

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

PAUL A. ALMEIDA,
Appellant

v.

CASE NOS: G1-11-247

NEW BEDFORD SCHOOL DEPT,
Respondent

G1-11-336

Appellant, Pro Se:

Paul A. Almeida

Appointing Authority's Attorney:

Jane Medeiros Friedman, Esq.
City of New Bedford
Solicitors Office
133 William Street
New Bedford, MA 02740

Commissioner:

Paul M. Stein

DECISION ON MOTIONS FOR SUMMARY DISPOSTION

The Appellant, Paul A. Almeida, brought these two related appeals against his employer, the City of New Bedford School Department (NBSD), seeking to enforce his rights under prior Decisions of the Civil Service Commission (Commission) concerning bumping and reinstatement following a layoff from his full-time labor service position as Bus Driver, pursuant to G.L.c.31, §39. As to each appeal, the NBSD has moved for Summary Disposition, which the Appellant has opposed.

PROCEDURAL HISTORY

Mr. Almeida was one of a number of NBSD bus operators whose permanent labor service positions were abolished in August 2008 due to lack of funds. In two prior decisions, the Commission established that: (1) Mr. Almeida was entitled to exercise his "bumping rights" to be demoted to certain other full-time unskilled labor service positions held by other employees with less seniority, including the position of Cafeteria Helper (Case No. G1-08-234; 22 MSCR 269, 22 MSCR 348) [*Almeida I*] and (2) the

Appellant did not have a right to “bump” into any full-time labor service position of his choice; rather NBSD was entitled to designate the lower job title(s) into which the employee may elect to be demoted (Case No. G1-09-327; 22 MCSR 739) [*Almeida II*].

Mr. Almeida thereafter brought a third appeal to protest NBSD’s subsequent decision to place him into a labor service position of part-time Cafeteria Helper, rather than a vacant permanent full-time Cafeteria Helper position that was available but awarded through collective bargaining bidding to employees with less seniority than Mr. Almeida. On October 10, 2010, the Commission dismissed that appeal because Mr. Almeida had failed to bid on the full-time positions and, if he had bid, his seniority would have entitled him to the position under the applicable collective bargaining rules. This lack of due diligence precluded relief from the Commission. The Commission stated:

“It might present a different case if, hypothetically, as a result of the bidding process, all [full time] Cafeteria Helper positions offered by NBSD for bidding by the Appellant in fact, went to more senior employees. In that event, the Appellant may well have an argument that his statutory bumping rights under Section 39 have not yet been satisfied and that NBSD was obliged to find some other(“full time” unskilled labor service job if there was any such position for which his seniority would qualify him (e.g., offering demotion to position in a different unskilled job classification occupied by a more junior employee.”)

Case No. E-10-10; 23 MCSR 608 [*Almeida III*]

In pending Case No. G1-11-247, the Appellant claims he was unlawfully bypassed for promotion from his part-time Cafeteria Helper position to a position of Full Time Cafeteria Helper that was posted in June 2011 and awarded to an existing Full-Time Cafeteria Helper through a collective bargaining bidding process, rather than to him by virtue of his bumping and reinstatement rights under G.L.c.31,§39. In pending Case No. G1-11-336, the Appellant contends that his reinstatement rights under G.L.c.31, §39 entitled him to have been placed into a position of an Assistant Cook when several of those position became available in September and October 2011.

FINDINGS OF FACT

Based on the submissions of the parties, I find the following facts to be undisputed:

1. The Appellant, Paul A. Almeida, was appointed to the labor service position of full-time Bus Operator in the School Department, with a seniority date of September 11, 2000. (*Almeida I*)

2. The NBSD is a party to a collective bargaining agreement through AFSCME Council 93, Local 641, effective from July 1, 2007 through June 30, 2010 (the CBA), which provides, in part, that vacant positions are to be posted and employees entitled to “bid” on any such position, which are to be awarded to the bidding employees in order of seniority. (*Almeida I; Almeida II*)

3. As a result of the Commission’s decision in *Almeida I*, NBSD placed Mr. Almeida temporarily in a vacant position of 6½-hour Cafeteria Helper. Following the Commission’s decision in *Almeida II*, NBSD posted that position, as well as one other 6½ hour and two other 4-hour Cafeteria Helper positions, seeking bids from eligible employees for permanent appointments to those vacant positions in accordance with the procedures of Article XVI of the CBA. (*Almeida III; NBSD Motion, Exh. "I"*)

