

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

**ANTHONY PRIDGEN and
TWENTY OTHERS¹,**
Appellants,

**CASE NOS: D1-09-79, D1-09-80,
D1-09-83, D1-09-86, D1-09-87,
D1-09-90, D1-09-91, D1-09-94,
D1-09-96, D1-09-97, D1-09-98,
D1-09-100, D1-09-103, D1-09-104,
D1-09-106, D1-09-107, D1-09-108,
D1-09-111, D1-09-114, D1-09-116,
D1-09-117**

v.

CITY OF FALL RIVER,
Respondent

Appellant's Attorney:

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Boston, MA 02109

Appointing Authority Attorney:

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Commissioner:

Paul M. Stein

DECISION ON APPELLANTS' MOTION TO RECONSIDER/REOPEN

The Appellants are twenty-one of forty Police Officers who served in the Police Department of the City of Fall River (Fall River), the Appointing Authority, who appealed to the Civil Service Commission (Commission) from Fall River's decision to select them for layoff, effective March 12, 2009, for lack of funds. After full hearing, the Commission determined that Fall River had just cause to terminate the positions held by the Appellants pursuant to G.L.c. 31, §39 and dismissed the appeals, with a proviso that, the Commission would entertain a motion to reconsider or reopen certain of the appeals

¹ Brian Cabral, Anthony Barbour, Brian St. Pierre, Derrick Silva, Williams Falandys, Thomas Demello, Barden Castro, Jeffrey Autote, Brian Saurette, Gregory Wiley, David Gouveia, Adam Talbot, Michael Silva, Jonathan Ferreira, Steve Valerio, Frederick Mello, Brian Levitre, Jason Resendes, Jared Mooney & Kevin Lopes.

by certain Appellants who asserted that they were improperly laid off while two officers, then serving on active military duty with less seniority, were retained. See Amaral et als v. City of Fall River, CSC Case Nos. D1-09-78 thru D1-09-117, 22 MCSR 653 (2009)

On January 4, 2010, the twenty-one presently named Appellants moved for reconsideration on those grounds and subsequently filed a Supplemental Brief on the issues involved. Fall River did not file an opposition to the Appellant's motion.

FINDINGS OF FACT

Based on the testimony and evidence presented to the Commission at the prior hearing, as well as the Appellants' Motion, Supplemental Brief and additional submission on March 25, 2001, the following facts appear to be undisputed:

1. On March 2, 2009, the Fall River Police Department (FRPD) sent notices to approximately four dozen Police Officers that Fall River was contemplating their layoff due to lack of funds. After hearings held on March 11, 2009, pursuant to G.L.c.31, §§39 & 41, forty of these Police Officers received termination notices, which they appealed to the Commission.

2. At the time of the layoffs, FRPD Police Officers Aaron LePage and Glen McDonald were serving on active duty in the armed forces. Officer LePage was stationed in a military hospital in Maryland and Officer McDonald was deployed in Iraq.

3. Due to their military status, the FRPD did not make an attempt to provide notices of contemplated layoff or termination notices to Officers LePage or McDonald.

4. Fall River has not provided sufficient evidence to support a finding that notices to Officers LePage and/or McDonald could not have been duly given to them by the FRPD through reasonable effort.

5. The civil service seniority date of Officer Lepage is 1/23/05 and the civil service seniority date of Officer McDonald is 9/25/06.

6. All of the twenty-one presently named Appellants who were laid off in March 2009 have civil service seniority dates greater than the 9/25/06 seniority date of Officer McDonald, and about half of the presently named Appellants also have seniority over Officer LePage.²

7. There is no evidence that either Officer LePage or Officer McDonald claimed disabled veteran's status as of March 2009.

8. The two most senior FRPD Police Officers who were laid off in March 2009 (i.e., the last officers in order of seniority to be terminated) are Anthony Pridgen (seniority date 1/14/01) and Anthony Barbour (seniority date 9/28/03).

9. As funding became available, from time to time, FRPD has offered reinstatement to most of the Police Officers who had been laid off in March 2009.

10. FRPD offered Officer Pridgen reinstatement on two occasions. Officer Pridgen declined the first offer and accepted the second one and is currently employed with the FRPD.

