COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

HOWARD ASNES,
ROBERT LEURINI &
DAVID NIX,
Appellants

v.

C-19-075 (Asnes)
C-19-077 (Leurini)
C-19-078 (Nix)

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellants:

Pro Se
Howard Asnes
Robert Leurini
David Nix

Appearance for Respondent:

Joseph Santoro
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

1. The Civil Service Commission (Commission) received the following reclassification appeals from employees at the Massachusetts Department of Correction (DOC) who have titles in the Industrial Instructor (II) series:

I.	Howard Asnes	II 2 seeking II 3	C-19-075
II.	Robert Leurini	II 1 seeking II 2	C-19-077
III.	David Nix	II 1 seeking II 2	C-19-078

2. I held three (3) pre-hearing conferences on April 30, 2019 at the offices of the Commission which were attended by the Appellants and a DOC Representative.

3. All three (3) of the Appellants work at the Water Treatment Plant at MCI Norfolk. Mr. Asnes is the primary operator of the plant and reports to an Environmental Analyst V; Mr. Luerini and Mr. Nix report to Mr. Asnes; they both sample and test water; order supplies; maintain records, etc.

4. None of the three (3) Appellants provide instructions to inmates regarding water treatment issues.

5. Mr. Luerini and Mr. Nix both previously worked at the Sewage Treatment Plant at MCI Norfolk where they held titles in a maintenance series and were part of a different union.

6. Approximately nineteen (19) years ago, employees in the Water Treatment Plant in then-Bargaining Unit 4 were reclassified from maintenance series titles to Industrial Instructor titles. This reclassification was done via an MOU between the state's Human Resources Division (HRD) and MCOFU.

7. According to Mr. Asnes, one (1) of the primary reasons behind this 2001 MOU was that Water Treatment employees had contact with inmates (i.e. – when they collect water samples in the institution, etc.).

8. One result of this 2001 reclassification was that these Water Treatment employees were moved from Group 1 to Group 4. Group 4 employees may retire at 50% of their salary after 20 years of service.

9. According to the 1987 Classification Specifications, still in effect today, Industrial Instructors: "instruct trainees in the use of hand tools and the operation of industrial shop machinery or equipment; determine methods of instruction to be used and assign tasks to trainees; inspect equipment and materials and perform preventative maintenance; monitor the activities of the assigned area; motivate trainees; and perform related work as required. The basic purpose of this work is to instruct trainees in an industrial arts subject to provide for the development of manual skills and familiarity with tools and machinery."

10. I listened carefully to all three Appellants regarding their job duties and responsibilities in the Water Plant. To me, their duties, while mission critical, are not even remotely related to what is described above as the basic purpose of the work of industrial instructors. See Asselin v. Department of Correction, 18 MCSR 387 (2005) ("Although all maintenance personnel in Bargaining Unit 4 were reclassified into Industrial Instructor positions in July of 2001, the Classification Specification for the Industrial Instructor Series has not been reviewed to reflect the level distinguishing duties performed by maintenance personnel.") The same holds true today, fourteen years after the Asselin decision.

11. Given that the Industrial Instructor series has never been updated to reflect the duties of maintenance personnel, or, more specifically, the duties performed by the Appellants, an analysis of whether the Appellants perform the level-distinguishing duties of the Industrial Instructor series is not possible. The only global level-distinguishing duties that can be assessed are supervisory duties, as was the case in Asselin. Here, Mr. Asnes is not a second-level supervisor and Mr. Leurini and Mr. Nix are not first-level supervisors.

12. Put simply, there appeared to be no basis upon which a reclassification in the Industrial Instructor Series could be granted. Rather, the issue here appeared to be more related to the reallocation of a class or group of classes to a higher group or job groups, whose positions are included in a collective bargaining unit represented by MCOFU. G.L. c. 30, s. 49 does not apply to such matters.

13. For all of the above reasons, I provided DOC with thirty days to file a Motion to Dismiss and the Appellants had thirty days thereafter to file a reply. I instructed DOC, as part of therir motion, to provide information regarding what steps will be taken to update the 1987 Specifications in light of the 2001 MOU.

14. On June 3, 2019, DOC submitted a Motion to Dismiss. As part of their Motion to Dismiss, DOC stated in part: "Upon a careful review of the Classification Specification Guide, it reveals that the Drinking Water Facilities Operator series (Drinking Water Facilities Operator II) may be the more suitable classification, given the current level of distinguishing duties of the workers presently assigned to the Water Treatment Plant. The Drinking Water Facilities Operator II classification does contain a special requirement. That special requirement is the possession of a current and valid Massachusetts Grade II Drinking Water License. The Industrial Instructor classification has no special requirements."

15. DOC also stated in the motion that: "The Department has initiated discussions with HRD regarding modification of the Industrial Instructor Classification Specification."

16. The Appellants did not file a reply to DOC's Motion to Dismiss.

Analysis / Conclusion

The Appellants do not provide instruction to inmates, a core part of the duties required of Industrial Instructors. Further, they do not meet the supervisory requirements of the titles to which they are seeking reclassification.

Also, the issue presented here does not appear to be the individual reallocation of a manager or employee's position, but, rather, the reallocation of a class or group. G.L. c. 30, s. 49 states in part that: "the 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 certified in accordance with the provisions of section four of chapter one hundred and fifty E."

For all of the above reasons, the Appellants' appeals are hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on July 18, 2019.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:
Howard Asnes (Appellant)
Robert Leurini (Appellant)
David Nix (Appellant)
Joseph Santoro (for Respondent)