

NOTIFY

Doherty v. Mass. Dept. of State Police and Mass. Civil Service Comm'n. Suffolk Civil No. 16-2143-H

Memorandum Of Decision And Order On Defendant Massachusetts Department of State Police's Motion To Dismiss

Defendant Massachusetts Department of State Police ("MSP") moved to dismiss the appeal pursuant to G. L. c. 30A, sec. 14 and G. L. c. 31, sec. 44 of the plaintiff, Denise Doherty ("Doherty"), on grounds that defendant Massachusetts Civil Service Commission (the "Commission") lacked jurisdiction to review the discipline imposed on her by the Colonel of MSP. In its review, the Commission determined that MSP had just cause to discipline Doherty by requiring that she forfeit two days of accrued leave time. The Commission and Doherty opposed MSP's jurisdictional motion. The Court heard oral argument on April 27, 2017. For the below reasons, MSP's jurisdictional motion to dismiss (Docket # 7) is **DENIED**.

Discussion

This Court joins at least one other Superior Court judge who has held that the Commission has jurisdiction to review decisions by the Colonel of MSP to forfeit accrued leave of MSP employees. See Massachusetts Department of State Police v. Hicks and Civil Service Commission, Suffolk Civil No. 07 - 3766 (Super. Ct. July 25, 2008). See also Massachusetts Department of State Police v. Riley, Suffolk Civil No. 06 - 2349 (Super. Ct. May 8, 2008). MSP argues that, by listing certain types of discipline subject to Commission review and excluding forfeiture of accrued vacation, the Legislature impliedly intended to exclude forfeiture of accrued leave from Commission review. This is one canon of statutory construction. See, e.g. Harborview Residents Committee, Inc. v. Quincy Housing Authority, 368 Mass. 425, 432 (1975). However, in this instance, three factors compel the Court to reach a different result, the same result reached in Hicks. First, since at least 2001, MSP's own regulations have provided that forfeiture of accrued leave time is the equivalent of, and may be used as a substitute for, a suspension. See Department of State Police Rules & Regulations, Discipline Guidelines, Appendix A, Interpretive note # 2 (January 31, 2001). Second, Commission review of these decisions seems consistent with the statutory goal of providing appeal rights to state employees across a broad range of disciplinary matters. See Sullivan v. Chief Justice for Administration and Management of the Trial Court, 448 Mass. 15, 24 (2006) ("If a liberal, even if not literally exact, interpretation of certain words is necessary to accomplish the purpose indicated by the words as a whole, such interpretation is to be adopted rather than one which will defeat the purpose.."). Third, in the nine years since Hicks was issued, the Legislature has given no indication that it intended a different result. Therefore, this Court rules that the Commission had jurisdiction to review the decision of the Colonel of MSP with regard to Doherty.

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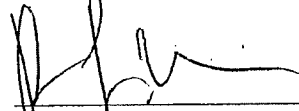
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MA Off. of Attorney General
Administrative Law Division

Conclusion and Order

Massachusetts Department of State Police's Motion To Dismiss (Docket # 7) is
DENIED.

Dated: May 5, 2017



Robert Ullmann
Justice of the Superior Court