Decision mailed: 11/5/10
Civil Service Commission CS

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

LOUISE A. DeROSA,
Appellant

C-99-880

DEPARTMENT OF REVENUE,
Respondent

Appellant's Attorney:	Louis B. Birenbaum, Esq. Birenbaum & Goldberg, LLP 175 Pleasant Street Malden, MA 02148
Respondent's Attorney:	Michael C. Rutherford, Esq. Massachusetts Department of Revenue 100 Cambridge Street Box 9557 Boston, MA 02114
Commissioner:	Daniel M. Henderson

DECISION

Pursuant to the provisions of M.G.L. c. 30 §§ 49 and 57, the Appellant Louise A. DeRosa (hereinafter "DeRosa" or "Appellant"), is appealing the decision of the Human Resources Division (hereinafter "HRD") and the Respondent, Department of Revenue ("DOR"), denying her request for reclassification from her position as Child Support Coordinator (Job Grade 21) to Special Investigator, DOR I (Job Grade 22) and Special Investigator, DOR II (Job Grade 24) within the DOR. The appeal was timely filed. A full hearing was held on June 8, 2000, at the offices of the Civil Service Commission (hereinafter "Commission") before Commissioner

Kevin M. Tivnan. By decision dated July 13, 2000, the Commission ruled that the dispositive issue in determining whether Ms. DeRosa's position should be reclassified was whether Ms. DeRosa "performs the duties and functions of the [Special Investigator, DOR I] at least 51 percent of the time on a regular basis." The Commission denied Ms. DeRosa's appeal because it found that she performed the duties of her current title, Child Support Coordinator, "at least 80% of the time."

Ms. DeRosa timely appealed the Commission's decision to the Superior Court pursuant to G.L. c. 30A, § 14. After a hearing on October 29, 2003, the Superior Court vacated the Commission's decision. According to the court, the Commission was in error in determining whether Ms. DeRosa performed the functions of a DOR Special Investigator, DOR I "51 percent of the time on a regular basis." Consequently, the matter was remanded to the Commission for a determination on the issue of whether "her work as a Child Support Coordinator constitute[d] 'similar work' to the work performed by a Special Investigator – DOR I, such that, under 'the principle of fair and equal pay for similar work,' she [was] entitled to the same job grade," as provided for by M.G.L. c. 30 § 45.

A hearing was held on the remanded issue before Commissioner Henderson on May 20, 2005. The parties submitted seven new joint exhibits and one (1) audiotape was made of the hearing which is retained by the Commission.

FINDINGS OF FACT

Based on the seven (7) joint Exhibits (Exhibits 1-7, the transcript and the Administrative Record), and the testimony of Fran Fahey, I make the following findings of fact:

1. On April 4, 1986, the Respondent, DOR, hired Ms. DeRosa as a Child Support Enforcement Worker. (Commission Transcript ("Transcript"), p. 43)

2. On October 10, 1987, Ms. DeRosa received a promotion to the position of Child Support Coordinator. (Transcript, p. 43)

3. The Alliance between the American Federation of State County and Municipal Employees (AFSCME) and the Service Employees International Union (S.E.I.U.), Local 509, both of whom fall under the American Federation of Labor (AFL) and Congress of Industrial Unions (CIO) (hereinafter "Local 509"), is the exclusive bargaining representative of Commonwealth employees in job titles within Unit 8. Those employed in the Child Support Enforcement Worker series and the Child Support Investigator series are within Unit 8 and represented by Local 509. (Testimony of Fahey, Exhibit 5)

4. The Child Support Coordinator classification series was a single-level series. The basic purpose of this position was to "supervise activities of the Child Support Enforcement Unit within an assigned region; advise the local office of laws concerning child support; participate in implementing new processes to increase support receipts; maintain liaison with courts on child support matters and perform related work as required." (Stipulated)[1]

5. On February 26, 1993, Ms. DeRosa applied to reclassify her position from a Child Support Coordinator, Job Grade 21, to a higher job grade within DOR. (DeRosa v. Civ. Serv. Comm'n., No. 00-3593-H, p. 1, October 29, 2003)

6. On April 27, 1999, DOR denied Ms. DeRosa's request to reclassify her position. (Administrative Record, p. 52)

7. As a result, in May 1999, Ms. DeRosa appealed the denial of her request for reclassification to HRD. (Administrative Record, p. 53)

[1] At the hearing before Commissioner Henderson on May 20, 2005, the parties stipulated to facts contained in findings 4, 8, 10, 12, and 17, *infra*.