4. NBSD received bids from fifteen employees for the posted vacancies. None of the employees who bid on the 6½-hour position then temporarily occupied by Mr. Almeida has a civil service seniority date earlier than Mr. Almeida’s seniority date. (*Almeida III*)

5. Mr. Almeida did not bid on any of the posted positions. In a letter to the NBSD, Mr. Almeida explained the reason for this action was that he “will not be ‘bidding’ for any open positions until I receive written notice as to where I am being permanently placed in accordance with . . . *Almeida II* . . .” (*Almeida III*)

6. Upon receipt and review of all of the bids, NBSD proceeded to fill the open Cafeteria Helper positions with employees who bid on those positions in order of their seniority, as NBSD construed it was obligated to comply with the applicable collective bargaining agreement. On January 18, 2010, Mr. Almeida was assigned to one of the unfilled open part-time positions of Cafeteria Helper at New Bedford High School. (*Almeida III; NBSD G1-11-247 Motion*)

7. On June 14, 2011, Mr. Almeida bid on a full-time Cafeteria Helper position at New Bedford High School. The position was awarded to Donna Burke, another employee who had less overall length of service than Mr. Almeida, but who had been a permanent full-time Cafeteria Worker since September 7, 2010. (*NBSD G1-11-247 Motion, Exhs "B" through "D"; Appellant's Opposition*)

8. Article XVI of the CBA provides: "Seniority among cafeteria personnel shall be listed in the following order: Cafeteria Manager, cook, assistant cook, six and one half (6 ½) [full time] helper and four hour [part time] helper. The CBA also states: "Cafeteria Helpers going from (4) hours [part-time] to six and one half (6½) hours [full time] shall be considered a promotion." NBSD interprets these provisions of the CBA to require that full time cafeteria personnel, within the job category, are entitled to make a lateral transfer, by seniority, before a four hour employee may be promoted into a 6 ½ hour vacancy." (*NBSD G1-11-247 Motion, Exh. "A"; NBSD G1-11-336 Motion, Exh "I"*)

9. Mr. Almeida contends that, had the NBSD followed the requirements of civil service law at the time he was laid off from his permanent position of Bus Operator, he would have bumped into a full time Cafeteria Helper position before Ms. Burke became a full time Cafeteria Helper in September 2010, and, thus, when the New Bedford High

School full-time position opened up, he, not Ms. Burke would have been first in line for the job. (*Appellant's Opposition*)

10. On September 9, 2011, Mr. Almeida bid on an opening for full time Cafeteria Helper at the Keith School. His bid was successful and he was placed into this position. (*Claim of Appeal; NBSD G1-11-336 Motion, Exhs. "A" & "D"*)

11. Mr. Almeida simultaneously bid on a vacancy for full time Assistant Cook at the Normandin Middle School. The position was awarded to Cidalia Sousa, also then a part-time Cafeteria Helper, with a civil service seniority date of February 22, 2010. (*Claim of Appeal; NBSD G1-11-336 Motion, Exhs. "A" through "C"*)

12. Of the five candidates who bid on the Normandin Middle School position, Mr. Almeida had the most seniority. Ms. Cidalia Sousa was second in seniority. (*NBSD Supplementary Submission*)

13. On October 28, 2011, Mr. Almeida bid on two additional vacant positions of Assistant Cook at the Carney Academy and the Campbell School, respectively. (*Claim of Appeal*)

14. The Carney School position was awarded to Maria Reis, a part time Cafeteria Helper with a seniority date of November 1, 2010, which placed her fifth in seniority of all candidates who bid the position. (*NBSD Motion, Exhs "H" & J"; NBSD Supplementary Submission*)

15. The Campbell School position was awarded to Krystyna Dzezielowski, a full time Assistant Cook at the Gomes School with a seniority date of January 16, 2007. (*Claim of Appeal; NBSD Motion, Exhs "H" & J" ; NBSD Supplementary Submission*)

16. The position of Assistant Cook is a labor service position that requires "one year's paid experience" and ability to perform "semi-skilled cooking and routine kitchen

duties”. (NBSD Reply; Administrative Notice [HRD MuniClass Manual, Cooking Series, Job Title 7404B]; NBSD Supplemental Submission)

