

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CIVIL DOCKET#: WOCV2011-00978-B

RE: Worcester v Civil Service Commission et al

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OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATIVE LAW DIVISION

NOTICE OF DOCKET ENTRY

You are hereby notified that on **04/13/2012** the following entry was made on the above referenced docket:

MEMORANDUM OF DECISION AND ORDER on Defendant's Complaint for Contempt. CONCLUSION: Based on the above court findings and analysis the plaintiff City of Worcester is not in contempt of the court order of January 12, 2012 and therefore the defendant Karen Walsh's complaint for contempt is herewith dismissed. Further, as the complaint for contempt is dismissed, the earlier entered stay of the Civil Service hearing concerning the City of Worcester's position that the work position of Karen Walsh has been eliminated and therefore she is subject to a lay off effective 4/17/09 is herewith dissolved. Accordingly, the Civil Service hearing provided all appropriate and required legal prerequisites and notices have been afforded to and issued to the defendant Karen Walsh may go forward hereafter. (Daniel M Wrenn, Justice) Entered and copies mailed 4/13/12
Dated at Worcester, Massachusetts this 13th day of April, 2012.

Dennis P. McManus, Esq.,
Clerk of the Courts

BY: Denise Foley
Assistant Clerk

Telephone: 508-831-2355 (Session Clerk) or 508-831-2349

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 11-00978

CITY OF WORCESTER,
Plaintiff

vs.

KAREN WALSH and CIVIL SERVICE
COMMISSION,
Defendants

**MEMORANDUM OF DECISION AND ORDER
ON DEFENDANT'S COMPLAINT FOR CONTEMPT**

The present matter is the plaintiff City of Worcester's appeal pursuant to Rule 30A, § 14(7) of a decision issued by the Civil Service Commission providing that the defendant, Karen Walsh was improperly removed from her position as a senior sanitary inspector for the City. This matter was the subject of a motion for judgment on the pleadings following a hearing on which the court issued a decision and order stating that "The decision of the Civil Service Commission that Karen Walsh was improperly removed from her employment and that she was entitled to a restoration of her employment with all back pay and benefits is AFFIRMED". See Memorandum of Decision on Plaintiff's City of Worcester's Motion for Judgment on the Pleadings authored by Superior Court Justice Richard T. Tucker dated January 11, 2012. Thereafter a judgment was issued ordering that both "the decision of the Civil Service Commission that Karen Walsh was improperly removed from her employment and that she was entitled to a restoration of her employment with all back pay and benefits is hereby AFFIRMED". See, Judgment of the Court issued on January 12, 2012.

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Entered and Copies Mailed 4-13-12

The above quoted order in regard to the action required of the City has two component parts. First the order provides that Karen Walsh be restored to her employment as of the date of her discharge that being August 8, 2008, to her prior position and secondarily that she be paid all back pay and benefits from that day forward.

Subsequent to the issuance of Judgment, the plaintiff filed a timely notice of appeal and in accordance with the Massachusetts Rules of Appellate Procedure 10(a)(3) the appeal was entered in the Appeals Court as of March 19, 2012.

On February 9, 2012, the defendant filed a complaint for civil contempt asserting that the City has failed to comply with Judge Tucker's Judgment and Order of the Worcester Superior Court in that the City had failed as of that time to restore her to her prior employment retroactive to August 2008 and had not paid all back pay and benefits from the date of restoration forward.

Underlying the issues raised in the complaint for civil contempt was the City of Worcester's recent action wherein the City of Worcester has taken the position as evidenced by correspondence of February 13, 2012 that the defendant Karen Walsh has been restored as a City of Worcester employee and is now subject to a lay off based on the allegation by the City that her prior position, that of a senior sanitary inspector, as of April 17, 2009 has been eliminated and therefore according to the City Ms. Walsh is laid off as of that April 17, 2009 date.

In conjunction with the complaint for civil contempt, the defendant also filed a motion for preliminary injunction to stop the Civil Service hearing from going forward so as to adjudicate that position elimination and lay off issue at the administrative level. The court allowed the motion for preliminary injunction and there were several hearings in order to establish an appropriate time line for handling the complaint for civil contempt and to allow the parties to offer additional positions

both legal and factual on the issues raised in the two pending motions. In order to resolve the issues raised by the defendant's complaint for civil contempt a motion for judgment on the pleadings was filed by the plaintiff City of Worcester with opposition from the defendant and a final hearing was held on that matter by the court on April 10, 2012.

Upon consideration of the written submissions provided by counsel, the arguments presented and the law applicable to this matter the court finds as follows:

1. The plaintiff City of Worcester subsequent to the decision of Superior Court Justice Richard T. Tucker on January 12, 2012 and by virtue of its correspondence of February 13, 2012 has restored the defendant Karen Walsh to her prior employment retroactive to August 8, 2008.

2. The plaintiff City of Worcester has in a timely way filed a legally valid appeal of the Superior Court decision of January 12, 2012 which appeal is presently pending in the Appeals Court.

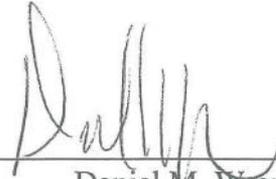
3. Pursuant to Mass. R. Civ. P. 62(d) and the authority as expressed in Borne v. Haverhill Golf, 58 Mass. Appeals Court 306 (2003) the City of Worcester's obligation to pay all back pay and benefits to the defendant Karen Walsh is stayed pending the appeal referenced in paragraph 2 above.

CONCLUSION

Based on the above court findings and analysis the plaintiff City of Worcester is not in contempt of the court order of January 12, 2012 and therefore the defendant Karen Walsh's complaint for contempt is herewith dismissed.

Further, as the complaint for contempt is dismissed, the earlier entered stay of the Civil Service hearing concerning the City of Worcester's position that the work position of Karen Walsh has been eliminated and therefore she is subject to a lay off effective April 17, 2009 is herewith

dissolved. Accordingly, the Civil Service hearing provided all appropriate and required legal prerequisites and notices have been afforded to and issued to the defendant Karen Walsh may go forward hereafter.



Daniel M. Wrenn
Justice of the Superior Court

DATED: April 12, 2012