

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

LAURA LALIBERTE, MICHAEL GIROUARD,
FRANCIS ASSAD and CHRISTOPHER CURTIS,
Appellants

v.

Docket No. G2-03-445 (Laliberte)
Docket No. G2-03-439 (Girouard)
Docket No. G2-03-446 (Assad)
Docket No. G2-03-442 (Curtis)

CITY OF WORCESTER POLICE DEPARTMENT
and

HUMAN RESOURCES DIVISION,
Respondents

MATTHEW EARLY,
CARL SUPERNOR,
Intervenors

Appellants' Representative:

Gary C. Nolan, Esq.
Nolan, Perroni, LLP
133 Merrimack Street
Lowell, MA 01852
(978)454-3800

Respondent's Representative:

Leo J. Peloquin, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062
(781) 762-2229

Human Resources Division Representative:

Wendy Chu, Esq.
Human Resources Division
One Ashburton Place
Boston, MA 02108
(617) 878-9777

Intervenors' Representative:

Gerard S. McAuliffe, Esq.
P.O. Box 690453
43 Quincy Avenue
Quincy, MA 02169

Commissioner:

John E. Taylor

DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b), Appellants Michael Girouard, Laura Laliberte, Francis Assad, and Christopher Curtis (hereafter "Girouard, Laliberte,

Assad, Curtis” or “Appellants”) challenged the decision of Respondent, the City of Worcester (hereafter “the City”), to promote four (4) patrol officers at the top of a certification list to sergeant for a day, demote them and then reinstate them after the list had expired.^[1] Appellants ask that the one-day promotions be declared invalid and that the officers promoted be removed from the City’s Reinstatement List for police sergeants. Appellants claim Respondent violated PAR 14(3), G. L. c. 31, §68 and basic merit principles as defined in G.L. c. 31, §1, which require that employees be assured “fair and equal treatment in all aspects of personnel administration, and that they are protected from arbitrary and capricious actions.” On April 15, 2004, the Commission allowed a Motion to Intervene by the two most recently promoted sergeants^[2] in the City of Worcester. A pre-hearing conference was held at the offices of the Civil Service Commission on April 20, 2004. A full hearing was held at the offices of the Civil Service Commission on June 3 and November 10, 2004.^[3] The Parties’ post-hearing briefs/recommended decisions were due December 13, 2004. By mutual agreement, the filing of the post-hearing briefs and/or recommended decisions was extended until January 18, 2005. Two (2) audiotapes were made of the full hearing.

¹Another Appellant, Richard Bates, G2-03-440, withdrew his appeal at the Commission on November 10, 2004.

² These sergeants are Thomas Gaffney and Michael Hanlon (hereafter “Gaffney” “Hanlon”).

³On or about November 9, 2004, Respondent City filed a Motion to Add the Human Resources Division (“HRD”) as a Respondent. Respondent’s grounds for the Motion were that HRD has been participating in the proceedings since the Appellants’ appeals were filed, that the City made promotions in reliance on consultation with HRD, that HRD ultimately approved the promotions, and that if the City has any liability to the Appellants, the City has a claim against HRD. HRD has filed a brief in support of the City in this matter.

FINDINGS OF FACT:

Ten Joint Exhibits (“JE”), two Appellant Exhibits, one Respondent Exhibit, a set of Stipulated Facts (18) and one Intervenor Exhibit were entered into evidence. Based upon the documents entered into evidence and the testimony of Janice Borg Silverman, Esq., Elizabeth Dennis, Thomas Gaffney and Michael Hanlon, I make the following findings of fact:

1. Appellants Michael Girouard, Laura Laliberte, Francis Assad, and Christopher Curtis are police officers employed by the City of Worcester, Massachusetts.
2. The City of Worcester is a municipality organized under the laws of the Commonwealth of Massachusetts and was for all times relevant hereto the Appointing Authority pursuant to G.L. c. 31, §1 with regard to Appellants’ civil service positions with the City of Worcester. (Stipulation of Fact)
3. The Commonwealth’s Human Resources Division (hereafter “HRD”) has designated the City a “delegated community.” This means that the City, rather than HRD, has the authority to certify promotional lists and make appointments. (Testimony of Dennis)
4. Janice Borg Silverman, Esq. has been the Director of the Executive Office of Human Resources, City of Worcester (“Human Resources”) since 1993. One of her duties is to serve as the delegated personnel administrator for all civil service transactions in the City. Thomas Hoover was the City’s “City Manager” and civil service Appointing Authority in fiscal year 2003.
5. Elizabeth Dennis served as the Director of the Civil Service Unit at HRD during the relevant time period. Dennis had held a variety of management level positions