17. Mr. Almeida has food service experience in the private sector, having been employed with McDonalds, including 2 years as a Cook and 4 years as a Certified Shift Manager. The management position required specialized formal training and knowledge of food service preparation, food safety handling, among other things. He has filled in as an Assistant Cook during absences of other Assistant Cooks. (*Appellant’s Reply*)

18. According to the NBSD, the appointments of Ms. Reis and Ms. Sousa were made on the basis of the recommendation of the respective schools’ principals, “per c.71 sec. 59B.” (*NSBD Motion, Exhs “B” & “G”*)

CONCLUSION

Summary

Mr. Almeida’s appeal from his June 2011 non-selection for promotion from part-time Cafeteria Helper to full time Cafeteria Helper fails because his “bumping rights” under civil service law are applicable only to his original layoff in 2008. The NBSD’s transfer of a current full time Cafeteria Helper to fill that position was made in accordance with the procedures of an applicable CBA that does not infringe or conflict with any rights Mr. Almeida had under civil service law that would entitle him to equitable relief at that time.

Mr. Almeida’s appeal from non-selection for an Assistant Cook position raises different issues. Unlike Cafeteria Helper, Assistant Cook is a semi-skilled, not an unskilled, labor service position. Thus, Mr. Almeida has neither “bumping” nor “reinstatement” rights to be promoted into that position in preference to other employees. However, as one of the positions were filled by promotion of a part time Cafeteria Helper whose seniority placed her outside the “2n+1” window, and Mr. Almeida was the most

senior qualified applicant, he has a bona fide claim that NBSD may have filled that positions outside the “2n+1” rule in violation of his rights under civil service law. A full evidentiary hearing will be scheduled to consider that limited issue on the merits.

Applicable Legal Standard

A motion for summary decision of an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. To survive a motion for summary decision, the non-moving party must offer “specific facts” which establish “a reasonable hope” to prevail after an evidentiary hearing. Conclusory statements, general denials, and factual allegation not based on personal knowledge are insufficient to establish a triable issues. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

Civil Service Law Governing Layoffs

Section 39 of G.L.c.31 established the rights accorded to permanent employees who are targeted for layoff in a reduction in force due to lack of funds, as well as the procedures by which those employees must be reinstated to permanent employment. The first two paragraphs of Section 39 provide, as relevant to the “labor service” positions involved in this appeal:

If permanent employees in positions having the same title in a departmental unit are to be separated . . . because of . . . lack of money . . . they shall, except as hereinafter provided, be separated from employment according to their seniority in such unit and shall be reinstated in the same unit and in the same positions or

positions similar to those formerly held by them according to such seniority, so that employees senior in length of service. . . shall be retained the longest and reinstated first. Employees separated from positions under this section shall be reinstated prior to the appointment of any other applicants to fill such positions or similar positions, provided that the right to such reinstatement shall lapse at the end of the ten-year period following the date of such separation.

. . . Any such employee who has received written notice of an intent to separate him from employment for such reasons may, as an alternative to such separation, file . . . , a written consent to his being demoted . . . to the next lower title or titles in the labor service, as the case may be, if in such next lower title or titles there is an employee junior to him in length of service. As soon as sufficient work or funds are available, any employee so demoted shall be restored, according to seniority in the unit, to the title in which he was formerly employed. (emphasis added)

The Commission's prior majority decisions in Almeida I & II determined that the "lower title or titles in the labor service" which a Bus Operator may be demoted (i.e. "bump" a labor service employee with less seniority) included the semi-skilled labor service positions of MEO within the same job series as well as unskilled labor service positions in other job series, including Laborers and Cafeteria Helpers. In Almeida II & III, the Commission concluded that an appointing authority has discretion to determine which "out-of-series" lower-level labor service positions into which a semi-skilled or skilled labor service employee would be allowed to bump, finding that in Mr. Almeida's case, NBSD did not abuse its discretion in selecting the Cafeteria Helper position into which Mr. Almeida was placed so as to be consistent with its obligations under the applicable CBA. cf. Scheffen et al v. City of Lawrence, 24 MCSR 524 (2011) (discussing an appointing authority's discretion under Section 39 and distinguishing "reinstatement" rights of employees separated in a layoff and "restoration" rights of demoted employees to be "restored" to their positions); Tomashpol v. Chelsea Soldiers Home, 23 MCSR 52 (2010), appeal pending (distinguishing bumping rights in a layoff of "official service" personnel);

