Decision mailed: 1/8/10
Civil Service Commission CB

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

ADONNA ANDERSON,
Appellant

v.

D-09-381

SAUGUS PUBLIC SCHOOLS,
Respondent

Appellant's Representative:

Matthew D. Jones, Esq.
Massachusetts Teachers Association
Division of Legal Services
20 Ashburton Place
Boston, MA 02108

Respondent's Representative:

Richard P. Langlois
Superintendent of Schools
Saugus Public Schools
23 Main Street
Saugus, MA 01906

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, Adonna Anderson (hereinafter "Anderson" or "Appellant"), pursuant to G.L. c. 31, § 35, filed an appeal with the Civil Service Commission (hereinafter "Commission") on September 25, 2009, claiming that she was improperly transferred by her employer, the Saugus Public Schools (hereinafter "Appointing Authority" or "Saugus").

A pre-hearing conference was conducted at the offices of the Commission on October 22, 2009. The Appointing Authority subsequently filed a Motion to Dismiss, arguing that

the Appellant was not "transferred" but, reassigned. Therefore, according to the Appointing Authority's argument, the Commission has no jurisdiction to hear her appeal. The Appellant submitted an opposition arguing that there has been a radical change in her employment that was based on a covert disciplinary motive that is inconsistent with basic merit principles. As such, the Appellant argues that the Commission does have jurisdiction to hear her appeal under G.L. c. 31, § 35 regarding involuntary transfers.

Applicable Standard on Dispositive Motion

The party moving for summary disposition of an appeal before the Commission pursuant to 801 C.M.R. 7.00(7)(g)(3) or (h) is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., "viewing the evidence in the light most favorable to the non-moving party", i.e., Saugus has presented substantial and credible evidence that the opponent has "no reasonable expectation" of prevailing on at least one "essential element of the case", and that Ms. Andersons has not produced sufficient "specific facts" to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008) Specifically, a motion to dismiss for lack of standing must allowed when the appellant fails to raise "above the speculative level" sufficient facts "plausibly suggesting" that Ms. Anderson would have the standing necessary to find her "aggrieved" within the meaning of G.L.c.31, §2(b) to pursue this appeal. See Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36, (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698, 550 (1990) (factual issues bearing on plaintiff's standing required denial of motion to dismiss)

Applicable Statute

G.L. c. 31, § 35 states in relevant part:

> "A person who is aggrieved by a transfer, other than an emergency transfer or assignment, made pursuant to this section but who is not subject to the provisions of section forty-one with respect to such transfer, may appeal to the commission pursuant to the provisions of section forty-three and shall be entitled to a hearing and a decision by the commission in the same manner as if such appeal were taken from a decision of the appointing authority made, after hearing, under the provisions of section forty-one."

Prior Commission Decisions Regarding Transfers v. Reassignments

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.

Arguments Regarding Instant Appeal

In regard to the instant appeal, the Appellant has retained the same civil service title of principal clerk with no reduction in pay. Further, there has been no increase in the commuting distance of the Appellant. As such, the Appointing Authority argues that, consistent with prior Commission decisions, the Commission has no jurisdiction to hear an appeal regarding what amounts to a reassignment.

Further, the Appointing Authority argues that the Superintendent acted within his broad authority granted to him under G.L. c. 71, § 59B.

The Appellant argues that there has been a "radical change in her employment" in that her functional responsibilities have changed *from* principal clerk duties involving the administration of the school department's payroll operation and supervision of other clerks *to* duties more appropriately assigned to a junior clerk.

Moreover, the Appellant argues that she has been banished to a "make work" job as part of a disciplinary action by the Appointing Authority. In support of this claim, the Appellant submitted twenty-four (24) pages of notes she began compiling shortly before

being assigned to her new position in August 2009. In short, the Appellant has documented what she believes are punitive actions taken against here shortly after the hiring of a new Human Resources Director and Finance Manager. For example, the Appellant alleges that she was told by the Finance Manager that she (the Appellant) was making life difficult for the Human Resource Director and that members of the School Committee and principals hate her. Not long after, the Appellant alleges that she was stripped of her duties, given a make-work job and forced to work in an unhealthy office adjacent to the boys' locker room.

Conclusion

The Appellant has retained her title of Principal Clerk at all times relevant to this appeal. She has not faced any reduction in pay nor has she been assigned to a work location that results in a longer commute. While her functional duties may have changed, those duties, as described in the Appellant's response, fall clearly within the clerical series. Even if the functional duties are substantially different, as they were in the Sands case, this alone would not constitute a transfer that is reviewable by the Commission.

I carefully reviewed the Appellant's allegations that the Appointing Authority has engaged in punitive actions against her in order to force her resignation. If true, these allegations, including assigning the Appellant to an office adjacent to the boys' locker room, are deeply troubling. The Appellant's recourse, however, would appear to be in another forum.

For all of the above reasons, HRD's Motion to Dismiss is allowed and the Appellant's appeal under Docket No. D-09-381 is hereby ***dismissed***.

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein and Taylor, Commissioners [Marquis – Absent]) on January 7, 2010.

A true Copy. Attest:

Commissioner
Civil Service Commission

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:
Richard P. Langlois (Appointing Authority)
Matthew Jones, Esq. (for Appellant)