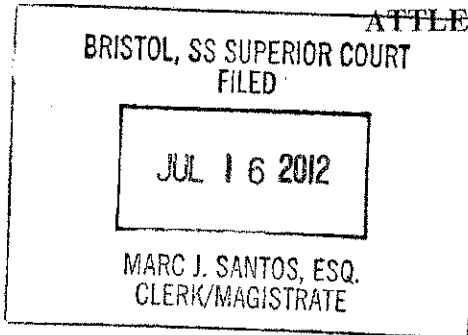


#14

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

BRISTOL, ss.

Civil Action # BRCV2011-00688



ATTLEBORO REDEVELOPMENT AUTHORITY,
Plaintiff

v.

CIVIL SERVICE COMMISSION,
MICHAEL MILANOSKI and
MEG ROSS,
Defendants

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

The plaintiff, the Attleboro Redevelopment Authority, has brought this action seeking judicial review of a decision of the Civil Service Commission, pursuant to G.L. c. 30A, § 14 and G.L. c. 31, §44. In its decision, the Commission ordered the Authority to reinstate the defendants, Michael Milanoski and Meg Ross, to their former positions as Executive Director and Chief Financial Officer of the Authority.

The Authority has filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the Massachusetts Rules of Civil Procedure and Superior Court Standing Order 1-96. The defendants, Milanoski and Ross, have filed a cross-motion for judgment on the pleadings. The Commission has filed neither a motion nor an opposition.

FACTS

In reviewing a decision of an administrative agency, the court's review of the issues "shall be confined to the record..." G.L. c.30A, § 14(5). The Commission's decision in this case includes extensive and detailed findings of fact, including the following.

In 2002, the Authority hired the defendant, Michael Milanoski, as its Executive Director. At the time, Milanoski also served as the city of Attleboro's Director of Economic Development. However, the employment arrangement was later restructured so that Milanoski worked solely for the Authority.

In 2005, the Authority hired the defendant, Meg Ross, as its Chief Financial Officer.

During the period in question, the Authority was primarily engaged in the development of two projects in Attleboro: the Industrial Business Park and the Intermodal Transportation Center.

Beginning in 2008, Mayor Kevin Dumas of Attleboro engaged in a public and private campaign to oust Milanoski from his position as Executive Director of the Authority. The campaign included lobbying Authority board members, making financial offers to Milanoski to induce him to resign and cutting off funding for the Authority until Milanoski resigned or was removed.

Mayor Dumas' campaign was initially unsuccessful because Milanoski had the support of a majority of the Authority's board members. However, in 2009, the Mayor's appointees and allies gained a majority on the board. At the first meeting after gaining that majority, on October 13, 2009, a majority of the Authority's board of directors voted to terminate the employment of all four Authority staff members, effective November 13, 2009, ostensibly due to a lack of funds.

At the time of this vote, as throughout the years in question, the Authority was financially dependent on grants from a variety of government agencies to fund its operations. As part of his efforts to oust Milanoski, Mayor Dumas terminated funding through the federal Community Development Block Grant funds administered by the city of Attleboro. Other grants, such as those administered by the Federal Transit Authority, were in jeopardy. However, the Commission found that the Authority had funds available to pay salaries from three sources: (1)

settlement of litigation with the Mantrose- Haecuser Co., Inc.; (2) a portion of a grant from the Massachusetts Opportunity Relocation and Expansion ("MORE") Jobs Program; and (3) urban renewal bonds.

The Commission concluded that the Authority's stated reason for termination of the staff's employment, i.e. lack of funding, was a pretext and that the Authority terminated its staff without just cause. The Commission ordered Milanoski and Ross reinstated to their positions, with back pay and benefits retroactive to November 13, 2009.

ANALYSIS

The Authority challenges the Commission's order to reinstate Milanoski and Ross to their former positions on two grounds. It contends that the evidence presented to the Commission was insufficient to support the finding that the Authority abolished their positions without just cause. It also contends that the Commission improperly attributed the acts of Mayor Dumas to the Authority.