- with HRD and its predecessor, the Division of Personnel Administration, since 1985. Her responsibilities included directing the statewide merit-based employment system for state agencies and municipalities governed by civil service laws, rules and regulations. This included testing, list establishment and maintenance, and review and approval of appointments and promotions. (JE 9)
6. In October 2000, several Worcester Police Officers, including Intervenors Early and Supernor, took a promotional examination for the sergeant position. Witnesses Hanlon and Gaffney, among others, took the promotional exam for the Lieutenant position. (Stipulated Fact No. 5; JE 4) At issue in this case are the fates of the four Appellants: Assad, Curtis, Girouard and Laliberte (though Laliberte's situation varied from the other three Appellants).
 7. In March 2001, a list of individuals who took the October 2000 test was certified; this list was scheduled to expire on March 31, 2003. (JE 4)
 8. In October 2002, the four Appellants and several similarly situated officers took a second promotional exam, from which a list would be certified to replace the March 2001 list set to expire on March 31, 2003. (Stipulation of Fact and JE 5)
 9. Silverman testified that some of the individuals promoted did not take the second promotional exam and some did not fare as well as they had on the first test; thus, their opportunity to be promoted once the list expired in some cases lessened or, in some cases, was lost completely. (JE 5 and Testimony of Silverman)
 10. In fiscal year 2003, there were four sergeant vacancies in the Police Department and the City had budgeted to fill them all from the 3/01-3/03 list (Exhibit 4)

11. The City budgeted for fiscal year 2003 based on the State's commitment to provide a certain amount of aid. However, in an unusual action, the Commonwealth, hundreds of millions of dollars in deficit, advised the City mid-year that it was reducing those payments significantly. These cuts^[4] meant the City lacked funding to fill vacancies and was forced to layoff some employees. As a result of the cuts, the City lacked the money to fill the four sergeant vacancies.
12. Officer Carl Supernor (Intervenor) expressed concern to Silverman that he would lose his promotion to sergeant and inquired whether anything could be done to prevent that result. In researching the issue, Silverman consulted with Dennis, asking her whether the 3/01-3/03 list could be extended beyond March 30, 2003. Dennis said the list could not be extended because an examination to generate a new list had already been given in October, 2002. (Testimony of Silverman)
13. Supernor also contacted Dennis to see if there was a method to preserve his promotional opportunity in the sergeant position. Dennis referred him to Omar Hernandez, HRD's Deputy General Counsel. Hernandez sent Supernor a February 12, 2003 letter describing a process under civil service law in which an employee who agreed to be demoted could be placed on a reinstatement list and gain preferred status for a future promotional vacancy. (Respondent Exhibit 1 and Testimony of Dennis)
14. After Supernor provided Silverman with a copy of the letter from Hernandez, Silverman contacted Dennis. Dennis informed her that the City could make the

⁴ G.L. c. 29, §9C (Authorizing the governor to reduce allotments made to municipalities when available revenues in a fiscal year will be insufficient to fund the authorized expenditures.)

one-day promotions/demotions and reinstatements as long as the officers promoted were reachable on the current List.^[5] Dennis told Silverman that those who were promoted to sergeant did not have to assume a sergeant's duties or be paid a sergeant's rate, that they would have reinstatement rights as a result of the one-day promotion, and that it was not necessary for the individual to perform any duties or to receive the pay for the one-day position in order to establish priority for the sergeant promotion for the future.

