

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

THOMAS DESHARNIAS,

Appellant

v.

D1-09-406

CITY OF WESTFIELD,

Respondent

Appellant's Attorney:

Thomas J. Rooke, Esq.
73 Chestnut Street
Springfield, MA 01103

Respondent's Attorney

Kathleen E. Degnan, Esq.
City of Westfield
59 Court Street
Westfield, MA 01085

Commissioner:

Christopher C. Bowman

DECISION ON SECTION 42 APPEAL

The Appellant, Thomas Desharnias (hereinafter "Desharnias" or "Appellant"), filed a timely appeal with the Civil Service Commission (hereinafter "Commission") on November 16, 2009 under both G.L. c. 31, § 42 ("Section 42 appeal" regarding procedural issues) and G.L. c. 31, § 43 ("Section 43 appeal" regarding just cause).

A pre-hearing conference was held at the Springfield State Building in Springfield, MA on November 25, 2009. A full hearing will be held on the Section 43 "just cause" appeal on January 13, 2010. This decision pertains to the Appellant's Section 42 appeal for which I heard oral argument at the November 25th pre-hearing.

Prior to terminating a tenured civil service employee, G.L. c. 31, § 41 requires that the employee be given: 1) a written notice by the appointing authority; and 2) a full hearing before the appointing authority or a hearing officer designated by the appointing authority. The written notice by the appointing authority must include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five.

If the Commission finds that the Appointing Authority failed to follow the above-referenced Section 41 procedural requirements and that the rights of said person have been prejudiced thereby, the Commission “shall order the Appointing Authority to restore said person to his employment immediately without loss of compensation or other rights.” G.L. c. 31, § 42.

Here, the Appellant argues that the City of Westfield (hereinafter “City” or “Appointing Authority”) failed to include the “action contemplated” in the written notice he received regarding the disciplinary hearing before the City and that he was prejudiced by this omission because he would have prepared a more vigorous defense had he known that termination was being considered.¹

The October 27, 2009 hearing notice from the City’s Police Chief to the Appellant stated in relevant part:

“The Police Commission [Appointing Authority] will be addressing an internal investigation completed by Captain Michael McCabe and submitted by me for their review and ultimate decision concerning any discipline.

A copy of the Captain’s internal investigation and a copy of your rights as a civil service employee (Mass. Gen. laws, Chap. 31, Sections 41-45)

¹ As grounds for his Section 42 appeal, the Appellant also claimed that the City failed to provide him with a decision in a timely manner, but this portion of the appeal was waived by the Appellant at the pre-hearing conference.

are provided for your review.

Please bring any representation you feel necessary to assist you.”

Captain McCabe’s four-page investigative report, referenced in the hearing notice to the Appellant, concluded that the Appellant violated several departmental Rules and Regulations related to: Professional Conduct and Responsibilities; Conduct Unbecoming an Officer; Truthfulness; Orders; Insubordination; Professional Image; Departmental Property and Equipment; Damage or Defective Equipment; Departmental Vehicles; and Care of Department Property. (The Police Commission ultimately found that the Appellant violated Rules and Regulations related to: Truthfulness and Conduct Unbecoming an Officer. Those charges are the subject of the Section 43 “just cause” hearing to be held by the Civil Service Commission on January 13, 2010.)

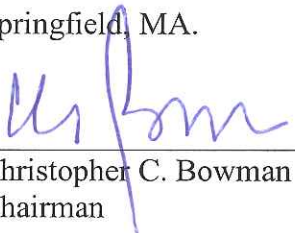
The City argues that they met all of the procedural requirements of the civil service law, including the requirement that the Appellant be informed of any contemplated action that could be taken by the Police Commission. The City argues that the hearing notice that was sent to the Appellant specifically stated that the hearing was being held to address the internal investigation and to determine “any discipline”. Thus, according to the City, the notice requirements of Section 42 have been met.

Conclusion

The City has complied with all of the procedural requirements of the civil service law and the Appellant’s Section 42 appeal should be dismissed. In addition to notifying the Appellant that he could be subject to “any discipline”, they attached a detailed investigative report which charged the Appellant with offenses, including untruthfulness,

that any police officer would reasonably understand that, if proven, could result in his termination.

For these reasons, the Appellant's Section 42 appeal under Docket No. D1-09-406 is hereby *dismissed*. A full hearing regarding the Appellant's Section 43 appeal will be conducted on January 13, 2010 at 10:00 A.M. at the Springfield State Building in Springfield, MA.



Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein and Taylor, Commissioners [Marquis – Absent]) on January 7, 2010.

A true Copy. Attest:



Commissioner
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of a 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:

Thomas J. Rooke, Esq. (for Appellant)

Kathleen E. Degnan, Esq. (for Appointing Authority)