It is well-settled that, in the event of a *material conflict* between civil service law and a collective bargaining agreement, the civil service law will take precedence. See, e.g., Local 1652, Int'l Ass'n of Firefighters v. Framingham, 442 Mass. 463, 477n.15 (2004); City of Fall River v. AFSCME Council 93, Local 3117, 61 Mass.App.Ct. 404, 411 (2004); Leominster v. Int'l Bhd of Police Officers, Local 338, 33 Mass.App.Ct. 121, 124-125, rev.den., 413 Mass. 1106 (1992) However, bumping rights under Section 39 as interpreted by the Commission in Almeida I, II & III, and as the NBSD attempted to apply them, were fully consistent with the requirement that vacancies be filled through a bidding process that results in the positions being awarded in order of seniority. This process, bargained in good faith, provided an orderly means to fill positions that avoided “musical chairs” problems and potential collective bargaining grievances that might otherwise arise.

Civil Service Law Governing Labor Service Promotions

G.L.c.31,§29 governs promotions in the labor service. That statute provides:

An appointing authority shall, prior to any request to the administrator for approval of a promotional appointment of a permanent employee in the labor service to a higher title in such service; or for approval of a change in employment of a permanent employee within such service from one position to a temporary or permanent position which is not higher but which has requirements for appointment which are substantially dissimilar to those of the position from which the change is being made, post a promotional bulletin. . . .

The promotional bulletin shall contain the following information about the position which is to be filled: the salary and location, any special qualifications or licenses which are required for performing the duties of the position, whether the position is permanent or temporary, if the position is temporary, the probable duration of the employment therein, and the last date to apply for the position. Such promotional bulletin shall be mailed to any employee who, during the entire period of posting, is on sick or military leave, on vacation or off the payroll.

Within fourteen days after approval by the administrator of a promotional appointment in the labor service, the appointing authority shall post in all areas under its control where five or more civil service employees start their tour of duty, the following information about the person who has been promoted: name, permanent title, position to which the promotional appointment has been made

and the date from which length of service was measured for purposes of determining seniority. (emphasis added)

The Personnel Administration Rules (PARs) promulgated by the civil service personnel administrator [HRD], prescribe:

“Promotional appointments and changes of position under the provisions of M.G.L.c.31,§29 shall be made from among the same number of persons with the greatest length of service as the number specified in making appointments under PAR.09 [so-called “2n+1 formula”], provided that such persons possess the required qualifications and serve in eligible titles as determined by the administrator. If there are less than the required number of persons, selection may be made from the lesser number.” PAR.19(5)(a).

The Commission construes these requirements to permit promotions within the labor service of any qualified candidate(s) with the “2n+1” longest civil service seniority date(s), without any right of another non-selected candidate to contest the non-selection, save that a candidate who was removed from the 2n+1 group on the grounds he or she was not qualified may contest the disqualification decision as arbitrary, the result of bias or favoritism or other violation of merit principles. See, e.g., Picard et al v. City of Quincy, 24 MCSR 416 (2011); Lusignan v. Holyoke G&E Dep’t., 20 MCSR 401, further considered, 21 MCSR 287, after hearing, 22 MCSR 137 (2009)

The Full-time Cafeteria Helper Position

As the Commission recently decided in Scheffen et al v. City of Lawrence, 24 MCSR 524 (2011), an employee, such as Mr. Almeida, whose position of Bus Driver was eliminated, and who was permitted to bump into a lower title, is covered by the second paragraph of Section 39, which provides that, when funds become available, the employee shall be “restored . . . to the title in which he was formerly employed.” G.L.c.31,§39,¶2 This provision only covers return to the job from which the employee was displaced in the layoff, i.e. Bus Driver. Only the first paragraph of Section 39 applies to “reinstatement” of an employee “separated from employment” to “the same

positions *or positions similar* to those formerly held” prior to the layoff. G.L.c.31, §39, ¶1. See Scheffen et al v. City of Lawrence, 24 MCSR 524 (2011) Thus, Mr. Almeida’s post-bumping civil service rights of “restoration” are limited, under the second paragraph of Section 39, to the position of Bus Driver, and he has no special Section 39 post-layoff “reinstatement” rights, if any, to any other positions, such as Cafeteria Helper.¹

In addition, as to the New Bedford High School position, the NBSD selected a full time Cafeteria Helper for lateral transfer into that position, in compliance with a collective bargaining requirement. Lateral transfers within the labor service are not considered promotions within the meaning of civil service law. Thus, a CBA provision giving priority in transfer of a current full-time Cafeteria Worker over a more senior part time worker is a legitimate subject for collective bargaining and does not conflict with or violate the seniority rights of the part time employee.

