

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

JEFFREY BOLGER AND
SIX OTHERS¹,
Appellant

v.

H-11-164

HUMAN RESOURCES DIVISION,
Respondent

Appellant's Attorney:

Pro Se
Jeffrey Bolger
Department of Correction
1 Industries Drive: P.O. Box 946
Norfolk, MA 02056

Respondent's Attorney:

Martha O'Connor, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION

On May 13, 2011, the Appellants, all of whom are management employees at the Massachusetts Department of Correction (DOC), filed an appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 31, §§ 53 and 57. They are contesting a May 4, 2011 decision of the state's Human Resources Division (HRD) to deny their appeal related to whether management employees should be required to work on

¹ The six (6) other Appellants are DOC managers Kelley Correira, Richard Greene, Kerry Rice, Joseph Santoro, Caroline Sawyer and Kieran Sullivan.

Evacuation Day and Bunker Hill Day and not receiving a compensatory day off or additional pay.

On June 7, 2011, a pre-hearing conference was held at the offices of the Commission and I heard oral argument from the parties.

Statutory References Related to Evacuation Day and Bunker Hill Day

Prior to July 1, 2010, G.L. c. 4, § 7, clause eighteen, stated in relevant part that “legal holiday” shall also include “with respect to Suffolk county only, March seventeenth and June seventeenth, or the day following when said days occur on Sunday ...”.

Outside Section 5 of the FY11 state budget (Chapter 131 of the Acts of 2010) amended the above-referenced statute by *adding* the words “provided, however, that all state and municipal agencies ... located in Suffolk county shall be open for business and appropriately staffed on Evacuation Day, on March seventeenth, and Bunker Hill Day, on June seventeenth ...”.

“Red Book” References Related to Evacuation Day and Bunker Hill Day

The “Red Book” refers to the “Rules Governing Paid Leave and Other Benefits for Managers and Confidential Employees” in the Executive Branch of state government. Among other things, these rules regulate vacation leave, sick leave, other leave with pay; overtime compensation; and payments in lieu of any of the proceeding ...”.

As of the filing of the Appellants’ appeal, Section 11.01: Definition of Holidays, included Evacuation Day and Bunker Hill Day with an asterisk stating: “Suffolk County Only.” Section 11.04 of the Red Book states: “An employee required to work on a holiday shall receive a compensatory day off with pay within sixty days following the holiday ... If a compensatory day cannot be granted by the Appointing Authority due to a

shortage of personnel or other reasons, then the employee shall be entitled to pay for one day at his/her regular rate of pay in addition to pay for the holiday worked.” (emphasis added)

The above-referenced provisions of the Red Book largely mirror language contained in collective bargaining agreements for unionized positions in the Executive Branch.

G.L. c. 7, § 28 requires HRD to post a notice at all agencies of any proposed changes to the Red Book, at least thirty days prior to the effective date of such changes, and to conduct a public hearing regarding the proposed changes no later than fifteen days prior the effective date.

Further, such rules and amendments must comply with the filing requirements of G.L. c. 30A, § 5. Section 2 of Chapter 30A allows for emergency regulations to be implemented for up to three (3) months under certain circumstances and conditions.

G.L. c. 30, § 57, under which the instant appeal is covered, states in relevant part that if the Commission issues a [Red Book-related] decision that “require[s] the payment of money to any employee of the Commonwealth, the civil service commission shall notify the appointing authority, the personnel administrator, the budget director, and the comptroller of the amount or amounts thereof, and such amount or amounts shall be paid from available appropriations if in accordance with law.” (emphasis added)

Facts Relevant to these Appeals

As referenced above, an outside section of the FY11 state budget added language to the statute requiring that all state offices be open for business on Evacuation Day and Bunker Hill Day. It is undisputed that this language did not eliminate the provisions

included in the various collective bargaining agreements that allow employees the day off, a compensatory day or additional pay.²

On or about March 10, 2011, HRD penned an email indicating that any employee that worked on Evacuation Day (March 17, 2011) should receive a compensatory day off within 60 days. Approximately four (4) days later, on March 14, 2011, HRD forwarded a follow-up email stating in relevant part that, “consistent with legislation passed last summer, all state managers are expected to report to work as usual on March 17, 2011 and June 17, 2011 (the Suffolk County holidays). Managers will not be afforded a compensatory day for work on those days. This policy shall be the policy of the executive departments going forward.” (emphasis added)

It is undisputed that, as of the date of the March 10th email, no changes had been made to the Red Book. It is also undisputed that HRD has subsequently posted and conducted a public hearing that would delete Bunker Hill Day and Evacuation Day from Section 11.01 of the Red Book.

