

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 10-4208G

NOTICE SENT

08-18-11

H.H.K. & C.

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D.W.B.D.

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E.B.V.

MASS. A.G.

R.L.O. JR.

TIMOTHY O'SULLIVAN,
Plaintiff

v.

BROOKLINE SCHOOL DEPT. and
THE CIVIL SERVICE COMMISSION,
Defendants

(LAT)

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

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ORDER ON THE PARTIES' CROSS-MOTIONS
FOR JUDGMENT ON THE PLEADINGS

This action is an appeal, pursuant to G.L.c. 30A, from a decision by the Civil Service Commission affirming the Brookline School Department's termination of the plaintiff's employment. It is before this court on the parties' cross-motions for judgment on the pleadings.

The well established case law in this area provides that if an agency's decision is based on substantial evidence, is not arbitrary and capricious, and does not involve an error of law, it cannot be disturbed. G.L.c. 30A, § 14 (7). The principle is that the judiciary should not substitute its judgment for that of an agency decision-maker.

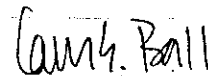
In this case, there is no basis for reversing the decision of the Civil Service Commission. The law is clear; the plaintiff pled guilty to assault charges and received a 90 day House of Correction sentence. G.L.c. 31, § 50 provides that he could not

remain employed for a year following his conviction unless the Superintendent of Schools exercised his discretion to retain the plaintiff. Here, the Superintendent plainly did not do so notwithstanding the plaintiff's arguments to the contrary. In my view, allowing Mr. O'Sullivan to use accrued vacation days and administrative leave time in order to keep him on the payroll while he was incarcerated does not constitute an exercise of discretion by the Appointing Authority as contemplated by c.31, § 50.

Moreover, the Civil Service Commission had no jurisdiction to consider the plaintiff's appeal premised on the second grounds for his termination: absence without leave for more than 14 days. See, Police Commissioner of Boston v. Civil Service Commission, 29 Mass. App. Ct. 470 (1990). The plaintiff's avenue of appeal in that regard was to the Massachusetts Personnel Administrator, Human Resources Division.

For all of these reasons the plaintiff's Motion for Judgment on the Pleadings (paper no. 9) is **DENIED** and the defendants' Cross-Motion for Judgment on the Pleadings (paper no. 10) is **ALLOWED**. Judgment shall enter for the defendants affirming the decision of the Civil Service Commission.

By the court,



Carol S. Ball
Justice of the Superior Court

DATE: August 15, 2011