Mr. Almeida makes the final point that, had the original layoff and bumping process proceeded in the way it was supposed to, he would have been placed in a full time Cafeteria Helper position before the selected candidate was appointed and, therefore, would have greater seniority rights to bid the position under the CBA. While the scenario Mr. Almeida portrays is a plausible one, in retrospect, the Commission is not persuaded that the argument shows any violation of his civil service rights that entitle him to any equitable relief. As reflected in Almeida I and II, the delay in Mr. Almeida’s placement into a position of full time cafeteria worker was the direct result of the NBSD having received conflicting advice from HRD at different points in time, as well as the uncertainty raised by Mr. Almeida’s appeals. In addition, the delay was due, in part, to

¹ The fact that Mr. Almeida was originally terminated does not change the analysis. The Commission rescinded the termination and ordered Mr. Almeida to be afforded his bumping rights under the second paragraph of Section 39, which he duly received. See Almeida I, II & III. The Commission had not yet specifically decided the scope of “reinstatement rights” to “similar” positions, if any, of labor service employees who were actually laid off in a reduction in force.

Mr. Almeida's own decision to decline to bid on a Cafeteria Helper position because he would have preferred bumping in to a Laborer job instead, or for other reasons of his own choosing. See Almeida II & III. See also Kelley v. Boston Fire Dep't, 25 MCSR 23 (2012) (denying relief seeking to "unscramble the egg" and reverse the domino effect of a series of allegedly improper "out-of-grade" assignments over a two year period)

The Assistant Cook Positions

Mr. Almeida's unsuccessful bid for an Assistant Cook's position at the Campbell School was filled by lateral transfer of Kristyna Dzieciolowski, a current employee serving as Assistant Cook at the Gomes School. Thus, this assignment does not implicate any violation of Mr. Almeida's civil service rights for the same reasons expressed above concerning the lateral transfer of the full Time Cafeteria Helper to the same position at New Bedford High School.

The two candidates selected for the other Assistant Cook positions – Maria Reis and Cidalia Sousa – both held the same part-time position of Cafeteria Helper as did Mr. Almeida. Thus, although, he had no G.L.c.31, Section 39 "reinstatement" or "restoration" rights to be selected for the position ahead of those employees, the elevation of a Cafeteria Helper to the position of Assistant Cook is clearly a promotional appointment within the labor service governed by G.L.c.31, Section 29 and the "2n+1" rule.

In the case of the Normandin Middle School promotion of Ms. Sousa, her seniority placed her within the "2n+1" group of first three candidates who applied. Thus, under civil service law and rules, the NBSD was entitled to select her over Mr. Almeida for that position, and he had no right of appeal to the Commission from his non-selection. Picard et al v. City of Quincy, 24 MCSR 416 (2011); Lusignan v. Holyoke G&E Dep't., 20 MCSR 401, further considered, 21 MCSR 287, after hearing, 22 MCSR 137 (2009)

The selection of Ms. Reis as Assistant Cook at the Carney School presents a more complicated issue. As she was the fifth most senior candidate who applied, and the record does not indicate that any of the candidates with greater seniority were unqualified, the appointment of Ms. Reis properly may be questioned under civil service law and rules, which require selection from among the 2n+1 group of qualified candidates by length of service (civil service seniority date). Mr. Almeida was clearly the most senior Cafeteria Helper who applied. It is not disputed that he has the requisite prior food service experience. His non-selection does appear to raise a bona fide question under civil service law that would, at a minimum, entitle him to a hearing to protest the selection of a candidate outside the “2n+1” formula.