15. On March 14, 2003, the City sent letters advising Officers Early, Ferraro, Robert and Supernor (who were on the earlier list that would expire March 30, 2003) that they would be promoted to sergeant and advising Sergeants Michael Hanlon and Thomas Gaffney that they would be promoted to lieutenant on March 20, 2003 but that they would have to sign forms in which they consented to be immediately demoted. They were advised, "This will make you eligible to be placed on a re-employment list for lieutenant should a vacancy be available and funding exists to fill the vacancy." (JE 7) Apparently, Appellants Assad, Curtis, Girouard and Laliberte, who were on the later list, did not receive such letters.
16. On March 18th, 2003, the City sent letters to Officers Early, Ferraro, Robert and Supernor advising them that they would be demoted effective March 21st due to the reduction in local aid for the current fiscal year and for the next fiscal year. On March 20th, the four officers signed "Consent to Be Demoted" forms. The forms

⁵ The reachable pool is determined by applying the formula $2n + 1$, with "n" constituting the number of positions to be filled. For example, if the City was filling one position, the top 3 individuals on the list comprise the pool of reachable applicants. Personnel Administration Rule ("PAR") .09.

stated that they consented to be demoted effective March 21 without a hearing.
(JE 7 and Testimony of Silverman)

17. According to the testimony of Hanlon and Gaffney, during the 24- hour period following their promotions to lieutenant, they worked their same shift, their same jobs, and their duties were unchanged. They stated that the normal practice following a promotion was to be reassigned. (Testimony of Gaffney and Hanlon)
18. At the time of the promotion, the promoted officers did not receive a pay increase. (Appellants' Exhibit 1 and Testimony of Silverman)
19. On March 21, 2003, the four officers who had been promoted for one day to the sergeant positions were demoted to their previous positions. (Appellants' Exhibit 1 and Testimony of Silverman)
20. On June 9, 2003, Local 378 and Local 504, International Brotherhood of Police Officers ("IBPO"), requested an investigation by the Personnel Administrator relative to the validity of the one-day promotions. (Testimony of Silverman)
21. In an affidavit from Silverman submitted as part of the Local 378, IBPO v City of Worcester Grievance 113-02, she stated that the March 20, 2003 promotions were a paper transaction only, that the employees did not vacate their old positions or assume the duties of their new position, and that they did not receive a pay increase. She stated that the City took this "unusual administrative action due to our current economic crises" and that the "action did not create any vacancies available to be filled." (Appellant's Exhibit 1)
22. On July 3, 2003, Hernandez wrote to Silverman that HRD had determined the promotions were invalid. HRD referred to Personnel Administration Rule 14 (3)

- and said that the six individuals (the four officers temporarily appointed to sergeants and the two sergeants temporarily appointed to lieutenants) would be removed from HRD's reinstatement list for Police Sergeant and Police Lieutenant. (JE 1 and Testimony of Silverman)
23. Silverman contacted Hernandez to protest his decision. She informed him that Dennis had advised her that the action taken was consistent with all pertinent laws and regulations. Hernandez agreed that the promotions would be approved if the City paid the promoted officers' sergeant's pay for the one day that they were promoted. (JE 2A and 2B)
24. The City issued a payment to the officers for the one day's increase in pay, which payment was allegedly credited to the officers on or about July 19, 2003. (Testimony of Silverman)
25. After further appeal by the local Unions, the HRD, in an August 22, 2003 letter, stated it had decided to allow the promotions to stand, based on "the applicable Civil Service laws" and the "equities of the situation." HRD wrote that it would closely scrutinize future promotions in Worcester. (Testimony of Silverman; JE 3)
26. On January 16, 2004, the City had funding sufficient to permanently fill 4 (four) sergeant positions (as well as the two lieutenant positions). Supernor, Ferraro, Early and Robert were re-promoted to sergeant from the list established in 2001 and that expired on March 30, 2003. Hanlon and Gaffney were reinstated to lieutenant. (Joint Exhibit 7 and Stipulations of Fact 15 and 16)
27. Laliberte was ranked No. 8 on the 3/03-3/05 list. She was not on the 03/01-03/03 list. (JE 4 and JE 5)

