

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JOSE BATISTA &
DAVID OMASTA,
Appellants

v.

C-11-192 (BATISTA)
C-11-193 (OMASTA)

UNIVERSITY OF MASSACHUSETTS
AT AMHERST,
Respondent

Appellant's Attorney:

Karen Clemens, Esq.
Associate General Counsel
AFSCME Council 93
Boston, MA 02108

Respondent's Representative:

Margaret March
University of Massachusetts
320 Whitmore Admin Building
Amherst, MA 01003

Commissioner:

Christopher C. Bowman¹

DECISION

Pursuant to the provisions of G.L. c. 30, s. 49, the Appellants, Jose Batista and David Omasta (hereinafter "Appellants" or "Batista" and "Omasta"), are appealing the March 30, 2011 decision of the state's Human Resources Division (hereinafter "HRD") denying their request for reclassification from the position of Skilled Laborer to the position of Maintenance Equipment

¹ The Commission acknowledges the assistance of Law Clerk Mary B. Flaherty in preparing this decision.

Operator I. The appeals were timely filed with the Civil Service Commission (hereinafter “Commission”) on June 7, 2011. A full hearing was held regarding both appeals on August 10, 2011 at the Springfield State Building in Springfield, MA. The hearing was digitally recorded and one CD was made of the hearing.

FINDINGS OF FACT:

Thirty-Eight (38) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Tetna, Classification Specialist, University of Massachusetts at Amherst;

For the Appellant:

- Jose Batista, Appellant;
- David Omasta, Appellant;

I make the following findings of fact:

1. The Appellants are employed and classified as Skilled Laborers and are assigned to the Landscape Management Department in the Physical Plant, at the University of Massachusetts, Amherst campus (hereinafter “UMASS”). (Testimony of Appellants)
2. Batista has been employed with UMASS since 1994. He has been a Skilled Laborer working in the Landscape Management Department since 1998. (Testimony of Batista; Exhibit 2)
3. Omasta has been employed with UMASS since 2003. At all times during his employment with UMASS he has been a Skilled Laborer working in the Landscape Management Department. (Testimony of Omasta; Exhibit 1)
4. In June 2009, the Appellants appealed their classification as Skilled Laborers (Grade 10) to Maintenance Equipment Operator I (Grade 13). The basis of their appeal was job changes.

UMASS conducted an audit interview on June 29, 2009 with both Appellants. (Exhibit 5; Exhibit 6)

5. Tetna is a classification specialist at UMASS and has been employed as such for twenty-five (25) years. His job duties include collecting information about various jobs at UMASS, interviewing the employees in each job and creating files. He was responsible for interviewing both Appellants subsequent to their appeal. (Testimony of Tetna)
6. The Appellants' requests for reclassification were denied by UMASS on October 27, 2009. (Exhibit 17; Exhibit 18)
7. The Appellants filed an appeal with HRD. The appeal was denied on March 30, 2011. (Exhibit 15; Exhibit 16)
8. The Appellants filed an appeal with the Commission on April 17, 2011. (Exhibit 13; Exhibit 14)
9. The Classification Specifications for Skilled Laborer describe the duties as "manual labor tasks" including maintaining grounds by pruning trees and shrubs and performing snow removal and ice control duties. The basic purpose of this classification is "to perform various manual tasks requiring some specialized skills and the use of hand tools in general construction and maintenance activities." The tools listed as being used by members of this classification include small hand tools such as pliers and hammers and power tools such as drills and chain saws, as well as a variety of motorized equipment such as snow blowers, lawnmowers, forklifts and dollies. The Classification Specifications also state that based on assignment, the Skilled Laborer may operate motor vehicles including light vehicles and trucks and/or snow and ice control equipment. (Exhibit 9)

