

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1985CV00397

THOMAS RALPH

vs.

CIVIL SERVICE COMMISSION

REC'D CIV. SERVICE COMM
MAR 4 2020 AM 9:02

**MEMORANDUM OF DECISION AND ORDER ON PARTIES' CROSS MOTIONS FOR
JUDGMENT ON THE PLEADINGS**

In this action, the plaintiff, Thomas Ralph (Ralph), appeals the decision of the Civil Service Commission (CSC) allowing the Human Resources Division's (HRD) motions to dismiss Ralph's consolidated appeals of HRD's denials of his requests for two additional training and experience points on four civil service promotional examinations.¹ Before the court are the parties' cross motions for judgment on the pleadings. For the following reasons, Ralph's motion is **DENIED** and CSC's cross motion is **ALLOWED**.

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BACKGROUND

The following facts are taken from the administrative record. See Superior Court Standing Order 1-96, § 5.

Between 2017 and 2018, Ralph, currently a sergeant with the Webster Police Department (WPD), took and passed four civil service promotional examinations. For each examination, Ralph requested that "experience credits" be added to his test scores. One of the credits was the "25-year

¹ Ralph claims violations of c. 30A, § 14(7) and c. 30A, § 11(8).

promotional preference” pursuant to G. L. c. 31, § 59.² He also claimed an “experience” or “E&E” credit under G. L. c. 31, § 22 for his time served as an “Acting Lieutenant” of Dedham Auxiliary Police Force.³

To establish the years of service to qualify for the twenty-five year promotional preference, Ralph relied primarily on his employment as a permanent intermittent police officer for the WPD, commencing on December 12, 1995, and his subsequent full-time employment with the WPD, commencing in 1996. Because that service fell approximately three years and ten months short of the twenty-five year mark, Ralph claimed that the following services put him over the statutory threshold: (1) nine years (1988-1996) of part-time service with the Dedham Auxiliary Police Department; (2) six years (1990-1996) of part-time employment as an auxiliary and special police officer with the Medfield Police Department; and (3) thirteen months (1992-1993) of full-time employment as a Campus Police Officer at the University of Massachusetts Lowell. Ralph also sought two additional training and experience points under G. L. c. 31, § 22 on the scoring of the following four civil service promotional examinations: Dracut Police Chief in February 2017; Oxford Police Chief in February and March 2017; Webster Police Lieutenant in September 2017; and Webster Police Chief in February 2018.

HDR found that Ralph’s time of service with Dedham, Medfield, and UMass did not qualify for the § 59 preference because the experience was not with a “regular police force.” It also denied Ralph’s claim for additional experience points under § 22 because service as an “Acting Lieutenant”

² Pursuant to G. L. c. 31, § 59, “a member of a regular police force ... who has served as such for twenty-five years and who passes an examination for promotional appointment in such force shall have preference in promotion equal to that provided to veterans under the civil service rules.”

³ Under G. L. c. 31, § 22, “an applicant shall be given credit for employment or experience in the position for which the examination is held.”

of the Auxiliary Police in the Town of Dedham was not equivalent to the service in the position that Ralph sought (lieutenant on a regular police force).

CSC allowed HRD's motions to dismiss Ralph's appeals. In reaching its decision on the creditable years of service issue, CSC examined the legislative intent behind § 59, the language of the statute, the duties of auxiliary, special, and campus police officers, and the documentation that Ralph submitted. In declining to adopt Ralph's position, CSC noted that the positions of auxiliary police officer and special police officer in the Towns of Dedham and Medfield are not classified as civil service job titles for the purposes of § 59, and that the record does not establish what duties such police officers are authorized to perform. It also concluded that UMass campus police force, as it existed at the time Ralph served there nearly twenty-five years ago, did not have the requisite characteristics to consider its duties the equivalent of service with a "regular" police force. With regard to the issue of "E&E" credit, CSC found that HRD's decision not to award credit to Ralph for his prior experience as an Acting Police Lieutenant was within HRD's discretion and should not be second-guessed by CSC.

DISCUSSION

I. Standard of Review

Under G. L. c. 30A, § 14, any person aggrieved by a decision of any agency in an adjudicatory proceeding has the right to appeal that decision to the Superior Court. A court may reverse or modify an agency decision "if it determines that the substantial rights of any party may have been prejudiced because the decision is . . . [u]nsupported by substantial evidence; or . . . [is] [a]rbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law." G. L. c. 30A, § 14(7). The party appealing an administrative decision bears the burden of demonstrating

the decision's invalidity. See Merisme v. Board of Appeals on Motor Vehicle Liab. Policies & Bonds, 27 Mass. App. Ct. 470, 474 (1989).

