

COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.



SUPERIOR COURT  
CIVIL ACTION  
NO. 1581CV00758

STEVEN O'NEILL,  
Plaintiff

vs.

CIVIL SERVICE COMMISSION & another<sup>1</sup>,  
Defendants

MEMORANDUM OF DECISION AND ORDER  
ON DEFENDANT'S MOTION TO DISMISS

The plaintiff, Steven O'Neill ("O'Neill"), filed this action seeking judicial review, pursuant to G. L. c. 30A, § 144, of the Civil Service Commission's ("the defendant" or "the Commission"), final decision to close its investigation into the residency of two Lowell police officers who participated in a statewide police promotional examination.<sup>2</sup> This matter is now before the court on the defendant's Motion to Dismiss. For the reasons set forth below, the defendant's Motion to Dismiss is ALLOWED.

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<sup>1</sup> City of Lowell ("the City"). Although the City is named as a defendant, O'Neill is challenging the decision of the Civil Service Commission.

<sup>2</sup> Although O'Neill's Complaint seeks review under G. L. c. 30A, § 14, this Court's authority to review a final decision of the Civil Service Commission is governed by G. L. c. 31, § 44. However, this error is meaningless because the standard of review under c. 31 is essentially identical to c. 30A appeals. See Andrews v. Civil Service Comm'n, 446 Mass. 611, 615 (2006) ("A party aggrieved by a final decision of the commission may seek judicial review pursuant to G. L. c. 31, § 44. Such review is governed by the provisions of G. L. c. 30A, § 14.").

## BACKGROUND

The following facts are taken from the complaint and the administrative record attached thereto as exhibits.

O'Neill is a police sergeant employed by the City of Lowell, Massachusetts. On April 29 and April 30, 2014, O'Neill sat for a statewide police promotional examination ("the examination"), seeking a promotion to lieutenant. (Compl. par. 5)<sup>3</sup>. At least eight other officers, including Sergeants John Cullen II ("Cullen") and Donald Crawford ("Crawford"), sat for the examination. (Compl., par. 7). Based on his performance on the examination, O'Neill placed sixth behind nine other individuals, including Cullen and Crawford who were among four individuals who tied for fourth place. This list was generated by the Human Resources Division of the Commonwealth of Massachusetts (the "HRD"), pursuant to a Delegation Agreement ("the Agreement") entered into with the City of Lowell. Pursuant to the Agreement, HRD was to develop an assessment center to compile a list of eligible individuals by rank and in accordance with exam scores and statutory preference for the position of lieutenant. (Compl., Ex 1).

On June 6, 2014, O'Neill filed a petition, pursuant to G. L. c. 31, § 2(a), requesting that the Commission investigate whether the City of Lowell and the HRD erred by allowing Cullen and Crawford to sit for the examination. (Compl.). O'Neill's petition alleged that both Cullen and Crawford resided in New Hampshire, and, therefore, neither complied with the residency requirements set forth in G. L. c. 31, § 58. The provision requires that police officers live "in the

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<sup>3</sup> References to the complaint shall be designated as "Compl., Par. \_\_\_" and references to the exhibits shall be designated as "Compl., Ex. \_\_\_"

commonwealth,” within ten miles of the city or town in which he or she is employed. (Compl., Ex. 2, pars. 1-3).<sup>4</sup>

On June 30, 2014, HRD sent information outlining the allegations of O’Neill’s petition to the Commission. (Compl., Ex. 1). Thereafter on July 8, 2014, HRD and the Commission held a show cause hearing, and, on July 14, 2014, the Commission issued a Procedural Order (“the Order”) outlining its findings. (Compl., Ex. 2). The Order stated that, based on the testimony offered during the July 8, 2014 hearing, Cullen was in compliance with the residency requirements of G. L. c. 31, § 58 as he resided in Dracut, Massachusetts, which is within ten miles of Lowell, Massachusetts. (Compl., Ex. 2, par. 7). As to Crawford, the Order stated that he lived in Hudson, New Hampshire, and, although he lived within ten miles of Lowell, he did not reside “in the commonwealth,” as required by G. L. c. 31, § 58. (Compl., Ex. 2, par. 8). Based on these findings, the Commission scheduled a status conference for January 6, 2015, to determine whether Crawford satisfied the dictates of G. L. c. 31, § 58. (Compl., Ex. 2, par. 14).