8. On December 13, 1999, HRD denied Ms. DeRosa's request for reclassification of her position. (Stipulated Fact)

9. Ms. DeRosa timely filed her appeal of the HRD decision to the Commission on December 28, 1999. She appealed the "denial of [her] request for reclassification of [her] position to Grade 24 or whatever other grade level is deemed appropriate." (Administrative Record, pp. 1, 103)

10. The DOR Special Investigator, classification was a two-level series with the purpose of ensuring payment of child support. "Incumbents of positions in this series conduct investigations of delinquent child support cases; prepare supporting data for the issuance of criminal or civil warrants; collect delinquent child support monies; direct and coordinate child support enforcement efforts among the Department of Revenue, the Special State Police Project, District Attorneys, Sheriffs and court personnel to ensure that absent parents support their children; and perform related duties as required." (Stipulated Fact)

11. The Commission held a full hearing on June 8, 2000. (Administrative Record, p. 103)

12. The Commission denied Ms. DeRosa's reclassification appeal in a July 13, 2000 decision. (Stipulated Fact)

13. On August 8, 2000, Ms. DeRosa timely appealed the Commission's decision in Suffolk Superior Court, pursuant to G.L. c. 30A, § 14. (*See* Plaintiff's Memorandum of Law in Support of Her Motion for Judgment on the Pleadings)

14. On July 1, 2001, the title of Child Support Coordinator title was converted to the title of Child Support Enforcement Specialist. It remained at the same grade, Job Grade 21. The Commonwealth and Local 509 both agreed to this change. (Testimony of Fahey)

15. In addition, the Special Investigator DOR titles were converted to the titles of Child Support Investigator A/B, Job Grade 22, and Child Support Investigator C, Job Grade 24, on July 1, 2001. Again, the Commonwealth and Local 509 agreed to these changes. (Testimony of Fahey)

16. On October 29, 2003, the Superior Court, finding that the Commission had addressed the wrong issue, vacated the Commission's decision and remanded the matter for adjudication on the "'fair and equal pay' for similar work" question. (DeRosa v. Civ. Serv. Comm'n., *supra* pp. 4-5)

17. On March 16, 2002, Ms. DeRosa retired from the Department of Revenue. (Stipulated Fact)

18. In the assignment of the duties, responsibilities and qualifications of nonmanagement employees, HRD uses a classification system with it specifications based on an analysis of each position. HRD's analysis includes the interviewing and the administering of questionnaires to "successful" employees. Based on the information collected, HRD then composes a standard description of the duties, responsibilities, and qualifications of each position. (Testimony of Fahey)

19. When an employee requests a reclassification, HRD considers the current job specifications versus the specifications of the sought position. (Testimony of Fahey)

20. The salary range for nonmanagement employees is determined through the collective bargaining process as directed by G.L. c. 150E. (Testimony of Fahey)

21. Ms. Fahey, an HRD employee for 25 years, demonstrated an understanding of the Child Support Coordinator job specifications and Special Investigator job specifications. (Testimony of Fahey)

22. Ms. Fahey showed an understanding of the concept of fair and equal pay for similar work as mandated in G.L. c. 30, § 45. HRD examines the responsibilities, qualifications and skills needed to accomplish particular jobs and compares them based on an objective system called the Hay Job Evaluation System (based on a model developed by the Hay Group, an internationally known human resource consulting firm). The Hay system allows HRD to determine the relative value of civil service jobs. The Hay system rates jobs based on an allocation of points according to several different evaluative charts. The points are then tallied and jobs with similar point scores are classified together in job groups with equal pay scales. The collective bargaining process allows parties to affirm HRD's recommended job groups or modify them accordingly. HRD strives to pay employees equally when their jobs have approximately the same worth. To this end, "[HRD's] goal is to establish a comparable worth for comparable jobs." (Testimony of Fahey)

