

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

**ALDEN C. ELLIS,**  
Appellant

v.

D-06-63

**FRAMINGHAM HOUSING  
AUTHORITY,**  
Respondent

Appellant's Representative:

Joseph G. Donnellan, Esq.  
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Needham, MA 02494

Respondent's Representative:

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Haranas, Mayer,  
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Commissioner:

John J. Guerin, Jr.

**DECISION**

Pursuant to G.L. c. 31, § 43, the Appellant, Alden C. Ellis (hereafter "Ellis" or Appellant) filed an appeal claiming that the Respondent, Framingham Housing Authority as Appointing Authority, (hereafter the "Authority" or "Respondent") did not have just cause to abolish his position as Director of Maintenance. The Appellant's Notice of Appeal was timely filed and a full hearing was held on February 28, 2007, April 4, 2007 and May 25, 2007 at the office of the Civil

Service Commission (hereafter “Commission”). As no written notice was received from either party, the hearing was declared private. The witnesses were sequestered. Six (6) tapes were made of the proceedings. Proposed Decisions were submitted by the parties thereafter, as instructed.

### **FINDINGS OF FACT:**

Based on the documents entered into evidence (Joint Exhibits 1 – 42) and the testimony of: Alden C. Ellis, Appellant; David Barrs, Director of Buildings and Grounds; Robert Benway, Materials Coordinator; William Casamento, Former Authority Executive Director; Patricia Crandall, First Accounting Assistant; Edward Convery, Authority Commissioner; Paul Ferraro, Maintenance Mechanic; Mark Gallante, Commissioner; Joseph McNamara, Maintenance Mechanic; and Robert Merusi, Authority Commissioner, I make the following findings of fact:

1. The Appellant, Alden C. Ellis, was hired by the Framingham Housing Authority (“FHA” or the “Authority”) as a Housing Inspector in 1991. On October 18, 1993, the Appellant was promoted to the position of Director of Maintenance at an annual salary of \$40,714, effective October 25, 1993. As Director of Maintenance, the Appellant reported to David Barrs, the Authority’s Director of Buildings and Grounds. (Testimony of Appellant)
2. Throughout his fourteen (14) plus years of work with the FHA, the Appellant was disciplined only once, with a one (1) day suspension. (Stipulation of Facts)
3. The FHA is the public housing authority for the town of Framingham. It has 1,000 units spread out over 14 developments. The buildings range in date from 1920’s era construction to mainly post-World War II developments, with some construction from the late 1970’s and early 1980’s. The composition of the units

varies from development to development and from building to building. (Testimony of Casamento and Ellis)

4. The five-member FHA Board of Commissioners included Commissioners Edward Convery, Mark Gallante and Robert Merusi. The Board, as a whole, was fiscally conservative. (Testimony of Casamento)
5. William J. Casamento was the Executive Director of the Framingham Housing Authority from 1998 until his retirement in 2006. He previously served as the Executive Director of the Medford, Somerville and Saugus Housing Authorities. Casamento had responsibility for the day to day operations of the FHA and dealt with the Appellant on a constant basis. He was a very knowledgeable and credible witness with good recall of details and situations. (Id.)
6. Casamento testified that a significant part of the Director of Maintenance position involved purchasing. He testified that the Appellant spent a great deal of his time making sure there were sufficient supplies and parts on hand so that the Maintenance Department employees would not have to interrupt their work to buy minor items. (Testimony of Casamento and Ellis)
7. The Appellant's duties also included supervision of Senior Mechanics and Maintenance Mechanics. He testified that he sometimes assisted his crews with their work on the units. (Testimony of Ellis)
8. During the four (4) years prior to the decision to abolish the position of Director of Maintenance, the number of employees supervised by the Appellant was reduced from fifteen to eleven through attrition. (Id.)

