



City of Cambridge

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IN CITY COUNCIL

Councillor Walsh

October 21, 1991

- WHEREAS: The present impasse surrounding the permanent appointment to the Police Department of the 18 persons appointed to the reserve list on 4/29/91, resulting from the Department of Personnel Administration's (DPA) reversal of its long-standing interpretation of the law by its 8/22/91 decision that reemployment lists supercede reserve list certifications, was addressed in the City Manager's 10/4/91 letter to the Acting Administrator of DPA. As of this date it appears that DPA has neither reversed its decision nor given the green light, as the City Manager requested, " to support application of C. 534 of the Acts of 1976 in the case of the current Cambridge reserve police officer list, to allow their certification for permanent appointments prior to any recertification of the reemployment list " ; and
- WHEREAS: The attached citation from Chapter 31 Section 40 of M.G.L.A. would appear to require DPA to respond affirmatively to the City Manager's request. (Text of citation: " The administrator, upon receipt of a requisition, shall certify names from such reemployment list prior to certifying names from any other list or register if, in his judgment, he determines that the position which is the subject of the requisition may be filled from such reemployment list "); and
- WHEREAS: In the meantime, this present holding pattern jeopardizes increased police presence which is urgently needed throughout the city and is literally a Sword of Damocles over the heads of 18 reserve list persons who have been trained for and seek permanent appointment as Cambridge Police Officers. Action is needed now to resolve the impasse; now therefore be it
- ORDERED: That the City Council appoint a delegation immediately consisting of three Councillors, the City Manager and the City Solicitor empowered with the mandate to meet as soon as possible with Speaker of the House Charles Flaherty and President of the Senate William Bulger for the purpose of requesting an amendment to the existing state law so as to allow the City of Cambridge, through its City Manager, to appoint as permanent police officers the persons who are presently on the reserve list.

(ATTACHMENT)

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C. 31

ANNOTATED LAWS OF MASSACHUSETTS

§ 40

department, division, board or commission without loss of seniority, retirement or other rights, notwithstanding the provisions of section thirty-three. (1978, 393, § 11.)

Cross References—

As to effect of 1978 recodification on existing rights, etc., see editorial note to § 1, *supra*.

CASE NOTES UNDER FORMER § 461

Employees of former health, welfare, and retirement trust funds board who were placed on the re-employment list could be certified to any position for which they were generally qualified regardless of the nature of their previous position with the board, but such employees could not be placed on reemployment list until actual separation from service. 1974-1975 Op Atty Gen, No. 57.

In certifying individuals from the re-

employment list, the personnel administrator is not restricted to qualifications previously demonstrated in accordance with civil service procedures (i.e., a civil examination), but may in the reasonable exercise of his discretion consider qualifications not previously related to the individual's past civil service history; in doing so the administrator must fashion consistent, reasonable guidelines which do not undermine the intent of the civil service system. 1975-1976, Op Atty Gen, No. 70.

[SUSPENSION, DISCHARGE, ETC.; REINSTATEMENT]

§ 41. Discharge, Removal, etc.; Right of Tenured Employees to Notice and Hearing; Right of Provisional Employees.

Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof, except that if the action contemplated is the separation of such employee from employment because of lack of work, lack of money, or abolition of position the appointing authority shall provide

§ 41

such employee with a holding of the hearing of sections thirty-nine hearing officer, his appointing authority for the report of the hearing officer, his appointing authority's decision, which is therefor. Any employee automatically be reinstated was suspended. In the such employee for a shall be subject to the of contemplated action approval is withheld commission as provide

A civil service employee period of five days or Such suspension may by a subordinate to authority to impose suspension performing similar duties whom such chief or twenty-four hours after the person authorized person suspended with and with a written notice the suspension and in hours after the receipt hearing before the appointing authority there was just cause shall be given a hearing officer designated by receipt by the appointing authority hearing is given, the suspended a written notice hearing. A person who after hearing, to have have been suspended, period for which he paragraph shall authorize suspension. An appointing action pursuant to the

MASSACHUSETTS

§ 39

case may be, if in such next junior to him in length of funds are available, any according to seniority in the employed.

become separated from his frequently capable of employment, as defined in section one, he be reinstated to a position from which he was any civil service list; pro-such reinstatement of such greater than five years from ment right shall be subject retraining program estab-

he preference provided for 1978, 393, § 11; 1982, 630, January 4, 1983; by § 56,

the second paragraph concerning come separated from his position

hta, etc., see editorial note to § 1.

n military service, see ALM Spec

lie officer or employment subject

at 11 years in securing public sent for blacks and hispanics. Beecher (1981, DC Mass) 522 F. 3, 27 BNA FEP Cas 1195, 29 PD 132703, 29 CCH EPD affd (CA1 Mass) 679 F2d 965, FEP Cas 1657, 29 CCH EPD

§ 40

132794, cert gr (US) 74 L Ed 2d 277, 103 S Ct 293.

