

NOTIFY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2019-1370

COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF STATE POLICE and  
another<sup>1</sup>

vs.

COMMONWEALTH OF MASSACHUSETTS CIVIL SERVICE COMMISSION and  
others<sup>2</sup>

REC'D CIV. SERVICE COMM  
OCT 18 2019 PM 2:07

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS JOHN ADAMS,  
JEFFREY RUSSELL, DANIEL CRESPI AND JEFFREY REGER'S MOTION TO  
COMPEL COMPLIANCE WITH THE ORDER OF THE CIVIL SERVICE  
COMMISSION REINSTATING THEM TO THE MASSACHUSETTS STATE POLICE**

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This case arises out of investigations revealing that certain troopers employed by the Defendant Commonwealth of Massachusetts Department of State Police ("MSP") allegedly defrauded the Commonwealth by claiming and collecting overtime pay for shifts, or portions of shifts, that they did not work. The four individual defendants – Troopers Adams, Russell, Crespi and Reger (the "Troopers") – are among the many troopers suspected of committing this alleged fraud. None of these four Troopers has been charged with a crime at this point, nor has MSP yet brought any of the four Troopers before a Trial Board, which, according to MSP, is a procedure that may well follow the completion of the current MSP internal investigation. A Trial Board is an MSP vehicle for taking disciplinary action against a trooper, if warranted. That discipline can include termination.

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<sup>1</sup> Colonel Kerry A. Gilpin, in her Official Capacity as Colonel and Superintendent

<sup>2</sup> John F. Adams, Daniel E. Crespi, Jeffrey K. Reger, and Jeffrey J. Russell

In August 2018, near the beginning of MSP's internal investigation, an MSP Duty Status Board held "duty status" hearings concerning these four Troopers, and changed the duty status of each Trooper to "suspended without pay." Each Trooper appealed that decision to the Defendant Massachusetts Civil Service Commission (the "Commission"). MSP moved to dismiss, asserting that the Commission lacked jurisdiction to hear an appeal of a decision made by an MSP Duty Status Board. MSP argued that a duty status hearing is an internal MSP administrative process not subject to review by the Commission. A member of the Commission denied those motions to dismiss. MSP filed motions for reconsideration, which were also denied.

The Commission held an evidentiary hearing on November 29, 2018. Because of its position that the Commission lacked jurisdiction, MSP declined to introduce any evidence at that hearing. In response, counsel for the Troopers pointed out that the burden of proof at the hearing was on MSP, so they, too, declined to introduce any evidence. All parties filed post-hearing briefs, however.

On March 28, 2019, the Commission issued a unanimous 19-page decision, concluding that it had jurisdiction and that the Troopers were entitled to relief. "As the Department has violated the Appellants' procedural rights to a hearing prior to imposing the suspensions, and has chosen to present no evidence at the full hearing, the Appellants are entitled to be reinstated to their positions," the Commission ruled. Decision of March 28, 2019 at 18. MSP moved for reconsideration, and the Commission denied that motion on May 9, 2019.

Rather than reinstating the Troopers – or, on the other hand, completing its internal investigation and bringing them before MSP Trial Boards, if it concluded that discipline was warranted – MSP filed this lawsuit against the Commission and the Troopers. The Complaint

seeks judicial review of the Commission's decision under M.G.L. c. 30A, § 14 and c. 31, § 44. In this appeal, MSP renews its argument that the Commission lacks jurisdiction in this matter.

Because MSP has refused to reinstate the Troopers as ordered by the Commission, the Troopers filed this motion to compel their reinstatement. I heard argument on the motion on October 9, 2019. For the reasons set forth below, I will deny the motion without prejudice.

#### Analysis

Rather than complying with the Commission's directive that it reinstate the Troopers, MSP has filed this appeal of the Commission's order. An appeal of an administrative decision under M.G.L. c. 30A, § 14(7) does not automatically stay the order of the administrative agency. *Longo v. Bd. Of Appeal on Motor Vehicle Liability Policies and Bonds*, 356 Mass. 24 (1969). Hence the current motion.

At oral argument before me, the Troopers and MSP agreed that the relief sought by the Troopers in this motion, their reinstatement during the pendency of MSP's appeal of the Commission's Decision, is equivalent to a request for injunctive relief by the Troopers. Therefore I will apply the standard test for such relief.

"A party seeking a preliminary injunction must show that (1) success is likely on the merits; (2) irreparable harm will result from denial of the injunction; and (3) the risk of irreparable harm to the moving party outweighs any similar risk of harm to the opposing party." *Cote-Whitacre v. Dept. of Public Health*, 446 Mass. 350, 357 (2006) (Spina, J., concurring), citing *Packaging Industries Group v. Cheney*, 380 Mass. 609, 616-17 (1980). Because MSP is a public body performing an important public function, there is a substantial public interest that also must be considered. *Commonwealth v. Mass. CRINC*, 392 Mass. 78, 89 (1984).

1. The Troopers' Likelihood of Success on the Merits

Because it is the Troopers who seek the equivalent of a preliminary injunction, the first question is whether the Troopers are likely to succeed on the merits. In this administrative appeal, that question turns on whether the Troopers (and the Commission) are correct that the Commission had jurisdiction to order the reinstatement of the Troopers, or whether MSP is correct that a Duty Status Board decision is not the proper subject of a Commission proceeding.

