

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

CHRISTOPHER C. NICHOLS,
Appellant

v.

D1-07-60

TOWN OF NORWELL,
Respondent

Appellant's Attorney:

Jordan E. Burke, Esq.
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160 Gould Street: Suite 211
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(781) 455-0707

Respondent's Attorney:

Paul J. Hodnett, Esq.
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Commissioner:

Donald R. Marquis

ORDER OF DISMISSAL

Pursuant to the provisions of G.L. c. 31, § 42, the Appellant, Christopher C. Nichols (hereafter "Nichols" or Appellant") appealed the failure of the Respondent, the Town of Norwell (hereafter "Appointing Authority", or "Town") to grant him a hearing before removing him from his assignment as "Police Prosecutor" in the Norwell Police Department. The Appellant filed a timely appeal with the Civil Service Commission. A pre-hearing conference was conducted at the offices of the Civil Service Commission on April 12, 2007 by Commissioner Marquis.

The Appellant is a tenured civil service employee in the position of police officer. It is undisputed that the Appellant was at some point designated as “Police Prosecutor” for the Norwell Police Department, an assignment that carried an additional \$500 per year stipend. There is no civil service position with the title “Police Prosecutor”; the Appellant was never permanently promoted to such a position; and he never received civil service permanency into any position other than police officer during his tenure with the Norwell Police Department.

On January 7, 2007, after being assigned “Police Prosecutor” for fourteen (14) years, the Norwell Police Department removed this designation from the Appellant and assigned another individual to this assignment. His permanent civil service title at all times remained that of police officer. According to the Appellant, the Town erred by failing to provide him with a hearing pursuant to G.L. c. 31, § 41.

G.L. c. 31, § 41 states in relevant part:

“Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority.”

The Town argues that the Commission lacks jurisdiction to hear this appeal. Specifically, the Town argues that while the Appellant is a tenured civil service employee in the position of police officer, he never had civil service permanency in any higher title.

In regard to the \$500 stipend the Appellant received by the Appellant for his designation as “Police Prosecutor”, the Town argues that the stipend is just that, a *stipend* similar to that paid to police officers designated as detectives, pursuant to the collective bargaining agreement between the Town and the Norwell Police Association. Loss of that stipend, however, does not constitute a “lowering of compensation” as defined by Section 41 as his compensation as a police officer has not been reduced. The Commission concurs with the City.

The Appellant’s civil service permanency rests in the position of police officer, a position he has been allowed to retain. As such, the Town was not obligated to provide the Appellant with a hearing pursuant to G.L. c. 31, § 41 when it opted to end his designation as “Police Prosecutor” and the Commission has no jurisdiction to hear this appeal.

Pursuant to 801 CMR 1.01 (7) (g) (3), 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 or for failure of the Petitioner to state a claim upon which relief can be granted.

As the Commission lacks jurisdiction to hear this appeal and the Appellant has failed to state a claim upon which relief can be granted, the Commission hereby *dismisses* the Appellant’s appeal under Docket No. D1-07-60.

Civil Service Commission

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on April 26, 2007.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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:

Jordan E. Burke, Esq. (for Appellant)

Paul J. Hodnett, Esq. (for Appointing Authority)