11. Officer Barbour is not currently employed with the FRPD. He is believed to be re-employed with a different municipal police force. In view of the fact that officers junior to him have been reinstated, the Commission infers that Officer Barbour has chosen to remain employed elsewhere, rather than accept reinstatement with FRPD.

² Two laid off Appellants (David Gouveia & Adam Talbot) have the same seniority date as Officer LePage. According to the practice of the FRPD, officers with the same seniority date are ranked for seniority purposes in alphabetical order. Thus, Officer Gouveia would be considered senior to Officer LePage and Officer Talbot would be junior to Officer LePage.

CONCLUSION

The Appellants' Motion for Reconsideration presents a narrow question for the Commission's review. The Commission's prior Decision in these appeals established that Fall River was justified in March 2009 to lay off up to forty of its least senior Police Officers for lack of funds. The Commission also determined that Fall River erroneously skipped over Officers' LePage and McDonald due to their military status, whereas, if it had been reasonably possible to give them notice, that should have been done, and, had such notice been successfully delivered, Officers LePage and/or McDonald should have been laid off ahead of officers with more seniority.

As it now appears that Fall River does not contest the premise that notice to Officers LePage and McDonald would have been successful through reasonable effort, the sole question remains what relief, if any, is appropriate to any of the Appellants here, due to the failure to make efforts to give such notice.

The present Appellants' originally contended that, absent notice to Officers LePage and McDonald, Fall River was precluded from terminating any Police Officers more senior to them. The Appellants seek relief from the Commission that would, as a practical matter, order the reinstatement of all twenty-one Appellants, to the extent they have not already been rehired, presumably retroactive to the March 2009 layoff. Alternatively, the Appellants sought relief to terminate Officers LePage and McDonald and reinstate the two most senior officers who had not yet been reinstated, and who are willing to do so.

The problem with both of the Appellants' initial proposed forms of relief is that they go too far. Should any such relief be appropriate, it must be limited to a person aggrieved by the violation of civil service law involved. The Commission should be concerned

only with the effect of erroneously “exempting” Officers LePage and McDonald from layoff on the rights of another more senior officer to have been retained at the time of that layoff. In this case, the lack of notice to Officers LePage and/or McDonald, at most, affected only the decision to lay off Officers Pridgen and/or Barbour, the two most senior officers who were laid off in their stead.³

As the Commission’s prior Decision in this matter indicated, if the evidence had established that, despite reasonable effort to “give” the notices of contemplated layoff and proposed termination (required by G.L.c.31, §39 and §41), those notices would not have reached the less senior officers, their layoff would have been prohibited, and no other officer could have protested the decision to retain them over other officers in order to reach the appropriate number of total layoffs needed for budgetary reasons. Amaral et al v. City of Fall River, 22 MCSR 653 (2009); Pike v. City of New Bedford, 22 MCSR 683 (2009) On the other hand, when the evidence suggests that reasonable effort to give the notices required by G.L.c.31, §39 and §41 to either LePage or McDonald would have been successful, only Pridgen and Barbour would arguably have standing to protest that they were improperly laid off and should be entitled to some form of relief. See Amaral et al v. City of Fall River, 22 MCSR 653 (2009)

A third possible scenario would arise if notice was not initially feasible, but, at some future time, while more senior officers remained on layoff, such notice would be feasible, such as, for example, the officer on military duty returns from leave or his or her deployment ends. It could reasonably be argued that, to be consistent with the civil

³ Hopefully, the Commission’s prior Decisions provide the necessary guidance for future layoffs that will prevent such an error from recurring. See Amaral et al v. City of Fall River, 22 MCSR 653, 658-659 (2009); Pike v. City of New Bedford, 22 MCSR 683 (2009).

service seniority rules, as well as the applicable collective bargaining agreements, the more junior officers should be displaced at that point to permit reinstatement of the more senior ones on layoff status. Such a result certainly has much to commend it, as a matter of equity, but the complex logistics of implementing such a “continuing notice” obligation also bears notice. Moreover, some input from the Massachusetts Human Resources Division, perhaps after consultation with representatives of municipal appointing authorities as well as collective bargaining units, would seem an important step in setting the appropriate process in such cases. Accordingly, the Commission need not address this hypothetical scenario at this time.

