COMMONWEALTH OF MASSACHSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 7/18/08
Civil Service Commission

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

WILLIAM TIMPERLEY,
Appellant

v.

BURLINGTON SCHOOL DEPARTMENT,
Respondent

Case No.: G2-06-236

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on July 17, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated June 9, 2008. The Commission received written objections from the Appointing Authority on July 1, 2008. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

The Commission further notes that the Appellant first sought relief in 2006 - long after he had received the results of his make up test - and after the Appointing Authority had made the appointments and returned the certification list to the Human Resources Department (HRD). At this time the Commission does not decide what action it might have taken had the Appellant sought relief in a more timely manner in the interim between his 2004 make up test, the 2006 appointments, and the return of the certification list to HRD.

A copy of the Magistrate's report is enclosed herewith. The Appointing Authority's Motion to Dismiss is allowed, thus the Appellant's appeal is hereby ***dismissed.***

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on July 17, 2008.

A true record. Attest.

Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after

receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Thomas W. Lawton, Esq. (for Appellant)
Darren Klein, Esq. (for Appointing Authority)
Shelly Taylor, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS
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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

June 9, 2008

Christopher Bowman, Chairman
Civil Service Commission
One Ashburton Place, 5th Floor
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Daniel Garrelick, Legal Intern
Human Resources Division
One Ashburton Place, 2nd Floor
Boston, MA 02108

Re: *William Timperley v. Burlington School Department,* G2-06-236: CS-08-27 (DALA)

Dear Chairman Bowman, Attys. Lawton, Klein and Marra:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c), they have 30 days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs.

Very truly yours,

Sarah H. Luick

Sarah H. Luick
Administrative Magistrate

encl.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

William Timperley,
Appellant

v. Docket No. G2-06-236;
CS-08-27 (DALA)

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Burlington School Department,
Appointing Authority

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Appearance for Human Resources Division: Daniel Garrelick, Legal Intern
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Administrative Magistrate: Sarah H. Luick, Esq.

RECOMMENDED DECISION

Pursuant to G. L. c. 31, § 2(b), the Appellant, William Timperly, is appealing the inaction of the Human Resources Division (HRD), in failing to add his name to the certified list his Appointing Authority, the Burlington School Department, had to use to appoint Senior Building Custodians. He had not made that certified list, but after being allowed by HRD to retake the exam, he scored high enough to be placed at the top of the original eligibility list from which the certified list was developed. This occurred before

the Burlington School Department had its appointments approved by HRD, but after it had submitted its candidates off the certified list to HRD for approval. The Appellant claims he was improperly bypassed for the promotional appointment of Senior Building Custodian. (Ex. 16) A hearing was held January 10, 2008 for the Civil Service Commission at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, 4th Floor, Boston, MA 02114.

Various documents are in evidence. (Exs. 1 – 18)[1] The Personnel Administration Rules were referred to by the parties in their arguments, and a copy of them was downloaded to be made part of the record. ("D") Two tapes were used. The Appellant testified, and the Appointing Authority presented the testimony of Craig Robinson, the Burlington School Department Director of Finances and Operations and the previous Director of Buildings and Grounds. The record was held open for HRD, which did not appear for the hearing, to provide background documents and information, and legal arguments.[2] HRD's filing was made February 15, 2008. ("B") The Appellant and Appointing Authority were given the opportunity to file briefs in response to the HRD filing, by March 10, 2008. ("A" & "C") The Appointing Authority renewed its Motion to Dismiss, arguing there is no bypass and no G. L. c. 31, § 2(b) jurisdiction. This Motion was added to its brief. ("C")

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[1] Exhibits 17 and 18 were added post-hearing. Both were offered by HRD. Exhibit 17 includes letters from HRD to the Appointing Authority seeking further information to support bypassing the first candidate listed on the certified list for the position of Senior Building Custodian dated: November 1, 2005; February 6, 2006; and, April 13, 2006. Exhibit 17 also includes follow-up notes of efforts by HRD to secure a resolution from the Appointing Authority. Exhibit 18 is an affidavit of Regina Caggiano, the Assistant Director for the Civil Service Unit within HRD.