9. Throughout his employment as Director of Maintenance, the Appellant performed his duties to the satisfaction of the Authority. (Stipulation of Facts)
10. The Appellant offered knowledgeable and credible testimony as to what he considered his duties to encompass as Director of Maintenance.
11. During the timeframe in which the Appellant was the Director of Maintenance, the Maintenance Department received high ratings from both the U.S. Department of Housing and Urban Development (HUD), the Massachusetts Department of Housing and Community Development and from private insurance inspectors. (Exhibits 12, 32, Testimony of Casamento, Attachment A)
12. During the five (5) years prior to the decision to abolish the position of the Director of Maintenance, the FHA privatized the painting and cleaning operations for its substantial number of units of public housing. Cleaning was outsourced in September 2004 and painting in 2005. The Appellant testified that he scheduled, supervised and inspected the work of the private contractors. (Testimony of Ellis and Casamento)
13. At some time in 2000, Commissioner Convery, a retired elementary school principal in the Framingham School System and FHA Commissioner for twenty-five (25) years, raised the issue of abolishing the Appellant's position. Convery stated that when he arrived in 1998, the Executive Director had suggested a reorganization to eliminate the Director of Maintenance position. (Testimony of Convery)
14. Commissioner Convery testified that, at some point, he spoke with Casamento about a drain pipe that had fallen down close to the administrative offices and that

was not repaired for a three week period. Convery was upset over the length of time it took to replace the pipe, that the Appellant had picked up the pipe and put it back down without repairing it and that the Appellant did not know about the need for the repair before Convery did. Convery testified that he viewed the Appellant's role to be the eyes and ears of Barrs, to whom he reported. Commissioner Convery had misgivings about the Appellant's performance based on the broken pipe spout and the fact that he observed other maintenance needs before the Appellant did. (Testimony of Convery)

15. Casamento testified that, periodically, a Commissioner would ask to revisit the issue of the Director of Maintenance position. Casamento was opposed to the idea of abolishing the Director of Maintenance position, stating that he believed there was a need for both the Appellant's job and the job of Director of Building and Grounds. (Testimony of Casamento)

16. Merusi, a Commissioner of the FHA for seven (7) years and the Manager of Parks and Recreation for the Town of Framingham, testified that in 2003 the commissioners had their first discussion regarding the position of Director of Maintenance and that the discussions focused on performance issues. He stated that in 2004 the Maintenance Department was not functioning properly and that other commissioners expressed dissatisfaction with the Maintenance Department and the Director of Maintenance. (Testimony of Merusi)

17. Casamento testified that he undertook a study of ten (10) similarly situated local housing authorities. He stated that this study showed that each of the other Authorities had a Director of Maintenance and each had as many or more

employees in the Maintenance Department as did the Authority. (Exhibit 24 and Testimony of Casamento)

18. In June 2004, the Appellant was asked by the Respondent to begin keeping a weekly log of his activities. After two weeks of the Appellant hand-writing the log, Casamento informed the Appellant that the commissioners' wanted the log kept in a more professional manner. Consequently, the Appellant began to type his log at home on his computer. He broke down his duties into numerous categories in order to indicate the percentage of time spent on each activity. (Exhibit 28 and Testimony of Appellant)
19. Convery testified that a review of the Appellant's logs did not reveal a great deal of daily activity. (Testimony of Convery)
20. Merusi testified that after a few months of reviewing the data, he noticed a low level of work and concluded that there was no reasonable return from the Director of Maintenance position for the money spent on salaries. He stated that a review of the Director of Maintenance position description indicated that the Appellant was not performing the more complex duties of his position. (Testimony of Merusi)
21. Merusi stated that he determined it would be better to eliminate the position and reuse the resources saved more effectively. He testified that he bore no ill will towards the Appellant. Merusi was a credible witness with an excellent grasp of the subject matter. (Id.)
22. Around June 2004, the FHA formed a sub-committee, at Merusi's urging, consisting of Merusi and Convery, to evaluate the Director of Maintenance position and study the on-going need for the position. The sub-committee reviewed the

make-up of other similar housing authorities and utilized tools (i.e. diaries and logs) to evaluate the on-going need for the position. A review of the logs kept by the Appellant led the sub-committee to conclude that the position in question was no longer necessary. (Testimony of Gallante and Merusi)

23. Commissioner Gallante stated that he has a sense of serious fiduciary responsibility to taxpayers and Authority tenants and that from 2002 until 2005 the Board was looking at the Authority's budget in terms of "getting the biggest bang for the buck." He testified that, for example, such a highly paid employee as the Appellant should not be running errands to Home Depot, as had been described by the Appellant. Gallante was a credible witness with a good recall of details. (Testimony of Gallante)

24. At numerous meetings from November 2004 through October 17, 2005, the Authority Commissioners considered the work duties and reviewed the logs of the Director of Maintenance. (Exhibits 5, 6, 7, 9, 11, 12, 13 & 14)

