

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place Room 503
Boston, MA 02108
(617) 727-2293

PATRICK POWERS,
Appellant

D-17-099

v.

WORCESTER PUBLIC SCHOOLS,
Respondent

Appearance for Appellant:

Nelson Carneiro
Mass. Laborers District Council
7 Laborers Way
Hopkinton, MA 01748

Appearance for Respondent:

Sean P. Sweeney, Esq.
311 Village Green North
Plymouth, MA 02360

Commissioners:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

On May 17, 2017, the Appellant, Patrick J. Powers (Mr. Powers), a provisional junior custodian with the Worcester Public Schools (WPS), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the WPS to terminate his employment.

On May 30, 2017, I held a pre-hearing conference which was attended by Mr. Powers, his representative, union representatives, counsel for WPS and other WPS representatives.

As part of the pre-hearing conference, counsel for the WPS filed a Motion to Dismiss, arguing that the Commission does not have jurisdiction to hear this appeal as Mr. Powers was not a tenured civil service employee.

Mr. Powers does not dispute that he was, at all times, a provisional employee with the WPS. I gave Mr. Powers ten (10) days to file a reply to the Motion to Dismiss or, in the alternative, a withdrawal of his appeal. He did neither.

The third paragraph of G.L. c. 31, § 41 provides the following limited protections to provisional employees, such as Mr. Powers, who have been employed for at least nine months in the provisional position and are discharged for reasons related to his personal character or performance:

“If a person employed under a provisional appointment for not less than nine months is discharged as a result of allegations relative to his personal character or work performance and if the reason for such discharge is to become part of his employment record, he shall be entitled, upon his request in writing, to an informal hearing before his appointing authority. If the appointing authority, after hearing, finds that the discharge was justified, the discharge shall be affirmed, and the appointing authority may direct that the reasons for such discharge become part of such person’s employment record. Otherwise, the appointing authority shall reverse such discharge, and the allegations against such person shall be stricken from such record. The decision of the appointing authority shall be final, and notification thereof shall be made in writing to such person and other parties concerned within ten days following such hearing.”

Furthermore, provisional employees do not enjoy the same protections that tenured civil service employees enjoy, including the right to appeal a termination decision to the Commission (see Rose v. Executive Officer of Health and Human Services, 21 MCSR 23 (2008) (provisional employee had no right to appeal her termination to the Commission even though she had been treated as a tenured civil service employee throughout her almost 30 year career); see also Hampton v. Boston, Case No. D-05-430 (2006)

(provisional employee had no right to appeal his 3-month suspension to the Commission)).

The limited protections afforded to provisional employees under the civil service law have also been confirmed by numerous court decisions. see Dallas v. Commissioner of Public Health & others. 1 Mass. App. Ct. 768, 771 (1974), referring to Sullivan v. Commissioner of Commerce and Dev. 351 Mass. 462, 465 (1966) (in the case of provisional employees, there is “no tenure, no right of hearing, no restriction of the power to discharge”). See also Raffery v. Comm’r of Pub. Welfare, 20 Mass.App.Ct. 718, 482 (1985) (provisional employee has right to an informal hearing by the Appointing Authority, but no further right to appeal to the Civil Service Commission).

Based on a plain reading of the statute and the above-referenced Commission and court decisions, the Commission does not have jurisdiction to hear this appeal. For this reason, Mr. Powers’s appeal under Docket No. D1-17-099 is ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners]) on July 6, 2017.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:
Nelson Carneiro (for Appellant)
Sean Sweeney, Esq. (for Respondent)