[2] HRD was permitted to review the pre-hearing legal arguments filed and the Exhibits in evidence from the hearing, and to listen to the tapes.

FINDINGS OF FACT

1. William Timperly has worked for the Burlington Public Schools as a Building Custodian from March 2000. He has tenured civil service status in his position. (Ex. 11. Testimony.)

2. Mr. Timperly took the promotional examination for the civil service position of Senior Building Custodian on May 17, 2003. Other Building Custodians in the Burlington Public Schools also took this promotional examination. (Exs. 1, 2, 6, 10, 11, 12, 15 & 17. Testimony.)

3. Mr. Timperly has a medical handicap that only allows him to write slowly. As a result, he requested an accommodation for this handicap in connection with taking this promotional examination. He was granted an accommodation of extra time to complete the exam. He was assigned to take the exam in a separate room, and had his own proctor. (Exs. 6, 11 & 12. Testimony.)

4. During the exam, Mr. Timperly experienced much loud noise from a neighboring room. He found this noise level interfered with his ability to take the exam. He discussed this high noise level with his proctor. The proctor recommended filing a complaint about the test conditions. (Exs. 6, 10, 11 & 12. Testimony.)

5. Shortly after he took the exam, Mr. Timperly telephoned the Civil Service Commission to complain about the noise he experienced trying to take the exam. He left messages, but did not hear back right away. In the meantime, upon returning to work following the taking of the exam, he complained to co-workers about the noise level and how it impaired his ability to take the exam. He also made this complaint at one of the union meetings he attended. He did not inform his superiors or his Appointing Authority

about the noise level and the problems it caused him in taking the exam. (Exs. 6, 10, 11 & 12. Testimony.)

6. On September 26, 2003, Mr. Timperly filed an "Answer Sheet Review" request with HRD to protest the noise he experienced taking the exam. He wrote:

> While taking the exam I was constantly interrupted by the Proctor in the next room, they were talking so loud that you could not think. My Proctor also was annoyed by the noise and said that they were writing a note of this situation.

(Ex. 12)

7. When the exam scores came out, Mr. Timperly scored so low he did not make the eligibility list produced by HRD on November 1, 2003. By then, no action had been taken on his complaint about the noise while taking his exam. (Exs. 6, 7, 10 & 11. Testimony.)

8. On October 23, 2003, the Burlington School Department filed a requisition with HRD for the hire of one permanent Senior Building Custodian. On November 20, 2003, certification list 23-1056 was issued. The Burlington School Department sought approval from HRD to hire Robert Ganley effective January 3, 2004. HRD approved this appointment. Three names were on the certification list: Robert Ganley was the first name; Paul Keating was the second name; and, Kevin Baker was the third name. (Exs. 1 & 14)

9. On December 5, 2003, the Burlington School Department filed a requisition with HRD for the hire of three permanent Senior Building Custodians. On January 30, 2004, certification list 23-1151 was issued. This certified list was developed using the eligibility list from the May 17, 2003 exam. The list contained the following names, ranked from highest scorer to lowest scorer:

Paul Keating
Kevin Baker
Robert Marsh
Kenneth Ramsdell
Lawrence Carney
Kenneth Marsh
Walter Feeney
Stephen Spinosa
Paul LeClerc

(Exs. 1, 2, 15, 17 & 18. Testimony.)

10. The Burlington School Department sought to hire, to begin work April 1, 2004 in the position of Senior Building Custodian, Kevin Baker, Robert Marsh and Kenneth Ramsdell. Paul Keating was bypassed. Mr. Keating, along with Mr. Baker, Mr. Marsh and Mr. Ramsdell, had all signed their willingness to accept the position. The Burlington School Department filed this request with HRD on March 30, 2004, and provided the following reasons in support of the three candidates chosen for the positions:

> Kevin Baker – He has been in the position since Feb. 22, 2000 and he is more senior as a custodian.
>
> Robert Marsh – He has been in the position since April 3, 2000 and he is more senior as a custodian.
>
> Ken Ramsdell – He has been in the position since January 13, 2003 and he is more senior as a custodian.

