

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

JOSEPH CAFARELLI,
Appellant

v.

E-17-145

CITY OF REVERE,
Respondent

Appearance for Appellant:

Mary Lemieux Sandorse, Esq.
Sandorse Law
9 Foster Street
Wakefield, MA 02149

Appearance for Respondent:

Matthew J. Buckley, Esq.
Deutsch Williams Brooks Derensis
& Holland, P.C.
One Design Center Place
Suite 600
Boston, MA 02210

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

On July 17, 2017, the Appellant, Joseph Cafarelli (Mr. Cafarelli), filed an appeal with the Civil Service Commission (Commission), stating that the City of Revere (City) violated G.L. c. 31, § 37 by failing to reinstate him to his permanent civil service position of Police Lieutenant after a leave of absence.

On August 15, 2017, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Cafarelli, his counsel and counsel for the City. After hearing from both parties, I encouraged them to settle this matter and scheduled a status conference for September

26, 2017. That status conference was held and the parties reported that they had failed to reach a settlement agreement. The City filed a Motion to Dismiss and Mr. Cafarelli filed an opposition.

The following relevant facts are not in dispute:

1. Mr. Cafarelli began employment with the City's Police Department as a police officer in 1992. He was promoted to sergeant in 1996 and to lieutenant in 2002. From 2002 to 2012, he served in the position of permanent police lieutenant.
2. On July 2, 2012, the City's mayor appointed Mr. Cafarelli to the non-civil service position of Police Chief.
3. A written five (5)-year employment agreement accompanied his appointment as Police Chief and entitled Mr. Cafarelli to six (6) month's written notice from the City of its intent not to renew his contract beyond the end date of June 30, 2017.
4. Section 15D of the employment agreement states:

“The City recognizes that the Chief holds the Civil Service position of Lieutenant in the Revere Police Department. The City agrees to allow the Chief to take a leave of absence from that Civil Service rank ...”
5. G.L. c. 31, § 37 states in relevant part:

“No leave of absence for a period longer than three months, except one granted because of illness as evidenced by the certificate of a physician approved by the administrator, shall be granted pursuant to this paragraph without the prior approval of the administrator [the state's Human Resources Division]”.
6. Neither the City nor Mr. Cafarelli sought approval from HRD for a leave of absence to exceed three (3) months.
7. On December 29, 2016, the Mayor provided Mr. Cafarelli with written notice that the City did not intend to renew his contract beyond its end date of June 30, 2017. That notice stated in part:

“By the terms of the contract the City recognizes that you continue to hold the Civil Service rank of Lieutenant with the Revere Police Department and that you have been on leave of absence during your tenure as Chief. Therefore, you are eligible to return to that rank effective July 1, 2017. Please notify me, in writing, at least 30 days in advance of any intention you have to return to the position of Lieutenant so that appropriate arrangements can be made in terms of schedule and assignment.”

8. In a letter dated July 10, 2017 to Mr. Cafarelli, the City’s Mayor stated in part:

“ ... Your employment contract with the City has expired. As you are aware, it is not being renewed. In addition, you were specifically instructed on December 29, 2016 Notice of Intention not to Renew the Police Chief Employment Agreement to notify me in writing at least 30 days in advance of your intention to return to your former position of Revere Police Lieutenant. I have received no such notice. Your employment with the City has therefore ended as of June 30, 2017.

Further, it has been determined that certain provisions contained within your expired employment agreement are not legal. You should be aware that you are not entitled to reinstatement to your former Civil Service position unless I submit a request that you be reinstated, and that such request is approved by the Administrator of the Human Resources Division (HRD) of the Commonwealth. See G.L. c. 31, §46 (attached). You should be aware that concerns about your return [] have been raised by the Superior Officer’s Union on behalf of current sergeants on the active promotional list for lieutenants, citing G.L. c. 31, § 46, which allows for reinstatement to a former Civil Service position only if certain conditions are met. Persons separated from a Civil Service position for more than five years, when there is a suitable list containing the names of two or more persons available for the appointment or promotion to such position, may not be reinstated to that position. Currently, there is an active list for both Lieutenant and Sergeant and you have been separated from your civil service position for more than five years.”

9. The July 10, 2017 letter went on to state that, should Mr. Cafarelli seek reinstatement,

“disciplinary action against you is being considered ...” including termination.

10. In a letter dated July 12, 2017 to the City’s Mayor, then-counsel for Mr. Cafarelli stated in part:

“Pursuant to the provisions of G.L. c. 31, § 37 and Paragraph 9 (sic) (D) of the contract ... duly executed on July 2, 2012, you are hereby informed that Lt. Cafarelli has returned to his civil service position of police lieutenant.”