1. Standard of Review

"Any party aggrieved by a decision of the [civil service] commission may obtain judicial review in Superior Court. G.L. c. 31, § 44. In [Superior] court, the proceedings are distinctly not de novo; it is not the occasion for a retrial of the case. ... Section 44 provides that the judicial review shall be conducted conformably with judicial review of administrative agency decisions, i.e., as prescribed in G.L. c. 30A, § 14. The reviewing court is, therefore, bound to accept the findings of fact of the commission's hearing officer, if supported by substantial evidence. ... The open question on judicial review is whether, taking the facts as found, the action of the commission was legally tenable." *City of Leominster v. Stratton*, 58 Mass. App. Ct.

726, 728 (2003) (citations omitted). See also, *City of Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 188 (2010) (same).

2. The Requirement of Just Cause

The Legislature has granted civil service protection to employees of redevelopment authorities. This protection includes a requirement of “just cause” for the loss of employment:

No person permanently employed by a redevelopment authority, who is not classified under chapter thirty-one [governing civil service], shall, after having actually performed the duties of his office or position for a period of six months, be discharged, removed, suspended, laid off, transferred from the latest office or employment held by him without his consent, lowered in rank or compensation, ***nor shall his office or position be abolished, except for just cause*** and in the manner provided by sections forty-one to forty-five, inclusive, of chapter thirty-one.

G.L. c. 121B, § 52 (emphasis supplied).

Thus, the issue faced by the Commission on the appeals filed by Milanoski and Ross was whether the Authority had “just cause” to abolish their positions.

“Lack of money is just cause for a layoff. 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. ... 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. ... An economic reason may not justify an action, however, if it is a mere pretext for an improper motive for removing an employee.” *Commissioner of Health and Hospitals of Boston v. Civil Service Commission*, 23 Mass. App. Ct. 410, 413 (1987) (citations omitted). *Debnam v. Town of Belmont*, 388 Mass. 632, 635-636 (1983) (“[A] municipality may abolish a civil service position when, in the judgment of appropriate municipal officials, the position is no longer needed or economical.”)

Cambridge Housing Authority v. Civil Service Commission, 7 Mass. App. Ct. 586, 589 (1979)

(“Any such abolition, however, 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.”)

2. Substantial Evidence of a Pretext

A decision of a state agency must be supported by “substantial evidence.” G.L. c. 30A, § 14(7)(e). The Authority contends that the Commission’s finding that it abolished Milanoski’s and Ross’ positions without just cause was not supported by substantial evidence.

“Substantial evidence” is defined as “such evidence as a reasonable mind might accept as adequate to support a conclusion.” G.L. c. 30A, § 1(6). “Judicial ‘review under the substantial evidence standard is circumscribed.’ ... It is a standard of review ‘highly deferential to the agency’ In order to be supported by substantial evidence, an agency conclusion need not be based upon the ‘clear weight’ of the evidence ... or even a preponderance of the evidence, but rather only upon ‘reasonable evidence’ ... i.e., ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ after taking into consideration opposing evidence in the record. G.L. c.30A, §§1(6), 14(8).” *Lisbon v. Contributory Retirement Appeal Board*, 41 Mass. App. Ct. 246, 257 (1996) (citations omitted.)

The Authority’s stated reason for abolishing its staff positions was lack of funding. However, the Commission was not required to accept that explanation in light of evidence to the contrary. The Commission found, based on conflicting evidence, that the Authority had funds available to pay salaries from three sources: (1) settlement of litigation with the Mantrose-Haeuser Co., Inc.; (2) a portion of a grant from the Massachusetts Opportunity Relocation and Expansion (“MORE”) Jobs Program; and (3) urban renewal bonds. The Commission reached this conclusion based on an assessment of the credibility of witnesses made by its hearing

officer. It is not within the authority of the court to second-guess that assessment of credibility. *Pyramid Co. v. Architectural Barriers Bd.*, 403 Mass. 126, 130 (1988) (“Under the substantial evidence test, a reviewing court is not empowered to make a de novo determination of the facts, to make different credibility choices, or to draw different inferences from the facts found by the [agency].”)