(Exs. 1, 2, 3, 5, 15 & 18. Testimony)

11. On March 31, 2004, HRD rejected the bypass of Mr. Keating, and informed the Burlington School Department of this determination. HRD explained:

> The selection reasons for the … candidates are not sound and sufficient. It is essential that any reason submitted for selection is specific and related to the

> knowledge, skills, abilities and requirements of the specific position in question.

(Ex. 4)

12. Mr. Timperly was allowed by HRD to retake the promotional exam for Senior Building Custodian. By letter of June 15, 2004, HRD gave him notice that this exam would be given on June 25, 2004. He retook the exam. Mr. Timperly passed the exam, and received the same score as had Mr. Keating who was the first name on the January 30, 2004 certification list, 23-1151. (Exs. 1, 6, 11, 13 & 16. Testimony.)

13. As a result of his new exam score, Mr. Timperly's name was placed at the top of the eligibility list for Senior Building Custodian. HRD did not revoke the certified list issued to the Burlington School Department and issued a revised one that included Mr. Timperly's name. HRD never informed the Burlington School Department that Mr. Timperly had to be considered in the hiring decision for the three Senior Custodian positions. HRD did ask the Burlington School Department for further information regarding the bypass of Mr. Keating. HRD wrote Craig Robinson, the Director of Finance and Operations for the Burlington Public Schools, on November 1, 2005 that HRD had been waiting for further information since March 2004. HRD made clear that until this further information was filed, "the selections of Mr. Baker, Mr. Marsh and Mr. Ramsdell cannot be approved." Since no response was received by HRD, Mr. Robinson was again contacted on November 17, 2005 by email seeking a response. Additional contact attempts generated no response from the Burlington School Department. HRD sent Mr. Robinson a detailed letter dated April 13, 2006. In it the same information was conveyed, including that none of the chosen candidates could be appointed Senior Building Custodians without HRD's approval. HRD also sought information as to

whether certain persons were working provisionally in Senior Building Custodian positions. HRD was able to learn from the Burlington School Department that the matter was being investigated. (Exs. 6, 10, 11, 17 & 18. Testimony.)

14. By letter dated May 26, 2006, Mr. Timperly wrote to the Civil Service Commission about his situation. He wrote that this letter was "a formal protest in connection with the imminent award" of the Senior Building Custodian jobs as a result of the May 17, 2003 test results without consideration of his new high score as a result of his retaking of the test on June 25, 2004. Because no one had yet been appointed to these jobs, Mr. Timperly argued that he should be part of the Appointing Authority's consideration of candidates. He contended that "to utilize the older certified list would be highly prejudicial and discriminatory." He provided the HRD list showing how, after he retook the exam, he received a score that tied with Mr. Keating's score. He mailed a copy of the letter to his Appointing Authority, which received it on May 31, 2006. (Ex. 6)

15. By email dated June 2, 2006, Mr. Robinson contacted HRD with the following information concerning the appointment of the three Senior Building Custodians:

> After discussions with the union and the principals involved in the appointment of the three Senior Building Custodians, the School Department would like to appoint the top three candidates from the list provided by your department.
>
> Mr. Paul Keating
> Mr. Kevin Baker
> Mr. Ken Ramsdell
>
> Please advise as to how we should proceed.
> Be advised that we are in receipt of a letter to your department that contends the list provided is incorrect. Should we proceed or wait for further action from your department regarding this issue.

(Exs. 7 & 18. Testimony.)

16. On May 1, 2006, HRD and Mr. Robinson met to discuss the appointments being sought for the Senior Building Custodian positions. (Exs. 9 & 18. Testimony.)