11. The July 12th letter went on to state that the Mayor had no authority to prevent Mr. Cafarelli from returning to his position, that his reliance on Section 46 of the civil service law was

misplaced and that allegations of misconduct against Mr. Cafarelli were “wholly irrelevant” and that they “seriously question the legality and motive to include them in the notice.”

12. This appeal followed on July 17, 2017.

Relevant Civil Service Law

G.L. c. 31, s. 37 states, in relevant part:

“An appointing authority may grant a permanent employee a leave of absence or an extension of a leave of absence; provided that any grant for a period longer than fourteen days shall be given only upon written request filed with the appointing authority by such person, or by another authorized to request such leave on his behalf, and shall be in writing. The written request shall include a detailed statement of the reason for the requested leave and, if the absence is caused by illness, shall be accompanied by substantiating proof of such illness. A copy of the written grant shall be kept on file by the appointing authority, who shall, upon request, forward a copy thereof to the commission or administrator. No leave of absence for a period longer than three months, except one granted because of illness as evidenced by the certificate of a physician approved by the administrator, shall be granted pursuant to this paragraph without the prior approval of the administrator.

...

Any person who has been granted a leave of absence or an extension thereof pursuant to this section shall be reinstated at the end of the period for which the leave was granted and may be reinstated earlier. If the appointing authority, upon demand of such person, shall fail to reinstate him to his civil service position, such person may request a hearing before the administrator. The administrator shall proceed forthwith to hold such a hearing and to render his decision. (emphasis added)

If a person shall fail to return to his civil service position at or before completion of the period for which a leave of absence has been granted under any provision of this section, the appointing authority shall, within fourteen days after the completion of such period, give such person a written notice setting forth the pertinent facts of the case and informing him that his employment in such position is considered to be terminated, whereupon the employment of such person in such position shall terminate. The appointing authority shall file with the administrator a copy of such notice which shall state the date on which the employment of such person should be recorded as having terminated. The provisions of sections forty-one through forty-five shall not apply to a termination made under this paragraph. Nothing in this section shall be deemed to prevent the subsequent reinstatement of such person pursuant to section forty-six.” (emphasis added)

G.L. c 31, s. 38 states in relevant part:

“If an appointing authority fails to grant such person a leave of absence pursuant to the provisions of the preceding paragraph or, after a request for a hearing pursuant to the provisions of this section, fails to restore such person to the position formerly occupied by him, such person may request a review by the administrator. The administrator shall conduct such review, provided that it shall be limited to a determination of whether such person failed to give proper notice of the absence to the appointing authority and whether the failure to give such notice was reasonable under the circumstances.

Analysis

Citing a series of Commission and judicial decisions, the City argues that this appeal falls squarely under Section 37 of the civil service law, under which they argue the Commission has no jurisdiction. Mr. Cafarelli argues that the cases cited are distinguishable and/or that the contract here supercedes the civil service law.

Ultimately, the dispute here involves whether Mr. Cafarelli was on an approved leave of absence from his position of police lieutenant and, if so, whether the City was and/or is obligated to return him to the position. That dispute falls squarely under Section 37 of the civil service law or, in the alternative, Section 38. The plain language of both of these sections state that the right of appeal is to the *state's Human Resources Division*. Further, prior Commission and judicial decisions have established that, if and when such appeal is filed with, heard and decided by HRD, there is no right to appeal that decision to the Commission. See Patruno v. City of Chicopee, 30 MCSR 43 (2017) (interpreting G.L. c. 31, § 37 to require civil service employees on leave who have not been reinstated to file an appeal with HRD, not the Commission); Hart v. Dep't of Environmental Mgmt., 11 MCSR 58 (1998) (dismissing a termination appeal for lack of jurisdiction pursuant to § 37 when the Appellant failed to return to his position after his leave of absence expired). See also, Sisca v. City of Fall River, 65 Mass.App.Ct. 266, 270 (2005) (failure of the appointing authority to restore employee or grant

leave under Section 37 is reviewable by the administrator with no right of review by the civil service commission.) Citing, Canney v. Municipal Ct. of Boston, 368 Mass. 648,645 (1975); Police Commr. Of Boston v. Civil Service Commn., 29 Mass.App.Ct.470, 473-474 (1990).

Conclusion

Based on the Commission's lack of jurisdiction here, Mr. Cafarelli's appeal under Docket No. E-17-145 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 15, 2018.

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Mary Lemieux Sandorse, Esq. (for Appellant)
Matthew J. Buckley, Esq. (for Respondent)