Further, there was an abundance of evidence that the majority of the Authority’s board members had an ulterior motive to abolish the positions. Mayor Dumas demonstrated his goal of terminating Milanoski through a persistent campaign to remove him. This included lobbying Authority board members, making financial offers to Milanoski to induce him to resign and cutting off funding for the Authority until Milanoski resigned or was removed. The board members who voted to abolish the staff positions were past or present appointees of the Mayor. They abolished the positions at the first meeting after they gained a majority on the board. They were assisted by the city’s attorney, whose services were loaned to the Authority by the Mayor. From these facts, the Commission could reasonably draw the inference that they were acting in concert with him to achieve the goal of removing Milanoski, rather than from a sense of fiscal prudence.

The Commission’s finding that lack of funding was a pretext for action designed to remove Milanoski from his employment without just cause is supported by substantial evidence in the record.

3. Attributing Mayor Dumas’ Acts to the Authority

The Authority also contends that the Commission committed an error of law by attributing the actions and motivations of Mayor Dumas to the board majority that voted to abolish the staff positions.

The Authority is correct in its contention that the city of Attleboro and the Authority are distinct legal entities. G.L. c. 121B, § 1 (a redevelopment authority is “a public body politic and corporate.”) Nevertheless, the two legal entities are closely intertwined. Municipal officers have authority to organize and to dissolve redevelopment authorities in their municipalities. *Id.* The Mayor has the power to appoint four out of five of the board members of the Authority. G.L. c. 121B, § 5. The Authority is required to use, and the city is obligated to provide, support for the Authority. G.L. c. 121B, § 7. Further, as in this case, redevelopment authorities and the cities in which they operate often work as partners in the development of urban renewal projects for the good of the people they both serve. The Authority and Mayor of Attleboro may have been legally distinct but they were hardly strangers.

The issue before the Commission was whether the Authority had just cause to abolish the staff positions. To resolve that issue, the Commission had to determine whether the majority of board members who voted to abolish the positions did so, as they stated, for financial considerations; or whether they acted in bad faith by using the financial considerations as a pretext to remove employees, who enjoy civil service protection, without just cause. The issue before the Commission was not whether Mayor Dumas acted in bad faith. A finding that Mayor Dumas acted in good faith or bad faith is unnecessary to resolve the legal issue.

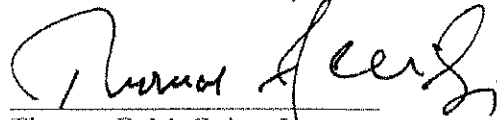
However, that does not mean that Mayor Dumas’ goals and actions are irrelevant. The Commission could properly consider evidence of what Mayor Dumas wanted and what he did to achieve those goals as bearing on the board members’ intentions. The Commission did consider that evidence and concluded that the board members were working in concert with the Mayor to remove Milanoski. The Commission further found that a majority of the board used funding issues as a pretext to terminate employees without just cause, in an effort to assist the Mayor.

The Commission did not commit any error of law in considering evidence of the Mayor's goals and actions to resolve the issue of whether the Authority violated G.L. c. 121B, § 52. Its further finding that Mayor Dumas acted in bad faith was unnecessary but does not require reversal of its decision about the Authority.

ORDER

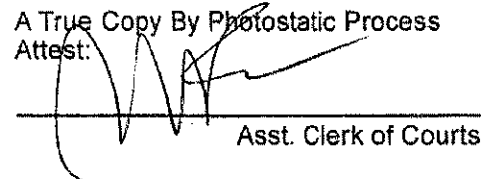
The plaintiff's *Motion for Judgment on the Pleadings* (Paper # 12) is **DENIED**. The *Cross-Motion for Judgment on the Pleadings* of the defendants, Michael Milanoski and Meg Ross, (Paper # 13) is **ALLOWED**. Judgment shall enter **AFFIRMING** the decision of the Civil Service Commission ordering the reinstatement of Michael Milanoski and Meg Ross to their former positions with back pay and all benefits retroactive to November 13, 2009.

July 15, 2012



Thomas F. McGuire, Jr.
Justice of the Superior Court

A True Copy By Photostatic Process
Attest:


Asst. Clerk of Courts