

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

TERENCE CARROLL,
Appellant

v.

D1-07-132

WORCESTER HOUSING AUTHORITY,
Respondent

Appellant's Attorney:

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Hearing Officer:

John J. Guerin, Jr.¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Terence Carroll (hereafter "Appellant"), is appealing the March 1, 2007 decision of the Respondent, Worcester Housing Authority (hereafter "Appointing Authority" or "Respondent"), to lay

¹ John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including the referenced credibility assessments, which were made by Mr. Guerin.

him off from his position as Project Manager due to a lack of funds. The appeal was timely filed and a hearing was held on November 26, 2007 at the offices of the Civil Service Commission (hereafter “Commission”). The hearing was recorded on two (2) audiotapes, as well as transcribed. As no written request was received from either party, the hearing was declared private. Following the hearing, the parties submitted proposed decisions, as instructed.

FINDINGS OF FACT

Based on the documents submitted into evidence: Joint Exhibits 1 – 12, Respondent Exhibits 1 – 7, and Appellant Exhibits 1 - 4, the testimony of the Appellant and Deputy of Finance and Information Technology Theodore Distaso (hereafter “Mr. Distaso”), I make the following findings of fact, the first ten (10) of which were stipulated by the parties:

1. The Appellant was formerly employed by the Respondent as Project Manager.
2. The Appellant was laid off from his employment as Project Manager, effective August 23, 2006. The reason given for his layoff was lack of funds.
3. The Appellant consented to be demoted to the position of Site Supervisor.
4. On August 24, 2006, the Respondent allowed the Appellant to demote to the position of Site Supervisor, a position held at the time by Eugene Felicetti (hereafter “Mr. Felicetti”).
5. Mr. Felicetti appealed to the Commission when his request to bump to a position outside of the Union was denied by the Respondent.

6. The Commission held in the case of Courchesne v. Dennis Housing Authority, 11 MCSR 40 (1998), that “bumping” rights as set forth in G.L. c. 31, § 39 are not afforded to housing authority employees.
7. On January 29, 2007, the Respondent, the American Federation of State, County and Municipal Employees, Council 93 (hereafter “AFSCME”) and Mr. Felicetti entered into a settlement agreement that returned Mr. Felicetti to his previous position of Site Supervisor.
8. The settlement agreement further provided that the parties agreed that the Appellant was to be laid off as a result of Mr. Felicetti’s return to his former position.
9. The Respondent and AFSCME executed a separate settlement agreement that provided that the Appellant would be returned to the position of Project Manager and then laid off from that position. The reason given was lack of funds.
10. The Appellant filed the instant appeal.
11. The Appellant has a Civil Service seniority date of April 15, 1995. (Appellant’s Appeal).
12. The Appellant began his employment with the Respondent as a Housing Inspector in October 1994. The Appellant resigned from that position in February 1995. (Testimony of Appellant, Hearing Transcript, page 99 (Nov. 26, 2007))
13. The Appellant regained employment with the Respondent as a Housing Inspector Supervisor in August 1995. (Id.)
14. In 2003, as a result of the Respondent’s decision to contract out its inspection services, the Appellant was laid off from his position as Housing Inspector Supervisor. (Id.)

15. At that time, the Respondent allowed the Appellant to “bump” to the junior employee position of Project Manager. (Id.)
16. The Appellant’s duties as a Project Manager involved overseeing and reviewing plans for state construction projects. (Testimony of Appellant, Tr., p. 100-101)
17. The Project Manager position is part of the Respondent’s Modernization Department. (Testimony of Mr. Distaso, Tr., p. 41 and Appellant Exhibit 2)
18. The Modernization Department also has a Senior Project Manager position that was held at all relevant times by Stanley Miknaitis (hereafter “Mr. Miknaitis”). (Testimony of Mr. Distaso, Hearing Transcript, pp. 41 & 44)
19. The Project Manager’s salary is funded eighty percent (80%) from the Commonwealth of Massachusetts Department of Housing & Community Development (hereafter “DHCD”). Twenty percent (20%) of the funding for the Project Manager’s salary is received from funds received by the Respondent from the United States Department of Housing and Urban Development (hereafter “HUD”). (Testimony of Mr. Distaso, Hearing Transcript., pp. 78 & 83)
20. The Senior Project Manager’s salary is funded one hundred percent (100%) by funds received by the Respondent from HUD. (Testimony of Mr. Distaso, Hearing Transcript, p. 67 and Appellant Exhibit 2)
21. The Respondent’s Capital Fund is funded by money that the Respondent receives from HUD. In contrast to the funds the Respondent receives from the DHCD, the funding that the Respondent receives from HUD is not specifically earmarked for any particular project or salary. (Testimony of Mr. Distaso, Hearing Transcript, pp. 78-80)