17. On May 11, 2006, Mr. Timperly faxed an inquiry to HRD about his status as a candidate for being considered for a Senior Building Custodian position. HRD responded by letter of June 7, 2006. HRD explained that usually, there is a three week time period to select candidates from a certified list. The Burlington School Department made the selections, but it had not been able to appoint Mr. Baker, Mr. Marsh or Mr. Ramsdell since they had not yet been approved by HRD. HRD explained that the Burlington School Department "has been notified of the information needed to process these promotions." HRD also noted "a time delay can occur waiting for the department to respond with the requested information." Although HRD informed Mr. Timperly that his name "was added to the Burlington School Senior Building Custodian eligible list" on June 25, 2004, HRD did not address in this letter whether, with Mr. Timperly's name now on the eligibility list, the certified list had to be reformed to include Mr. Timperly as a candidate for one of the Senior Building Custodian appointments. (Ex. 1)

18. By letter of June 13, 2006, Paul Keating wrote to Mr. Robinson stating the following:

> This letter is to confirm our conversation and agreement made today .... I hereby inform you that as of the above listed date, I no longer wish to be considered for the senior custodian position that is open at this time. If however in the future another senior position should become available, I would like to be considered.

(Ex. 8)

19. Mr. Robinson forwarded a copy of Mr. Keating's letter to HRD on June 15, 2006. He requested that HRD now approve the appointments of Mr. Baker, Mr.

Marsh and Mr. Ramsdell. (Exs. 9 & 18.)

20. HRD approved the appointments of Mr. Baker, Mr. Marsh and Mr. Ramsdell on July 12, 2006. In terms of Mr. Timperly's name now at the top of the eligibility list, HRD reasoned:

> Because there were appointments that had already been requested and were pending prior to Mr. Timperly's makeup exam (which was held in June 2004). The results of that exam did not affect those appointments.

(Ex. 10)

21. Once Mr. Timperly learned about the HRD approval of the appointments of Mr. Baker, Mr. Marsh and Mr. Ramsdell, he appealed to the Civil Service Commission. On August 14, 2006, he filed a bypass appeal form. Once he completed the required steps for securing this appeal, the Civil Service Commission acknowledged the appeal on September 27, 2006. (Exs. 11 & 16.)

Conclusion and Recommendation

I agree with HRD. It is not required to revoke a certified list and issue a new one after an Appointing Authority has requested that appointments be made from that list. This is so even if HRD has not yet approved appointments from that list. This is the case even when an original exam taker who failed the test is provided the opportunity to retake it and gains a score placing his name at the top of the elibility list that had been used to put together the certified list.[3] HRD argues the importance of distinguishing between an eligibility list compiled from the results of an examination for a position, and a

[3] The findings show the Burlington School Department inquired of HRD whether Mr. Timperly had to be considered as a candidate due to his score after retaking the exam, and HRD said no. As a result, this appeal involves the actions of HRD.

certification list provided to an Appointing Authority seeking to fill a certain number of positions. Once he retook the exam, the only remedy Mr. Timperly received was to be placed onto the eligibility list and not to be placed onto the certification list the Burlington School Department had to use to hire the three Senior Building Custodians. If in the future the Burlington School Department seeks to fill further Senior Building Custodian positions, then Mr. Timperly's name would be part of a new certified list sent to the Burlington School Department so long as the eligibility list is still useable. By the time Mr. Timperly retook the exam, the Burlington School Department had already timely commenced, as it was supposed to, the appointment process. This process would need to be started over again if Mr. Timperly's remedy was imposed.

G. L. c. 31, § 7 addresses promotional appointments:

> An appointing authority ... shall, if a suitable eligible list exists, submit a requisition to the administrator. Upon receipt of such requisition the administrator shall certify from such list the names of persons eligible for such promotional appointment ....

