

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

TODD GLIDDEN,
KEITH SWEENEY
& JOHN WOSNY,
Appellants

v.

D-19-141 (Glidden)
D-19-146 (Sweeney)
D-19-147 (Wosny)

DEPARTMENT OF STATE POLICE,
Respondent

Appearance for Appellant Glidden:

Joseph Kittredge, Esq.
Lorena Galvez, Esq.
Rafanelli Kittredge, P.C.
One Keefe Road
Acton, MA 01720

Appearance for Appellants Sweeney and Wosny:

Daniel J. Moynihan, P.C.
Mark Russell, Esq.
271 Main Street, Suite 302
Stoneham, MA 02180

Appearance for Respondent:

Siobhan E. Kelly, Esq.
Department of State Police
470 Worcester Road
Framingham, MA 01702

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

1. In July 2019, the Appellants, John Wosny, Keith Sweeney and Todd Glidden (Appellants), all Troopers employed by the Department of State Police (Department), filed appeals with the Civil Service Commission (Commission), arguing that they were “suspended without pay” by the Department (as part of a Duty Status Board proceeding); that there was no just

cause for said suspension and that the Department failed to follow procedural requirements of the civil service law.

2. On, July 23, 2019, the Department filed a Motion to Dismiss with the Commission, arguing in part that the Commission lacks jurisdiction to hear the appeal as, according to the Department, the underlying matters do not fall within the limited grant of authority to the Commission under G.L. c. 22C, s. 13.
3. The Appellants filed oppositions arguing, in part, that the Commission, for the same reasons articulated by the Commission in Reger et al v. Dep't of State Police 32 MSCR 212 (2019) including the Commission's decision on reconsideration, 32 MCSR 136 (2019) does have jurisdiction to hear these appeals. The Commission's decision in Reger et al was appealed to the Superior Court and was pending a decision at that time
4. Both parties, as part of their written submissions, asked that the Commission take administrative notice of the above-referenced decisions, which I did.
5. Subsequent to the completion of multiple days of hearing regarding the instant appeals, but prior to the submission of post-hearing briefs, the Superior Court, in Dep't of State Police v. Civ. Serv. Comm'n & Reger et al, Suffolk Sup. Ct. No. 2019-1370-G (2020), allowed the Department's judicial appeal, stating in part that: "The Legislature has specifically authorized Commission review of Trial Boards, but not decisions of Duty Status Boards" and further stated in part that "... The Commission does not have jurisdiction to hear appeals of Duty Status Board decisions."
6. In light of this recent Superior Court decision, which involves the same jurisdiction issues as the instant appeals, I provided the Department with the opportunity to submit a renewed motion to dismiss and for the Appellants to file a reply. The Department subsequently filed a renewed Motion to Dismiss and the Appellants did not file a reply.

Analysis

The Department's renewed motion to dismiss these appeals comes to the Commission on the heels of a recent judicial decision which seeks to reconcile the unique statutory relationship between the broad disciplinary authority of the Colonel of the Massachusetts State Police over State Troopers under his/her command (G.L.c. 22C §§ 1,10 & 43) with appellate rights granted to State Troopers pursuant to Civil Service Law (G.L. c. 31, §§ 41-45). State Troopers are not "civil service employees" as defined by G.L. c. 31, § 1. See G.L.c. 22C, § 10. State Troopers are granted the right to appeal certain discipline imposed on them for de novo review by the Commission pursuant to a specific provision of Chapter 22C which provides:

"Any uniformed member of the state police who has served for 1 year or more and against whom charges have been preferred shall be tried by a trial board to be appointed by the colonel or, at the request of the officer, may be tried by a board consisting of the colonel. Any person aggrieved by the finding of such a trial board may appeal the decision of the trial board under sections 41 to 45 inclusive of chapter 31. A uniformed

officer of the state police who has been dismissed from the force after trial before such a trial board, or who resigns while charges to be tried by a trial board are pending against him, shall not be reinstated by the colonel.”