10. The Classification Specifications for Maintenance Equipment Operator I describe the duties as operating “heavy power-operated equipment such as backhoes, front-end loaders and bulldozers” and “heavy dump trucks, snow plows, sanders, tractor-drawn mowers and other equipment” The basic purpose of this classification is to “operate heavy power-operated and other equipment used in excavating, grading and other activities to construct, maintain and/or repair highways, bridges, roadsides, parks and other products.” Members of this classification are also required to possess both a Class II Motor Vehicle Operator’s License and a Class C Equipment Operator’s License issued by the Department of Public Safety. (Exhibit 10)
11. The UMASS employment application lists backhoes, dump trucks, front-end loaders, lawn mowers and tractors under the category of heavy equipment. (Exhibit 12)
12. It is undisputed that both Appellants spend ninety percent (90%) of their working time operating equipment. (Exhibit 5; Exhibit 6; Testimony of Appellants)
13. Omasta testified that he spends about thirty-five to forty percent (35-40%) of his time mowing with a tractor and about forty percent (40%) of his time brush hogging. He mostly operates the John Deere Model 210 front-end loader, John Deere Model JM301-A tractor, and the Ford Model 2120 loader/tractor. (Testimony of Omasta)
14. Batista testified that he mostly operates the John Deere Model 244 front-end loader, GM Toro Model 580 Mower (triple deck) and the GM Toro Model 4000 D Mower (triple deck). He mostly uses these for mowing and moving snow. (Testimony of Batista)
15. During the growing season, both appellants operate tractors, front-end loaders, tool cats and backhoes in support of other operations and landscaping projects. In the winter, they use

backhoes and front end loaders to clear snow and assist in other related operations. (Exhibit 5; Exhibit 6)

16. Both Appellants perform minor maintenance, fueling and lubing on the equipment that they regularly use. (Testimony of Omasta; Testimony of Batista; Exhibit 28; Exhibit 29)

17. The Appellants stated they believe the basic purpose of their position is

“to operate front end loaders, tractors, mowers, backhoes, dump trucks and other equipment and vehicles in support of Landscape Management operations including: ensuring open and safe campus passageways, maintaining pleasant appearance of campus grounds, and consistently meeting grounds standards set for the University’s flagship campus.” (Exhibit 5; Exhibit 6)

18. The only job change the Appellants claimed was that in 2000 and 2004 Batista and Omasta, respectively, began to operate front end loaders in support of snow clearance. (Exhibit 5; Exhibit 6)

19. Tetna testified that he did not consider the equipment the Appellants operated to be “heavy” and that in his opinion the equipment must weigh more than a ton in order to be classified as heavy. He examined photographs of the equipment the Appellants used the majority of their time and concluded that they did not look like they weigh more than a ton. Tetna further testified that he does not think any of it requires a CDL license in order to operate. (Testimony of Tetna)

20. Tetna does not make classification recommendations to UMASS. He interviewed the Appellants, collected the information, and gave his opinion about whether or not he considered the equipment to be heavy. (Testimony of Tetna)

21. The Appellants’ direct supervisor, who assigns, reviews and approves their work, is John S. Rogala, Head of Grounds and Service Section at UMASS. (Exhibit 5; Exhibit 6)

22. Pamela Monn, Assistant Director for Buildings and Grounds, reviewed both Appellants' duties and responsibilities as she understood them, and recommended to UMASS that their appeals be denied. (Exhibit 7; Exhibit 8)
23. Ms. Monn's review of Omasta spoke very highly of him and commended his abilities to perform his job duties, adding that he is a candidate for a leadership position. However, she stated that he does not operate heavy power-operated equipment such as cranes, backhoes, bulldozers, and heavy dump trucks, road snow plows, sanders or sweepers. She further stated that the industrial loaders Omasta uses for lawn restoration projects, brush hogging and snow removal are not equivalent to a construction backhoe/front end loader as there is approximately a 10,000 pound difference. She did state, however, that a Technical Assistant II or Maintenance Working Foreman might be a better fit for Omasta. (Exhibit 7)
24. Ms. Monn's review of Batista stated that he primarily mows lawns in the spring, summer and fall and plows snow in the winter. She further stated that he does not operate heavy power-operated equipment such as cranes, backhoes, bulldozers, and catch basins nor heavy dump trucks, road snow plows, sanders or sweepers. Rather, she stated that Batista used a 2002 Toro Groundmaster 580-D Mower to mow the lawns, which does not require any special license to operate, and a 1999 John Deere 244H Loader for snow removal, which is rated as a small industrial loader that is not equivalent to a construction backhoe/front end loader as there is approximately a 10,000 pound difference. (Exhibit 8)
25. The Appellants allege that they only see Ms. Monn about four to ten (4-10) times per year and that she does not give them their assignments. Furthermore, she is unaware of the duties they actually perform regularly and that her description of their duties and responsibilities is wrong. (Testimony of Omasta)