22. On February 14, 2007, the Respondent and the Union executed a separate settlement agreement providing that effective February 12, 2007: (1) the Appellant would be removed from the position of Site Supervisor, (2) returned to the position of Project Manager, (3) and then laid off from that position. The reason provided for the layoff was lack of funds. (Joint Exhibits 1 and 7)
23. On February 28, 2007, the Respondent held a hearing pursuant to G.L. c. 31, § 41 in regard to the proposed layoff of the Appellant. (Joint Exhibit 10)
24. At the hearing, the Appellant argued that he was denied bumping rights pursuant to G.L. c. 31. The Respondent denied the Appellant's appeal, and cited the Courchesne decision as support for its position. The Respondent also claimed that the position of Project Manager had not been filled since the Appellant's layoff, and that there were no funds in the Project Manager position. (Id.)
25. The Respondent informed the Appellant by letter dated March 1, 2007, that his employment was going to be terminated effective March 15, 2007 due to a lack of funds. (Joint Exhibit 11)
26. The Appellant appealed the Respondent's decision to the Commission. The Appellant's Appeal alleged that (1) he was denied "bumping" rights and (2) that contrary to the Respondent's claim, there was no lack of funds for his position. (Appellant's Appeal).
27. Prior to the Appellant's full hearing, the Respondent moved to dismiss the Appellant's appeal. By order dated November 11, 2007, the Commission allowed the Respondent's Motion to Dismiss on the issue of bumping rights. The Commission denied the remaining portions of the Respondent's Motion to Dismiss finding that the

Respondent had the burden of proving that there was a lack of funds justifying the Appellant's layoff. (Administrative Notice)

28. Mr. Distaso, the Deputy of Finance and Information Technology for the Respondent for the last five (5) years, testified about the financial condition of the Respondent at the time of the Appellant's layoff. I found Mr. Distaso to be very well versed in the financial subject matter. His testimony was of an expert level. He was clear and concise in his explanations of the complex budgetary methods employed by the Worcester Housing Authority and had the ability to render those complexities into easily understood terms. Mr. Distaso appeared competent, confident and credible at all times and demonstrated a strong knowledge as to all levels of funding sources and how those funds are allocated. He was most persuasive as a witness and lent credibility to the documents entered into evidence for which he provided explanations. As the appeal is based on a lack of funding, I assign great weight to his testimony. (Demeanor and Testimony of Mr. Distaso)

29. The Respondent's fiscal year begins on April 1 and ends on March 31. The Respondent's decision to layoff the Appellant occurred in fiscal year 2007, which began on April 1, 2006 and ended on March 31, 2007. (Testimony of Mr. Distaso, Hearing Transcript, p. 17)

30. The Respondent typically begins its budgetary process in November or December of the current fiscal year. At that time, the Respondent requested relevant information regarding financial and operations needs, staffing levels, projected overtime and discretionary spending from its department heads. (Testimony of Mr. Distaso, Hearing Transcript, p. 18)

31. The Respondent monitors spending levels for the current fiscal year in order to identify spending trends for the upcoming fiscal year. Additionally, the Respondent reviews information from its federal and state funding sources, HUD and the DHCD, respectively, to assist in establishing spending levels based on anticipated subsidies. (Id.)
32. The breakdown of the Respondent's revenue sources are as follows: seventy percent (70%) from the federal government; twenty percent (25%) from the Commonwealth; and five percent (5%) from self-generated rental incomes. (Testimony of Mr. Distaso, Hearing Transcript, pp. 18-19)
33. Based on the above, the Respondent prepares a preliminary budget based on spending needs and anticipated funding sources. Appropriate adjustments are, however, made to the Respondent's final budget upon receipt of actual subsidy from the state and federal government. (Testimony of Mr. Distaso, Hearing Transcript, pp. 21 & 156)
34. For FY 05, the Respondent received \$4,068,897 in Capital Fund Program assistance from HUD. HUD notified the Respondent of the actual assistance amount on September 14, 2004, five (5) months into FY 05. (Testimony of Mr. Distaso, Hearing Transcript., pp. 20-21 and Respondent's Exhibit 1A)
35. For FY 06, the Respondent received \$3,744,563 in Capital Fund Program assistance from HUD. HUD notified the Respondent of the actual assistance amount on August 23, 2005, four (4) months into FY 06. (Testimony of Mr. Distaso, Hearing Transcript, p. 22 and Respondent Exhibit 1B)
36. For FY 07, the Respondent received \$3,607,978 in Capital Fund Program assistance from HUD. HUD notified the Respondent of the actual amount on May 4, 2007, one

