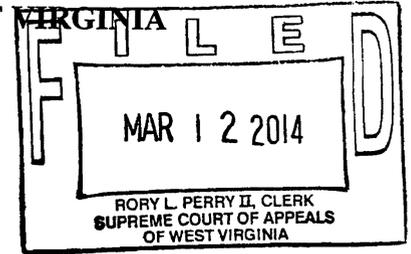


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 13-1261

MYRON BOGGESS, et al.
Plaintiffs Below, Petitioners



v.

**CITY OF CHARLESTON, A WEST VIRGINIA MUNICIPAL
CORPORATION; MATTHEW P. JACKSON, ERIC E. KINDER,
AND VICTOR E. SIGMON, IN THEIR CAPACITY AS
COMMISSIONERS OF THE FIREMEN'S CIVIL SERVICE
COMMISSION OF THE CITY OF CHARLESTON**
Defendants Below, Respondents

**BRIEF OF MATTHEW P. JACKSON, ERIC E. KINDER, AND VICTOR E. SIGMON IN
THEIR CAPACITY AS COMMISSIONERS OF THE FIREMEN'S CIVIL SERVICE
COMMISSION OF THE CITY OF CHARLESTON**

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I. SUMMARY OF ARGUMENT

On November 23, 2011, Petitioners filed a petition with the City of Charleston Firemen's Civil Service Commission seeking to reinstate what they claimed was the correct hourly wage for firefighters employed by the City of Charleston. That petition generally alleged that the City of Charleston unilaterally changed the method of calculation of the regular hourly rate by which they were paid and that change resulted in a reduction of pay on an hourly basis which was used to calculate overtime pay. On January 26, 2012, a special meeting of the City of Charleston Firemen's Civil Service Commission was held in order to hear that petition. The initial portion of the hearing before the Commission was limited solely to the issue of whether the Commission had jurisdiction pursuant to W. Va. Code § 8-15-11 and 8-15-25 to hear and rule upon the claims that were being presented.

The Commission asserts that its jurisdiction is limited by the provisions of W. Va. Code § 8-15-11 and 8-15-25. In accordance with those Code provisions, the Commission found that it could only hear and rule upon the petition filed with it if the allegations involved the removal, discharge, suspension, or reduction in rank or pay of any particular firefighter. The evidence presented to the Commission on January 26, 2012 was uncontradicted that none of the Petitioners had been removed, discharged, suspended, had been reduced in rank, or that any other disciplinary action had been taken or was pending against them. The Commission held that the West Virginia Supreme Court decision of *Darlington v. Magnum*, 450 S.E.2d 809 (W. Va. 1994) restricted its jurisdiction because the actions of the City of Charleston in adjusting the Petitioner's pay was not part of a disciplinary action and as a result the Commission did not have jurisdiction to hear the petition before it.

II. ARGUMENT

I. THE CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA DID NOT ERR IN DISMISSING THE CITY OF CHARLESTON FIREFIGHTERS CIVIL SERVICE COMMISSION

W. Va. Code § 8-15-1 *et seq* exclusively controls matters under which the City of Charleston Firemen's Civil Service Commission can act. Pursuant to the provisions of the W. Va. Code § 8-15-11 and 8-15-25, the jurisdiction of the Commission is limited to certain defined areas. As it relates to the Petitioners' claim in this matter, the Commission may only hear matters that involve the removal, discharge, suspension, or reduction in rank or pay of any particular effected individual.

The evidence presented before the Commission was uncontradicted that none of the Petitioners had been removed, discharged, suspended, or had been reduced in rank, or that any other disciplinary action had been taken or pending against them. While Petitioners were asserting that the actions of the City of Charleston effectively reduced the pay that they should receive, no allegation was made that any action by the City of Charleston in doing so was a result of any disciplinary proceedings.

The West Virginia Supreme Court decision of *Darlington v. Magnum*, 450 S.E.2d 809 (WV 1994) is controlling on the issue of whether the Commission had jurisdiction to hear this matter. In *Darlington*, the County Commission of Raleigh County had begun to take out of deputy sheriffs' salaries a premium of twenty-five dollars of month for single persons and fifty dollars a month for a family for healthcare. The deputy sheriffs (just like the involved fire fighters in this case) argued before the Deputy Sheriffs' Civil Service Commission that such charges effectively resulted in a reduction of their pay under the provisions of W. Va. Code § 7-

14-17, which is virtually identical to the civil service provision found for firefighters in W. Va. Code § 8-15-25.

This Court in *Darlington* found that the language of W. Va. Code § 7-14-17 related to disciplinary proceedings instituted against deputy sheriffs and the term “reduction in wages” found in that code section was used as part of a group of disciplinary actions that cannot be taken without affording a deputy sheriff the procedural rights contained in the civil service statute. This Court ultimately held that the actions of the Sheriff’s Department in *Darlington* were not based on any disciplinary event, but instead were related to payment of insurance premiums for health coverage and therefore the deputy sheriffs had no right to have the Civil Service Commission decide their grievance under W. Va. Code § 7-14-11.

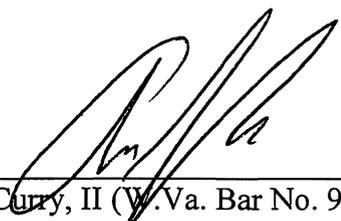
In the case presently before this Court, it was undisputed that none of the Petitioners were removed, discharged, suspended, or reduced in rank, and no disciplinary action had been taken against them or was pending against them by either the City of Charleston Fire Department or the City of Charleston. Even though the actions of the City of Charleston alleged by Petitioners effectively caused them to receive less pay than they believe they should have received, that action did not come about as a result of some type of disciplinary proceeding that would allow the City of Charleston Firefighters Civil Service Commission jurisdiction to hear the underlying matter.

The Commission’s duties, rights, and responsibilities are statutory and it only has those powers which are conferred upon it by statute. It has no inherent jurisdiction. *Pugh v. Policeman’s Civil Service Commission*, 590 S.E.2d 691 (W. Va. 2003) and *City of Huntington v. Lomrado*, 143 S.E.2d 553 (W. Va. 1965). Because the alleged reduction in pay asserted by Petitioners did not come about as a result of some type of disciplinary action, the Commission

did not have jurisdiction to hear the petition before it. The Circuit Court of Kanawha County correctly ruled that the Commission properly found that it did not have jurisdiction to hear the complaints of Petitioners in this matter pursuant to the provisions of W. Va. Code § 8-15-11 and 8-15-25.

III. CONCLUSION

The judgment of the Circuit Court of Kanawha County affirming the Final Order of the Commission which held that it did not have jurisdiction in this matter was correct and should not be reversed. To the extent that Petitioners have a claim, it has been correctly asserted against the City of Charleston.



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Certificate of Service

I, Arden J. Curry, II, counsel for the Respondents, do hereby certify that on the 10th day of March, 2014, I served the forgoing *Brief of Matthew P. Jackson, Eric E. Kinder, and Victor E. Sigmon in Their Capacity as Commissioners of the Firemen's Civil Service Commission of the City of Charleston* upon counsel of record by depositing a true and exact copy thereof via U.S. mail, postage prepaid, addressed as follows:

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