

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2011-03820

THE CITY OF QUINCY,  
Plaintiff

NOTICE SENT  
11-21-11  
J.S.T.  
MASS. A.G.  
I.J.A.

v.

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION,  
COMMONWEALTH OF MASSACHUSETTS  
HUMAN RESOURCES DIVISION,  
GARY SMYTH and JOSEPH BARRON,  
Defendants

(AAT)

MEMORANDUM AND ORDER ON THE PLAINTIFF, CITY OF QUINCY'S  
REQUEST FOR A PRELIMINARY INJUNCTION AND ORDER STAYING THE  
ENFORCEMENT OF THE DECISION AND ORDERS OF THE CIVIL SERVICE  
COMMISSION PENDING THE FINAL OUTCOME OF THE CITY OF QUINCY'S  
REQUEST FOR JUDICIAL REVIEW OF SAID DECISION AND ORDER OF THE  
CIVIL SERVICE COMMISSION ENTERED ON SEPTEMBER 22, 2011

This matter came on for hearing on the plaintiff, City of Quincy's request for a Preliminary Injunction to issue under prayer B of count I of the Plaintiff's Complaint. The Court has heard all the parties in this case on the issues involved, has read the entire file including but not limited to all memoranda and other documents submitted by counsel and the Decision issued by the Civil Service Commission in case of Gary Smyth v. City of Quincy, Case No. G2-10-3 on September 22, 2011 (60 pages).

In determining whether a preliminary injunction should issue

in this case this Court must evaluate (1) the plaintiff's claim that it will suffer irreparable harm if the injunction is denied. (2) the harm that the defendants will suffer if the injunction is granted and (3) the moving party's likelihood of success on the merits. In an appropriate case the risk of harm to the public interest also may be considered. Brookline v. Goldstein, 388 Mass. 443, 447 (1983).

What the Commission ordered in its September 22, 2011 sixty page Decision and Order is accurately summarized by the attorney for Gary Smyth in his opposition to this motion at page 2, which is as follows:

"The Commission ordered that the permanent promotion of Barron be vacated, that Barron's civil service status in the Chief's position be adjusted from "permanent" to "temporary" (i.e. that Barron continue to serve as Fire Chief), that the eligibility list from which Barron was promoted (and Smyth bypassed) be revived, and that the City implement a specified hiring process - designed to assure independent and transparent consideration of the candidates - for appointment of a permanent Chief from the revived list. The power of appointment remains vested in the Mayor as appointing authority."

The Court held a hearing on this matter for approximately one hour. This Court finds that the order was well within the power and discretion of the Civil Service Commission to issue under the facts and the law governing this case. Therefore, this Court is of the opinion that the City of Quincy has little chance of prevailing in its judicial review of the Civil Service

Commission's Decision and Order issued on September 22, 2011.

ORDER

The plaintiff, the City of Quincy's Request for a Preliminary Injunction and Order Staying the Enforcement of the Decision and Orders of the Civil Service Commission Pending the Final Outcome of the Plaintiff's Request for Judicial Review is DENIED.

By the Court,

  
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Thomas E. Connolly  
Justice of the Superior Court

Date: *November 21, 2011*