

Bond Case Briefs

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EMPLOYMENT - MASSACHUSETTS

Thompson v. Civil Service Com'n

Appeals Court of Massachusetts, Suffolk - October 7, 2016 - 59 N.E.3d 1185

Police department and four terminated officers sought judicial review of decision of the Civil Service Commission upholding termination of employment of four officers, but reinstating six officers, after 10 officers submitted hair samples that tested positive for cocaine.

The Superior Court affirmed. Four officers appealed and department cross-appealed.

The Appeals Court held that:

- Positive drug tests alone were insufficient to support termination of employment of police officers;
- Civil service law applied over conflicting provision of collective bargaining agreement;
- Evidence was sufficient to support termination of four officers based on positive drug tests; and
- Awards of back pay to reinstated officers were mandatory.

Hair test positive for cocaine was not, by itself, sufficient to support termination of employment of city police officers, where positive test was not conclusive on question of voluntary ingestion, as positive test may have also represented sample contamination by environmental exposure.

Provision of civil service law governing termination of public employees for misconduct conflicted with termination provision of collective bargaining agreement, and therefore law applied over agreement in proceeding concerning termination of police officers following positive drug tests, where agreement permitted termination of employment based solely on positive drug test, even in absence of actual misconduct, whereas law permitted termination only for just cause.

Evidence was sufficient to support termination of employment of four city police officers based on positive cocaine tests. Officers each had positive hair test, as to all four officers, each of their initial tests and each of their safety net retests were positive at levels well above the cutoff level, two of four officers had no independent hair testing following initial positive test, while third prevaricated in testimony on issue, finally admitting that his independent hair test was positive, and Civil Service Commission found testimony in support of denials of all four officers to lack credibility.

Awards of back pay to city police officers who were terminated following positive hair tests for cocaine was statutorily mandated after Civil Service Commission reversed terminations, where applicable statute used mandatory language and provided for no exceptions.