

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

08-P-1379

JASON BROUILLARD & another<sup>1</sup>

vs.

CITY OF HOLYOKE.

COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

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MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The city of Holyoke (city) appeals from a Superior Court judgment affirming a decision of the Civil Service Commission (commission) to reinstate Jason Brouillard's employment with the city. Brouillard, a permanent, part-time reserve police officer, was terminated during his probationary period, and also filed his appeal of the termination to the commission during the probationary period. The city claims that the commission lacked jurisdiction to hear Brouillard's appeal. For the following reasons, we agree and accordingly vacate the judgment.

The commission only has jurisdiction to hear appeals of tenured employees. See Selectmen of Brookline v. Smith, 58 Mass. App. Ct. 813, 815 (2003) ("If [the employee] was not tenured, then the commission lacked jurisdiction to hear his appeal"). This is clear from the structure and content of the civil service laws, which "provide an administrative hearing for tenured

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<sup>1</sup> Massachusetts Civil Service Commission. As a nominal party, the commission has neither submitted a brief nor participated in oral argument.

employees, G. L. c. 31, § 43, but not for probationary employees." New Bedford v. Civil Serv. Commn., 6 Mass. App. Ct. 549, 551 (1978) (decided under essentially identical provision of predecessor statute to G. L. c. 31, § 34). Compare G. L. c. 31, § 34 (describing termination procedure for probationary employees, but providing no administrative remedy), with G. L. c. 31, §§ 42 & 43 (providing administrative remedy for employees discharged under § 41, which describes termination procedures for tenured employees).

Here, Brouillard was hired as a permanent, part-time reserve police officer on August 25, 2002, and received a notice of termination dated January 29, 2003, stating that as of January 30, 2003, his employment was terminated. He filed an appeal of this termination with the commission on February 6, 2003. The parties appear to agree that Brouillard had to serve a six-month probationary period pursuant to G. L. c. 31, § 34, before he could become a tenured employee. Therefore, under the parties' calculations, Brouillard was a probationary employee when he filed his appeal of his termination with the commission. The commission accordingly lacked jurisdiction over Brouillard's appeal.<sup>2</sup> The judgment is vacated and a new judgment shall enter

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<sup>2</sup> We note that Brouillard, as a terminated probationary employee, is not left entirely without recourse. If the termination concerns allegations about an employee's reputation, the employee may be entitled to a "name-clearing" hearing in court. Police Commr. of Boston v. Cecil, 431 Mass. 410, 416

vacating the commission's decision and dismissing Brouillard's appeal to the commission for lack of jurisdiction.

So ordered.

By the Court (Rapoza, C.J., Trainor  
& Katzmann, JJ.),

*Ashley Mean*  
Clerk

Entered: August 6, 2009.

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(2000). The courts have also considered declaratory judgment actions and mandamus actions filed by probationary employees concerning whether a notice of termination was adequate. See Thibeault v. New Bedford, 342 Mass. 552, 553, 558 (1961); Costa v. Selectmen of Billerica, 377 Mass. 853, 855, 861-862 (1979).