25. At the October 17, 2005 Authority meeting, the subcommittee presented its report on the usefulness of the Director of Maintenance position. The report stated that, based solely on the information provided from Appellant's weekly reports, it had become clear over the last few months that the money expended for the position had "limited and questionable worth to the FHA." The subcommittee recommended to the Board of Commissioners that the FHA reorganize the Maintenance Department by eliminating the position of Director of Maintenance and redistributing "those resources more effectively throughout the Maintenance

organization.” Merusi, Convery and Gallante voted to implement this plan.  
(Exhibit 16 and 24 and Testimony of Merusi)

26. Gallante stated that, ultimately, the Board could not justify the cost of the Director of Maintenance position for the amount of work getting done and believed outsourcing of painting and cleaning was more efficient. (Testimony of Gallante)
27. Convery stated that he believed abolishment of the Director of Maintenance position achieved efficiency if not cost savings. Convery testified that abolishing the Appellant’s position was based on privatization and whether Barrs could do his job without a Director of Maintenance. He credibly stated that it was not a move against the Appellant. (Testimony of Convery)
28. Commissioner Convery could not recall if he initiated the discussion to abolish the Appellant’s position but acknowledged participating in the discussion. He was a credible witness with a professional manner. (Id.)
29. On October 18, 2005, the Appellant was given notice that the Authority had voted on October 17, 2005 to eliminate the position of Director of Maintenance, effective immediately. (Stipulation of Facts)
30. On October 21, 2005 the Authority gave notice to the Appellant of his right to a hearing before the Authority, pursuant to G.L. c. 31, § 41, prior to the abolishment of the position of Director of Maintenance. (Stipulation of Facts)
31. On November 14, 2005, the FHA voted to reinstate the position of Director of Maintenance pending the results of the § 41 hearing scheduled for on December 5, 2005. (Exhibit 17 and Stipulation of Facts)

32. On December 5, 2005, a vote was taken to eliminate the Director of Maintenance position effective March 20, 2006. (Exhibit 17)
33. The Authority voted on March 20, 2006 to abolish the position of Director of Maintenance and terminated the Appellant. (Stipulation of Facts)
34. After the Appellant's position was abolished, Barrs assumed the Appellant's supervisory duties while Benway, the materials coordinator, took over ordering supplies. (Exhibits 17 and 31 and Testimony of Barrs, Benway and Casamento)
35. The FHA authorized raises to Barrs and Benway of \$100.00 per week and \$40.00 per week, respectively. The Assistant Executive Director also received an annual increase of approximately \$1,500.00 to resolve a conflict with Barrs' raise. (Exhibits 3 and Testimony of Casamento)
36. Benway testified that stock levels remain the same as when the Appellant was there. He orders very few paint supplies and rarely orders cleaning supplies due to those tasks having been privatized. Benway was a credible and impartial witness whose answers were very detailed. (Testimony of Benway)
37. Barrs testified that there had been almost no complaints from tenants about painting or cleaning since it had been outsourced. There had also been no difference in the overall maintenance of units following the abolishment of the Appellant's position. (Testimony of Barrs)
38. Joseph McNamara and Paul Ferraro, Maintenance Mechanics, were supervised by the Appellant. Both testified that, during the Appellant's tenure, there were always sufficient supplies for assignments and in the rare case a part was needed, the Appellant would retrieve the part so as to keep the work on the job site going. In

contrast to Barrs and Benway's testimony, Ferraro and McNamara testified that, with the abolishment of the Appellant's position, there was a frequent lack of inventory and supplies which required the interruption of jobs so that parts could be procured at local hardware stores. Both also testified that the absence of the Appellant from the workplace resulted in a decrease in their ability to perform their work as the expertise and assistance that they were provided by the Appellant was no longer available to them. (Testimony of Ferraro and McNamara)

39. Patricia Crandall, the First Accounting Assistant for the FHA, is responsible for accounts payable, payroll, benefits, and physical inventory. Crandall testified that, since the Appellant's departure, the number of invoices that she processes for small value items has increased dramatically and that there is a lot of purchasing of every day items (fan belts, nuts and bolts) that is done on a "quick, I need it now basis" which did not happen when the Appellant was there. She testified that the inventory system was run more efficiently under the Appellant. Crandall is also the president of the employee union representing the Appellant. (Testimony of Crandall)

40. The Authority created the position of a working foreman at a cost of \$4,200.00 per year. This position was to be filled by promoting an existing Mechanic and providing that person with a stipend of \$4,200.00 per year when a Senior Mechanic retired in March 2006. (Testimony of Casamento and Exhibit 21)

