

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

YVONNE BREEN,
Appellant
v.

Case No.: D-11-359

**GARDNER SCHOOL
DEPARTMENT,**
Respondent

ORDER OF DISMISSAL

On December 21, 2011, the Appellant filed an appeal with the Civil Service Commission (Commission), contesting a decision, mandated by an arbitrator, by the Gardner Public Schools (School Department) that resulted in the Appellant being reassigned to a different work location.

On January 24, 2102, a pre-hearing conference was held at the offices of the Commission, which was attended by the Appellant and counsel for the Appellant.

It is undisputed that the Appellant was laid off, then reinstated to her permanent civil service title of Senior Clerk / Typist. A subsequent arbitration decision, related to another employee, addressed provisions of the collecting bargaining agreement related to the assignment of various Senior Clerk / Typists to various position in the School Department. The Appellant's status as a permanent Senior Clerk / Typist was not disturbed by the Arbitrator's decision and/or any action taken by the School Department.

The Commission does not have jurisdiction over issues related to reassignment.

Prior Commission decisions regarding lack of jurisdiction over reassignment cases

In Appellant v. Department of Revenue, 1 MCSR 28, 29 (1985), the Commission dismissed the Appellant's appeal on the grounds that the action being appealed was a reassignment as opposed to a transfer. In that case, the employee's position in the Worcester office was eliminated and he was reassigned to the Cambridge office. The employee claimed that this change in duty was effectively a transfer. The Commission found that the distances to Cambridge or to Worcester from the employee's home were approximately equal. It further found that that the reassignment did not affect the employee's job title, duties, grade or salary.

In Sullivan v. Department of Transitional Assistance (11 MCSR 80, 82 (1998)), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken

did not constitute a transfer, but, rather, a reassignment. The Commission restated its definition of a “transfer” as “a change of employment under the same appointing authority from a position in one class to a similar position in the same or another class or a change of employ in the same position, under the same appointing authority, from one geographical location to a different geographical location, provided that a different geographical location shall be one which is both more than a commuting distance from the employee’s residence than its prior location and more distant from the employee’s residence than his prior location.” In Sullivan, the Appellant’s job title, duties and rate of compensation remained the same. The only distinction between his employment prior to the action taken and his new employment was the physical location of his office, which was actually closer to his home. The Commission also ruled that it lacked jurisdiction to hear the Appellant’s appeal in Sullivan as the Appellant did not commence employment with the Department of Public Welfare until June of 1978 and as such did not qualify for the statutory protections afforded to transferees under the provisions of G.L. c. 31, § 41. That statute grants procedural protections to employees who have been transferred without their written consent if they have “served as tenured employees since prior to October fourteen, nineteen hundred and sixty-eight (October 14, 1968).”

In McLaughlin v. Registry of Motor Vehicles (CSC Case No. G-01-1461 (2004)), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but a reassignment. In McLaughlin, the Appellant was not transferred to a different position, but merely relocated to a different branch office while keeping the same job title, duties and pay.

In Sands v. City of Salem, 21 MCSR 502, 504 (2008)), the Commission, citing Sullivan, determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In Sands, the Appellant, a Hoisting Equipment Operator, was no longer able to perform some of the essential duties in his previously held position. Therefore, in order to make reasonable accommodations for his medically documented permanent disability, he was reassigned to perform cemetery-related duties in the Cemetery Department. Although his distance of travel from his residence was greater than previously, the Commission concluded that the change in travel did not impose an unreasonable hardship on the employee.

In McQueen v. Boston Public Schools (21 MCSR 548, 551 (2008)), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In McQueen, the Appellant was reassigned from one elementary school to another. In dismissing his appeal, the Commission considered that the Appellant retained the same position of junior custodian and retained the same rate of pay in his new position.

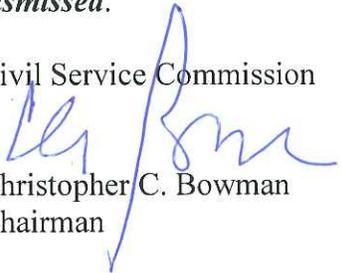
In Anderson v. Saugus Public Schools (CSC Case No. D-09-381) (2010), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In Anderson, the Appellant retained her title of Principal Clerk; she did not face any reduction in pay nor had she been assigned to a work location that resulted in a longer commute. While her functional duties had changed, those duties still fell clearly within the clerical series. Even if the functional duties were

substantially different, as they were in the Sands case, the Commission concluded that this alone would not constitute a transfer that is reviewable by the Commission.

In Haye and Simone v. Methuen Public Schools, 23MCSR 122 (2010), the Commission determined that it lacked jurisdiction to hear appeals in that the action did not constitute a transfer, but, rather, a reassignment. In Haye and Simone, the Appellants were both permanent junior building custodians. They were reassigned to building custodian positions different from those in which they had been serving. Each of them continued to serve in junior building custodian positions without any loss of compensation. Mr. May, who had previously worked in the functional title of “building custodian / store delivery person” and Mr. Simone, who had previously worked as building custodian / system-wide groundskeeper”, each had been reassigned to positions as junior building custodians in one of the elementary schools in the Methuen Public Schools.

For all of the above reasons, the Appellant’s appeal under Docket No. D-11-359 is hereby *dismissed*.

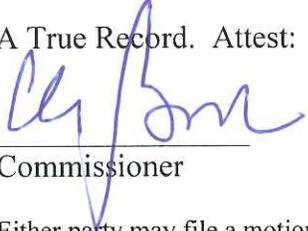
Civil Service Commission



Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on April 19, 2012.

A True Record. Attest:



Commissioner

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)(l), 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.

Notice to:

Yvonne Breen (Appellant)
John M. Flick, Esq. (for Respondent)