

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108



RICHARD BROOKS,
Appellant

v.

E-10-161

CITY OF LAWRENCE,
Respondent

Appellant's Attorney:

Pro Se
Richard Brooks



Respondent's Attorney:

Anne L. Randazzo, Esq.
City of Lawrence
Office of the City Attorney
City Hall: Suite 306
200 Common Street
Lawrence, MA 01840

Commissioner:

Christopher C. Bowman

DECISION ON MOTION TO DISMISS

The Civil Service Commission issued a decision on July 1, 2010 that adjusted the civil service seniority dates of eighteen (18) police officers in the City of Lawrence. See Shawn Quaglietta and Eleven Others v. City of Lawrence. Each of the eighteen (18) police officers either filed an appeal with the Commission or were deemed intervenors.

The July 1, 2010 decision was based in part on a 1995 Essex Superior Court order related to this matter.

The Appellant, Richard Brooks, despite being hired as a reserve police officer several years prior to the 1995 Superior Court order and being appointed as a permanent full-time police officer over a year prior to the issuance of the court order, filed an appeal on July 6, 2010, arguing that he is a similarly situated individual whose civil seniority date should also be adjusted.

A pre-hearing conference was held on August 17, 2010 regarding this matter which was attended by the Appellant, counsel for the City and HRD. Per agreement of the parties, the City filed a Motion to Dismiss and the Appellant filed an opposition to the City's motion.

City's Argument

The City argues that the Appellant is not in the same position as the individuals in the Quaglietta case in that his original date of service is 1989, which is well before the period of December 1995 through December 1997, which is the period addressed by the Superior Court decisions and arbitration awards referenced in the Quaglietta decision. Thus, according to the City, the Appellant's appeal should be dismissed.

Appellant's Argument

The Appellant argues that his date be changed "for the same reason that the Anglo officers on the department have requested their date changed. Every officer that has had their dates changed is an Anglo officer."¹ More specifically, the Appellant appears to argue that the City should be ordered to recalculate the civil service seniority dates of all

¹ The website "Wikipedia" defines the term "Anglo" as a prefix to indicate a relation to the Angles, England or the English people, as in the terms Anglo-Saxon, Anglo-American, Anglo-Celtic, Anglo-African and Anglo-Indian. It is often used alone, somewhat loosely, to refer to people of British Isles descent in The Americas, Australia and Southern Africa. It is also used, both in English-speaking and non-English-speaking countries, to refer to Anglophone people of other European origins.

Lawrence Police officers, regardless of whether they were hired before or after the 1995 Superior Court decision.

Conclusion

The party moving for summary disposition of an appeal before the Commission pursuant to 801 C.M.R. 7.00(7)(g)(3) or (h) is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the movant has presented substantial and credible evidence that the opponent has “no reasonable expectation” of prevailing on at least one “essential element of the case”, and that the non-moving party has not produced sufficient “specific facts” to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, 887 N.E.2d 244, 250 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, 881 N.E.2d 778, 786-87 (2008).

Central to the Commission’s decision to grant certain Lawrence police officers a retroactive civil service seniority date in Quaglietta were two Superior Court decisions and an arbitration award which stated that the City abused the use of reserve officers from the time period December 1995 through December 1997 by designating individuals as reserve officers when they were actually de-facto permanent full-time police officers. In fact, a 1996 Superior Court decision deemed certain of the Appellants in Quaglietta as aggrieved individuals and ordered a corrected civil service seniority date of July 1, 1995.

The Commission did not, on its own initiative, as the Appellant is effectively seeking here, initiate its own investigation to determine if said violations actually occurred approximately 15 years ago. Absent judicial or administrative decisions that show that

similar violations occurred prior to 1995, the Appellant can not show that he is similarly situated to those individuals granted relief in Quaglietta.

For this reason, his appeal under Docket No. E-10-161 is hereby *dismissed*.

Civil Service Commission



Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell & Stein, Commissioners) on January 27, 2011.

A True Record. Attest:



Commissioner

**Commissioner Marquis was
absent on January 27, 2011**

Either party may file a motion for reconsideration within ten days of the receipt of the Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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 to:

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Richard Brooks (Appellant)

Appellants in Shawn Quaglietta and Eleven Others v. City of Lawrence:

Shawn Quaglietta
Daniel Fleming
James Raso
Michael Simard
Robert DiBenedetto
James Fitzpatrick
Dawn Pappalardo
Steven Scheffen
Jeffrey Hart
Timothy Dube
Thomas Murphy
Robert Moody
Daniel J. Fitzpatrick

Intervenors in Shawn Quaglietta and Eleven Others v. City of Lawrence:

Scott McNamara
Alan Laird
John Heggarty
Joseph Beaulieu
Marco Ayala