26. Both Appellants possess a Massachusetts Commercial Driver's License (hereinafter "CDL") as well as a Hoisting License. It is the policy of UMASS to only subject those employees who use their CDL license in the course of their employment position to random drug testing. Both Appellants have been subject to random drug testing. (Testimony of Batista; Testimony of Omasta; Exhibit 21; Exhibit 22)
27. The Position description Form 30s for two other Skilled Laborers at UMASS state their duties and responsibilities primarily as being to "provide for the care and maintenance of lawns, trees, shrubs, flower beds, walks, roadways, and parking lots." It also included cutting the lawns using hand mowers and power mowers, operating light trucks and equipment, on a seasonal basis, and assisting in University snow removal operations, among others, as duties performed by both Skilled Laborer employees. (Exhibit 23; Exhibit 24)
28. The Position description Form 30s of two Maintenance Equipment Operator I employees state their duties and responsibilities to include operating heavy or specialized equipment in roadway, walkway, and landscape construction, solid waste or property collection, handling and transport, and construction, landscaping and highway maintenance. It also includes performing manual tasks requiring various specialized skills or knowledge. (Exhibit 25; Exhibit 26)
29. Batista retired from his employment with UMASS on July 30, 2011.

CONCLUSION

After a careful review of the testimony and evidence presented in this appeal, the Commission concludes that the decision of the Human Resources Division denying the request of the Appellants to be reclassified as Maintenance Operator I's should be affirmed. I base this on the credible and informed testimony of Tetna, a Classification Specialist at UMASS Amherst

as well as the candid and informative testimony of the Appellants and the documents submitted as evidence.

The basic purpose of the work of a as Maintenance Operator I is to operate heavy power-operated and other equipment used in excavating, grading and other activities to construct, maintain and/or repair highways, bridges, roadsides, parks and other products. Although the Appellants operate equipment 90% of their time, the parties are in dispute as to whether the equipment they operate is considered “heavy” equipment for the purposes of the position. Tetna, a Classification Specialist at UMASS Amherst, testified that in his opinion, the equipment the Appellants operate is not “heavy.” He based his opinion on photographs of the equipment the Appellants used, compared with his knowledge of the equipment members of the Maintenance Equipment Operator I position use, which he felt needed to be distinguished. The Respondent alleges that the equipment the Appellants operate is not “heavy” because they do not require a CDL. Although both Appellants possess a CDL, none of the equipment that they listed as using the majority of their time requires a CDL in order to operate. Furthermore, the duties that the Appellants perform with the equipment they use are not consistent with the duties the Maintenance Operator I employees perform, namely, the construction, maintenance and repair of highways, parks or drainage systems and performing routine maintenance on vehicles and equipment. Although the Appellants operate snow plows, they do not do so more than 50% of their time and that duty is not inconsistent with the duties of the Skilled Laborer position. The vehicle maintenance which they allege is also not routine and not performed more than 50% of their time.

Based on the Appellants’ own testimony, more than 50% of their time is spent operating front-end loaders and tractors for the purposes of mowing the lawns, brush-hogging and snow

removal. These duties are not consistent with the title of Maintenance Operator I. Also, the Front-end loaders and tractors the Appellants operate are not the same type as the front-end loaders and tractors implied in the description of the equipment used by the Maintenance Operator I employees, as the ones actually being used by those employees are approximately 10,000 pounds heavier than the ones used by the Appellants and require a CDL to operate. Although the duties the Appellants perform on a regular basis may not be consistent with the duties and responsibilities of the other Skilled Laborers, they are not inconsistent with the basic purpose of that position, namely, to perform various manual tasks requiring some specialized skills and the use of hand tools in general construction and maintenance activities.

Although the Appellants do not perform a majority of the duties of a Maintenance Operator I more than 50% of the time, it is clear from their testimony that they perform an invaluable service for UMASS Amherst in an exemplary manner.

For all of the above reasons, the Appellants' appeals under Docket Nos. C-11-192 and C-11-193 in which they seek to be re-classified as Maintenance Operator are hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis and McDowell, Commissioners [Stein – Absent]) on August 9, 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:

Karen Clemens, Esq. (for Appellants)

Margaret March (for Respondent)