G. L. c. 31, § 25 addresses the establishment of eligibility lists:

> The administrator shall establish, maintain and revise eligible lists of persons who have passed each examination for appointment to a position in the official service. The names of such persons shall be arranged on each such list ... in the order of their marks on the examination .... Each such list shall be established or revised as soon as such marks are determined by the administrator. ... The administrator shall make all eligible lists available for public inspection ....
>
> ...
>
> Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years [with certain exceptions not applicable here].

G. L. c. 31, § 27 addresses bypassing candidates.

> If an appointing authority makes an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment, the appointing authority shall immediately file with the administrator a written statement of his reasons for appointing the person whose name was not highest. Such an appointment of a person whose name was not highest shall be effective only when such statement of reasons has been received by the administrator.

No provision of Chapter 31 grants Mr. Timperly the remedy of having his name placed on the certification list for this particular round of appointments his Appointing Authority wanted to make. He was not on that list because he had not passed the original exam. Given that he was allowed to retake the exam, he was not found at fault for failing the exam. His new exam score tied with the highest scorer on the eligibility list, but this course of events is not enough to secure the remedy he seeks. Rather, for having problems taking the exam, being given the opportunity to retake it and gain entrance onto the eligibility list is a reasonable and fair remedy in light of no improper actions taken by his Appointing Authority in connection with the efforts to hire the Senior Building Custodians. G. L. c. 31, § 16 allows a handicapped candidate a reasonable accommodation to ensure that the exam taking process is a fair one for the candidate. But it does not grant a remedy of having an existing certified list revoked with a new one issued to include the new test score.

HRD's Personnel Administration Rules at PAR.01 Scope and Purpose state that their purpose is to "establish standards for the conduct of the civil service merit system … a system of uniform standards implementing applicable law for use by appointing authorities in the employment processes of recruitment and examination of applicants

…." PAR.08 Civil Service Requisition and Certification (1) states that the Appointing Authority "shall make requisition to fill a position" to the Personnel Administrator [HRD], and if there exists "a suitable eligible list," the Personnel Administrator shall

> certify the names standing highest on such list in order of their place on such list …. Insofar as possible, sufficient names shall be certified to enable such appointing authority to make appointments from among the number specified in PAR.09.

("D")

PAR.08(2) sets forth time periods the Appointing Authority has to fill positions off a certified list of candidates. If that time period is not met, then the certification can become "void." At PAR.08(2)(a) the time period is "within three weeks of any certification of names to the appointing authority by the administrator from any eligible list established as a result of a promotional examination." PAR.08(2)(c) addresses a request by an Appointing Authority for a time extension. ("D")

PAR.08(3) addresses the situation where a higher scoring candidate is bypassed by an Appointing Authority in favor of a lower scoring candidate. The Appointing Authority is required to

> immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons, more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all reasons for selection or bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates …. The certification process will not proceed, and no appointments or promotions will be approved, unless and until the Personnel Administrator approves reasons for selection or bypass.

("D")

PAR.09 Civil Service Appointments (1) addresses how many names will be placed on a certification list off an eligibility list. If the number of appointments to be sought is one, then three names are provided. If the number is two then five names are provided. If the number is three then seven names are provided. If the number is four then nine names are provided, and so on. Only PAR.10 Special Certification in the Civil Service allows for additional names to be added to a certification list. This is a particular affirmative action remedy "based on race, color, national origin or sex." PAR.10(1) ("D")

The course of events involving the effort by the Burlington School Department to gain approval from HRD for the hire of Mr. Baker, Mr. Marsh and Mr. Ramsdell, shows that HRD did not find sound and sufficient reasons for bypassing Mr. Keating, the highest ranked candidate on the March 2004 certified list. But for that issue, the Burlington School Department had satisfied the requirements of PAR.08 in terms of timely making its choices off the certified list. And, HRD timely responded to its request to make those appointments by holding open the matter for further information to support the bypass of Mr. Keating. The matter simply continued to be pending for the next two years as HRD waited for this further information. Nothing in PAR.08 calls upon HRD or an Appointing Authority to alter the certified list by adding any additional name(s) based on a person now passing and scoring high on the exam after being allowed to retake it.