(1) month into FY 07. (Testimony of Mr. Distaso, Hearing Transcript p. 22 and Respondent Exhibit 1C)

37. Accordingly, the two (2) year reduction in HUD's Capital Fund Program was \$460,919. (Testimony of Mr. Distaso, Hearing Transcript, p. 23 and Respondent Exhibit 1D)

38. HUD operating subsidies are the Respondent's main funding source. (Testimony of Mr. Distaso, Hearing Transcript, pp. 25-26)

39. The amount of operating subsidies requested by the Respondent is based on 100% of the Respondent's operating needs and is completely driven by formulas and guidelines issued by HUD. (Id.)

40. In FY 05, the operating subsidy obligated for the Respondent by HUD on September 29, 2004 was 98.1% of the operating subsidy amount due to the WHA for that year. The Respondent received \$6,224,665 instead of the \$6,292,078 budgeted, and, as a result, realized an under-funding of \$67,413 for FY 05 in its operating subsidy. (Testimony of Mr. Distaso, Hearing Transcript, pp. 27-29 and Respondent Exhibit 2A)

41. In FY 06, the operating subsidy obligated for the Respondent by HUD on September 27, 2005 was 88.8% of the operating subsidy amount due to the WHA for that year. The Respondent received \$6,670,850 instead of the \$7,000,905 budgeted, and, as a result, realized an under-funding of \$330,055 for FY 06 in its operating subsidy. (Testimony of Mr. Distaso, Hearing Transcript, pp. 30-31 and Respondent Exhibit 2B)

42. In FY 07, the operating subsidy obligated for the Respondent by HUD on September 26, 2006 was 86.02% of the operating subsidy amount due to the WHA for that year. The Respondent received \$7,937,303 instead of the \$9,088,929 budgeted, and, as a result, realized an under-funding of \$1,151,626 for FY 07 in its operating subsidy. (Testimony of Mr. Distaso, Hearing Transcript, p. 31 and Respondent Exhibit 2C)
43. The consecutive three (3) year reduction in HUD operating subsidies was \$1,549,094.
44. Accordingly, the Respondent's HUD funding (Capital Fund and operating subsidies) was reduced by \$2,010,013 from FY 05 to FY 07. (Testimony of Mr. Distaso, Hearing Transcript, pp. 23 & 33)
45. The Respondent established a Budget Committee to review all discretionary spending and fixed costs in order to initiate cost savings strategies to address the revenue cutbacks described above. (Testimony of Mr. Distaso, Hearing Transcript, pp. 33-34)
46. The Budget Committee was comprised of the Respondent's Executive Director, Mr. Raymond Mariano, and his three Deputy Directors: Mr. Distaso – Deputy Director, Finance & Information Technology; Michael Murphy – Deputy Director of Administration; and Craig Leslie – Deputy Director of Facilities and Maintenance. (Testimony of Mr. Distaso, Hearing Transcript, p. 35)
47. Based on the Budget Committee's recommendations, the Respondent instituted the following cost saving measures: (i) all overtime ceased unless approved in advance by the Executive Director; (ii) all discretionary spending required approval from the Executive Director; (iii) monthly financial reports were provided to the Board of Commissioners; (iv) actual spending was closely monitored against the actual budget; (v) all discretionary spending was scrutinized; (vi) all fixed costs (collective

bargaining agreements and vendor contracts) were reviewed; (vii) purchasing of new computers was delayed; and (viii) all employee trainings outside of Massachusetts were eliminated. (Testimony of Mr. Distaso, Hearing Transcript, pp 34 and 37-38)

48. Additionally, the Board of Commissioners adopted a deficit budget of \$848,259 for FY 07, and if necessary, were prepared to rely upon the Respondent's budget reserve for any shortfalls. (Testimony of Mr. Distaso, Hearing Transcript, pp. 152-153 and Respondent Exhibit 2C)

49. The Respondent is required by HUD to maintain a budget reserve in case of emergencies, however, the Respondent's current funding level of the budget reserve is well below HUD's optimum guideline (Id.)

