

## COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO: 2010-1813 D

CITY OF METHUEN,

Plaintiff

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION and JOSEPH SOLOMON,  
DefendantsMEMORANDUM OF DECISION AND ORDERRE: PLAINTIFF, CITY OF METHUEN'S MOTION TO STAY  
ENFORCEMENT OF THE CIVIL SERVICE COMMISSION'S DECISION  
GRANTING DEFENDANT, JOSEPH SOLOMON, RELIEF

1. On or about May 7, 2008, defendant Joseph Solomon ("Solomon") was discharged by the Mayor of the City of Methuen as Chief of Police of the Methuen Police Department, a civil service position.
2. Solomon appealed the decision to the Civil Service Commission.
3. After nineteen (19) days of evidentiary hearings before Commissioner Paul Stein, the Commission issued a 125 page unanimous decision and ordered that Solomon's discipline be reduced from his discharge to a suspension for a period of twelve (12) months commencing on the date of his discharge of May 7, 2008. The Commission ordered Solomon's reinstatement as Chief of Police of the Methuen Police Department commencing on October 1, 2010.
4. The City has filed a Petition for Judicial Review with the

Court seeking to set aside the Commission's decision and order of reinstatement of Solomon as Police Chief.

5. The City now seeks to stay enforcement of the Commission's decision and order pending the Court's decision on the City's Petition for Judicial Review.

A. Standard of Review

A request for a stay of an agency decision and order is considered under the same standards applicable to a request for a preliminary injunction. "To succeed in an action for a preliminary injunction, a plaintiff must show[:] (1) likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and [,] (3) that, in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction." Tri-Mel Management, Inc. v. Board of Health of Barnstable, 433 Mass. 217, 219 (2001), citing Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980). Moreover, in appropriate matters involving governmental action, the risk of harm to the public interest also should be considered. See GTE Products Corp. v. Stewart, 414 Mass. 721, 723 (1993).

B. Discussion

a) Likelihood of Success on the Merits

Before the Court is the 125 page decision of the Commission.

The Court does not have before it any part of the record of the

19 day evidentiary hearing; no transcripts of testimony and no exhibits introduced during the hearing. The Commission decision, at least on its face, reflects a thorough and thoughtful consideration of the evidence presented by the parties. The decision identified and explained a number of credibility determinations which were made and which were important to the Commission's decision. Making credibility determinations falls within the Commission's charge to hear evidence on a de novo basis. The decision of the Commission is internally consistent, has coherence to it, does not reflect any misconception of law, is consistent with statutory authority given to the Commission, and articulates conclusions which appear to be rationally based upon the evidence and finding of facts made by the Commission. Although the City contends that there was no substantial evidence to support the Commission's decision to undo Solomon's discharge, the Court has before it no record by which it can test the City's contention.

The City asserts, citing to Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997), that the Commission's job was to determine whether the City had sustained its burden of proving that there was reasonable justification for Solomon's discharge based upon circumstances found by the Commission to have existed when the Mayor made his decision. Instead, the City maintains that the Commission did not look to

determine whether the Mayor had good reasons for taking the action he took. Rather, the City argues that the Commission wrongfully substituted its own judgment for the Mayor's concerning the appropriate discipline for Solomon.

The Cambridge v. Civil Service Commission case comments further that: "In making that analysis, the commission must focus on the fundamental purpose of the civil service system - to guard against political considerations, favoritism and bias in government employment decisions . . . and to protect efficient public employees from political control. When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission." Id. (internal citations omitted). The Commission's decision reflects a determination that the severity of discipline, i.e., discharge, was in large part controlled by political considerations and not based on the merits of the situation. The Commission explained how it came to said conclusion and the determination appears to be supported by credible evidence. Again, in the absence of a record, there is no basis on which to be critical of the Commission's decision.

The Court is also mindful that when the record does become available for its review on the merits of the City's petition, the Court is not to make de novo factual determinations or

substitute its judgment for that of the Commission. The Court will be limited to deciding whether the Commission's decision was supported by substantial evidence and not arbitrary or capricious. The Court is also aware that agency decisions, such as the Commission's are entitled to some deference and the Court is to give "due weight to the experience, technical competence and specialized knowledge of the agency, as well as to the discretionary authority conferred to it."

Taking into account all of the above, it is quite clear that the City has failed at this stage to demonstrate any likelihood of success on the merits.

