

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

RONALD CRESSOTTI,
Appellant

v.

D-05-277

CITY OF WESTFIELD,
Respondent

Appellant's Attorney:

Wayne Soini, Esq.
AFSCME Council 93, AFL-CIO
8 Beacon Street
Boston, MA 02108
(617) 367-6024

Respondent's Attorney:

Peter H. Martin, Esq.
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Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Ronald Cressotti (hereafter "Cressotti" or Appellant") appealed the decision of the Respondent, the City of Westfield (hereafter "Appointing Authority", or "City"), rescinding his promotion to the position of Working Foreman after he failed to obtain a Grade D-2 Massachusetts Drinking Water Supply Facilities License. A pre-hearing was held on December 14, 2005. Subsequent to the pre-hearing, the Appellant submitted a Motion in Limine to the

Commission on January 3, 2006 seeking permission to *introduce* evidence (notwithstanding that such a motion is typically used to *limit* the introduction of evidence) beyond the issue of the licensing requirement, specifically, evidence of the Appellant's satisfactory performance while serving in the position on a conditional basis. The Appointing Authority submitted a Motion for Summary Decision and Dismissal of Appeal with the Commission on January 13, 2006.

Background Regarding Demotion

On or about March 17, 2000, the City's Water Department posted an opening for the position of Working Foreman. This position is in the Labor Service of the Civil Service classification system. The job description and the posting for this position requires that the successful candidate possess a Grade D-2 Massachusetts Drinking Water Supply Facilities License. According to the City, the licensing requirement has been in place since at least 1993.

It is undisputed that the Appellant was selected for the position of Working Foreman with the condition that he obtain the above-referenced Grade D-2 license within six months of his appointment, which occurred on April 10, 2000. The Appellant subsequently took the state exam required to obtain the Grade D-2 license and failed on April 14, 2001. The Appellant was allowed to stay in the position for several years and take the test again. By letter of January 24, 2005, the City notified the Appellant that an examination was being held on April 2, 2005, that the deadline to register for the exam was February 15, 2005, and that if he failed to take and pass the exam, he would be removed from the position of Working Foreman. The Appellant did not take the exam

and he was indeed subsequently removed from the position of Working Foreman and demoted to his previous position.

There is no dispute that the Appellant does not possess a Grade D-2 Massachusetts Drinking Water Supply Facilities License. Rather, the Appellant, in his Motion in Limine, argues that, while serving in the position, he was able to perform his duties satisfactorily without possessing the license in question.

Conclusion

In regard to promotional appointments in the labor service, G.L. c. 31, § 29 requires the Appointing Authority to post a promotional bulletin which, “shall contain the following information about the position which is to be filled: the salary and location, any special qualifications or licenses which are required for performing the duties of the position, whether the position is permanent or temporary, if the position is temporary, the probable duration of the employment therein, and the last date to apply for the position.” (emphasis added)

The State’s Human Resources Division (HRD) has promulgated rules relating to promotional appointments as set forth in PAR.19 which states in part, “promotional appointments...shall be made from among the same number of persons with the greatest length of service as the number specified in making appointments under PAR.09, provided that such persons possess the required qualifications and serve in eligible titles, as determined by the administrator.” (emphasis added)

Since at least 1993, a required qualification for the position of Working Foreman in the City’s Water Department has been possession of a Grade D-2 Massachusetts

Drinking Water Supply Facilities License. The Appellant was promoted into the position on the condition that he obtain the license within six months of his promotion. Four years passed and the Appellant was unable to obtain the required license.

A full hearing on this matter will not change the fact that the Appellant lacks a required qualification of the position, thus justifying the City's decision to rescind the promotion and demote the Appellant to his previous position.

For this reason, the Appointing Authority's Motion for Summary Decision is allowed and the Appellant's appeal under Docket No. D-05-277 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Bowman, Guerin, Marquis and Taylor, Commissioners) on December 14, 2006.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:
Wayne Soini, Esq.
Peter Martin, Esq.