

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT

CIVIL ACTION
No. 20 CIV 190

HAMPDEN COUNTY
SUPERIOR COURT
FILED

OCT 08 2021

ERIK SUNNY
PLAINTIFF

vs.

CIVIL SERVICE COMMISSION
AND HUMAN RESOURCES DIVISION
DEFENDANTS


CLERK OF COURTS

MEMORANDUM OF DECISION AND ORDER
ON PLAINTIFF'S MOTION (AND DEFENDANTS' CROSSMOTION) FOR
JUDGMENT OF THE PLEADINGS

Plaintiff seeks judicial review of the of the defendant Civil Services Commission's (Commission) action upholding the defendant Human Resource Division (HRD) determination that the plaintiff police officer Erick Sunny was ineligible to sit for the September 2018 promotional examination for the position of sergeant with the Chicopee Police Department.

Plaintiff sat for the exam, but thereafter HRD refused to score his exam based on its determination that the plaintiff was ineligible to sit for it because he had yet to complete his third year of service in the lowest rank of police officer, as required by statute.

Plaintiff submits, pursuant to G.L.c. 31, § 44 and G.L.c. 30A, that § 14, the decision prejudices his substantial rights because it is based on an error of law, is unsupported by substantial evidence, or is arbitrary, capricious, or an abuse of discretion.

For the reasons which follow, I must deny the plaintiff's motion for judgment on the pleadings and allow the defendants' crossmotion for the same.

THE ISSUE

The facts and administrative background are not materially contested. The issue before me is whether the plaintiff's roughly five months of paid service in the police academy as a "student officer," shall be included in determining whether he satisfied the statutory requirement that he complete three years of service in the first rank, police officer, before becoming eligible to take the written promotional examination for the next rank, sergeant.¹ See G.L.c. 30A § 59, quoted in pertinent part below.

STANDARD OF REVIEW

Judicial review of the Commission's ruling is governed by Chapter 30A § 14 and G.L.c. 31, § 44. On factual questions, I am bound to accept the Commission's findings, if supported by substantial evidence. *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). On questions of law, my review is *de novo*. *Lawrence v. Civil Service Commission*, 66 Mass. App. Ct. 309, 311 (2006).

When reviewing questions of statutory interpretation, my review is also *de novo*, however, I must "give deference to a reasonable interpretation of a statute by the administrative agency charged with administration and enforcement." *Sullivan v. Board of Appeals on Motor Vehicle Liability Policies & Bonds*, 97 Mass. App. Ct. 818, 821 n.7 (2020).

¹ On May 4, 2015, after passing the civil service examination, plaintiff entered the police academy from which he graduated on October 9, 2015, the date he was sworn in as a police officer. On September 15, 2018—*more* than three years after entering the police academy, but *less* than three years after being sworn in as a police officer—plaintiff sat for the written portion of a promotional exam for the rank of sergeant.

At the hearing on these crossmotions, respective counsel agreed that subsequently, plaintiff satisfied the requirements to be promoted to the rank of sergeant, and that plaintiff's sole purpose in pursuing this action is to credit what he deems is his proper seniority.

BACKGROUND

Plaintiff was paid by the Chicopee Police Department while enrolled for roughly five months in the department's police academy. While the defendants take no position on whether the department's payment of wages to plaintiff rises to the level of permanent employment, for the purposes of my ruling, that appears to be the case. On September 15, 2018, less than three years after being sworn in as a first-rank police officer—*excluding his five months of paid service in the police academy as a student officer*—plaintiff sat for the written part of the promotional exam for the second rank, sergeant.² The City of Chicopee has a population more than 50,000, thus, the statutory three-year service requirement in the lowest position (police officer) for promotion to the next lower position (sergeant) is triggered. That statute is G.L.c. 30A § 59, which in pertinent part provides:

... An examination for a promotional appointment to any title in a *police ... force shall be open only to permanent employees in the next lower title in such force ... provided ... that **no such examination for the first title above the lowest title** in the police ... force of a city or town with a population in excess of fifty thousand **shall be open to any person who has not been employed in such force in such lowest title for at least three years after certification.** (emphasis added).*

Because the plaintiff was indeed paid by the police department while studying full-time in the police academy, does the phrase “employed in such force” in § 59 require three years of “actual service” as a police officer? The Commission answers yes. The plaintiff, no, reasoning that § 59 does not containing the words “actual service.”

