

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

DEBORAH MARTIN,  
Appellant

v.

Docket No. D-03-371  
D-05-98

CITY OF BOSTON  
PARKS & RECREATION  
DEPARTMENT,  
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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City of Boston  
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Commissioner:

John J. Guerin, Jr.

**DECISION**

Pursuant to G.L. c. 31, section 43, the Appellant, Deborah Martin (hereafter "Appellant"), filed this appeal on August 4, 2003 with the Civil Service Commission (hereafter "Commission") claiming that the Respondent, City of Boston Parks and Recreation Department as Appointing Authority, did not have just cause for her July

2003 layoff (Appeal No. D-03-371). In addition, the Appellant filed an additional claim on March 11, 2005 contesting the Appointing Authority's utilization of higher-graded employees to complete her former duties on an as-needed basis (Appeal No. D-05-98).

In May 2005, the Appointing Authority filed a motion to dismiss the Appellant's claim in Appeal No. D-05-98 for failure to state a claim upon which relief may be granted. The Appellant did not file a brief to challenge the Appointing Authority's motion and the Commission did not render a decision on the motion prior to the hearing on this matter.

The Appellant filed a timely appeal for her July 2003 layoff in No. D-03-371. A consolidated hearing was held on both of the above referenced matters on Thursday, January 19, 2006, before the Commission. One audiotape was made of the record of the hearing. As no written request was received from either party, the hearing was declared to be private. Witnesses were not sequestered. Post hearing briefs were filed following the conclusion of the hearing as instructed.

#### **FINDINGS OF FACT:**

Based upon the documents entered into evidence (Joint Exhibits 1 through 9) and the testimony of the Appellant, City of Boston Chief Financial Officer Lisa Signori, Parks & Recreation Department Finance Director Jerry Carchedi, and Parks & Recreation Department Personnel Director Paul Parisi, I make the following findings of fact:

1. The City of Boston (hereinafter referred to as “City”) is a municipal entity, which includes the Boston Parks & Recreation Department (hereinafter referred to as “Department”).
2. The City’s annual budget is approximately two billion dollars. (Testimony of Signori)
3. In mid-2003 the City was operating with one percent less in its budget that it had in the previous fiscal year. This deficit was created by an \$80 million dollar reduction in Local Aid from the Commonwealth of Massachusetts over the preceding two years. (Id.)
4. The Department’s personnel budget was reduced by approximately \$781,253 in personnel funds in its budget from Fiscal Years 2003 to 2004. (Testimony of Jerry Carchedi)
5. The Department’s budgeted positions were depleted from 244 in Fiscal Year 2003 to 209 in Fiscal Year 2004. (Exhibit 1 and Testimony of Paul Parisi). Specifically, the number of Head Clerks in the Department was reduced from five (5) in Fiscal Year 2003 to three (3) in Fiscal Year 2004 to one (1) in Fiscal Years 2005 and 2006. (Id.)
6. The City undertook several cost-saving measures prior to resorting to layoffs, including the cancellation of a police recruit class in early 2003, early retirement initiatives in October 2002 and mid-

2003, consolidation of health insurance plans, a purchasing freeze and voluntary furloughs. Such measures did not completely eliminate the need for further reductions in force through layoffs, but greatly reduced the number of layoffs that were necessary. (Testimony of Lisa Signori)

7. The Department determined that the Head Clerk position held by the Appellant could not be funded in Fiscal Year 2004, given the operational need of the Department to maintain basic services and the corresponding shortfall in the personnel budget for the coming fiscal year. (Testimony of Jerry Carchedi)
8. The Appellant was laid off in July 2003 from her position as Head Clerk in the Department. (Exhibit 2)
9. There is one job title that lies below Head Clerk in the Appellant's job series and is in the Department's budget, i.e. Principal Clerk Typist. (Exhibit 1)
10. At the time of the layoff the Appellant was one of the two (2) least senior employees in the Head Clerk position, both of whom were laid off. (Exhibits 3 and 4). The parties made a joint stipulation at the January 19, 2006 hearing that the Appellant was the least senior permanent Head Clerk. The parties also stipulated at the hearing that the Appellant was made permanent in the title by way of legislative action on September 9, 1998.

