

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

INVESTIGATION RE:
CITY OF BOSTON LABOR SERVICE APPOINTMENTS

v.

Docket No.: I-11-267

AFSCME Council 93 Attorney:

Joseph E. DeLorey, Esq.
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

City of Boston's Attorney:

Paul Curran, Esq.
City of Boston
Office of Labor Relations
City Hall: Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

**RESULTS OF COMMISSION INVESTIGATION AND
ORDERS PURSUANT TO CHAPTER 310 OF THE ACTS OF 1993**

On September 8, 2011 and October 6, 2011, the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(a), initiated an investigation regarding labor service appointments and promotions in the City of Boston (City).

The investigation was initiated based on the findings and conclusions contained in decisions related to the following appeals:

- Hector Mejias v. City of Boston, G2-10-224 (24 MCSR 476 (2011));
- Victor Mejias v. City of Boston, G2-10-225; (24 MCSR 476 (2011));
- Robert V. Johnson v. City of Boston, G2-10-226; (24 MCSR 476 (2011));
- Steven Wise v. City of Boston, G2-10-237; (24 MCSR 476 (2011));
- Alexander Allen v. City of Boston, G2-10-286 (24 MCSR 461 (2011));
- Kevin Vaughn v. City of Boston, G2-08-108; (not published in Civil Service Reporter).

All of the above-referenced Appellants are employed by the City as permanent civil service employees, most of whom obtained permanency through Chapter 282 of the Acts of 1998 ("the 1998 Special Act").

Each of the Appellants was contesting his non-selection for a provisional promotion to an official service position. As referenced in a series of Commission decisions, provisional promotions to official service positions can only be granted to permanent civil service employees. The individuals selected for these provisional promotions were labor service employees hired by the City after passage of the 1998 Special Act.

As part of the decisions issued in the above-referenced appeals, the Commission found that, since at least 1998, the City had failed to comply with the civil service law and rules regarding labor service appointments and promotions, including the failure to appoint individuals to labor service positions from labor service rosters maintained by the state's Human Resources Division (HRD). As a result, the Commission: 1) ordered the City to comply, forthwith, with civil service law and rules regarding labor service appointments on a going-forward basis; 2) ordered HRD to conduct an audit of the City's practices; and 3) ordered the City to propose a remedy regarding the civil service status of those labor service employees appointed after the 1998 Special Act. If these post-1998 Special Act employees, including those granted the provisional promotions, were granted permanency, that would potentially make all of the above-referenced appeals moot. Thus, those appeals were dismissed with a future effective date, tied to the final outcome of this investigation.

On June 5, 2012, a status conference was held at the offices of the Commission, which was attended by: counsel for the City; counsel for AFSCME Council 93, which represents most, if not all, of the labor service employees hired after the 1998 Special Act; various other union representatives from AFSCME Council 93; counsel for HRD; various legal and human resource representatives of the City and many of the Appellants in the initial appeals.

At the status conference, it was reported to me that: 1) the City is now making labor service appointments by requesting a certification from rosters maintained by HRD; 2) HRD had not completed the audit ordered by the Commission; and 3) the City and AFSCME Council 93 were jointly asking the Commission to grant permanency to those labor service employees hired after the 1998 Special Act and the City would continue to comply with all civil service law and rules regarding labor service appointments and promotions.

To expedite a resolution, I offered to pen a draft set of orders that would be submitted to the City, AFSCME Council 93 and HRD.

Pursuant to Chapter 310 of the Acts of 1993, and with the assent of the City and AFSCME Council 93, the Commission hereby orders the following:

1. All City of Boston employees hired into non-temporary labor service positions after September 9, 1998, but before August 23, 2012, who have completed six (6) months of employment with the City, shall be deemed permanent civil service employees in their current, non-temporary labor service position effective August 23, 2012.
2. The civil service seniority date of any individual referenced in Paragraph 1 shall be the individual's first day of service as a labor service employee with the City, but in no case

shall the individual's civil service seniority date be earlier than September 9, 1998, the civil service seniority date of those granted permanency via the 1998 Special Act.

3. For those City employees hired into non-temporary labor service positions who have not completed six (6) months of employment with the City as of August 23, 2012, they shall be deemed permanent upon serving their six (6)-month probationary period.
4. Any individual referenced in Paragraph 1 who was subsequently promoted to an official service position shall be considered provisionally promoted into that official service position.
5. The City shall not make any provisional appointments or promotions into labor service positions and shall comply with all civil service law and rules regarding labor service appointments and promotions contained in G.L. c. 31, §§ 1, 28 and 29 and Section 19 of the Personnel Administration Rules (PAR.19).

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on August 23, 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)(1), 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 as stated below.

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 from the effective date specified in 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:
Joseph DeLorey, Esq. (for Appellants)
Paul Curran, Esq. (for City of Boston)
John Marra, Esq. (HRD)