In their motion, the Troopers do not address this question at all. They simply present me with the Commission's Decision, without pointing to any authority on the question of whether the Commission had jurisdiction to issue it. Nor does their reply brief shed any light on the question. Because parties seeking injunctive relief carry the burden of establishing their entitlement to that relief, I could deny the Troopers' motion without proceeding any further.

I have not chosen that course, however. Instead, I have accepted the Troopers' invitation that I examine the Commission's decision to search for support for the notion that the Troopers will succeed on the merits in this case. That review leads me to conclude that the issue of whether the Commission had jurisdiction is complex. In arguing for their polar-opposite positions on that question, the Commission and MSP rely on seemingly contradictory provisions in the civil service law, M.G.L. c. 31, and the statute governing MSP, M.G.L. c. 22C, as well as on Rules and Regulations issued by MSP. Perhaps the Troopers and the Commission will ultimately prevail in this appeal, or perhaps they will not. But, on the record before me, I find that the Troopers have not established their likelihood of success on the merits.

## 2. Balancing of Harms

The Troopers' failure to establish likelihood of success on the merits means that I need not consider the remaining factors in the test for a preliminary injunction. Nonetheless, I will proceed to the next two steps in the analysis, which concern irreparable harm.

The irreparable harm analysis begins by considering whether the Troopers will suffer irreparable harm if they are not immediately reinstated to their positions. If they will, the next step is to balance that harm against the harm that would be suffered by MSP if I ordered immediate reinstatement.

This lawsuit is about suspension without pay. Thus the primary damage about which the Troopers complain is economic: MSP is not paying them during their suspensions. Economic loss rarely rises to the level of irreparable harm.

Despite this truism, the Troopers do not address irreparable harm in their motion, relegating their discussion of that topic to one paragraph in their reply brief. There the Troopers argue that "if and when the [Troopers] are reinstated, they are not guaranteed retroactive pay to the date of their suspension nor does there exist a clear mechanism on how to recover retroactively." Troopers' Reply Brief at 3. The Troopers are incorrect. M.G.L. c. 30A, § 14(7), one of the statutes under which this appeal was brought, provides, "If the court finds that the action of the appointing authority [here, MSP] in . . . suspending . . . [an employee] was not justified, the employee shall be reinstated in his office or position without loss of compensation."

Although the Troopers do not argue it in their papers, one can imagine that the Troopers are also suffering non-economic reputational injury by being suspended without pay. However, any harm to their reputations will remain in place, even if they are reinstated, until the day when (and if) they are cleared of any wrongdoing at the conclusion of the MSP internal investigation.

I find that the Troopers have not established irreparable harm justifying a court order directing their immediate reinstatement.

Even if the Troopers had more non-economic harm at stake, such harm would be outweighed by the harm that MSP would suffer if it were ordered to reinstate Troopers whom MSP apparently believes have engaged in overtime fraud. That is especially so because that reinstatement would only be temporary if MSP were to prevail in today's case, or if the Troopers are terminated after an MSP Trial Board proceeding or are indicted in the ongoing criminal investigations. MSP is a quasi-military organization, and reinstating state troopers is a considerably more serious step than reinstating, say, an accounting clerk or salesperson involved in an employment dispute with a private-sector employer. I find, therefore, the balance of harms weighs in favor of not reinstating the Troopers at this time.

### 3. The Public Interest

In a case of this nature, *Mass. CRINC* requires that I take into account the public interest before issuing the order sought by the Troopers. That interest cuts against granting relief to the Troopers.

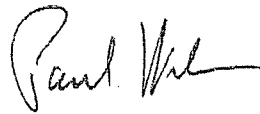
In Duty Status Board proceedings, MSP cited evidence that it believed warranted immediately suspending the Troopers without pay, because they had defrauded the Commonwealth. In its decision, the Commission was careful to note that whether the Troopers had engaged in "a serious breach of the duty of honesty and integrity demanded from all sworn law enforcement officers . . . is not the issue presented to the Commission here." Commission Decision at 1-2. The Commission added that "the Civil Service Commission would not be a safe haven for those proven to be engaged in such misconduct." *Id.* at 2.

MSP is entitled to complete its investigation about whether these Troopers engaged in that “serious breach of the duty of honesty and integrity.” Indeed, MSP is under a public duty to investigate that question.

The Troopers are unhappy that the internal investigation has already taken a very long time, and they fear that “there is no end in sight to such investigations.” Troopers’ Reply Brief at 2. Their frustration is understandable. But if the Troopers are ultimately vindicated, they will be awarded back pay and costs. Until they are vindicated, if that should be the outcome, the public interest would be best served by maintaining the status quo while MSP completes its internal investigation.

Conclusion

For these reasons, Defendants John Adams, Jeffrey Russell, Daniel Crespi, and Jeffrey Reger’s Motion to Compel Compliance with the Order of the Civil Service Commission Reinstating them to the Massachusetts State Police is **DENIED WITHOUT PREJUDICE.**



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Paul D. Wilson  
Justice of the Superior Court

October 11, 2019