11. At the time of layoff there was only one budgeted position in the Principal Clerk Typist job series, which position was filled by Elizabeth Vozzella. (Exhibits 1 and 5)
12. Vozzella, the incumbent Principal Clerk Typist, had more seniority than the Appellant. (Exhibits 1, 4 and 5)
13. Because Vozzella had greater seniority in the Principal Clerk Typist position, the Appellant was not allowed to “bump down” into the Principal Clerk Typist position and was laid off effective August 5, 2003. (Exhibit 4)
14. The parties stipulated at the January 19, 2006 hearing that the Appellant was afforded her Section 41 rights with a hearing on the merits of her layoff on July 16, 2003.
15. From the time of her layoff through February 2005, the Department has not had sufficient funding to recall the Appellant to the Head Clerk position. (Testimony of Jerry Carchedi and Paul Parisi)
16. The Department has utilized employees in the Administrative Secretary job title to perform the Appellant’s former duties on an as-needed basis. (Testimony of Jerry Cardechi and Paul Parisi)  
  
The Administrative Secretary position is in the same job series as the Head Clerk position, but is a higher-graded position than the Head Clerk position and performs lesser-included duties such as

those described by the Head Clerk job description. (Testimony of Paul Parisi and Exhibit 8)

17. When a Head Clerk vacancy opened up in February 2005 following a termination, the Department offered to recall the Appellant to the position by letter dated February 22, 2005. (Exhibit 6)
18. The Appellant received the recall offer, but chose not to accept the position by letter dated March 16, 2005. (Exhibit 7) The Appellant cited transportation issues as her reason to decline the recall offer, as the position was located in Franklin Park in Dorchester and was scheduled for a 7:00 a.m. to 3:30 p.m. shift, and the Appellant does not own a car and lives in South Boston. (Exhibit 7 and Testimony of Deborah Martin)
19. Several bus lines serve both Franklin Park and the 1010 Massachusetts Avenue administrative building. In addition several Department employees reach their work locations, be it 1010 Massachusetts Avenue or Franklin Park, on time each workday without the benefit of a personal vehicle. (Testimony of Paul Parisi)
20. The Head Clerk job description does not specify a worksite. (Exhibit 8) The Department has stationed Head Clerks throughout various locations, including 1010 Massachusetts Avenue and Franklin Park. (Testimony of Paul Parisi)

21. Since the Appellant was laid off, the Department has not hired individuals into Head Clerk positions. The Department has posted and interviewed for the Head Clerk position that the Appellant declined recall to in February 2005, but the Department has not hired an individual for the position. (Testimony of Paul Parisi)
22. After the Appellant declined the February 2005 recall to the Head Clerk position (Exhibit 7), the Appellant remained on the recall list for the Head Clerk position pursuant to G.L. c. 31, s. 39. (Testimony of Paul Parisi)
23. The Department has not had the budgeted funds or operational need to hire another Head Clerk position at the 1010 Massachusetts Avenue worksite. (Testimony of Paul Parisi and Jerry Carchedi)
24. The Appellant received unemployment compensation benefits for the maximum allowable period following her July 2003 layoff. (Testimony of Deborah Martin)
25. The Appellant obtained a position with a private employer in January 2005, and has remained employed since that time. (Testimony of Deborah Martin)

## **CONCLUSION:**

When presented with an appeal pursuant to G.L. chapter 31, section 43, the Civil Service Commission seeks to determine whether the Appointing Authority had reasonable justification for the action taken against the Appellant. City of Cambridge v.

Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997), Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983), McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995), Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000), City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). “The removal of a tenured civil service employee for a lack of funds is an action that the appointing authority may only make with requisite just cause, and that finding of just cause is subject to the Commission’s review”. LePage v. Department of Mental Retardation, Civil Service Commission Case No. D-03-416 (2005). G.L. chapter 31, section 39 provides that, “Any action by an Appointing Authority to separate a tenured employee from employment for the reasons of lack of work or lack of money...shall be taken in accordance with the provisions of section forty-one”. The Department held a hearing on Martin’s layoff, in accordance with section 41, on July 16, 2003.

Documentary evidence and testimony demonstrates that the Department was faced with a legitimate lack of funding that necessitated the elimination of the Appellant’s Head Clerk position. Economic reasons, such as lack of funds, may constitute just cause for separation from service of a tenured Civil Service employee and/or the abolishment of a position. G.L. c. 31, s. 39, *see* Debnam v. Belmont, 388 Mass. 632,634 (1983), Mayor of Somerville v. District Court of Somerville, 317 Mass. 106 (1944); Commissioner of Health and Hospitals of Boston v. Civil Service Commission, 23 Mass. App. Ct. 410, 413 (1987), City of Gardner v. Bisbee, 34 Mass. App. Ct. 721, 723 (1993). “The courts have ruled that the Appointing Authority is to have great discretion in making this determination,” and the 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.” Holman v. Arlington, 17 MSCR 108 (2004), citing School Committee of Salem v. Civil Service Commission, 348 Mass. 696, 698-699 (1965). Therefore, absent evidence demonstrating that a separation for lack of funds is but a mere pretext for another improper motive for separation, the Commission cannot override a good faith determination by the appointing authority that such separation is made for cost-saving purposes. Gloucester v. Civil Service Commission, 408 Mass. 292, 299-300 (1990), Shaw v. Board of Selectmen of Marshfield, 36 Mass. App. Ct. 924, 926 (1994), Sheriff of Plymouth County v. Personnel Board, 440 Mass. 711, 713 (2004).

