

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

**MARK PORCARO &
WILLIAM HALLISEY,**

Appellants

v.

CITY OF BROCKTON,

Respondent

Case Nos.:

E-10-288 (PORCARO)

E-10-300 (HALLISEY)

ORDER OF DISMISSAL WITHOUT PREJUDICE

The Appellants, both of whom are superior officers in the Brockton Police Department, filed an appeal with the Civil Service Commission seeking to have their civil service seniority dates in their current positions of Lieutenant (Porcaro) and Sergeant (Hallisey) retroactively adjusted from January 20, 2010 to September 4, 2009.

In support of their appeal, the Appellants make the following argument:

1. The collective bargaining agreement (CBA) between the parties states that: “any member of the bargaining unit who guarantees that he/she is in their last year of employment, shall be allowed to sell his/her accumulated sick leave prior to his actual retirement date in order in order to more effectively plan for his/her retirement.”
2. In July 2008, a Brockton police lieutenant by the name of Lieutenant John H. Flynn indicated his intention to retire within one year and sought to sell back his accumulated sick time;
3. In July 2009, Lieutenant Flynn did not retire. As there was no vacancy, the City did not seek to fill Lieutenant Flynn’s position;
4. In November 2009, the Appellants filed a grievance stating that the CBA was violated when Lieutenant Flynn failed to retire one year after requesting payment for his accumulated sick time;
5. As part of their grievance, the Appellants sought the retirement of Lieutenant Flynn; the promotion of Porcaro to Lieutenant; the promotion of Hallisey to Sergeant; and retroactive seniority dates back to July 2009.
6. On November 12, 2009, the City denied the Appellants’ grievances, stating that while the Appellants “are correct in pointing out that the lieutenant violated Article 9.13 of the BPSU collective bargaining agreement with the City, it is not clear as to what the penalty for such a violation would be.”

7. Lieutenant Flynn subsequently retired.
8. On January 20, 2010, Porcora was appointed as Lieutenant and Hallisey was appointed as a Sergeant.
9. The Appellants argue that, had Lieutenant Flynn retired in July 2009 as required by the CBA, they would have been appointed as Lieutenant and Sergeant respectively by on or around September 4, 2009 and that they should be granted retroactive civil service seniority dates of September 4, 2009.

A pre-hearing conference was held at the offices of the Civil Service Commission on November 23, 2010 which was attended by the Appellants and Gilbert Schipini, Assistant City Solicitor.

The Appellants were unable to show, nor did they present any evidence or argument that that they would be able to show at a full hearing, that there has been any violation of the civil service law or rules. There was no lieutenant vacancy in July 2009 and, even if there was such a vacancy, nothing in the civil service law or rules would have required the City to fill such vacancy. (See Turowski v. City of Quincy, 12 MCSR 166 (1999), citing Goldblatt v. Corporation Counsel of Boston, 360 Mass. 660 (1971).

Here, it also appears to be undisputed that the City has agreed, for collective bargaining purposes, to recognize September 4, 2009 as the date that the Appellants should have been promoted. Pursuant to the collective bargaining agreement, this enables the Appellants to be deemed eligible for step increases as of that earlier date and, according to the Appellants, bid on shifts, vacation time, etc. using this earlier date. Thus, it would appear that the granting of a retroactive civil service seniority date in the respective positions would be of no value to the Appellants here. Thus, the appeals must be dismissed.

Although the appeals are being dismissed without prejudice, and may be reinstated if the Appellants can show that the relief requested would be of some benefit to them, they would likely still face the insurmountable obstacle of showing why the Civil Service Commission should grant relief when there has been no violation of the civil service law or rules.

For all of the above reasons, the appeals under Docket Nos. E-10-288 and E-10-300 are hereby ***dismissed without prejudice***.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and McDowell, Commissioners on December 2, 2010.

A True Record. Attest:

Commissioner

Notice to:
Mark Porcaro (Appellant)
William Hallisey (Appointing Authority)
John Marra, Esq. (HRD)