The question remains whether, on the facts presented, the Commission is warranted to reopen these appeals to grant relief to Officers Pridgen and/or Barbour. After carefully considering the issues raised by the Appellants, it does appear appropriate that some very limited relief be ordered.

The evidence presented by the Appellants has established that, at the time of the March 2009 layoff, Officer LePage was in a Maryland hospital and Officer McDonald was in Iraq. The Appellants presented sufficient evidence at the prior hearing of this matter to warrant the conclusion that, under normal circumstances, reasonable efforts to contact a member of the armed services deployed overseas can be expected to be successful. Amaral et al v. City of Fall River, 22 MCSR 653(2009). See also Pike v. City of New Bedford, 22 MCSR 683 (2009). Fall River has not contested this conclusion here. Accordingly, as to Officer McDonald, the most junior of the two officers on military duty, the facts warrant the conclusion that he would have received notice of his contemplated layoff and termination, that Officer McDonald, rather than Officer Pridgen,

was the person who should have been selected for layoff, and that, therefore, Officer Pridgen was laid off through no fault of his own. The harm to Officer Pridgen in this case is the time between his March 2009 layoff and the time Fall River first offered him the opportunity for reinstatement (which he denied). Officer Pridgen is entitled to relief restoring his compensation and other benefits for this limited period.

The case of the second most senior officer, Officer Barbour, is more complicated. The propriety of his selection for layoff turns, in the first instance, on whether Officer LePage – then in a Maryland hospital – was susceptible to receiving proper notice of his contemplated layoff and was in a position to take appropriate steps to protect his interest at the time. While it is perhaps conceivable that Officer LePage’s hospital confinement was such that notice to him was not practical, Fall River has not presented any evidence that such was more than a mere possibility here. Accordingly, the Commission is warranted to infer that the proper G.L.c.31 notices to Officer LePage also would have been effective. However, on the present record, the Commission does not have sufficient facts upon which to order relief, if any, which might be appropriate in the case of Officer Barbour and attributable to no fault of his own. Specifically, the record does not indicate when he was re-employed elsewhere, whether it was before or after he was given an opportunity for reinstatement to the FRPD, and whether he refused such an offer due to his interest in employment elsewhere. Thus, the Commission cannot determine whether Officer Barbour is entitled to the same relief as Officer Pridgen or whether relief, if any, appropriate to his case should be limited differently.

The very limited relief to be granted here is specifically without prejudice to the status of Officers’ LePage or McDonald, who were not parties to these appeals and have

not participated in the proceedings. Any consideration of their rights would require further notice and opportunity for them to present evidence and argument on their own behalf. Fall River does not contend that it has any intention to take action to affect the rights of either of these officers. Their employment status was preserved under circumstances that arose through no fault of their own and which were, apparently, solely at the impetus of Fall River and entirely beyond the control of (indeed, unbeknownst to) the officers then on active military duty. Under these circumstances, the Commission has no cause to prolong these proceeding solely to revisit the potential for retrospective adverse effect upon Officers LePage and McDonald of the mistaken decision by Fall River's to retain them in employment. Nothing in this Decision warrants or authorizes Fall River to initiate any action adverse to Officer LePage or McDonald at this time.

Accordingly, for the reasons and to the extent stated above, save for the appeal of Officer Pridgen, the Appellants' Motion to Reconsider and Reopen their appeal is *denied*, and the Motion to Reconsider and Reopen Officer Pridgen's appeal is *allowed in part*. Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission directs Fall River to grant the Appellant, Anthony Pridgen the limited relief specified in this Decision to restore his compensation and civil service rights for the period of time between his layoff and the date of the first offer of reinstatement Fall River made to him.

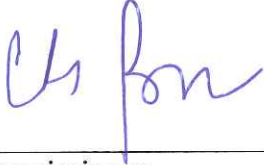
Civil Service Commission



Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell [absent] & Stein, Commissioners) on. April 7, 2011.

A True Record. Attest:



**Commissioner Marquis was
absent on April 7, 2011**

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), 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 to:

John M. Becker, Esq. (for Appellants)

Steven Torres, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)