

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**DAVID CREMINS, RUSSELL
CAMPBELL and MICHAEL ROGERS,**
Appellants

v.

Docket Nos. G2-04-534
G2-04-535
G2-04-536

CITY OF SOMERVILLE,
Respondent

Appellants' Attorney:

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Commissioner:

John J. Guerin, Jr.

**DECISION ON APPELLANTS' MOTION FOR SUMMARY
DECISION**

Procedural Background

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellants, David Cremins, Russell Campbell and Michael Rogers (hereafter "Cremins", "Campbell", "Rogers" or "Appellants") appealed the decision of the Appointing Authority, the City of Somerville

(hereafter the “City” or “Respondent”), bypassing them for an Assistant Supervisor of Custodians position. The Appeals were timely filed in December 2004. A pre-hearing conference was held on March 8, 2005 at the offices of the Civil Service Commission and a full hearing was scheduled for June 28, 2007. When the Respondent failed to appear at the hearing, the Commission invited the Appellants to submit a Motion for Summary Decision. Pursuant to 801 CMR 1.01 7(h), the Appellants’ Motion for Summary Decision was submitted on July 11, 2007. On September 28, 2007, the Respondent submitted an Opposition to the Appellants’ Motion for Summary Decision.

Factual Background

The Classification Series for job titles under Class 24 at the City’s public schools, pursuant to the Classification Plan for the City of Somerville, lists the following titles in order of rank (highest to lowest): Supervisor of Custodians, Assistant Supervisor of Custodians, Senior Building Custodian, and Building Custodian. At the time of their appeal, Appellants Cremins and Rogers held the Civil Service rank of Senior Building Custodian, with Cremins’ seniority date being February 26, 1979 and Rogers, September 18, 1996. In January 2003, Campbell was provisionally appointed from Senior Building Custodian to Assistant Supervisor of Custodians. His seniority date is November 17, 1980.

On October 13, 2004, the City posted a vacancy for the Supervisor of Night Custodians position. All three Appellants applied for the position and were interviewed on November 16, 2004 by the Personnel Director for the City. On December 17, 2004,

the City posted a title correction from the previous posting, changing the title from Supervisor to *Assistant* Supervisor of Night Custodians. Michael Bowler, who held the position of a Junior Building Custodian and has a seniority date of February 1, 1999, was allowed to apply and was selected for the position of Assistant Supervisor of Custodians. The City did not seek approval from the Commonwealth's Human Resource Division ("HRD") to promote Bowler, as required by G.L. c. 31.

Subsequently, the Day Supervisor of Custodians left his job and the City combined the Assistant Supervisor of Custodians and Supervisor of Custodians positions. Bowler held both job titles until July 1, 2005, although the City never sought HRD approval to appoint him provisionally or temporarily into these job titles. On July 1, 2005, Bowler was promoted to the Supervisor of School Facilities and Energy Conservation, a position outside of the jurisdiction of Civil Service. This position's title was subsequently changed to the Supervisor of Facilities. The City has not filled either the Assistant Supervisor of Custodians or Supervisor of Custodians positions since July 1, 2005. It acknowledges that it is required to fill these positions in accordance with Civil Service law.

Appellants' Grounds for Summary Decision

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Town of Watertown v. Arria,

16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” City of Cambridge at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971)

The Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 7(h) states that, “When a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense.” In this case, there is no genuine issue of fact in dispute and the issue is ripe for summary decision.

The facts in this case are not disputed. Here, the Appellants are aggrieved over being bypassed for promotion to Assistant Supervisor of Custodians, arguing that the City violated basic merit principles in the manner in which it promoted Bowler to the positions of Assistant Supervisor of Custodians and Supervisor of Custodians. Based on the submissions of the parties, the City had three qualified Senior Custodian applicants who were in the lower job title in the classification series and were ready and willing to accept the position. However, the City selected Bowler, a Junior Building Custodian and

lower in rank in the classification series than the Appellants, without seeking HRD approval. This selection was not made in compliance with G.L. c. 31, §§ 7, 12, 13, 14 or 15. Moreover, in 2005 and 2006, the City unsuccessfully filed a home rule petition to remove the titles of Assistant Supervisor of Custodians and Supervisor of Custodians from the provisions of Civil Service law, apparently acknowledging that it had violated proper promotion procedures under the applicable sections of G.L. c. 31.

Accordingly, the Appellants' Motion for Summary Decision is allowed and the appeals on Docket Nos. G2-04-534 – 535 are *allowed in part*. Specifically, the Commission orders the HRD to take the following action:

The appointment of Michael Bowler as Assistant Supervisor of Custodians in the City of Somerville is hereby rescinded and any Civil Service seniority time he may have accrued while serving as Assistant Supervisor of Custodians is to be erased.

Although there is no longer a remedy for the Appellants as the Commission is unable to order the City to fill the Assistant Supervisor of Custodians or the Supervisor of Custodians positions, the Commission wishes to express its strong disapproval of the City's attempt to circumvent Civil Service law with regard to the erroneous selection process at issue in these appeals.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Taylor, Guerin, Henderson and Marquis, Commissioners) on January 24, 2008.

A true copy. Attest:

Commissioner

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:

James W. Simpson, Jr. Esq.

Matthew J. Buckley, Esq.