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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 17cv0045D

KAREN WALSH

v

CIVIL SERVICE COMMISSION and CITY OF WORCESTER

MEMORANDUM OF DECISION AND ORDER ON
CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

This case is before the court on the plaintiff's appeal of the Civil Service Commission's ("Commission") decision determining she had been laid off from her job with the City of Worcester ("City") effective January 14, 2013. The plaintiff contends the earliest effective date is December 8, 2016, the date of the Commission's decision. The City posits a termination date of February 24, 2012, the date of the scheduled termination hearing. The Commission argues it was correct in choosing January 14, 2013, the date the City formally notified the plaintiff of the lay-off. After careful consideration of the administrative record, the written submissions, and the oral arguments, the court **AFFIRMS** the Commission's decision.

BACKGROUND

The plaintiff's quest to keep her City job has traversed a long and somewhat tortuous path beginning in August 2008 with the City's erroneous determination that she had resigned, and ending (but for this appeal) on December 8, 2016, when the Commission determined that the plaintiff had been laid off effective January 14, 2013. In between, there were multiple administrative and judicial appeals. The timeline is complicated by the fact that the various appeals of the August 8, 2008 termination did not address a layoff that happened in 2009. The court sets forth the salient facts below in separate timelines.

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The August 8, 2008 termination

August 8, 2008	The City removed the plaintiff from its payroll based on what was later determined to be a mistaken view that she had resigned.
October 14, 2008	The plaintiff appealed her removal to the Commission.
April 21, 2011	The Commission found in favor of the plaintiff and ordered reinstatement retroactive to August 8, 2008.
May 20, 2011	The City appealed the Commission's decision to the Superior Court
January 13, 2012	The Superior Court affirmed the Commission's decision ordering reinstatement to August 8, 2008.
January 27, 2012	The City appealed the Superior Court decision to the Court of Appeals.
February 6, 2013	The Court of Appeals affirmed the Superior Court's January 13, 2012 decision and ordered reinstatement to August 8, 2008.

The 2009 layoff

April 17, 2009 ¹	The City eliminated the plaintiff's position as part of a reduction in force
January 27, 2012	The City notified the plaintiff of a February 17, 2012, layoff hearing.
February 9 to April 13, 2012	The plaintiff appealed to the Superior Court seeking to enjoin the layoff proceedings. The court enjoined the proceedings through April 13, 2012.
October 4, 2012	The City conducted the layoff hearing.
December 31, 2012	The City hearing officer affirmed the layoff.
January 14, 2013	The City notified the plaintiff of the layoff.
January 23, 2014	On appeal by the plaintiff, the Commission affirmed the layoff retroactive to April 2009.
February 21, 2014	The plaintiff appealed the Commission's decision to the Superior Court.
December 29, 2014	The Superior Court reversed the Commission and determined the layoff was ineffective because the plaintiff had not received advance notice.
January 6, 2015	The City appealed the Superior Court decision to the Court of Appeals.
June 21, 2016	The Court of Appeals reversed the Superior Court decision in part, finding that the layoff could be applied retroactivity but only to a point in time after the plaintiff had received notice and a hearing. The

¹ The precise date is unclear from the record; however, the record suggests April 17, 2009 as the effective date of the layoff. In any event, the precise date is not material to the court's decision.

	Court of Appeals remanded the case to the Commission to determine a layoff date and to consider reemployment rights.
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On December 8, 2016, Commission determined that the plaintiff's layoff was effective January 14, 2013. The Commission's December 8, 2016 decision spawned the plaintiff's further appeal to this court.²

STANDARD OF REVIEW

A party aggrieved by a decision of the Commission may seek judicial review in the Superior Court; the scope of such review is governed by G.L. c. 30A. G. L. c. 31, § 44. Judicial review, therefore, is limited to determining whether the Commission's decision was based upon error of law; was unsupported by substantial evidence; or was arbitrary, capricious, or an abuse of discretion. G. L. c. 30A, § 14(7); *Connolly v. Suffolk County Sheriff's Dep't*, 62 Mass. App. Ct. 187, 192-193 (2004). "The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy." *Energy Express, Inc. v. Department of Pub. Util.*, 477 Mass. 571, 575 (2017) (internal quotation marks and citations omitted). The court "must apply all rational presumptions in favor of the administrative action and not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate." *City of Springfield v. Civil Serv. Comm'n*, 469 Mass. 370, 376 (2014) (internal citations and quotation marks omitted).

DISCUSSION

The Commission followed the Appeals Court's order to establish an effective date for the plaintiff's layoff that was after the plaintiff had received: (1) notice of the intended layoff; and

² The City did not appeal the Commission's order. Instead, it asserted a Counterclaim, alleging it had been aggrieved by the Commission's decision. The plaintiff argues that the Counterclaim should be dismissed because it is, in effect, an untimely appeal of the Commission's decision. The court need not decide the issue because it finds the City's claim to be without merit.

(2) a hearing. The January 14, 2013, date meets both requirements. The City notified the plaintiff of the proposed layoff on January 27, 2013, conducted a hearing on October 4, 2012, and notified the plaintiff of its decision on January 14, 2013. The Commission's selection of an effective date after both notice and an opportunity to be heard finds substantial support in the record and was not arbitrary, capricious, or an abuse of discretion.

In reaching this decision, the court has considered the arguments of both the plaintiff and the City and finds neither convincing. The plaintiff cites no support for her claim that the Commission should have linked the effective date of the layoff to the date of the Commission's most recent decision. Indeed, it is difficult to see the logic of her position because the date of the Commission's decision has nothing to do with when the plaintiff received notice and a hearing.³ The City's argument that the Commission should have pegged the layoff to the February 17, 2012 hearing that was postponed violates the Appeals Court's order that the layoff could only be applied retroactively to a "point in time after the plaintiff had received both notice and a hearing." It is of no consequence that the hearing was rescheduled as a result of the plaintiff's exercise of her rights to see redress in the courts.

Further, the court finds the Commission sufficiently addressed the plaintiff's reemployment rights, finding no basis for extending them further. Thus, there is no reason to remand the question to the Commission.⁴

ORDER

For the foregoing reasons, the court **AFFIRMS** the Commission's decision.

³ The plaintiff's alternative argument for, in essence, rescission of the layoff goes against the Appeals Court's determination that a layoff could be applied retroactively to a point in time after the plaintiff received notice and a hearing. Further, the plaintiff's civil service rights have not been prejudiced because she received notice and a hearing before the layoff became effective. Finally, the court cannot order the Commission to take action that rests solely within its discretion.

⁴ The court declines to address the damages issues raised by the City as they are not properly before the court given the present posture of the case.

Further, the court finds the Commission sufficiently addressed the plaintiff's reemployment rights, finding no basis for extending them further. Thus, there is no reason to remand the question to the Commission.⁴

ORDER

For the foregoing reasons, the court **AFFIRMS** the Commission's decision.


Karen L. Goodwin

Associate Justice of the Superior Court

DATED: January 3, 2018

⁴ The court declines to address the damages issues raised by the City as they are not properly before the court given the present posture of the case.