Appellants’ Argument

Given the anticipated changes to the Red Book, Mr. Bolger stated at the pre-hearing conference that the Appellants’ sole argument today is that requiring state managers to work on March 17th and not receive a compensatory day off was a violation of due process.

According to Mr. Bolger, HRD was required to abide by the applicable provisions of the Red Book in place at the time – which allowed managers the day off, a compensatory day or additional pay.

² On May 25, 2011, State Auditor Suzanne Bump declared that the change in the statute was an unfunded mandate for municipalities in Suffolk County as it forced certain communities to pay workers at a time-

HRD's Argument

HRD argues that its decision was consistent with the statutory changes included in the FY11 state budget requiring all state agencies to be open for business.

Conclusion

As recently stated in agency-wide correspondence from the Secretary of Administration and Finance, “all state employees have made significant sacrifices throughout the course of the recession to help the Commonwealth preserve services and responsibly manage its budget in the face of unprecedented fiscal challenges. State employee unions agreed to historic concessions that have already saved the state over \$200 million. Executive branch managers ... have sacrificed in the following ways: no wage increases since 2007 and unpaid furloughs during FY09 and FY10, effectively resulting in wage cuts... increased contributions to health insurance costs by increasing the percentage of the premium paid by employees and increasing co-pays and deductibles .. and [being] required to do more with less resources, including managing major organizational and operational changes to make state government more efficient with 426 or 10.4% less managers and 2,750 or 5.8% less total executive branch employees than we had when the recession began.”

For the reasons referenced above by the Secretary, it is understandable that state managers would be frustrated by a decision to eliminate two compensatory days off that appear to have been in place since at least 1976. However, that frustration must be viewed in the broader context of a national economic downturn that has resulted in long-term unemployment for thousands of our fellow residents. Further, the overall benefits provided to private sector employees pales in comparison to those offered to state

and-a-half rate to staff all departments during the Evacuation Day holiday on March 17.

employees which include: a defined benefit pension plan, up to 5 weeks of paid vacation time annually, 3 personal days, 3 weeks of sick time; and affordable and comprehensive health insurance options. In that context, it is difficult for state government to justify spending its limited resources providing managers with two paid holidays which are not available to any private sector employees that I am aware of. In these unprecedented fiscal times, it is important that state agencies have all hands on deck, including a full complement of managers.

For these reasons, and as a result of the statutory changes in July 2011, I conclude that it was a reasonable and prudent decision to require all state managers to report for duty on the two days in question and not receive a compensatory day off.

The Appellants raise compelling due process issues related to the failure to update the Red Book in a timely manner. HRD, in retrospect, should have updated the Red Book well prior to March 17, 2011 either through the traditional procedures contained in Chapter 30A or through the emergency regulation provisions contained therein.

However, for all of the reasons referenced above, that administrative oversight does not warrant intervention by the Commission in the form of an order requiring additional pay and/or a compensatory day for managers who worked on March 17th.

Further, G.L. c. 30, § 57, under which the instant appeal is covered, states in relevant part that if the Commission issues a [Red Book-related] decision that “require[s] the payment of money to any employee of the Commonwealth, the civil service commission shall notify the appointing authority, the personnel administrator, the budget director, and the comptroller of the amount or amounts thereof, and such amount or amounts shall be paid from available appropriations if in accordance with law.” (emphasis added) Absent

a showing that there are available funds for the purpose of retroactively providing state managers who worked March 17th with additional pay or a paid day off, I believe any such order by the Commission could not be enforced.

For all of the above reasons, the Appellants' appeal under Docket No. H-11-164 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman - Yes; Henderson, Commissioner – Yes; Marquis, Commissioner – Yes; McDowell, Commissioner – No; and Stein, Commissioner - Yes) on June 16, 2011.

A true record. Attest:

Commissioner

Pursuant to G.L. c. 30, § 57, this decision is final and binding on all parties.

Notice:

Jeffrey Bolger (Appellant)
Kelley Correira (Appellant)
Ricahrd Greene (Appellant)
Kerry Rice (Appellant)
Joseph Santoro (Appellant)
Caroline Sawyer (Appellant)
Kieran Sullivan (Appellant)
Martha O'Connor, Esq. (for HRD)