

**[J-26A-2023 and J-26B-2023] [MO: Wecht, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

DEPARTMENT OF CORRECTIONS, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE	:	No. 95 MAP 2022
	:	Appeal from the Order of the Commonwealth Court dated February 14, 2022, Reconsideration denied March 31, 2022, at No. 1203 CD 2020 Affirming the Order of the State Civil Service Commission dated October 26, 2020 at No. 30245
v.	:	
RALPH E. LYNN (STATE CIVIL SERVICE COMMISSION)	:	ARGUED: May 23, 2023
	:	
APPEAL OF: GOVERNOR'S OFFICE OF ADMINISTRATION	:	
	:	
GOVERNOR'S OFFICE OF ADMINISTRATION,	:	No. 96 MAP 2022
	:	Appeal from the Order of the Commonwealth Court dated February 14, 2022, Reconsideration denied March 31, 2022, at No. 1286 CD 2020 Affirming the Order of the State Civil Service Commission dated November 25, 2020 at No. 30245
Appellant	:	
	:	
v.	:	
RALPH E. LYNN (STATE CIVIL SERVICE COMMISSION),	:	ARGUED: May 23, 2023
	:	
Appellee	:	

CONCURRING OPINION

JUSTICE MUNDY

DECIDED: December 19, 2023

The Court granted allowance of appeal in this matter to address the following question:

Is the Commonwealth Court's decision contrary to longstanding precedents of the Supreme Court of Pennsylvania, including *Hoffman v. Township of Whitehall*, 677 A.2d 1200 (Pa. 1996), and *Housing Authority of County of*

Chester v. Commission,[730 A.2d 935 (Pa. 1999),] which hold that application of veterans' preference to promotions is unconstitutional?

Department of Corrections v. Lynn, 284 A.3d 1181 (Table). In the order granting allowance of appeal, the Court further directed the parties to address "the related issue of whether a non-civil service employee seeking a civil service position at a higher pay scale in the same department is seeking a promotion such that the individual is ineligible for the veterans' preference." *Id.* The Court denied allowance of appeal as to all other issues. *Id.* The Majority analyzes the two issues we granted and finds that "it is not discriminatory under Section 2704 of the [Civil Service Reform Act] for a public employer to apply veterans' preference to the initial appointment of the veteran into the classified service from the employer's unclassified service, but not to apply veterans' preference to a veteran who is being promoted within the classified service." Majority Opinion at 33. Based on that holding, the Majority concludes the Civil Service Commission ("Commission") and the Commonwealth Court erred by determining that Ralph Lynn was entitled to veterans' preference and that he was subject to non-merit discrimination. *Id.*

After concluding the Commission and Commonwealth Court erred in this regard, however, the Majority determines it must affirm the Commonwealth Court's ruling "based upon the procedural posture of th[e] case." *Id.* It bases this determination on the recognition that the Commission also held that Lynn should be returned to the position of Correctional Welding Trade Instructor ("CWTI") because removing Lynn from the position constituted technical discrimination, a determination the Commonwealth Court affirmed. *Id.* The Majority acknowledges that the Office of Administration sought allowance of appeal on whether the Commonwealth Court erred in this regard, but the Court denied review of that issue. *Id.* As such, the Majority finds that the issue is beyond the scope of the Court's limited grant of allowance of appeal and, therefore, the Court does not consider the propriety of the Commonwealth Court's holding on the issue. *Id.* Therefore,

the Majority leaves the lower court's order affirming the Commission's order reinstating Lynn to the CWTI position undisturbed. *Id.* at 33-34.

I agree with the Majority's determination that the Court did not grant allowance of appeal to address the propriety on the Commonwealth Court's affirmance of the Commission's holding that the DOC must reinstate Lynn to the CWTI position based on technical discrimination. I further agree with the Majority's conclusion that this requires the Court to affirm the Commonwealth Court's affirmance of the Commission's order reinstating Lynn to the CWTI position. Based on that determination, however, I disagree with the Majority's decision to address the issues upon which the Court granted allowance of appeal, as the discussion of those issues has no bearing on the Court's ultimate disposition of the case. Once the Court determined it would affirm the Commonwealth Court's holding based on an issue we denied allowance of appeal on, the Court's analysis should have ended. The Majority's analysis and purported resolution of issues unrelated to the disposition of the case amount to mere dicta. *BouSamra v. Excela Health*, 210 A.3d 967, 976 n.5 (Pa. 2019) (“[D]icta is generally regarded as information in an opinion which is ‘not necessary to the determination of the case.’”) (quoting *In re L.J.*, 79A.3d 1073, 1089 (Pa. 2013)). I, therefore, do not join that part of the Majority's holding addressing the issues surrounding the veterans' preference. Nonetheless, I concur in the result affirming the Commonwealth Court's holding based on its determination that Lynn should be returned to the CWTI position because removing Lynn from the position constituted technical discrimination, which is not currently before the Court.

Justice Brobson joins this concurring opinion.