

# NOTIFY

11/17/2021 17

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

REC'D CIV. SERVICE COM.  
NOV 22 2021 10:28  
SUPERIOR COURT  
Civil No. 21-1396-H

WESTFIELD FIRE COMMISSION  
Plaintiff

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION, & others<sup>1</sup>  
Defendants

Notice sent  
11/17/2021  
K. A. P.  
M. M. C., JR.  
E. F. & C., PC  
T. M. N.  
THE R. LAW F.

### MEMORANDUM AND ORDER ON MOTIONS TO STAY AND CONSOLIDATE

(sc)

Pursuant to G.L. c. 30A, § 14, and G.L. c. 31, § 44, the Westfield Fire Commission seeks review of a 69-page decision by the Massachusetts Civil Service Commission (the “Decision and Order”), which, among other things, ordered the reinstatement of the three individual defendants, who had been fired from the Westfield Fire Department, and ordered the Westfield Fire Commission to discipline and further investigate the current Westfield Fire Chief. Two motions are before me: plaintiff moves to stay imposition of the Decision and Order; and the individual defendants move to consolidate this case with a case pending in Hampden County and to transfer this case to Hampden County. For the following reasons, the motion to stay is denied and the motion to consolidate is allowed.

### DISCUSSION

#### I. The Motion to Stay

The filing of a complaint for judicial review of an order by the Massachusetts Civil Service Commission will not ordinarily justify a stay of the Commission’s decision or order. G.L. c. 31, § 44. A stay is only justified if the moving party demonstrates a likelihood of success

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<sup>1</sup> Rebecca Boutin, David Kennedy, and Kyle Miltimore.

on the merits, irreparable harm if the stay does not issue, and the balance of the harms favors issuance of the stay. The court must also consider the public interest. Tri-Nel Mgmt, Inc. v. Bd. of Health of Barnstable, 433 Mass. 217, 219 (2001); Gerry v. Bd. of Pub. Accountancy, 394 Mass. 118, 130 (1985).

Plaintiff has not begun to meet this burden. Plaintiff, for example, has not argued in its motion to stay that it has a reasonable likelihood of success on the merits. It has not flagged any substantive or procedural defects in the Commission's decision. Judicial review under G.L. c. 30A, § 14, is deferential to the administrative agency. The court looks to determine if the agency committed an error of law or if its factual findings were unsupported by substantial evidence or arbitrary and capricious. The court must give weight to the agency's expertise and may not substitute its view of the evidence for the agency's findings or for the agency's assessment of credibility. As a result, it is not easy for a petitioner to overturn an administrative decision. Plaintiff certainly has not demonstrated that it has a reasonable likelihood of shouldering this burden.

In addition, plaintiff has not shown that it will be irreparably harmed without imposition of a stay. Plaintiff submits no affidavit or any other factual material from which the court could find any irreparable harm to plaintiff without a stay. Plaintiff argues only that it will incur expense if it has to begin an investigation of the Westfield Fire Chief. Plaintiff does not quantify that cost, nor is incurring costs ordinarily considered irreparable harm. In short, plaintiff has not met its burden to justify a stay of the Decision and Order.

## **II. The Motion to Consolidate**

After extensive hearings and considerable evidence, the Civil Service Commission issued its Decision and Order on or about May 21, 2021. Plaintiff filed this case on June 18, 2021, to challenge almost all aspects of the Decision and Order. Three days later, on June 21, 2021,

defendant Rebecca Boutin filed suit in the Hampden Superior Court seeking judicial review of the portion of the Decision and Order that imposed a thirty-day suspension in lieu of termination. See Boutin v. Westfield Fire Commission, et al., 2179CV0318 (“the Hampden Case”).

There is no question that it makes sense to consolidate this case with the Hampden Case. See Mass. R. Civ. P. 42(a). The two cases seek judicial review of different aspects of the same Decision and Order. Proceeding separately risks inconsistent judicial decisions about that administrative ruling. Consolidation would create judicial efficiencies, would require the preparation of only one administrative record (the record is apparently fairly hefty), and could streamline the briefing and argument on the motions under Mass. R. Civ. P. 12(c). See Superior Court Standing Order 1-96.

Ordinarily, when two Superior Court cases are consolidated, they are consolidated in the county and session of “the earliest-filed case.” Superior Court Rule 31, para. 2. However, the judge in the session in which that case was filed may, “in the interest of justice,” order that “the cases be consolidated in a session where a later-filed case is pending,” provided “the judge in that other session agrees to accept the consolidated cases.” *Id.* In this case, the interests of justice favor consolidation in Hampden County. The actions at issue occurred in Hampden County. All of the parties and lawyers are from Hampden County, except the administrative agency, which has state-wide reach. The Hampden Superior Court has also adjudicated other aspects of this dispute. I have discussed the potential consolidation with Judge David Hodge, who is currently presiding in the session where the Hampden Case is pending, and with Judge Michael Callan, the Regional Administrative Justice for Hampden County. Both of them consent to, and are willing to accept, the consolidated cases.

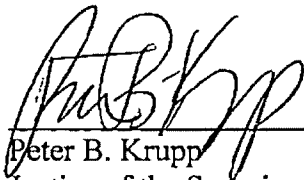
**ORDER**

(sc)

Plaintiff's Motion to Stay Imposition of the Civil Service Commission's Order Pending a Decision on its Appeal Pursuant to M.G.L. c. 30A, Section 14 (Docket #13) is **DENIED**.

Defendants', Rebecca Boutin, David Kennedy and Kyle Miltimore's Motion to Consolidate Suffolk and Hampden County Superior Court Actions Under Mass.R.Civ.P 42(a) and Superior Court Rule 31 (Docket #10) is **ALLOWED**. The Clerk shall promptly transfer the case files in this case to the Clerk for the Hampden Superior Court. The case pending in the Hampden Superior Court, Boutin v. Westfield Fire Commission, et al., 2179CV0318, shall be designated the "lead case."

Dated: November 10, 2021

  
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Peter B. Krupp  
Justice of the Superior Court