The Department made a good faith effort to layoff a number of employees, including the Appellant, to combat the foreseen budgetary shortfalls for Fiscal Year 2004. The evidence further shows that the Department provided an opportunity for Ms. Martin to be placed on the recall list, and in fact placed her on the list following her layoff in July 2003. The Appellant’s Section 39 reinstatement rights have not been violated, given that she was offered a recall in February 2005 to a Head Clerk position in the Department but turned it down.

The Appellant has filed two separate appeals relating to her July 2003 layoff that have been consolidated by the Commission. The first appeal, No. D-03-371, deals with the issue of whether the Department had just cause for the Appellant’s layoff. The second appeal, No. D-05-98, was filed in March 2005 but does not state a claim upon

which relief may be granted. In that appeal, the Appellant claims that the Department has utilized higher-graded employees to complete her former duties on an as-needed basis. The Department filed a motion to dismiss appeal No. D-05-98 at the May 2005 pre-trial hearing in that matter. The Appellant did not file a brief to challenge the Department's motion, and the Commission has not ruled on the Department's motion. The City also moved for a decision on appeal No. D-05-98 at the conclusion of the Appellant's presentation at the hearing on January 19, 2006, because the Appellant failed to offer any evidence to support her claims in that matter. The Commission took the City's motion under advisement.

In brief, the Department argued in its motion to dismiss appeal No. D-05-98 that the Commission lacks jurisdiction to grant the Appellant's appeal and request for relief under G.L. c. 31 and the Standard Adjudicatory Rules of Practice and Procedure. 801 CMR 1.01(7) (g)(3) states that "the Presiding Officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted". In the Appellant's appeal, which consists of a letter from her Union counsel without reference to any specific facts or individuals, the Appellant simply states that the Appointing Authority has allowed employees who did not get laid off to do her job duties. Even assuming the Appellant is correct, there is no right to appeal that issue to the Civil Service Commission.

There is no vacant, budgeted Head Clerk position in the Department. Since the Appellant was laid off from her position as Head Clerk, a preponderance of the credible evidence presented in this matter shows that the Appointing Authority has not had the funds available to budget for any new Head Clerk vacancies. In fact, the complement of Head Clerks in the Parks Department has gone from five (5) in FY03 to three (3) in FY04, to one (1) in FY05 and FY06. The City undertook several cost-saving measures prior to resorting to layoffs, including the cancellation of a police recruit class in early 2003, early retirement initiatives in October 2002 and mid-2003, consolidation of health insurance plans, a purchasing freeze and voluntary furloughs. Such measures greatly reduced the number of layoffs that would be necessary to achieve requisite cost-savings but did not completely eliminate the need for further reductions in force through layoffs.

It became necessary for the Department to layoff the two (2) least senior Head Clerks in July 2003, including the Appellant. Furthermore, the Appellant could not bump down into the lower-graded position in her job series, Principal Clerk Typist, because the incumbent was permanent in that position and had greater seniority over the Appellant. Thus the Department separated the Appellant from service on August 5, 2003 and placed her on the recall list for the Head Clerk position. When a Head Clerk vacancy opened in February 2005 by way of a termination, the Appointing Authority offered the Appellant the position and she refused the offer citing personal reasons.

G.L. c. 31, s. 2(b) requires that, for an individual to have standing before the Commission, the individual must be aggrieved by a decision, action or failure to act by

the administrator. A person aggrieved is further defined as one whose “rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person’s employment status”. *Id.* In this instance the Appellant only claims that other higher-graded employees who were not laid off are doing her former duties. The Commission’s recent decision in Lepage D-03-416 (2005) (Psychologist Associate III assumed caseload of Psychologist Associate I following Psychologist Associate I’s separation from employment for lack of funds) confirms that higher-graded employees may assume the duties previously performed by lower-graded personnel prior to a layoff. The Appellant is not an “aggrieved person” as defined in G.L. c. 31. The Appellant was the least senior employee in her job series and was offered reinstatement when there was a vacancy, yet she declined for personal reasons. Therefore, the Appellant lacks the standing under the law to seek redress from the Commission.

The Department has met its burden of producing a preponderance of credible evidence to demonstrate that the Appellant’s separation in July 2003 for lack of funds was reasonably necessary as a cost-saving function. Concurrently, the Appellant has not produced any evidence to demonstrate that the Department’s evidence on funding constraints was a mere pretext for an improper motive for his separation. Therefore, for all the reasons stated herein, the appeals on Docket No.’s D-03-371 and D-05-98 are hereby *dismissed*.

Civil Service Commission

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John J. Guerin, Jr.  
Commission

By vote of the Civil Service Commission (Chairman Goldblatt, Guerin, Marquis and Bowman, Commissioners) [Taylor, Commissioner absent] on February 15, 2007.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c 30A s.14(1) for the purpose of tolling the time for appeal.

Under the provisions of M.G.L. c. 31 s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings 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 the Commission's order or decision.

Notice to:

Wayne Soini, Esq.

Michael T. LoConto, Esq.