When reviewing an agency's decision, "[t]he court shall give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14(7). "If [an] agency has, in the discretionary exercise of its expertise, made a choice between two fairly conflicting views, and its selection reflects reasonable evidence, [a] court may not displace [the agency's] choice . . . even though the court would justifiably have made a different choice had the matter been before it de novo." Lisbon v. Contributory Ret. Appeal Bd., 41 Mass. App. Ct. 246, 257 (1996) (internal quotations and citation omitted). However, "where a question of law is involved, [the Court] act[s] de novo." Id. The court may overrule an agency's interpretation when it is contrary to the plain language of the statute and its underlying purpose. Leopoldstadt, Inc. v. Commissioner of Div. of Health Care Fin. and Policy, 436 Mass. 80, 91 (2002).

II. Merits of the Parties' Motions

This case involves a matter of statutory interpretation of § 59. This court's review of the CSC's interpretation of this statute is based on a "reasonableness" standard. See Massachusetts Med. Soc'y v. Commissioner of Ins., 402 Mass. 44, 62 (1988) ("Where the Commissioner's statutory interpretation is reasonable, and his findings are supported by substantial evidence, the court should not supplant his judgment.").

Section 59 neither defines the term "regular police force" nor defines the duties a "regular" police officer performs. In examining the language of the statute, CSC opined that "the legislature's chosen phrase 'served as such' logically means to refer back to a candidate's time

spent 'as' a full-time sworn member of a 'regular police force.'" Ralph disagrees with this interpretation, stating that "it is patently evident that the term 'member' refers back to the term 'police officer,' and that the Legislature, when it enacted Section 59, knew and intended for the statute to reward all police officers serving with a regular police force for 25-years of dedicated service to the Commonwealth, regardless of the individual's status as a part-time, full-time, special, auxiliary, regular, civil service or non-civil service officer." (Emphasis added).

This court (Kern, J.) has previously held that Massachusetts law distinguishes between "regular police officers" and "special state police officers" by using qualifiers. See DeFrancesco v. Civil Serv. Comm'n., 26 Mass. L. Rptr. 444, 2009 WL 5909267, at *2 (Mass. Super. 2009). For example, in Jones v. Town of Wayland, 374 Mass. 249, 255 (1978), the Supreme Judicial Court noted: "There are numerous instances in the General Laws where the term 'police officer' has been qualified by antecedents such as, inter alia, 'regular,' 'permanent,' and 'full-time.'" See also Jones v. Town of Wayland, 4 Mass. App. Ct. 725, 731 (1976), and statutes cited ("[T]here are too many instances in which the Legislature has seen fit to qualify the generality of the words 'police officer' . . . by the use of such words as 'regular' . . . 'permanent' . . . 'full time' . . . 'reserve' . . . 'intermittent' . . . or 'special' . . . to permit us to read the words 'police officer' . . . to comprehend something less than every type of police officer."). In light of the above, the court declines to find unreasonable CSC's position that the presence of a qualifying antecedent like "regular" in § 59 demands the conclusion that the phrase "served as such" means service as a "regular" officer in a "regular," civil service police force. Similarly, it was reasonable for CSC to conclude that the 2014 legislative amendments revising the laws to vest UMass campus

police officers with broader authority do not relate back to 1993 when Ralph served as UMass Lowell police officer.

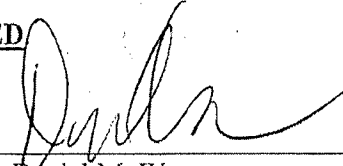
The court also rejects Ralph's argument that CSC improperly denied Ralph credit for serving in the non-civil service position of Acting Lieutenant with the Dedham Auxiliary Police under G. L. c. 31, § 22. CSC stated that "HRD was fully justified to disqualify volunteer, part-time 'acting' service with an Auxiliary Police department, supervising civilians who were being directly supervised by the Regular Police officers whom they were 'assisting . . . with traffic and crowd control at town events . . . traffic duties at church gatherings . . . weekend patrol duties of town buildings and property, when requested by the Regular Police' and attending 'regular weekly meetings of the unit.'" The court agrees with CSC that the above service does not qualify for the E&E credit because it was not "experience in the same position for which the examination was held [lieutenant on the regular police force]." Further, while it is true that CSC and HRD have previously allowed experience credit for volunteer service as an auxiliary police officer on the 2005 and 2012 exams, they are not required to do so in this case; the agencies can exercise their discretionary powers to prospectively "correct errors" in the requirements for E&E points in a future exam.⁴

In sum, pursuant to c. 30A, § 14(7), CSC's decision was not in excess of its statutory authority, based on error of law, arbitrary, capricious or an abuse of discretion, or otherwise not in accordance with Massachusetts law. Accordingly, CSC's decision is affirmed.

⁴CSC also noted that "no evidence was produced to infer that adding the E&E points involved would make any difference to Sgt. Ralph's final, rounded exam score or his place on the eligible list."

ORDER

For the foregoing reasons, plaintiff Thomas Ralph's motion for judgment on the pleadings is **DENIED** and defendant CSC's cross motion is **ALLOWED**



Daniel M. Wrenn
Justice of the Superior Court

DATED: February 25, 2020