50. On or about April 2004, the Executive Director instructed his Deputy Directors to further review spending and staffing levels because the funding reductions outpaced the Respondent's cost saving measures while the Respondent was committed to fixed costs contained in outside vendor contracts and its financial obligations as enumerated in its numerous collective bargaining agreements. Additionally, deeper budgetary savings could not be achieved because the Respondent's fringe benefit rate was 53.6% of employee salaries. (Testimony of Mr. Distaso, Hearing Transcript, pp. 36, 38 & 45)

51. The decision to layoff employees occurred during FY 07 once the Respondent determined that federal monies would be reduced by an amount greater than initially anticipated in the Respondent's budget. (Id.)

52. Notwithstanding the significant cutbacks in federal funding, prior to FY 07, employees received base wage increases from the Respondent as a result of language

negotiated in its numerous collective bargaining agreements, including the AFSCME agreement that covered the Appellant's Project Manager position. (Testimony of Mr. Distaso, Hearing Transcript, p. 33)

53. Based on the recommendation made by the Respondent's Deputy Directors, six (6) employees were laid off and two (2) vacancies were not filled. Deputy Director Distaso identified two (2) positions for layoff; Deputy Director Leslie identified four (4) positions for layoff and Deputy Director Murphy identified two (2) positions that were vacant and not filled. (Testimony of Mr. Distaso, Hearing Transcript, pp. 39-40)
54. The Respondent did not realize full salary savings from the eight (8) positions because the layoffs occurred on or about August 2006 and, as a result, five (5) months into FY 07. Full salary savings, however, were realized in the FY 08 budget because none of the positions (except for an employee returning from FMLA leave) were budgeted in subsequent fiscal years. (Testimony of Mr. Distaso, Hearing Transcript, p. 40 & 45-58 and Respondent Exhibit 3-5)
55. The budgetary controls on spending described above still remain in effect. (Testimony of Mr. Distaso, Hearing Transcript, p. 63)
56. None of the laid off employees - including the Appellant, or their exclusive bargaining representatives - grieved or arbitrated the Respondent's decision to layoff employees based on lack of funds. (Testimony of Mr. Distaso, Hearing Transcript, p. 39)
57. Moreover, none of the employees filed appeals pursuant to G.L. c. 31, § 43 with the Commission challenging the Respondent's reason (lack of funds) for the layoffs. (Id.)

58. Finally, none of the employees or their exclusive bargaining representatives filed unfair labor charges with the Massachusetts Labor Relations Commission relating to the Respondent's decision to layoff due to lack of funds. (Id.)
59. Since 2002, the Appellant was the AFSCME Local's president and chief steward. (Testimony of Appellant, Hearing Transcript, p.104)
60. I found the Appellant to be sincere in his testimony. He was responsive and unhesitant under examination and cross examination. I find that he truly was troubled by the Respondent's assertion that there was a lack of funds for his position since he knew there had been salary increases. The Appellant believed that there was actually a budget surplus. However, I cannot assign nearly the weight to the Appellant's budgetary conclusions as I can assign to those of Mr. Distaso, the Respondent's key witness. The Appellant may have been, he simply could not demonstrate the grasp of the budget process necessary to sustain his argument that there did not exist a lack of funds for his position. He offered no evidence that the Respondent had any motivation to lay him off that might be unrelated to basic merit principles, upon which civil service is based. (Testimony and Demeanor of Appellant)
61. The Appellant and with two other AFSCME employees were laid off on or about August 2006. They did not challenge the Respondent's decision. The Appellant consented to being demoted to a Site Supervisor position within the bargaining unit due to lack of funds. (Testimony of Appellant, Hearing Transcript, pp. 121, 123-124 and Joint Exhibit 3)
62. The Appellant, in his capacity as AFSCME's president and chief steward, was responsible for investigating and confirming the Respondent's stated reasons for the

layoffs (lack of funds.) Both the appellant and AFSCME were satisfied that the parties had conducted all necessary impact negotiations over the Respondent's decision to layoff for lack of funds in July of 2006. (Testimony of Appellant, Hearing Transcript, p. 129 and Joint Exhibit 7)

