

1 City that there is no expenditure of new funds at  
2 issue here. Speaking to the ten taxpayer issue, I  
3 point out that there is case law that such relief is  
4 only available if a town or a municipality is about  
5 to raise or expend money, or incur obligations, that  
6 the right to sue is not present if the challenged  
7 action has already occurred.

8 Here there may well be, on this record, no  
9 indication of any expenditure of funds over and  
10 beyond what had already been taking place both at  
11 the time of the filing of this lawsuit and today. I  
12 point to, among other decisions, *Kapinos versus*  
13 *Chicopee*, 334 MA 196. Looking at the ten taxpayer  
14 cases, I also conclude that trying to fit this set  
15 of concerns on the part of the Boston Police  
16 Patrolmen's Association into that statute and that  
17 remedy is simply not a good fit.

18 The plaintiffs here also urge that their  
19 request to seek an investigation was improperly  
20 denied. Judgment should enter for the defendants on  
21 this issue as well for a number of reasons. First,  
22 there has been no final adjudicatory decision within  
23 the meaning of Section 44. Second, while the  
24 statute certainly does not require that a petition



1 for investigation need only be made by an aggrieved  
2 person, the statute, in my view, can only be fairly  
3 read to confer significant discretion upon the Civil  
4 Service Commission in terms of what response and to  
5 what extent, if at all, an investigation is  
6 appropriate.

7 Here, the Commission did look at the matter and  
8 did render a decision; one that was grounded largely  
9 in its conclusion that it had already considered at  
10 length, over a period of time, each of the three  
11 issues the plaintiffs sought to be investigated  
12 under 2A, namely first, whether the positions of  
13 Boston Municipal Police Department officers and  
14 Boston Police Department officers are similar,  
15 second, whether BMPD employees are police officers  
16 and/or permanent employees, and third, whether the  
17 transfers were contrary to basic merit principles  
18 articulated by the statute. That action, that  
19 conclusion satisfied all of the Commission's  
20 obligations to these plaintiffs by way of a petition  
21 for investigation under Section 2A.

22 With respect to the decision of the Commission,  
23 granting permanent civil-service status to the 23  
24 BMPD officers, I also conclude that the decisions of

1 the Commission should be affirmed for the following  
2 reasons. I think it is a close question as to  
3 whether the plaintiffs here have standing to appeal  
4 that decision as to the grant of permanent civil-  
5 service status. The papers before me, the record  
6 before me, appear to indicate that the Commission  
7 allowed these plaintiffs to intervene and not merely  
8 to act as limited participants. All of these  
9 concepts are addressed in the Code of Massachusetts  
10 regulations, 801 CMR 1.01.

11 If the Commission permitted the plaintiffs to  
12 intervene, then it seems to me that the plaintiffs  
13 have a strong argument that they may act like any  
14 other party including taking an appeal from a  
15 Commission decision. I note that the Commission  
16 specifically used the language of intervention when  
17 it concluded early on in these proceedings that the  
18 BPPA was indirectly, substantially, and specifically  
19 affected by the proceedings. I conclude, however,  
20 that even if the plaintiffs had standing to pursue  
21 an appeal of that decision, that on the merits, that  
22 outcome, that decision on the part of the Commission  
23 should be affirmed.

24 With respect to the 20 officers who received

1 the benefit of Chapter 282, I conclude, for the  
2 reasons expressed by the State defendants, that  
3 these officers were provisional civil-service  
4 employees by virtue of the various decisions and  
5 changes in the City of Boston employment situation.  
6 They were not temporary civil-service employees, nor  
7 obviously were they, at that juncture, permanent.  
8 They became permanent by the provisions of Chapter  
9 282. I accept entirely the argument of the State  
10 defendants that, at this juncture, some many years  
11 later, it is simply inconceivable that a challenge  
12 may be made to their employment status. It would be  
13 inequitable in the extreme for the courts to permit  
14 such a challenge to occur.

15 With respect to the 13 individuals hired after  
16 July 1, 1997 and sometime before, approximately, the  
17 end of 1999, I do note that all of these individuals  
18 had at least five years of police experience. I  
19 note further that their rights under Chapter 31 were  
20 abridged; they had no direct mechanism to obtain  
21 permanency. All 13 of these individuals took and  
22 passed the State examination in approximately '00 to  
23 '02. I note that the exercise of authority under  
24 Chapter 310 is one that our cases have said is

1 largely committed, if not entirely committed, to the  
2 informed discretion of the Civil Service Commission.

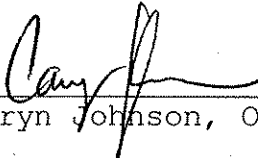
3 I also conclude that the positions were similar  
4 for the reasons described in the State defendants'  
5 papers. Again, for those same reasons, I conclude  
6 that the requirements for appointment were not  
7 substantially different. Furthermore, I conclude,  
8 for the reasons I have already described, that the  
9 public interest called for and supports the highly  
10 discretionary decision of the administrator in terms  
11 of his conclusion that the public interest warranted  
12 the transfers at issue.

13 For these reasons, once again, I affirm all of  
14 the decisions of the Commission. Judgment shall  
15 enter on the motions for pleadings filed by all  
16 parties as follows: judgment for the defendants and  
17 against the plaintiffs, the decisions of the  
18 Commission are affirmed.

19  
20 (Decision concludes)  
21  
22  
23  
24

C-E-R-T-I-F-C-A-T-E

I, Caryn Johnson, hereby certify that the foregoing transcript, pages 1 through 12, is a true and accurate transcription of Judge Brassard's decision as dictated in open court on December 18, 2007.

  
\_\_\_\_\_  
Caryn Johnson, OCR