In conducting reductions in police and fire departments, city of Boston must maintain the percentage of minority representation as it existed prior to reduction; ALM GL c 31 § 39 can not be used to de facto reverse all prior remedial orders of federal court giving public employment to blacks and hispanics. Castro v Beecher (1981, DC Mass) 522 F Supp 873, 27 BNA FEP Cas 1195, 29 CCH EPD 132703, 29 CCH EPD 132704,

CIVIL SERVICE

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affd (CA1 Mass) 679 F2d 965, 28 BNA FEP Cas 1657, 29 CCH EPD 132794, cert gr (US) 74 L Ed 2d 277, 103 S Ct 293.

Fire commissioners had power to send termination notices to personnel so as to reflect number of positions in mayor's proposed budget. Whalen v Holyoke (1982) 13 Mass App 446, 434 NE2d 650.

Where municipal employees are laid off due to lack of funding, disabled veterans are the last to be laid off, in order of seniority. 1980/81 Op Atty Gen, No. 1.

CASE NOTES UNDER FORMER § 46G

The civil service director has no authority to compute seniority tables of employment in the classified service which will bind appointing officers in determining the order of layoffs or demotions, or

reinstatements after layoffs or demotions, under the provisions of this section. 1945 Op Atty Gen 15.

Former GL c 31, § 46G was constitutional. 1975-1976 Op Atty Gen, No. 2.

§ 40. Reemployment List.

If a permanent employee shall become separated from his position because of lack of work or lack of money or abolition of his position, his name shall be placed by the administrator on a reemployment list, or if a permanent employee resigns for reasons of illness his name shall be placed on such list upon his request made in writing to the administrator within two years from the date of such resignation.

The names of persons shall be set forth on the reemployment list in the order of their seniority, so that the names of persons senior in length of service at the time of their separation from employment, computed in accordance with section thirty-three, shall be highest. The name of a person placed on such reemployment list shall remain thereon until such person is appointed as a permanent employee after certification from such list or is reinstated, but in no event for more than two years. The administrator, upon receipt of a requisition, shall certify names from such reemployment list prior to certifying names from any other list or register if, in his judgment, he determines that the position which is the subject of the requisition may be filled from such reemployment list.

If the position of a permanent employee is abolished as the result of the transfer of the functions of such position to another department, division, board or commission, such employee may elect to have his name placed on the reemployment list or to be transferred, subject to the approval of the administrator, to a similar position in such



City of Cambridge

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IN CITY COUNCIL

October 21, 1991

COUNCILLOR WALSH

WHEREAS: The present impasse surrounding the permanent appointment to the Police Department of the 18 persons appointed to the reserve list on 4/29/91, resulting from the Department of Personnel Administration's (DPA) reversal of its longstanding interpretation of the law by its 8/22/91 decision that reemployment lists supersede reserve list certifications, was addressed in the City Manager's 10/4/91 letter to the Acting Administrator of DPA. As of this date it appears that DPA has neither reversed its decision nor given the green light, as the City Manager requested, "to support application of C.534 of the Acts of 1976 in the case of the current Cambridge reserve police officer list, to allow their certification for permanent appointments prior to any recertification of the reemployment list"; and

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WHEREAS: In the meantime, this present holding pattern jeopardizes increased police presence which is urgently needed throughout the city and is literally a Sword of Damocles over the heads of 18 reserve list persons who have been trained for and seek permanent appointment as Cambridge Police Officers. Action is needed now to resolve the impasse; now therefore be it

ORDERED: That the City Council appoint a delegation immediately consisting of three Councillors, the City Manager and the City Solicitor empowered with the mandate to meet as soon as possible with Speaker of the House Charles Flaherty and President of the Senate William Bulger for the purpose of requesting an amendment to the existing state law so as to allow the City of Cambridge, through its City Manager, to appoint as permanent police officers the persons who are presently on the reserve list.

In City Council October 21, 1991.

Adopted by the affirmative vote of nine members.

Attest:- John E. Flynn, Deputy City Clerk.

A true copy;

ATTEST:- John E. Flynn, Deputy City Clerk

A handwritten signature of John E. Flynn in dark ink.

F-577

NON-CONSENT ORDER # 53

**Councillor Walsh re: Special committee
to meet with Speaker Flaherty and President
Bulger regarding police appointments.**

In City Council,

October 21, 1991

Order Adopted