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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

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| _____ |) | |
| In the Matter of: |) | |
| |) | |
| ROBIN HOEY |) | |
| Employee |) | |
| |) | OEA Matter No.: 1601-0074-07 |
| v. |) | |
| |) | Date of Issuance: June 25, 2008 |
| D.C. METROPOLITAN POLICE |) | |
| DEPARTMENT |) | |
| Agency |) | |
| _____ |) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Robin Hoey (“Employee”) began his tenure with the D.C. Metropolitan Police Department (“Agency”) in 1985 as a police officer in the Career Service. He progressed steadily through the ranks first becoming a Lieutenant and then being promoted to the rank of Captain on January 16, 2000. From the rank of Captain, Employee was promoted to the rank of Inspector. Ultimately, Employee achieved the rank of Commander of the Sixth District. The promotion to this rank took effect August 1, 2004. Throughout each promotion Employee’s personnel form continued to reflect that he was in the Career Service.

On April 3, 2007 Cathy Lanier was confirmed as the new Chief of Police. Shortly thereafter, on April 19, 2007, the Chief informed Employee that she was transferring him from the Sixth District to the D.C. Central Cellblock and reducing his rank from Commander to Captain. The Chief did not give Employee any reason for her actions. On May 16, 2007 Employee filed a Petition for Appeal with the Office of Employee Appeals.

On December 14, 2007 the Administrative Judge issued the Initial Decision. The Administrative Judge determined that there were two statutes that controlled the outcome of this appeal—D.C. Official Code § 1-608.01(d-1) and (d-2)(1) and D.C. Official Code § 5-105(a) and (b)(1). Based on his interpretation of these statutes, the Administrative Judge held that because Employee was a Commander within the Career Service, the Chief could not take the adverse action of demoting him to the rank of Captain without first establishing cause. The judge concluded by stating that “Employee was demoted without cause . . . under the mistaken assumption by Agency that he was an “at-will” Excepted Service employee” and ordered that “Agency reinstate Employee to his Career Service position of record.”¹

Agency then filed a Petition for Review on January 17, 2008. Employee filed a response on February 21, 2008. In its petition, Agency argues that the Initial Decision “[f]ails to take into consideration the ‘notwithstanding’ clause of D.C. Official Code § 1-608.01(d-1); [e]rroneously construes the more general provisions [of the law] to supersede the more specific provisions. . .; and [c]ontradicts the legislatively history and the expressed intent of the [City] Council. . .in enacting [D.C. Official Code] § 1-608.01(d-1).”² For these reasons Agency asks that we grant its petition and reverse the Initial Decision.

¹ *Initial Decision* at 10.

² *Respondent Metropolitan Police Department’s Petition for Review* at 1.

We agree with the Administrative Judge that D.C. Official Code § 1-608.01(d-1) and D.C. Official Code § 5-105.01(a) are applicable to this appeal. D.C. Official Code § 1-608.01(d-1) provides the following:

For members of the Metropolitan Police Department and notwithstanding § 1-632.03(1)(B) or any other law or regulation, the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines.³

D.C. Official Code § 5-105.01(a) provides, in relevant part, the following:

The Mayor of said District shall appoint to office, assign to such duty or duties as he may prescribe, and promote all officers and members of said Metropolitan Police force; . . . provided further, that the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines[.]⁴

Also applicable to this appeal is MPD General Order 101.9 which states, *inter alia*, that “Commanders shall be of the rank of Deputy Chief.”

The plain meaning of the foregoing statutes makes it clear that all Assistant Chiefs, Deputy Chiefs and inspectors must be selected from among the captains of the police force. It is also clear that the Chief of Police has the authority to take an Assistant Chief, Deputy Chief, or inspector out of that position. Furthermore, if the Chief exercises her discretion in this regard, it is clear that she must return any Assistant Chief, Deputy Chief, or inspector to the rank of captain.⁵ Even though D.C. Official Code §§ 1-608.01(d-1) and 5-105.01(a) do not specifically mention Commanders, MPD General Order 101.9 clarifies that

³ D.C. Law 13-172 added this section to the law. It went into effect on October 19, 2000.

⁴ This law predates Home Rule but was amended at the time of the Home Rule Act to its current language.

⁵ The Mayor delegated all personnel authority vested in the Mayor to the Chief of Police pursuant to Mayor’s Order 9-88, May 8, 1997. That order remains in effect.

Commanders are equivalent to Deputy Chiefs. Therefore, these sections apply equally to Commanders.

The Administrative Judge believed that D.C. Official Code §§ 1-608.01(d-2)(1) and 5-105.01(b)(1) were also relevant to this appeal. D.C. Official Code § 1-608.01(d-2)(1) provides, in relevant part, the following:

The Chief of Police shall recommend to the Director of Personnel criteria for Career Service promotions and Excepted Service appointments to the positions of Inspector, Commander, and Assistant Chief of Police that address the areas of education, experience, physical fitness, and psychological fitness. The recommended criteria shall be the same for Career Service promotions and Excepted Service appointments to these positions.

D.C. Official Code § 5-105.01(b)(1) mirrors the foregoing. The Administrative Judge used these sections to show generally that there were Commander positions within the Career Service and specifically that Employee occupied such a position. We do not necessarily disagree with this interpretation. We do disagree, however, with the relevancy these sections have to this appeal. Neither we nor Agency dispute that Employee was a Commander in the Career Service.

Nevertheless, having found that Employee was a Commander in the Career Service, the Administrative Judge went on to hold that he could not be subjected to an adverse action, such as being demoted to the rank of captain, without cause. Because D.C. Official Code §§ 1-608.01(d-1) and 5-105(a) explicitly permit the Mayor, who has delegated personnel authority to the Chief of Police, to return a Commander to the rank of captain at his or her discretion, it logically follows that such action should not be considered an adverse action for which there must be cause. Rather, we think this is more appropriately viewed as nothing more than a type of personnel action for which the Chief, notwithstanding any other law or regulation, has specific legal authority to exercise. We do believe, however, that

Employee's Career Service status would have given him certain legal rights had the Chief chosen to terminate him or demote him to a rank below that of captain.⁶ Such actions would indeed be considered adverse actions.

In any event, the Chief has not sought to take an adverse action against Employee. As previously stated, the Chief has exercised her legal authority and followed the law by returning Employee to the rank of captain. For these reasons, we are compelled to grant Agency's Petition for Review and vacate the Initial Decision.

⁶ This appeal is distinguishable from the case of *D.C. Metropolitan Police Dep't v. Stanley*, 942 A.2d 1172 (D.C. 2008). In *Stanley*, Winfred Stanley, Reginald Smith, and John Daniels were all Commanders with the Metropolitan Police Department. The newly appointed then-Chief gave Stanley and Smith the ultimatum of being terminated unless they retired on the spot. Daniels' ultimatum was to accept termination, retire, or accept a vaguely described demotion. Each chose to retire. The court ruled that given the circumstances surrounding the retirements, the retirements were involuntary. Ultimately the court affirmed the Superior Court ruling which ordered that the three commanders be reinstated to their positions. In the present appeal, the Chief has not sought to terminate Employee nor has she given him an ultimatum to force him into retirement. To the contrary, the Chief has sought to exercise her legally given discretion and return Employee to the rank of captain. For these reasons, this appeal is distinguishable from *Stanley*.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED** and the Initial Decision is **VACATED**.

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.