The Commission presents the far better argument. First, as a student officer, by statute, plaintiff was *prohibited* from exercising *any* police powers *until* he completed his

² See fn. 1, *infra*.

academy course of study. G.L.c. 41 § 96B, provides that “every person who receives an appointment... in which he *will* exercise police powers in the police department ... *shall, prior to exercising police powers, be assigned to and satisfactorily complete a prescribed course of study.*” (emphasis added). Thus, the mere fact that the plaintiff was being paid full-time wages while *studying* at the police academy (a statutory requirement) to *become* a police officer is in no way determinative.

Second, the Commission persuasively argues that during his five months as a student officer studying to become a police officer, plaintiff could not possibly gain *any actual* experience in the day-to-day policing, such as performing stops and arrests, responding to emergency and non-emergency calls, and making significant decisions which go hand-in-hand with policing, before he was sworn in as a police officer. See *Cambridge v. Cambridge Police Patrol Officers Association*, 58 Mass. App. Ct. 522, 526 (2003) (“A cadet is not at risk to be put in harm's way as if even an office-bound police officer.”)

Third, § 95B *exempts* student officers from the purview of Chapter 31 (civil service) notwithstanding any collective bargaining agreement.

... The provisions of chapter thirty-one and any collective bargaining agreement notwithstanding, *any person so attending such a school shall be deemed to be a student officer and shall be exempted* from the provisions of chapter thirty-one and any collective bargaining agreement for that period *during which he is assigned to a municipal police training school*, provided that such person *shall be paid the regular wages* provided for the position to which he was appointed ...” (emphasis added).

Fourth, acceptance of the plaintiff’s argument would, in my view, serve to undercut “basic merit principles” upon which the civil service system depends. See *Mass. Assoc. of Minority Law Enforcement Officers v. Abba*, 434 Mass 256, 259 (2001). (“The

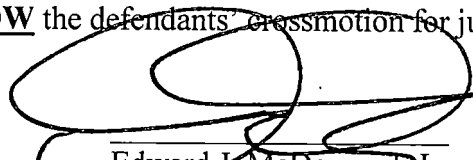
fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. *Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 304 (1997), and cases cited. The commission is charged with ensuring that the system operates on "basic merit principles," as defined in G. L. c. 31, § 1 ..."). See also *Sherman v. Randolph*, 472 Mass. 802, 804 (2015) ("To achieve this goal [merit-based promotions] when an appointing authority notifies HRD of an open position, HRD certifies a list of eligible candidates for the position and ranks the names on the list in order of the scores the candidates received on the relevant HRD examination, with the inclusion of veterans' preferences. See G. L. c. 31, §§ 25-26."). To promote candidate A to sergeant, *before* A actually served the statutorily mandated three years as a police officer—by tacking on candidate A's "abilities, knowledge, and skills" demonstrated during five months as a mere student officer—over candidate B, who *actually served* three years as police officer, is hardly suggestive of a "merit-based" promotion.

Finally, in a different but analogous context, the Commission submits, and I agree, that its position on the "actually serve" requirement finds considerable support in the Appeals Court's decision in *Weinburgh v. Civil Serv. Comm'n*, 72 Mass. App. Ct. 535, 538 (2008) ("[T]he judge correctly concluded that G. L. c. 31, § 59, requires that an employee: (1) be on the promotion list (and, thus, certified) for the immediate lower position one year prior to taking the exam for the higher position; and (2) *actually serve in the force* for one year after certification, but not necessarily in that lower position. In this case, because the plaintiff was certified for the lower position of fire lieutenant in the summer of 2003 and had been employed "in such force," see G. L. c. 31, § 59, for one

year after certification, he was qualified to sit for the fire captain's examination in November, 2004.”) (emphasis added). (emphasis added).

CONCLUSION

For the reasons explained, I will **DENY** the plaintiff's motion for judgment on the pleadings and **ALLOW** the defendants' crossmotion for judgment on the pleadings.



Edward J. McDonough Jr.,
Justice of the Superior Court

Dated: 10/1/21