63. The Project Manager's position was a stand-alone position within the Respondent's Facility and Modernization Department. More specifically, the Appellant was assigned to the Curtis Development Project which is a stand-alone capital improvement project funded by the Commonwealth. (Testimony of Mr. Distaso, Hearing Transcript, pp. 41 & 43)

64. The Curtis Development Project, as part of its funding requirements, requires the Respondent to assign a project manager to the project. (Testimony of Mr. Distaso, Tr., 43 and Testimony of Appellant, Hearing Transcript, p.137)

65. As a result, eighty percent (80%) of the Appellant's salary was funded by state monies requiring a project manager on the Curtis Development Project. Moreover, failure to use state funds designated for the Project Manager's position could have resulted in the state seeking a refund or sanctions from the Respondent upon completion of its internal audits. (Testimony of Mr. Distaso, Hearing Transcript, pp. 43 & 81 and Respondent Exhibit 7)

66. At the time of the Appellant's layoff as Project Manager, Mr. Miknaitis was the Respondent's Senior Project Manager and a member of the same bargaining unit. The Senior Project Manager is a stand-alone position that is a higher classification within the Respondent's Facility and Modernization Department. (Testimony of Mr. Distaso, Hearing Transcript, p. 44; Joint Exhibit 2 and Respondent Exhibit 5)

67. At the time of the Appellant's layoff as Project Manager, Mr. Miknaitis' position was fully funded by federal monies. Unlike the Appellant's position, Mr. Miknaitis' monies were not earmarked for any particular project or job classification. (Testimony of Mr. Distaso, Hearing Transcript, p. 79)
68. The Respondent decided to layoff the less experienced Appellant and assign Mr. Miknaitis to the Curtis Development's Project. (Testimony of Mr. Distaso, Hearing Transcript, p. 66)
69. As a result, funds earmarked for a Project Manager at the Curtis Development Project were allocated to Mr. Miknaitis (Testimony of Mr. Distaso, Tr., p. 66 and RE 5 & 7)
70. Beginning in August of 2006, Mr. Miknaitis performed the Appellant's duties on the Curtis Project and the Respondent did not replace the vacant Project Manager position in FY 08. (Testimony of Appellant, Hearing Transcript, p. 134 and Respondent Exhibit 5)
71. As a result, the salary savings realized by the Respondent was with Mr. Miknaitis' federal salary. (Testimony of Mr. Distaso, Hearing Transcript, p. 44 and Respondent Exhibits 3, 4, 5 and 7)

CONCLUSION

The role of the Commission is to determine "whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). An action is justified when it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by

correct rules of law.” Id., quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971).

In reviewing an appeal under G.L. c. 31, § 43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission must affirm the action of the Appointing Authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004). The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the Commission, there was reasonable justification of the action taken by the appointing authority in the circumstances found by the Commission to have existed when the appointing authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See, Commissioners of Civil Service v. Municipal Court of Boston, 369 Mass. 84, 86 (1975); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

Housing Authority employees derive rights from G.L. c. 121B, § 29. These rights are limited compared to other civil service employees. See Courchesne. Housing authority employees with five years of uninterrupted service may only be involuntarily separated from service “in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.” G.L. c. 121B, § 29. Former Housing Authority employees may appeal the separation from employment to the Commission following a hearing before the Appointing Authority. G.L. c. 31, § 43.

To sustain a separation from employment, the Appointing Authority must establish just cause for the removal of a tenured employee. See Courchesne; G.L. c. 31, § 43. Lack of funds due to budgetary constraints may constitute just cause. Id. In determining whether just cause existed, the Commission must decide “whether on the basis of the evidence before it, the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the Appointing Authority.” City of Cambridge, 43 Mass. App. Ct. at 303.

In the present matter, the Respondent has the burden of proving by a preponderance of the evidence that there was just cause for laying off the Appellant from his position as a Project Manager for lack of funds. See Randazza v. Gloucester Housing Respondent, 13 MCSR 3, 4 (1999).