28. Dennis testified that she knew of previous incidents in which one-day appointments had been made and that she relayed to Silverman examples of Department of Revenue managers taking provisional administrative positions to protect themselves from layoffs, thereby gaining bumping rights. Dennis stated that she did not consider Par 14(3) in her initial analysis. (Testimony of Dennis)
29. According to Silverman, the one-day promotion/demotion, relative to the police department, was unusual and used only for these particular promoted officers. (Testimony of Silverman)
30. On February 28, 2005, while this matter was pending at the Commission, Appellants Curtis and Girouard signed similar Settlement Agreements with the City. Assad appears to have signed the proposed Settlement Agreement relating to him in early March, 2005. The City signed Assad's and Curtis' Settlement Agreements on March 22, 2005. The City did not sign the Settlement Agreement with Girouard. In their Settlement Agreements, Appellants Assad and Curtis agreed, inter alia, to "... withdraw, with prejudice to re-filing" their appeals in consideration of the fact that the City had appointed them sergeants and to avoid further cost associated with the litigation." The Assad and Curtis Agreements further provided, "This Settlement Agreement and the terms herein may not be used to prejudice the position of the City or [Assad/Curtis] in any pending or future matter, and therefore shall not be admissible in any proceeding except one to enforce its terms." (Respondent's Amended Post-Hearing Brief (relating to Appellant Laliberte), dated May 15, 2005, Exhibits A, B thereto)

31. The Settlement Agreements between Assad and the City and Curtis and the City provide,

“The City of Worcester (‘City’) and [Assad/Curtis ...] hereby agree as follows:

Whereas, the City of Worcester (‘City’) has appointed [Assad/Curtis] to the position of Police Sergeant; and,

Whereas, the City and [Assad/Curtis] want to avoid the time, effort and expense of further litigating whether [Assad/Curtis] was aggrieved by the City’s one day promotion, demotion and subsequent reinstatement to sergeant of Officers James Ferraro, Carl Supernor, Matthew Early and Keith Robert in 2003 and 2004, including without limitation any claims in [Assad v. City of Worcester, Civil Service Commission Docket No. G2-03-446/ Curtis v. City of Worcester, Civil Service Commission Docket No. G2-03-442].

NOW THEREFORE, in consideration of the above, and intending to be legally bound, the parties agree as follows:

1.[Assad/Curtis] will withdraw, with prejudice to re-filing, his appeal in [Assad v. City of Worcester, Civil Service Commission Docket No. G2-03-446/ Curtis v. City of Worcester, Civil Service Commission Docket No. G2-03-442.]

2.[Assad/Curtis] hereby releases the City, its officers, agents, employees and elected officials (‘City of Worcester et al’) from any and all claims or causes of action of any kind related to or arising out of City’s one day promotion, demotion and subsequent reinstatement to sergeant of Officers James Ferraro, Carl Supernor, Matthew Early and Keith Robert in 2003 and 2004, including without limitation any claims in [Assad v. City of Worcester, Civil Service Commission Docket No. G2-03-446/ Curtis v. City of Worcester, Civil Service Commission Docket No. G2-03-442.]

3. This Settlement Agreement and the terms herein may not be used to prejudice the position of the City or [Assad/Curtis] in any pending or future matter, and therefore shall not be admissible in any proceeding except one to enforce its terms.”

(Respondent’s Amended Post-Hearing Brief (relating to Laliberte), dated May 19, 2005, Exhibits A, B)

32. The Girouard Settlement Agreement provides,

“The City of Worcester (‘City’) and Michael Girouard (‘Girouard’) hereby agree as follows:

Whereas, Girouard is at the top of the current certification list of officers eligible for promotion to sergeant; and

Whereas, the City of Worcester (‘City’) has determined that Girouard should be appointed to the position of Police Sergeant before the current certification list expires March 30, 2005 and it will make that appointment; and

Whereas the City and Girouard want to avoid the time, effort and expense of further litigating whether Girouard was aggrieved by the City’s one day promotion, demotion and subsequent reinstatement to sergeant of Officers James Ferraro, Carol Supernor, Mathew Early and Keith Robert in 2003 and 2004, including without limitation any claims in Girouard v. City of Worcester, Civil Service Commission No. G2-03-439 and Girouard v. City of Worcester et al, Worcester Superior Court CA Nos. 03-2215B, 03-2215C.

