

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

JAMES ESTRELLA,
Appellant

v.

CITY OF NEW BEDFORD,
Respondent

CASE NO: D1-09-52

Appellant's Attorney:

Sheila McCravy, Esq.
Law Offices of Timothy M. Burke
160 Gould Street, Suite 111
Needham, MA 02494

Appointing Authority's Attorney:

Jane Medeiros Friedman, Esq.
City of New Bedford
Office of the City Solicitor
133 William Street, Room 203
New Bedford, MA 02740-6163

HRD's Attorney:

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

Commissioner:

Paul M. Stein

DECISION ON MOTION FOR CLARIFICATION

The Appellant, James Estrella, acting pursuant to G.L.c.31, §43, appealed to the Civil Service Commission (the Commission) from a decision of the City of New Bedford (City), the Appointing Authority, based on a purportedly mistaken calculation by the Massachusetts Human Resources Division ("HRD") as to Appellant's seniority as a City Police Officer for purposes of layoff under G.L.c.31, §39. On March 12, 2009, the Commission issued a Decision granting HRD's Motion for Summary Decision. On March 20, 2009, HRD moved to obtain clarification of the Commission's Decision as to how the Commission meant to interpret G.L.c.31, §33, ¶1 insofar as it impacts the

computation of Mr. Estrella's seniority date after August 2009. The Appellant and the City did not file a response to HRD's motion.

In particular, HRD notes that the language of G.L.c.31, §33, ¶1, which the Commission found applicable to Officer Estrella's case, prescribes that upon completion of the necessary period of continuous service following his return to the Police Department after a prior absence from the payroll that exceeded six months, Officer Estrella's seniority date should be "computed from the date obtained by adding the period of such absence from the payroll [86 weeks] to the date of original employment [with the Police Department]". HRD raised the question that the Commission's Decision may have implied that the adjusted seniority date would be the original hire date and that such an interpretation would be construed to conflict with requirements of Section 33, insofar as the Decision stated: "Mr. Estrella's seniority date will not revert to his original hire with the City's Police Department until August 2009." (Decision, p.8) (*emphasis added*)

The Commission finds the motion for clarification is well-taken and clarifies the Commission's Decision to confirm that HRD's position is correct, namely that, once Officer Estrella has a period of continuous service with the New Bedford Police Department equal to twice the length of his absence, i.e., 172 weeks, his length of service will be computed by using the date of his original hire in the New Bedford Police Department (i.e. October 29, 1995) as the starting point and adding 86 weeks (i.e., the period of his absence from the payroll of that department) to the original hire date to arrive at Officer Estrella's future adjusted seniority date.

For the reasons stated above, the Motion for Clarification is granted and the Decision of the Commission dated March 12, 2009 is modified to incorporate the clarification of

its Decision as set forth above. As so clarified, the appeal of the Appellant, James Estrella is denied, the Motion for Summary Decision of HRD is allowed, and the appeal of the Appellant, James Estrella, is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on April 9, 2009.

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)(l), 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:

Sheila McCreedy, Esq. (for Appellant)

Jane Medeiros Friedman, Esq. (for Appointing Authority)

Martha Lipchitz O'Connor, Esq. (for HRD)