On November 17, 2014, the City of Lowell and the New England Police Benevolent Association, Local 10, executed a Side Letter of Agreement (“the Side Letter”) that provided, in pertinent part, that “Lowell Superior Court Officers may reside outside the Commonwealth, but not to exceed a twenty-five mile radius (from border to border).” (Compl., Ex. 3). Notwithstanding the execution of the Side Letter, on January 6, 2015, the Commission held the status conference. (Compl., par. 24). Thereafter, on January 22, 2015, the Commission determined that the issues

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<sup>4</sup> General Laws c. 31, § 58 provides, in pertinent part, that “any person who receives an appointment to the police force . . . of a city or town shall . . . establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town; provided, however, that a city or town may increase the 10 mile residency limit under a collective bargaining agreement negotiated under chapter 150E.”

raised by O'Neill's petition had been resolved and that it would not be pursuing the investigation. (Compl., par. 29).

On February 23, 2015, O'Neill filed a Complaint seeking judicial review of the Commission's decision to close its investigation into whether Cullen and Crawford were in compliance with the residency requirements of G. L. c. 31, § 58. (Compl., pars. 30-35).

### DISCUSSION

O'Neill's standing to challenge the Commission's decision is a threshold issue that must be resolved before the court can even consider the substantive issues raised in his appeal. See Ginther v. Commissioner of Ins., 427 Mass. 319, 322 (1998) (the court "treat[s] standing as an issue of subject matter jurisdiction."); Barvenik v. Bd. of Aldermen, 33 Mass. App. Ct. 129, 131 (1992) (explaining that standing is not just a mere technicality, but rather is a "jurisdictional prerequisite" for judicial review). In the absence of standing, the court does not consider other issues raised.

Pursuant to G. L. c. 31, § 44, a party aggrieved by a final order or decision of the Commission may seek judicial review "to determine if [the decision] violates any of the standards set forth in G. L. c. 30A, § 14(7)." Plymouth v. Civil Service Comm'n, 426 Mass. 1, 5 (1997). To qualify as a "party aggrieved" O'Neill must "show that the challenged action has caused [him] injury." Sullivan v. Chief Justice for Admin & Mgt. of the Trial Court, 448 Mass. 15, 21 (2006) (internal citations omitted). "Simply alleging injury alone is insufficient and '[i]njuries that are speculative, remote, and indirect' do not confer proper standing." Pugsley v. Police Dept. of Boston, 472 Mass. 367, 371 (2015) quoting Sullivan, 448 Mass. at 21. Accordingly, O'Neill bears the burden of demonstrating that he is "aggrieved in a legal sense" by the Commission's decision to close its investigation of

Crawford's residency, and that, because of this decision, O'Neill's "substantial rights have been prejudiced." See Bd. of Health of Sturbridge v. Bd. of Health of Southbridge, 461 Mass. 548, 557 (2012).

O'Neill contends that he has standing to challenge the Commission's decision and that he has been "aggrieved in a legal sense" because, absent Crawford's participation in the 2014 examination, he would have been placed higher on the promotional list, increasing the likelihood that he would have been promoted to lieutenant. (Pl. Mem., at 5). Under O'Neill's scenario, had Crawford not sat for the examination, the individuals that were ranked higher on the list than he was could have been bypassed, ultimately leading to his promotion. This scenario, although possible, is nothing more than speculation. Even if Crawford had been disqualified based on a violation of the residency requirement of G. L. c. 31, § 58, O'Neill would have still been ranked sixth behind eight other individuals.<sup>5</sup>

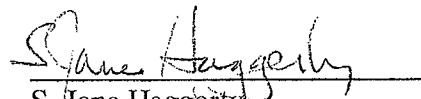
O'Neill's "contention is little more than an allegation that an injury might have occurred if a series of events transpired a certain way" and is insufficient to confer standing to appeal the Commission's decision to close the investigation. See Pugsley, 472 Mass. at 371-372 (plaintiff's alleged injury that, without selective gender certification, 180 additional candidates may have been considered for promotion was held to be insufficient to confer standing). As O'Neill's injury is too remote and speculative, he does not qualify as an "aggrieved" party under G. L. c. 31, § 44. Therefore, he lacks standing to challenge the Commission's decision and his Complaint must be dismissed.

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<sup>5</sup> Since Crawford was one of four other officers tied for fourth place, O'Neill's rank would have nevertheless remained the same. See Pl. Mem. at 3. The only change would have been that eight, rather than nine, officers would have been ranked higher than O'Neill. Indeed, during oral argument, O'Neill conceded that he was not next in line for promotion.

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that the Commission's Motion to Dismiss is **ALLOWED**. The complaint is necessarily dismissed as to the City. Judgment shall enter for both Defendants.

  
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S. Jane Haggerty  
Justice of the Superior Court

Date: February 26, 2014