Mr. Timperly argues he has been prejudiced as a result of being denied the remedy he seeks. However, the case law has upheld as a valid exercise of the Civil Service Commission's powers, finding adequate the remedy of being placed onto only an

eligibility list so that the civil service employee could be a candidate for a future appointment.

In Thomas v. Civil Service Commission, 48 Mass. App. Ct. 446 (2000), the Appellant attacked, as an abuse of discretion and an error of law by the Civil Service Commission, the revival of an expired eligibility list from which Mr. Thomas's Appointing Authority made appointments even though it did not include his name. The Appeals Court upheld the Civil Service Commission's action. In Mulhern v. Civil Service Commission, 57 Mass. App. Ct. 920, 921 (2003), the remedy sought by the Appellant on a successful bypass appeal was securing the promotional appointment for which he was bypassed. The Civil Service Commission only granted him the remedy of being placed at the top of the eligibility list for the position to aid in a future requisition process to fill such positions. The Appeals Court upheld the Civil Service Commission's determination, and addressed the remedial powers of the Civil Service Commission in bypass appeals:

> The remedy to be accorded a plaintiff is a matter within the commission's discretion and will rarely be overturned. See Bielawski v. Personnel Administrator of the Div. of Personnel Admn., 422 Mass. 459, 464 n. 11, 465 (1996); Thomas v. Civil Service Commn., 48 Mass. App. Ct. 446, 451 (2000). We have reviewed the record and this is not such a case. We have expressly noted that the commission has the authority to adjust appointment dates for remedial reasons. Dedham v. Dedham Police Assn., 46 Mass. App. Ct. 418, 421 n. 3 (1999).
>
> In Bielawski v. Personnel Administrator of the Div. of Personnel Admn., supra, as here, the commission ordered that the plaintiff be placed at the top of the next certification of candidates. The plaintiff in that case complained that by failing to order his promotion, the commission did not do enough. The court pointed out that although "the commission's remedy did not correspond in tone and vigor with its rebuke of the appointing authority, this

> would not be that rare case in which the courts will second guess the commission's choice of remedy." Id. at 465.

In Bielawski, supra at 253, the Supreme Judicial Court held that a job candidate had no property interest in a promotion because his name appeared on a certified list. Mr. Bielawski had ranked on the top of the list but was bypassed.

The Civil Service Commission determination in a bypass appeal must be supported by a preponderance of the evidence. There must be a justifiable reason to support a bypass. Brackett v. Civil Service Commission, 447 Mass. 233, 241 (2006) In Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 303 (1997), the Appeals Court explained that justifiable reasons to support a bypass are determinations "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law."

I recommend that the Civil Service Commission affirm HRD's refusal to revoke the January 2004 certification list by adding Mr. Timperly's name to it, or to require that the Burlington School Department commence a new appointment process for the three Senior Building Custodian positions. Having his name placed onto the eligibility list after being allowed to retake the exam due to conditions he faced when he took the exam on May 17, 2003, was reasonably related to the harm that he suffered. Even though the appointments were not approved by HRD until July 12, 2006, long after Mr. Timperly's name was placed at the top of the eligibility list, I find that the remedy he seeks would disrupt the appointment process that was timely commenced by the Burlington School Department, as it was required to do once the certification list issued in January 2004.

In light of the foregoing discussion, I find that Mr. Timperly was never bypassed erroneously since he never had the right to have his name added to the certification list.

Therefore, I recommend that the Appointing Authority's Motion to Dismiss be allowed, or, to achieve the same result, that the Appellant's G. L. c. 31, § 2(b) appeal be dismissed.

DIVISION OF ADMINISTRATIVE
LAW APPEALS

Sarah H. Luick

Sarah H. Luick, Esq.
Administrative Magistrate

DATED: June 9, 2008