NOW THEREFORE, in consideration of the above, and intending to be legally bound, the parties agree as follows:

1. Girouard will withdraw, with prejudice to re-filing, his appeal in Girouard v. City of Worcester, Civil Service Docket No. G2-03-439.
2. Girouard will file the attached Stipulation of Dismissal in Girouard v. City of Worcester et al, Worcester Superior Court CA Nos. 03-2215B, 03-2215C.
3. Girouard hereby releases the City, its officers, agents, employees and elected officials (“City of Worcester et al”) from any and all claims or causes of action of any kind related to or arising out of City’s one day promotion, demotion and subsequent reinstatement to sergeant of Officers James Ferraro, Carl Supernor, Mathew Early and Keith Robert in 2003 and 2004, including without limitation any claims in Girouard v. City of Worcester, Civil Service Commission Docket No. G2-03-439 and Girouard v. City of Worcester et al, Worcester Superior Court CA Nos. 03-22115B, 03-2215C.
4. This Settlement Agreement and the terms herein may not be used to prejudice the position of the City of Girouard in any pending matter, and therefore shall not be admissible in any proceedings except one to enforce its terms.”
(Respondent’s Amended Post-Hearing Brief (relating to Laliberte), dated May 19, 2005, Exhibit D)

33. The City subsequently refused to sign Girouard’s agreement. As reason therefor, the City alleged that the proposed Agreement explicitly barred Girouard from referring to it in any pending or future matter. Specifically, the City argues that

Appellants' counsel wrongly referred to the Agreement in his Post-Hearing Brief (relating to Appellant Laliberte). Upon learning of the City's position on Appellant Girouard's Agreement, Appellants Curtis and Assad sought to withdraw from their Settlement Agreements with the City. (Respondent's Amended Post-Hearing Brief (relating to Laliberte), dated May 19, 2005)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether 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). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). 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. at 304, 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). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal

notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). 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 shall 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 for 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 Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In the present case, Appellants Assad and Curtis each signed a Settlement Agreement. (Girouard signed his Settlement Agreement but the City refused to sign it.) The City argues that the Commission should reject Assad's and Curtis's subsequent claims precisely because they signed the Agreements, agreeing to withdraw their appeals with prejudice, and because the City met all of its obligations. Assad and Curtis should be held to their obligations. Their attempts to revive their claims must be rejected based on their promises to withdraw them and release the City from all claims. The City has met all of its obligations under the Agreement as Assad and Curtis were appointed sergeants and remain sergeants. It appears that Assad and Curtis did not continue to pursue the litigation arising from their appeals, thereby relieving them of the time and expense of

doing so. The City argues that it has met its obligations under the Agreements and that the Commission should enforce the promises of Assad and Curtis to withdraw their appeals to the Commission because they signed enforceable Settlement Agreements. We concur.

Appellant Girouard maintains that the City does not have the right to refuse to sign the Agreement with him because of the reference in the Laliberte Post-Hearing brief to a term of his proposed settlement. The City argues that Girouard is not entitled to be appointed Sergeant based on the proposed Settlement Agreement because he breached its provisions by his counsel's reference to the proposed Agreement to promote Girouard to argue that Laliberte's appeal was viable.

Appellant Laliberte asserts that the promotions and demotions excluded her from the eligible group. She argues that had the one-day promotions been made from the March 31, 2003 list, using the statutory formula of $2n + 1$, she would have been included in the eligible group for promotion. She further asserts that this group would have included the first nine officers on the list, allowing an Appointing Authority filling four positions to choose from among the top nine applicants on a list. She contends that had all the promotions been made from the March 31, 2003 list she would have been promoted. The City argues that she never had standing to challenge the City's actions. She was not on the list from which the one-day appointments were made and was only eighth on the list in place when the demoted officers were reinstated to sergeant. The City contends that even if Laliberte prevailed in her claim that the four (4) one-day sergeant appointments should be rescinded, she would not be appointed because the appointments would go to the top four applicants on the list, according to the order of placement on the

list. Thus, even if the four appointments were invalidated, Laliberte would not have been reached for appointment.

