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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION

NO. 2384CV1948 *A*

Notice sent (4)
03/06/2025

(sc)

MICHEAL LYNCH

vs.

CIVIL SERVICE COMMISSION & another¹

**MEMORANDUM OF DECISION AND ORDER ON CROSS-MOTIONS
FOR JUDGMENT ON THE PLEADINGS**

Plaintiff Michael Lynch ("Lynch") filed this action seeking judicial review of a decision of the Defendant Civil Service Commission ("Commission") dismissing his claim that he was not selected by Defendant Town of Arlington ("Town") for the position of Parks Supervisor in violation of the civil service law, G.L. c. 31. Plaintiff argues that the Commission erred in its decision because (1) the Town failed to comply with G.L. c. 31, § 12 by failing to submit its "provisional appointment" for approval to the Personnel Administrator of the Human Resources Department ("HRD") for authorization and (2) the Town failed to use the "provisional promotion" provided for under G.L. c. 31, § 15, which it was required to do. The parties have cross-moved for judgment on the pleadings. The court held a hearing on the motions on February 25, 2025 and took the matter under advisement. For the following reasons, Plaintiff's motion for judgment on the pleadings is **DENIED**, and Defendants' motion for judgment on the pleadings is **ALLOWED**.

¹ Town of Arlington

BACKGROUND

Plaintiff is the Working Foreperson in the Arlington Department of Public Works ("DPW"), which is a tenured civil service position. The position of Parks Supervisor is also within the DPW. Parks Supervisor falls under the civil service system but no examination for that position has been held in decades. Due to inadequate funding, there is no likelihood that an exam will be held at any time in the near future. Therefore, there is no list from which the Town can make a permanent appointment.

The Parks Supervisor position became vacant in August 2022. The Town posted the position as a provisional appointment. This allowed the Town to seek external and internal candidates. The Town conducted a detailed interview process, the details of which do not need to be recited. The process consisted of three steps, including both written and oral components. The Town utilized four evaluation panelists in the initial two stages and five panelists in the third and final stage. The combined score totals after the last stage saw Plaintiff ranked fourth out of the remaining four candidates. The Town selected the candidate who finished second in total score.

DISCUSSION

The court reviews the Commission's decision to determine whether it was in conformity with the standards set forth in G.L. c. 30A, § 14(7). *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 689 (2012). See *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 263 (2001). The court may set aside or modify the commission's decision if it concludes that "the substantial rights of any party may have been prejudiced" by a decision that is based on an error of law, unsupported by substantial evidence, or otherwise not

in accordance with the law. G.L. c. 30A, § 14(7). The party appealing the Commission's decision bears the burden of establishing that the decision is invalid. See *Kavaleski*, 463 Mass. at 689.

"That is a 'heavy burden' since [the court] give[s] 'due weight to the experience, technical competence, and specialized knowledge' of the commission in deciding these matters." *Id.*, citing G.L. c. 30A, § 14(7) (internal citations omitted). "This standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom."

Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 242 (2006), quoting *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992).

I. Failure to Submit Provisional Appointment to Personnel Administrator of HRD

The Commission ruled that the absence of a request to HRD for authorization of the provisional appointment did not invalidate the appointment because there has not been a civil service examination for the position at issue in decades. Moreover, almost all non-public safety positions are filled by provisional appointments or promotions.

"An underpinning of the civil service structure is that original and promotional appointments will be made from a list of persons declared eligible on the basis of competitive examination." *Fall River v. Teamsters Union, Local 526*, 27 Mass. App. Ct. 649, 651 (1989). "To account for those positions for which no list of eligible persons and, perhaps, no competitive examination is available, the statutory scheme offers the possibility of provisional appointments." *Id.* Provisional appointments "are regarded as 'permitted only in what are supposed to be exceptional instances' which will end when a list of eligibles becomes available." *Id.* at 651-652, quoting G.L. c. 31, §§ 12-14.

There are two distinct types of appointments: permanent and provisional. “Unlike the specific selection criteria which govern permanent civil service appointments, provisional appointments need to meet only the general standard that ‘the person proposed for the provisional appointment meets the proposed requirements for appointment to the position and possesses the knowledge, skills and abilities necessary to perform such duties.’” *Id.* at 652. “The elements of competition and comparative selection so integral to the permanent selection process are absent from the making of a provisional appointment, presumably for the reason that a provisional appointment is a standby affair and that, therefore, the same rigor of selection procedure is not necessary.” *Id.*

The Commission has long taken the position that HRD, since 2009, has delegated the vast amount of decision-making authority regarding permanent appointments and promotions to cities and towns. “Under that delegation, for example, cities and towns are no longer required to submit bypass reasons to HRD for approval regarding permanent appointments and promotions . . . The vast majority of non-public safety civil service appointments and promotions have been done provisionally across Massachusetts for decades with no objection from HRD. In this context, the approval referenced here in regard to provisional promotions, even if not explicitly listed in the delegation agreements, has truly become a ministerial function.” Ex. A, Commission decision at 429.

It is unfortunate that a statute has fallen into the category of impossibility of performance due to decades of non-use combined with budgetary neglect. There is no list of eligible persons. There is not going to be a list of eligible persons. It is not an error of law for

the Commission to acknowledge that and comport with the best possible results given the reality of the current circumstances.

II. Provisional Appointment from Within the Same Department – G.L. c. 31, § 12


Plaintiff urges this court to accept the argument that the Town “cannot make a Provisional Appointment from within the department unit at issue.” In its decision, the Commission ruled that “...a provisional appointment made from within the same departmental unit is proper so long as the vacancy was open to both internal and external candidates[,] which this was. A provisional appointment is open to anyone who ‘meets the proposed requirements for appointment to the position and possesses the knowledge, skills and abilities to perform such duties.’ See G.L. c. 31, § 31. Nothing in the statutory language suggests that only external candidates may be selected for provisional appointments. See *id.* at §§ 12-13.” Ex. A at 430. The Commission further found that “[t]he Town properly considered both internal and external candidates, and presented sound reasoning for its decision to select an internal candidate who ranked second overall but had relevant experience with the Town’s [DPW] . . . The Town complied with basic merit principles, and the extensive documentation underlying the selection process refutes [Lynch’s] suggestion that it was slanted against him.” *Id.* at 431.

The Commission did not commit an error of law in reaching its decision. Further, the Commission’s decision is supported by substantial evidence.

ORDER

(sc)

For the foregoing reasons, Plaintiff's motion for judgment on the pleadings is DENIED, and the Defendants' motion for judgment on the pleadings is ALLOWED. The decision of the Commission is hereby AFFIRMED.


Matthew J. Nestor
Justice of the Superior Court

Dated: March 4, 2025