

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

TIMOTHY CALLINAN, GIULIO BONAVIDA &  
SHAWN McCARTHY,  
Appellants

v.

E-18-203 (Callinan)  
E-18-204 (Bonavita)  
E-18-205 (McCarthy)

TOWN OF WINTHROP,  
Respondent

Appearance for Appellants:

Daniel E. Cocuzzo, Esq.  
2 Oak Street  
Stoneham, MA 01980

Appearance for Respondent:

Howard Greenspan, Esq.  
200 Broadway  
Lynnfield, MA 01940

Commissioner:

Cynthia A. Ittleman

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

1. On October 19, 2018, the Appellants (Timothy Callinan, Giulio Bonavita & Shawn McCarthy) (Appellants), all police officers at the time in the Town of Winthrop (Town)’s Police Department (Department), filed appeals with the Civil Service Commission (Commission).
2. Each of the Appellants attached an identical statement in which they wrote:

“The Town of Winthrop entered into an agreement with an individual authorizing the individual to sit for a ‘make-up’ promotional exam and to have the individual’s name added to the already established list. The individual did not participate in the April 3, 2018 Sole Assessment Center Examination. This agreement was made on the sole basis of reducing future liability and not based on civil service law. The Town and the individual requested that an arbitrator protect the enforcement of the agreement by turning the agreement into an arbitrator’s order, so it would supersede the Civil Service Commission’s authority. The arbitrator issued the order. This agreement / order was not discussed with the Local Union,

as it was conducted without their knowledge. An investigation revealed the order's existence.”

3. On November 13, 2018, I held a pre-hearing conference which was attended by the Appellants, counsel for the Appellants and counsel for the Town.
4. Based on the information provided at the pre-hearing conference, the following appears to be undisputed:
  - A. On May 2, 2018, an eligible list for Winthrop Police Sergeant was established.
  - B. Appellant Callinan was ranked 1<sup>st</sup>; Appellant McCarthy was ranked 2<sup>nd</sup>; and Appellant Bonavita was ranked 4<sup>th</sup>.
  - C. The name of Ferruccio Romeo, who had been terminated from his position as a Winthrop Police Officer in 2015, did not appear on the May 2, 2018 eligible list.
  - D. In 2016, an Arbitrator reinstated Romeo to his position as police officer; the Town appealed.
  - E. In 2017, the Superior Court vacated the Arbitrator's decision; Romeo and the Union appealed.
  - F. In 2018, the Appeals Court reinstated the Arbitrator's decision and ordered Romeo reinstated.
  - G. Since Romeo was not employed by the Town as a police officer when the sergeant's promotional examination was administered, he did not have the opportunity to take the examination and/or have his name appear on the eligible list, which was established in May 2018.
  - H. In September 2018, pursuant to a stipulated order, an Arbitrator entered an Order permitting Romeo to take part in a make-up promotional examination on October 25, 2018.
  - I. Six days before Romeo was scheduled to take the make-up promotional examination, the Appellants filed the instant appeals.
5. Romeo took and passed the promotional examination.
6. On April 1, 2019, Romeo's name was added to the Winthrop Police Sergeant promotional list. Romeo's name appeared below Callinan and McCarthy; and above Bonavita.
7. According to information posted on HRD's website, Callinan and McCarthy were promoted to Police Sergeant on May 12, 2019; Romeo was promoted to Police Sergeant on December

18, 2019; Bonavita has not been promoted and his name appears first among those remaining on the eligible list for Police Sergeant.

*Analysis / Conclusion*

These appeals are dismissed for the following reasons. First, the appeals of Callinan and McCarthy are moot as they have both been promoted to Police Sergeant with an effective date prior to Romeo. Second, the Appellants' argument that the Arbitrator's decision to allow Romeo to take the make-up examination was inconsistent with civil service law is misplaced. The Appeals Court upheld an Arbitrator's decision to reinstate Romeo, effectively restoring his rights. When a civil service employee is reinstated to his/her position, G.L. c. 31, s. 43 requires that the person be "returned to his position without loss of compensation *or other rights.*" (emphasis added) Therefore, the Arbitrator's decision to allow Romeo to take the make-up promotional examination, upon his reinstatement, was not inconsistent with this provision of the civil service law.

For these reasons, the Town's Motion to Dismiss is allowed and the Appellant's appeals are hereby *dismissed*.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 25, 2021.

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.

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 after receipt of

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Daniel A. Cocuzzo, Esq. (for Appellants)

Howard L. Greenspan, Esq. (for Respondent)