

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

KAREN WALSH,
Appellant,

v.

D1-13-9

CITY OF WORCESTER,
Respondent,

Appearance for Appellant:

Steven C. Fletcher, Esq.
45 Bourne Drive
Bedford, NH 03110

Appearance for Respondent:

William F. Bagley, Jr., Esq.
City of Worcester
455 Main Street
Worcester, MA 01608

Commissioner:

Christopher C. Bowman

DECISION AFTER REMAND

In a decision issued June 21, 2016, the Appeals Court issued a decision in Karen Walsh v. City of Worcester, 15-P-541 (2016), remanding the case to the Civil Service Commission (Commission) regarding two (2) limited questions.

In short, although the Appeals Court concluded that the Commission properly determined that there was just cause to lay off Ms. Walsh (an issue the Superior Court did not address), the Appeals Court concluded in relevant part that, “the layoff could not take effect until after the October 4, 2012, hearing”, a reference to the date that the City conducted a local civil service hearing under G.L. c. 31, § 41.

To put this in context, other relevant dates cited in the Appeals Court decision are as follows: January 27, 2012 (City sent notice of hearing to Ms. Walsh); October 4, 2012 (local

hearing conducted); December 31, 2012 (local hearing officer issued report); and January 14, 2013 (City notified Ms. Walsh of layoff decision).

In its conclusion, the Appeals Court stated, in part, “ ... the city’s decision of January 14, 2013, can only be applied retroactively to a point in time after the plaintiff had received both notice of the intended layoff and a hearing.” The Appeals Court, on this issue, remanded the case to the Commission for “a determination of the layoff date in light of G.L. c. 31, § 41 ...”.

Given that the local hearing was on October 4, 2012, and the city’s decision was issued on January 14, 2013, I see the Court’s remand on this matter as limited to the very narrow question of whether the layoff effective date should be October 4, 2012, January 14, 2013, or some date in between (i.e. – December 31, 2012.)

On July 19, 2016, I held a status conference with counsel for both parties. In regard to the effective date of the termination, I asked both parties why the Commission, consistent with its longstanding interpretation of Section 41, should not establish January 14, 2013 (the date the City notified Ms. Walsh of the layoff decision) as the effective date of Ms. Walsh’s termination.

I gave both parties the opportunity to submit briefs on this issue. In its brief, the City argued that the termination effective date should be February 24, 2012, the date that the City initially scheduled the local Section 41 hearing, arguing that the local hearing was delayed, in part, because of judicial proceedings initiated by Ms. Walsh.

Ms. Walsh, effectively arguing that the Appeals Court decision was erroneous, argues that she should be reinstated through June 21, 2016, the date of the Appeals Court judgment.

Nothing in the parties’ briefs has changed my understanding of the Appeals Court’s (very) limited reason for remand to the Commission. In short, the Appeals Court left for the Commission to decide whether Section 41 allows for the termination of a tenured civil service

employee: a) as of the date of the required local hearing or; b) the date that the employee is notified of the result of the local hearing.

I am not aware of any Commission decision that has ever interpreted Section 41 as allowing for the employee's termination effective as of the date of the required local hearing. Rather, the termination does not become effective until after the local hearing officer has rendered a decision and the employee has been notified of such decision.

For this reason, the effective date of Ms. Walsh's termination is January 14, 2013, the date she was notified of decision to terminate her.

The Appeals Court decision also remanded the case to the Commission for "consideration of the plaintiff's reemployment rights pursuant to G.L. c. 31, § 40." Although I did not read the Appeals Court decision as having any impact on the additional reinstatement rights granted to Ms. Walsh by the Commission in its decision, I gave both parties the option of addressing this issue in their briefs. Neither party has offered an argument as to why any additional reinstatement rights should be granted based on the Appeals Court decision. For this reason, Ms. Walsh's reinstatement rights remain as indicated in the Commission's original decision.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 8, 2016.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Steven C. Fletcher, Esq. (for Appellant)

William Bagley, Esq. (for Respondent)

John Marra, Esq. (HRD)