41. The Appellant stated that he was not contacted by the Authority about the vacancy. He testified that he would have accepted the Senior Mechanic position but the

Appellant's attorney stated that the Authority was not going to fill the position.  
(Testimony of Casamento and Ellis)

42. Casamento and Convery testified that the Appellant was not offered that position, in part, because they did not believe he could transfer into a position in a different bargaining unit than the one that the Director of Maintenance position was in. Casamento also testified that he did not think the Senior Mechanic job was open when the Appellant had to decide on bumping rights but he did not fully recall whether that was so. (Testimony of Casamento and Convery)

43. Although the Commissioners abolished the Appellant's position in part to use the salary savings in another manner, those funds are no longer available to the FHA from the state as those funds are on a use-it-or-lose-it basis. (Testimony of Merusi)

44. The Appellant did not file written notice of his consent to be demoted to another position with the FHA. (Exhibit 34)

45. The Appellant was offered to be returned to his position as Housing Inspector but declined the offer as the salary was much lower. (Testimony of Ellis)

### **CONCLUSION:**

G.L. c. 31, § 43 protects persons against removal or the abolition of their positions "except for just cause." Persons protected by G.L. c. 31, § 43 who have their jobs abolished are entitled to a hearing to determine if the action of the appointing authority is justified and not motivated by political influence or other improper considerations such as an Appellant's union activities.

The abolition of a position as part of an effort made in good faith to achieve economy and effectiveness does not run afoul of Civil Service protections. See Commissioner of Health and Hospitals of Boston v. Civil Service Commission, 23 Mass. App. Ct. 410, 413 (1987); Gardner v. Lowell, 221 Mass. 150, 154 (1915); McNeil v. Mayor of Peabody 297 Mass. 499, 504 (1937); Dooley v. Fire Commissioner of Malden, 309 Mass. 156, 162 (1941). See also Cambridge Housing Authority v. Civil Service Commissioner, 7 Mass. App. Ct. 586, 1979, which affirmed that “the Board clearly has the right to abolish a position it finds to be unnecessary and uneconomical”. However, any abolition of a position must be undertaken in good faith and may not be done without proper cause or as a pretext for depriving a person of his job. See Mayor of Somerville v District Court of Somerville, 317 Mass at 106 (1944). When reviewing an Appointing Authority’s decision to abolish a particular position, the Civil Service Commission may not, in the guise of protecting an aggrieved employee, substitute its judgment for that of an Appointing Authority as to the wisdom of a particular reorganization plan undertaken for reasons of economy. School Comm. of Salem v. Civil Service Comm., 348 Mass. 696, 698-699 (1965).

In the present case, the Appellant contends that the Authority’s claim of economic efficiency is merely a cover for the unjustifiable motive to remove him from his position and eliminate him from the payroll without the benefit of providing him with his Civil Service protections.

The Appellant’s argument regarding the Authority’s improper motive is not persuasive. The Respondent showed by a preponderance of the credible evidence that it had just cause to abolish the position of Director of Maintenance. The decision of the Appointing Authority in this matter was based on its fiscally conservative nature and a reasonable desire to expend the public funds in a

more effective and cost efficient manner. Evidence indicated that the Authority carefully considered the usefulness of the position in question and voted to abolish it and to perform the functions required of it in a more efficient and economical fashion. Prior to voting to abolish the position of Director of Maintenance, the FHA carefully examined the on-going need for said position for a number of years. Credible testimony showed that upon the elimination of the position, a reorganization plan was implemented for reasons of efficiency and the required functions were assigned to Barrs and Benway at modest salary increases.

Additionally, the Appellant did not demonstrate that the Respondent's action of not having him fill the Senior Mechanic position was not justified as there was no evidence that the Appellant filed written notice of his consent to be demoted to another position with the FHA although he had the opportunity to do so.

For all the above stated findings of fact and conclusion, the Commission determines that the position of Director of Maintenance was shown to have been abolished for just cause.

Therefore, the Appellant's appeal on Docket No. D-06-03 is hereby *dismissed*.

Civil Service Commission

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John J. Guerin, Jr.  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Taylor, Guerin and Marquis, Commissioners) on September 20, 2007.

A true record. Attest:

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Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. 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.

Any party aggrieved by a final decision or order of the Commission may initiate proceeding for judicial review under section 14 of chapter 30A 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 commission's order or decision.

Notice to:

Joseph G. Donnellan, Esq.

William H. Mayer, Esq.