G.L.c.22C, §13 (*emphasis added*).

Chapter 22C, § 3 and § 43 authorize the Colonel of the State Police to make rules, regulations and orders governing the operation of the Department and the supervision and control of its officers. Pursuant to that authority, the Department promulgated “Regulations Establishing Disciplinary Procedures and Temporary Relief from Duty” that establish the process through which the Colonel may act to impose good order and discipline within the Department.

- Sections 6.4 through 6.9 of the regulations establish the process for “Trial Boards” convened pursuant to G.L.c.22C,§13, *infra*. The Trial Board is “analogous to a military court martial”. See Burns v. Commonwealth, 430 Mass. 444, 448 n.6 (1999). After an officer against whom charges have been preferred is provided an opportunity to be heard, represented by counsel, present evidence and cross-examine witnesses, the Trial Board makes a finding of “guilty” or “not guilty” and, if guilty, recommends the discipline to be meted out, subject to approval by the Colonel, which may include discharge, suspension, reduction in rank as well as a variety of other sanctions specific to the State Police, such as reassignment or forfeiture of accrued leave, detail opportunities and overtime. An officer aggrieved by a finding of the Trial Board may appeal to the Commission as provided by G.L.c.22C, §13, *infra*.
- Section 6.2 of the regulations establishes an alternative procedure for addressing the “Duty Status” of officers who, among other things, are the subject of criminal proceedings, domestic abuse proceedings and other violations of Department procedures and orders. After hearing before a “Duty Status Board”, the board is authorized to recommend, subject to the Colonel’s approval, whether to retain the officer on full duty, restricted duty or suspension with or without pay. An officer who is aggrieved by a finding under G.L.c.22C, §43 may appeal that decision for judicial review by the Superior Court as provided by that statute. If and when charges are ultimately preferred, the officer may request a Trial Board under G.L.c.22C, §13.

In Reger et al, the Superior Court vacated the Commission’s decision to take jurisdiction over an appeal from a group of State Troopers who had been suspended indefinitely without pay after a “Duty Status” hearing, but before formal “charges” had been “preferred” and a Trial Board decision had been made. In its opinion, the Superior Court rejected the Commission’s conclusion that the indefinite suspension violated the officers’ rights to a “pre-deprivation” administrative hearing under G.L c. 31, § 41 and was an unlawful use of G.L. c. 22C “duty status” hearings to make an end run around the officer’s right to rectify such procedural irregularities by appeal to the Commission under G.L.c.31, § 41 & § 43. The Superior Court held that (1) the question as to when the Commission had subject matter jurisdiction to hear the appeals was a question of statutory interpretation of G.Lc.22C, to be decided de novo by the Court; (2) since the Department, not the Commission, is the agency charged with enforcement of Chapter 22C, the

Commission’s interpretation of that statute, while “relevant” was not entitled to the “special deference” the Commission would receive in construing civil service law contained in Chapter 31; and (3) Chapter 22C expressly limited the Commission’s subject matter jurisdiction to appeals from Trial Board decisions rendered under G.L.c.22C,§13, but not otherwise, and, specifically, the Commission “does not have jurisdiction to hear appeals of Duty Status decisions.” Id.

While the Commission may have good reason to question the logic of this decision, Reger et al., while not binding, per se, remains the sole holding interpreting the scope of jurisdiction granted to the Commission under Chapter 22C to hear appeals by State Troopers.

Since the instant appeals raise the identical issues addressed in the Court’s decision in Reger et. al., and for all the reasons stated above, the Department’s Motion to Dismiss is allowed and the Appellants’ appeals are hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 11, 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)(1), 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:

Joseph Kittredge, Esq. (for Appellant Glidden)
Lorena Galveze, Esq. (for Appellant Glidden)
Daniel Moynihan, Esq. (for Appellants Sweeney and Wosny)
Mark Russell, Esq. (for Appellants Sweeney and Wosny)
Siobhan E. Kelly, Esq. (for Respondent)