

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston,

In the case no. 08-P-493

ANDREW ARVANITIS & another

vs.

CIVIL SERVICE COMMISSION & another.

Pending in the Superior

Court for the County of Suffolk

Ordered, that the following entry be made in the docket:

Judgment affirmed.

By the Court,

NOTE:

The original of the within rescript
will issue in due course, pursuant
to M.R.A.P.23

APPEALS COURT

Ashley Thuan, Clerk
Date May 6, 2009.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

08-P-493

ANDREW ARVANITIS & another¹

vs.

CIVIL SERVICE COMMISSION & another.²

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiffs, two employees of the Department of Correction (department), appeal from a Superior Court judgment which upheld a decision of the Civil Service Commission (commission) dismissing, for lack of jurisdiction, their request for reclassification of their positions. (A.25,26) We affirm.

After separately and unsuccessfully seeking reclassification by the department in March, 2002, the plaintiffs appealed pursuant to the statutory process provided in G. L. c. 30, § 49, to the human resources division (HRD) of the Executive Office for Administration and Finance. In June, 2002, the HRD denied the reclassification requests. (A.9-10,27) The plaintiffs appealed to the commission in July, 2002, and the appeals were consolidated. (A.5,6) After discovery and a formal hearing, the commission concluded, in a decision dated September 7, 2006, that

¹ Edward Jacobs.

² Department of Correction. While the Department of Correction was named as a party in the plaintiffs' complaint, it never was properly served and is not a party in this appeal.

it lacked jurisdiction to consider the plaintiffs' request for reclassification. (A.23) The plaintiffs then sought judicial review in the Superior Court pursuant to G. L. c. 30A, § 14. In a judgment entered on February 6, 2008, a Superior Court judge affirmed the commission's decision. (A.2,3,25) Represented by counsel in the proceedings below, the plaintiffs filed this appeal pro se.

The plaintiffs principally argue that the Superior Court judge and the commission erred in concluding the commission was without jurisdiction to consider their request for reclassification from educational specialist to institutional school teacher.

Discussion. 1. Decision of the commission. The commission dismissed the plaintiffs' appeal for lack of jurisdiction, relying on G. L. c. 30, § 49, as appearing in St. 1977, c. 658, § 1, which provides that "[t]he provisions of this section, as they relate to appeals on the reallocation of a class or group of classes to a higher job group or job groups, shall not apply to any employee whose position is included in a collective bargaining unit represented by an employee organization" (emphasis supplied). The plaintiffs are represented by Local 509 of the Alliance, AFSCME/SEIU, AFL-CIO, which has a collective bargaining agreement (CBA) with the Commonwealth. (A.13,52)

The commission found that during negotiations for the CBA

governing the years from July, 2001, through June, 2004, the "parties negotiated over the content of the job specifications for the Educational Specialist series and the Teacher series." (A.14, F.23) Fatal to the plaintiffs' appeal is the commission's finding that "[i]n a negotiation session held on January 9, 2002, the Union's representative recommended that the Educational Specialist remain a separate title." (A.14-15, F.25) The commission ultimately found that the plaintiffs are similarly situated to sixteen other educational specialists in the department and are not unique in relation to the others; therefore, as members of a class, their request could not be considered apart from the treatment of that class in the CBA.³ (A.22-23, C.5,6) Accordingly, the commission concluded that it "does not have jurisdiction over challenges to reallocation of positions resulting from collective bargaining," and dismissed the plaintiffs' appeal. (A.23)

2. The Superior Court judgment. The judge considered the plaintiffs' assertions that the commission made seven errors in its decision. He stated that it was inappropriate to address each assertion of error because those assertions did not address

³ The commission further found that the agreement reached during collective bargaining "did not include the remedy that the [plaintiffs] are seeking," and stated that if the plaintiffs "seek to challenge the appropriateness of their union official entering into an (agreement), they must select [an] appropriate forum." (A.15)

the statutory jurisdictional issue on which the commission based its decision.⁴ (A.29-30) The judge properly deferred to the commission's reasonable interpretation of its statutory authority, cf. Falmouth v. Civil Serv. Commn., 447 Mass. 814, 821 (2006), to conclude that the plaintiffs are members of a class, and that the commission does not have jurisdiction over challenges to reclassification where such a class is covered by collective bargaining. (A.31) In affirming the commission's decision, the judge concluded that there was no substantial evidence contrary to the commission's findings, and that the commission committed no error of law. (A.31-32) The plaintiffs moved for additional findings of fact and conclusions of law, which the judge treated as a motion for reconsideration. Concluding that his decision was "legally sound," he denied the motion. (A.35)

We discern no error of fact or law in the decisions of the commission and the Superior Court.

Judgment affirmed.

By the Court (Lenk, Cypher
& Mills, JJ.),

Ashley Theron

Clerk

Entered: May 6, 2009.

⁴ As none of the four arguments raised in the plaintiffs' appellate brief addresses the jurisdictional issue controlling this case, we do not consider them.