Considering the special financial circumstances that existed at the time the City took the disputed actions in this case, the City's actions were permissible. See Silvia v. Department of Correction and DPA, 9 MCSR 2, 5 (1996) (Commission approves one-day appointments in special circumstances.) The City took the action because, but for an unanticipated and unusual fiscal crisis, the promotions would have been permanent from the outset. The demoted officers were reinstated to sergeant permanently when funding became available, rather than filling the positions from the then current list. HRD ultimately reviewed and approved the City's actions after the City paid the affected Officers for the one-day difference in salary.

Chapter 31 does not appear to preclude an Appointing Authority from promoting an employee for a day and then demoting the employee and putting him on a reinstatement list under the circumstances involved in this case. Similarly, there does not appear to be a bar precluding an employee from accepting that demotion voluntarily. While not enthusiastic about one-day appointments, the Commission has found them consistent with basic merit principles in certain circumstances. Id.

The City took the disputed action to prevent four officers, who had earned the first four spots on the certification list for promotion to sergeant, from losing out because of an unusual local and statewide fiscal crisis, and took these actions only after HRD determined that they were consistent with the law. The four officers who received one-day appointments did not get special treatment as the City did the same for others whose budgeted appointment to a civil service position could not go through because of the

unanticipated and unusual local and statewide fiscal crisis. Two sergeants received one-day appointments to lieutenant and were subsequently reinstated when funding became available. There was no evidence submitted of favoritism.

Additionally, Appellants' reliance on Personnel Administration Rule ("PAR.") 14 (3)") in requesting relief is not persuasive. This section reads in pertinent part:

“...no permanent employee shall be regarded as promoted within the requirements of these rules unless he is actually employed in the position to which he is promoted within thirty days from the date of receipt of notice by the administrator of promotion.”

HRD has interpreted the “actually employed” phrase to require nothing more than that the promoted officer be paid for a day at the rate for the position. PAR 14(3) states that the individual need only be “actually employed in the position.” Under this interpretation, the four patrol officers were “actually employed” as sergeants on March 20, 2003 as the City subsequently paid them for the day as sergeants.

Based on the above, there was reasonable justification for the City's actions with regard to the one-day appointments. Girouard, who was in a position similar to Assad and Curtis, should be treated similarly. With regard to Appellant Laliberte, her claim of harm due to the City's one-day promotion and placement on a reinstatement list of Supenor, Ferraro, Early and Robert, is too speculative to entitle her to relief. She was not on the 03/01-03/03 list and eighth (8th) on the 3/03-3/05 list. There was no more than an opportune chance that Laliberte, ranked eighth, would have been promoted even if all of the reinstatement promotions were rescinded. An “opportunity” is not the “actual harm” that G.L. c. 31, § 2(b) requires. Spadafora v. Civil Service Commission, 53 Mass. App. Ct. at 1107-08.

For all of the above-stated pertinent reasons, the Commission hereby:

- 1) *dismisses* Appellant Laliberte's appeal;
- 2) *denies* the requests of Appellants Assad and Curtis to remove the withdrawal of their appeals;
- 3) *orders* that Assad, Curtis and the City shall promptly perform their obligations and receive their benefits under their respective Settlement Agreements to the extent that their obligations have not been performed and their benefits have not been previously received, or are otherwise now moot;
- 4) *orders* that Girouard's appeal shall be deemed withdrawn;
- 5) *orders* that Girouard and the City shall promptly perform their obligations and receive their benefits under the proposed Settlement Agreement between them to the extent that their obligations have not been performed and their benefits have not been previously received, or are otherwise now moot;
- 6) *orders* that, for civil service purposes only, the promotion of Appellants Assad, Curtis and Girouard shall be effective March 22, 2005; and
- 7) *provides* that no back pay is warranted under the circumstances.

Civil Service Commission

John E. Taylor, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on November 29, 2007.

A true copy. Attest:

Commissioner

A motion for reconsideration may be filed by either party within ten days of the receipt of a Commission order or decision. 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 of appeal.

Pursuant to 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:

Gary G. Nolan, Esq
Leo J. Peloquin, Esq.
Wendy Chu, Esq.
Gerard S. McAuliffe, Esq.