The Commission understands NBSD to assert that, the “2n+1” rule notwithstanding, Ms. Reis was lawfully appointed under “principal’s choice”, as set forth in the Massachusetts Education Reform Law, G.Lc.71,59B. That statute provides:

The superintendent of a school district shall appoint principals for each public school within the district at levels of compensation determined in accordance with policies established by the school committee. Principals employed under this section shall be the educational administrators and managers of their schools and shall supervise the operation and management of their schools and school property, subject to the supervision and direction of the superintendent. Principals employed under this section shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, athletic coaches, instructional or administrative aides, and other personnel assigned to the school, and for terminating all such personnel, subject to review and prior approval by the superintendent and subject to the provisions of this chapter. The principal of any school which requires an examination for student admission shall be solely and exclusively responsible for hiring all teachers, instructional or administrative aides and other personnel, and for terminating all such personnel without the requirement of review or prior approval by the superintendent before said hiring or termination. This section shall not prevent one person from serving as the principal of two or more elementary schools or the use of teaching principals in such schools.

It shall be the responsibility of the principal in consultation with professional staff of the building to promote participatory decision making among all professional staff for the purpose of developing educational policy.

The school superintendent of a city or town or regional school district including vocational-technical schools, may also appoint administrators and other personnel not assigned to particular schools, at levels of compensation determined in accordance with policies established by the school committee

Id. (*emphasis added*)

The scope of a principal's discretion under Section 59B is broad, but it is not "unfettered." See School Committee of Pittsfield v. United Educators of Pittsfield, 438 Mass. 753 (2003) ("involuntary transfers" properly within scope of CBA and not precluded by §59B); School Committee of Newton v. Newton School Custodians Ass'n, Local 454, SEIU, 438 Mass. 739 (2003) (CBA requirement that seniority be considered as a factor in hiring decision did not improperly encroach on principal's §59B "selection" authority); School Committee of Hull v. Hull Teachers Ass'n, MTA/NEA, 69 Mass.App.Ct. 860, rev.den., 450 Mass. 1104 (2007) (arbitrator's award reinstating teacher did not contravene §59B); School Committee of Westport v. AFSCME, Council 93, Local 2667, 61 Mass.App.Ct 910 (2004) (§59B did not trump employee's CBA bumping rights)

The courts do not appear to have decided a case in which the right of "principal's choice" came into conflict with a provision of civil service law and rules. Chapter 71 is not a statute within the Commission's enforcement jurisdiction, and the Commission would tread carefully in interpreting the scope of G.L.c.71,§59B. It would seem likely, however, that the rules of construction that have been applied to CBA/Section 59B issues should be similarly apt in reconciling that statute with the provisions of civil service law, which are analogous. Thus, "bumping", "restoration", "reinstatement" and "reemployment" rights of tenured civil service employees under G.L.c.31, §§39 and 40

would seem equally as intact as involuntary transfers and bumping rights under a CBA, as the Pittsfield and Westport cases suggest. Similarly, the Commission is not aware of any disciplinary appeal that has come before it, pursuant to G.L.c.31, §§41 through 43, in which an appointing authority argued that a principal's Section 59B authority for "terminating" employees divested the Commission of jurisdiction to hear a school employee's termination appeal and to order reinstatement and restoration of benefits under civil service law if the Commission found the termination was not supported by "just cause" under civil service law and rules. Thus, absence clear judicial guidance, the Commission will continue to apply the "2n+1" rule as it has been applied in all other labor service hiring decisions according to its terms.

Relief to Be Granted

Mr. Almeida has no civil service rights to selection to the Cafeteria Helper position or to the Normandin Middle School Assistant Cook's position. His appeals must be dismissed as to those claims. He may be entitled to some relief due to his non-selection for the Assistant Cook's position at the Carney Academy. The Commission will schedule an evidentiary hearing to take evidence on whether the selection of Ms. Reis was a violation of Mr. Almeida's civil service rights, what application G.L.c.71, §59B may have to such rights and what prospective and/or retrospective relief, if any, would be lawful and appropriate to provide to Mr. Almeida.

Accordingly, for the reasons stated, the Respondent's Motion for Summary Judgment in Case No. G1-11-247 is hereby allowed and the Appeal of the Appellant, Paul Almeida, in Case No. G1-11-247 is *dismissed*. The Respondent's Motion for Summary Judgment

in Case No. G1-11-336 is hereby allowed, in part, and denied, in part, and a limited evidentiary hearing consistent with this Decision will be scheduled.

Civil Service Commission

Paul M. Stein
Commissioner

By the Civil Service Commission (Chairman Bowman; Commissioners Ittleman, McDowell, Marquis and Stein) 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:

Paul A. Almeida [Appellant]

Jane Medeiros Friedman, Esq. [for Respondent]