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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

1 of 2 DOCUMENTS

BETH A. REUTER vs. METHUEN PUBLIC SCHOOLS & another.¹

1 The Civil Service Commission is also a party to this action, however, in letter to this court dated March 2, 2015, the commission informed the court that "the Commission's role in these matters was primarily to adjudicate a dispute between the other parties to this action, all of whom are represented before this Court" and "[a]s a result, the Commission is a nominal party and does not intend to submit a brief or present oral argument on March 3, 2015, or otherwise participate in this action."

14-P-759

APPEALS COURT OF MASSACHUSETTS*2015 Mass. App. Unpub. LEXIS 431***May 15, 2015, Entered**

NOTICE: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS *RULE 1:28, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009)*, ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO *RULE 1:28* ISSUED AFTER FEBRUARY 25, 2008, *MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT.*

SEE CHACE V. CURRAN, 71 MASS. APP. CT. 258, 260 N.4 (2008).

JUDGES: Berry, Vuono & Rubin, JJ.³

3 The panelists are listed in order of seniority.

OPINION**MEMORANDUM AND ORDER PURSUANT TO RULE 1:28**

The plaintiff was employed as a permanent senior building custodian by the Methuen Public Schools (Methuen). Her employment was terminated on March 7, 2013, following her conviction for larceny over \$250, *G. L. c. 266, § 30(1)*. Reuter received a one-year sentence in

a house of correction, thirty days to serve with the balance suspended with probation. Reuter appealed her termination to the Civil Service Commission (Commission). While Reuter's appeal was pending before the Commission, Reuter and Methuen entered into a settlement agreement whereby Methuen agreed to re-employ Reuter under certain conditions, including a suspension and a demotion. The agreement specified, among other things, that the settlement "shall not, either in whole or in part, serve as precedent in any other matter or dispute between the parties. Except as may be required by *G. L. c. 31, § 50*, [Methuen] will not undertake any further disciplinary action against Ms. Reuter" for any acts surrounding or giving rise to the existing theft charges.² The agreement arose after Reuter was charged with, but not yet convicted of, larceny.

2 *General Laws c. 31, § 50*, provides, in relevant part, that "[n]o person . . . shall be appointed to or retained in any civil service position . . . within one year after [her] conviction of any crime except that the appointing authority may, in its discretion, appoint or employ within such one-year period a person convicted of any of the following offenses: a violation of any provision of chapter ninety relating to motor vehicles which constitutes a misdemeanor or, any other offense for which the sole punishment was (a) a fine of not more than one hundred dollars, (b) a sentence of imprisonment in a jail or house of correction for less than six months, with or without such fine, or (c) a sentence to any other penal institution under which the actual time served was less than six months, with or without such fines."

The Commission's decision, dated July 1, 2013, affirmed Methuen's decision on the ground that, as a result of Reuter's conviction and sentence, Reuter was disqualified from employment under *G. L. c. 31, § 50*. The

Commission further determined that termination of Reuter's employment was not precluded by the settlement agreement the parties had executed approximately one year prior to Reuter's conviction. Following the Commission's decision, Reuter sought judicial review under *G. L. c. 31, § 44*. A judge of the Superior Court denied Reuter's motion for judgment on the pleadings and affirmed the Commission's decision. This appeal ensued.

In his well-reasoned memorandum of decision and order, the trial judge correctly observed that the question before the Commission was what the "parties meant by the use of the word 'required' [in the settlement agreement] and what[,] in fact[,] does [*§*] 50 require with respect to the continued employment of a person convicted and sentenced as Reuter was." The judge answered the question as follows:

"Under the plain language of [*§*] 50, Reuter could not be employed by [Methuen] within one year of February 13, 2013[,] unless the sentence imposed on her fell within one of the categories that permitted [Methuen] to exercise discretion to retain her in its employ. Reuter does not come within any of the exceptions. She was not convicted of a motor vehicle offense. Her sole punishment was not a fine of not more than \$100. Her sole punishment was not a sentence of imprisonment in a jail or house of correction for less than six months, with or without a fine. Her punishment included a [one-year] suspended house of correction sentence, and a period of probation with conditions, in addition to her thirty-day house of correction commitment. Her sole punishment was not a sentence in any other penal insti-

tution under which the actual time served was less than six months. Other penal institution means other than jail or house of correction mentioned in subsection (b), and she was sentenced to the house of correction. The [D]istrict [C]ourt does not have jurisdiction to sentence a defendant to [S]tate prison. The Woman In Transition Program is a placement program run by Essex County house of correction, not a sentence to a penal institution other than a house of correction."

The judge then concluded: "Thus, no prerequisites existed for [Methuen] to use its discretionary authority to retain Reuter in its employment after her conviction and sentence on February 13, 2013. As [§] 50 required her termination, even under Reuter's construction

of the settlement agreement, her termination must be upheld."

When reviewing a decision of the Commission, "[t]he reviewing court is . . . bound to accept the findings of fact of the commission's hearing officer, if supported by substantial evidence. . . . The open question on judicial review [in the Superior Court] is whether, taking the facts as found, the action of the commission was legally tenable." *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). We agree with the judge's reasoning in all respects and conclude that he appropriately determined the Commission's action in this case was supported by substantial evidence and was "legally tenable." *Ibid.* The judgment is therefore affirmed.

So ordered.

By the Court (Berry, Vuono & Rubin, JJ.³),

3 The panelists are listed in order of seniority.

Entered: May 15, 2015.