G.L. c. 31, § 39 provides, in relevant part, as follows: “Any action by an Appointing Respondent to separate a tenured employee from employment for the reasons of lack of work or lack of money or abolishment of positions shall be taken in accordance with the provisions of section forty-one.” G.L. c.31, § 41 protects employees with permanent Civil Service status from layoffs, except for just cause. G.L. c. 31, § 1 defines layoffs as “temporary discontinuance of employment for lack of work or lack of money.” Therefore, either lack of work or lack of money constitutes “just cause” for layoff under § 41. Debnam v. Belmont, 388 Mass. 632, 634 (1983); see also Randazza, 13 MCSR at 4 (“A civil servant may be laid off for lack of funds.”)

The Commission’s determination as to the existence of just cause is based upon whether the Appointing Authority demonstrated that it believed that laying off the Appellant would save money. Holman, Witham, McGurl v. Arlington, 17 MCSR 108

(2004). If the economic reasons presented are merely a pretext for the layoffs, then just cause does not exist for the action taken. Cambridge Housing Respondent v. Civil Service Commission, 7 Mass. App. Ct. 586 (1979). In Gloucester v. Civil Service Commission, the Supreme Judicial Court further explained as follows:

[I]n the absence of pretext or device designed to defeat the civil service law's objective of protecting efficient public employees from partisan political control . . . or to accomplish a similar unlawful purpose, the judgment of municipal officials in setting the municipality's priorities and in identifying the goods and services that are affordable and those that are not cannot be subject to the [C]ommission's veto.

Gloucester, 408 Mass. 292, 300 (1990) (internal citations omitted.)

Once the Appointing Authority meets its burden of proof by articulating legitimate economic reasons for the layoff, the burden then shifts to the Appellant to prove that the economic reasons presented as justification of the termination were pretextual and that he was laid off in bad faith. Commission of Health and Hospitals of Boston v. Civil Service Commission, 23 Mass. App. Ct. 410 (1987); Green v. Town of Brookline, 53 Mass. App. Ct. 120, 125 (2001).

Here, the Respondent has sustained its burden of proving by a preponderance of the evidence that there was just cause for laying off the Appellant for lack of funds. The evidence presented and the testimony of Mr. Distaso clearly showed that the Respondent's financial condition had significantly deteriorated from FY 05 to FY 07. The evidence shows that in FY 07, the Respondent received \$136,585 less in Capital Fund Program assistance from HUD than it did in FY 06 and \$460,919 than it did in FY 05. It is further established that in FY 07, the operating subsidy obligated for the Respondent by HUD was \$7,937,303 rather than the \$9,088,929 budgeted for that year,

resulting in an under-funding of \$1,151,626 for FY 07; and a three (3) year reduction in HUD operating subsidies received from FY 05 – FY 07 totaling \$1,549,094. For FY 07 alone the Respondent suffered a reduction of Capital Fund Program assistance and operating subsidies totaling \$1,288,211 from the previous fiscal year. Given the \$2,010,013 reductions in Capital Fund Program assistance and operating subsidies the Respondent received from HUD from FY 05 to FY 07, there was a lack of funds leading the Respondent not to fund the Appellant's position as Project Manager.

There is no evidence that the Respondent's decision to lay off the Appellant was in any way motivated by political or personal bias or animus. In his March 6, 2007 appeal, the Appellant did not allege that the Respondent's decision to lay him off was motivated by a political motivation or bias but instead asserted, "lack of funds." During the hearing before the Commission, the Appellant offered no testimony or evidence that the Respondent's decision behind the layoff was in any way motivated by political or personal bias or pretext.

The Respondent made the decision to lay off the Appellant in July of 2006 from his position as Project Manager, not in March of 2007. But for the Respondent's good faith error in allowing him to bump into a lower position, the Appellant would have been off the Respondent's payroll in August of 2006. The Appellant was laid off again in March of 2007 at his own request to be laid off from his former Project Manager's position in order to secure higher unemployment benefits, recall rights to that position and to ensure that he was eligible to be heard by this Commission on appeal of the lay off. (Joint Exhibit 8.) To find otherwise would amount to the Commission substituting its judgment into an otherwise valid exercise of discretion by the Respondent.

For all of the reasons stated herein, the Commission finds that the Respondent has proved, by a preponderance of the credible evidence as presented, that it had just cause to lay off the Appellant, Terence Carroll, from his position as a Program Manager for the Worcester Housing Authority. Therefore, the appeal on Docket No. D1-07-132 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein, Marquis and Taylor, Commissioners) on July 10, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Michael J. Maccaro, Esq.
Nicholas Anastasopoulos, Esq.
Antonia C. Peabody, Esq.