**b) Irreparable Harm and Risk of Harm to the Public**

The reinstatement of Solomon as Police Chief will result in some disruption within the Methuen Police Department. Several key positions in the command structure will be impacted. The current Chief will be bumped back to her prior command position and this will ripple through several other positions. This possibility had always been recognized and the current Chief's contract expressly acknowledged it. Although these upper echelon police officers may be unhappy with Solomon's return, there is no reason to believe that these law enforcement professionals will not continue to perform their duties in the best interest of the citizens of Methuen. Nothing provided to the Court concretely suggests that the public's interactions with

the Methuen Police Department will be adversely impacted by Solomon's reinstatement or that public safety will be compromised. Thus, the Court determines that no irreparable harm will result to the City of Methuen should the Court not grant the requested stay.

Should the City prevail on its Petition for Review, a second disruption will occur but then presumably the current Chief and a few others will resume the positions they now hold. No irreparable harm results from such occurrence.

c) Balance of Harm


Even though no likelihood of success on the merits or irreparable harm has been established by the City, the Court will address whether the disruption to the City and any morale issues resulting from Solomon's reinstatement outweighs the harm to the defendant in granting the stay. On this subject, the Court concludes that the City has not established that its harm outweighs the harm to Solomon. As previously stated, the Court recognizes that there will be some disruption to the Methuen Police Department resulting from Solomon's reinstatement and perhaps some unhappiness or morale issues. The Court does not believe irreparable harm results but such consequences are certainly not positives and are best avoided when possible.

As to Solomon's situation, it appears that the loss of his position as Police Chief and the income and other benefits

associated with that position has caused him real hardship. The loss of income appears to have caused severe financial strains for him as detailed in his affidavit to the Court. Likewise, his loss of health care coverage appears to have also caused significant distress. Although the City just a few days ago offered health care to Solomon, it has not offered to pay him during the period of the stay.

ORDER

The Court denies the City of Methuen's request for a stay of the Civil Service Commission's order reinstating Joseph Solomon as Chief of Police of the Methuen Police Department effective October 1, 2010.



Thomas R. Murtagh  
Associate Justice  
of the Superior Court

Dated: September 30, 2010

COMMONWEALTH OF MASSACHUSETTS

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Defendants

FINDINGS PURSUANT TO TRIAL COURT RULE VIII

Pursuant to Trial Court Rule VIII, the Court makes the following findings with respect to defendant, Joseph Solomon's Emergency Motion to Impound Five (5) paragraphs of the affidavit he submitted in opposition to the plaintiff, City of Methuen's Motion to Stay Enforcement of the Civil Service Commission's Decision reinstating Solomon to the position of Police Chief of the City of Methuen commencing October 1, 2010:

1. The City of Methuen has petitioned this Court for Judicial Review of the decision of the Civil Service Commission which concluded that Solomon was to be reinstated as Police Chief of the Methuen Police Department effective October 1, 2010.

2. The City of Methuen has moved on an emergency



basis for a stay of the Commission's Order reinstating Solomon.

3. In support of its stay request the City of Methuen has asserted that the disruptive harm to the City in not granting the stay outweighs any harm to Solomon resulting from a stay.

4. Solomon was then required to respond and he did so in part by filing an affidavit setting forth facts to demonstrate hardships he claims to have experienced or is experiencing as a result of his removal as Police Chief.

5. Solomon seeks to impound five (5) paragraphs of his affidavit claiming that these paragraphs contain information of a sensitive and private nature in which the public has no interest.

6. Solomon is a public figure and his suspension and discharge as Police Chief has interest for the public. So also do his attempts to gain reinstatement and the City of Methuen's efforts to challenge the Commission's decision. The public also has an interest in Solomon's response to the City's request for a stay of enforcement of the Commission's decision.

7. The Court concludes that because of the public's


interest in the Police-Chief controversy that three (3) of the paragraphs of Solomon's affidavit (paragraphs 12, 16 and 17) sought to be impounded by Solomon shall not be kept from public scrutiny.

8. As to the other two (2) paragraphs, paragraphs 18 and 19, the Court finds that with the exception of the first sentence of each of these paragraphs, the content of these paragraphs should be impounded. These paragraphs contain details concerning medical conditions and treatment which are typically treated as private and confidential. Although Solomon has provided the details for the Court's consideration, he did so only because he had to in order to address the City's assertion that no harm would result to him from the granting of a stay of the Commission's decision. Solomon should not forfeit his right to privacy of medical details because the City positioned him to defend himself with the information. In this situation, Solomon's right to keep medical information private trumps any interest the public has in such information.

#### O R D E R

Joseph Solomon's Emergency Motion to Impound Portions of his Affidavit is Allowed as to paragraphs

18 and 19 except for the first sentence in each of these paragraphs. The Motion is Denied as to paragraphs 12, 16, 17 and as to the first sentence in each of paragraphs 18 and 19. Solomon's counsel shall immediately cause the filing of the Solomon affidavit which reflects this decision.

  
Thomas R. Murtagh  
Associate Justice of the  
Superior Court

Dated: September 30, 2010