

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK,ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

HARRY MICHEL,  
*Appellant*

v.

G-01-463

CITY OF WALTHAM,  
*Respondent*

Appellant's Attorney:

Jun X. Lim, Esq.  
Sandulli Grace, P.C.  
44 School Street: Suite 1100  
Boston, MA 02108

Respondent's Attorney:

Luke Stanton, Esq.  
Assistant City Solicitor  
City of Waltham  
119 School Street  
Waltham, MA 02451

Commissioner:

Christopher C. Bowman

**DENIAL OF APPELLANT'S REQUEST TO AMEND A DECISION OF THE CIVIL  
SERVICE COMMISSION**

On April 12, 2011, the Appellant, Harry Michel, filed a request asking the Civil Service Commission (Commission) to amend its decision, issued on January 17, 2002, in Michel v. City of Waltham, CSC Case No. G-01-1463. A pre-hearing conference was held on May 10, 2011 at the offices of the Commission.

The 2002 decision related to the 2000 non-selection of the Appellant by the City of Waltham (City) as a reserve police officer in the Waltham Police Department (Department). Pursuant to a mutual agreement of the parties, the 2002 Commission decision ordered the

state's Human Resources Division (HRD) to "place Harry Michel's name at the top of the eligibility list for original appointment for the position of police officer so that his name appears at the top of the next certification which is requested by the City of Waltham ... from which the next original appointments to the position of police officer in the Waltham Police Department ...". The mutual agreement did not call for, and the Commission order did not grant, a retroactive civil service seniority date back to the date of bypass in 2000.

The Appellant is now seeking to amend the Commission's 2002 decision "to include a make-whole order, which would retroactively place Officer Michel on the reserve list on 2000."

The reason for the Appellant's request is that he believes that such an amended order would result in him being able to purchase approximately two additional years of creditable service towards his retirement, citing G.L. c. 32, § 4(2)(b).

The Appellant's request is *denied* for the following reasons:

1. There was no error in the Commission's 2002 decision. The Commission appears to have accepted the mutual agreement of the parties in which neither party sought a retroactive civil service seniority date at the time.
2. Even if there was an error in the order, the time period to request a reconsideration of that decision has now passed. A motion for reconsideration must be filed within ten days of the receipt of a Commission decision or order.
3. The Appellant's assertion that a retroactive civil service seniority date "would retroactively place [him] on the reserve list in 2000" is incorrect. According to the Appellant, he was appointed as a full-time Waltham police officer on January 22, 2002.

He never served as a reserve police officer and a retroactive civil service seniority date would not change that.

4. Even if the Appellant had been granted a retroactive civil service seniority date as a reserve police officer, he would not meet the requirements under G.L. c. 32, § 4(2)(b) to purchase creditable years of service towards his retirement. This section of the retirement allow provides in relevant part that:

“the [retirement] board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment; and provided, further, that such service as a permanent-intermittent or call fire fighter shall be credited only if such permanent-intermittent or call fire fighter was later appointed as a permanent member of the fire department. For a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter retiring from a governmental unit accepting the provisions of this sentence, the board shall credit, in addition to the five years of credit allowed pursuant to the preceding sentence, as one day of full-time service each day in any year which is subsequent to the fifth year following said appointment and on which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was assigned to and actually performed duty as a reserve or permanent-intermittent police officer or reserve, permanent-intermittent or call fire fighter; provided, however, that such service as a permanent-intermittent or call fire fighter shall be credited only if such fire fighter was later appointed as a permanent member of the fire department; provided, further, that this sentence shall take effect in a city by vote of the city council in accordance with its charter, in a town which maintains a separate contributory retirement system by vote of the town meeting, in a town whose eligible employees are members of the county retirement system of the county wherein such town lies by vote of a town meeting and by acceptance by the county commissioners of said county, in a district which maintains a separate contributory retirement system by vote of the district meeting, and in a district the eligible employees of which are members of a county retirement system by vote of the district meeting and by acceptance of the county commissioners of said county.”

The Appellant was not on the police reserve list and he was not eligible for assignment to duty at any time prior to January 22, 2002, the date he was appointed as a full-time police officer.

In all cases, a retroactive civil service seniority date ordered by the Commission is limited to civil service purposes only<sup>1</sup> and is not intended to provide the Appellant with any additional and/or retroactive compensation or benefits. A retroactive civil service seniority date should not be construed to provide an individual with the ability to

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<sup>1</sup> For example, a retroactive civil service seniority date can be important when layoffs are made under G.L. c. 31, § 39 according to an individual’s civil service seniority date.

purchase creditable years of service toward his / her retirement, particularly, for periods during which the individual actually performed no service as a public employee.

Civil Service Commission

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Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson and McDowell, Commissioners [Stein, Marquis – Absent]) on August 25, 2011.

A True copy. Attest:

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Commissioner

Notice to:  
Jun X. Lim, Esq. (for Appellant)  
Luke Stanton, Esq. (for Appointing Authority)

Courtesy copies to:  
John Marra, Esq. (HRD)  
Joseph E. Connarton, Executive Director, PERAC