23. Ms. DeRosa's salary was determined by the collective bargaining agreements entered into by the Commonwealth (acting through HRD) and Local 509. The Commonwealth and Local 509 bargained over the terms and conditions of employment every three years, each time reaching a signed and accepted Agreement. (Testimony of Fahey; Joint Exhibit 5, Commonwealth of Massachusetts and the Alliance, AFSCME/SEIU, AFL-CIO Agreement July 1, 1990 – June 30, 1993; Joint Exhibit 6, Agreement July 1, 2001 – June 30, 2004; the Agreements convering July 1, 1994 through June 30, 2001, hereinafter referred to as "the Agreements," were submitted to the Commission following the May 20, 2005 hearing on June 7, 2005)

24. Special Investigators are represented by the National Association of Government Employees (NAGE). (Testimony of Fahey)

25. Article 17, entitled Classification and Re-Classification, Section 1, entitled Class Specifications, of all of the pertinent Agreements (Joint Exhibits 5 and 6, the Agreements) that were in place throughout Ms. DeRosa's appeal, provides that HRD (the successor to the Department of Personnel Administration), in consultation with the Office of Employee Relations and the union, shall determine: job titles, relationship of one classification to the others and job specifications. (Article 17, Section 1)

26. Article 17 of each Agreement, provides:

> Individual employees shall continue to have the same right to appeal the propriety of the classification of his/her position through the Personnel Administrator or the Civil Service System which the individual employee enjoyed on June 30, 1976, and such appeal may not be the subject of a grievance or arbitration under Article 23A herein.

(Article 17, Section 3, entitled Individual Appeal of Classification)

27. Article 17A of each Agreement, entitled Class Reallocations, states: "Class reallocations may be requested by the Chairman and Secretary of the Alliance whenever they believe a reallocation is justified by the existence of an inequitable relationship between the positions covered by the reallocation request and other positions covered by this Agreement." (Article 17A, Section 1)

CONCLUSION

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." Cambridge v. Civ. Serv. Comm'n., 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the appointing authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First

Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Comm'rs of Civ. Serv. v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

Ms. DeRosa sought to reclassify her position from Child Support Coordinator, Job Grade 21, to that of Special Investigator, DOR I, Job Grade 22, or Special Investigator, DOR II, Job Grade 24. DOR denied her request. Ms. DeRosa then appealed to HRD where she was again denied. She then appealed to the Commission pursuant to the provisions of G.L. c. 30, §§ 49 and 57. After a full hearing, the Commission issued a decision on July 13, 2000 denying Ms. DeRosa's appeal and upholding the existing job grade for her position. Consequently, Ms. DeRosa filed an appeal with the Superior Court. The Superior Court remanded the matter to the Commission so that it could determine whether Ms. DeRosa was performing work similar to that of a Special Investigator, DOR I, and was therefore entitled to the same job grade and salary under "the principle of fair and equal pay for similar work," as provided by G.L. c. 30, § 45(3).

With all due respect to the Court, G.L. c. 30 § 45 does not apply to Ms. DeRosa. Her job grade and title, which determined her pay rate, were governed by the terms of a collective bargaining agreement negotiated pursuant to G.L. c. 150E between the Commonwealth and Local 509, the exclusive bargaining agent for employees in Ms. DeRosa's unit. G.L. c. 30 §§ 45-50 cannot prevail over the terms of a collective bargaining agreement under G.L. c. 150E. Stockman v. Civ. Serv. Comm'n., 57 Mass.App.Ct. 1115 (2003).

> If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and any municipal personnel ordinance, by-law, rule or regulation. . . , [or] sections forty-five to fifty, inclusive, of chapter thirty. . . ; the terms of the collective bargaining agreement shall prevail.
> G.L. 150E § 7(d)(k)

In S.E.I.U. v. Labor Relations Comm'n, 410 Mass. 141, 142-143 (1991), certain provisions of a collective bargaining agreement regarding a job reclassification plan, including titles and pay grades, were in dispute among multiple statewide bargaining units, including Local 509 and the Commonwealth. In that case, Local 509 and the Commonwealth understood and agreed that the provisions of the collective bargaining agreement in question prevailed over the conflicting provisions of G.L. c. 30, § 49. Id. at 143. In the present case, an analogous conflict exists between the provisions of the collective bargaining agreement and G.L. c. 30 § 45. In the instant matter, Ms. DeRosa's job grade and classification were established through the collective bargaining process, removing her right to pursue this matter individually. Thus, in accord with G.L. c. 150E § 7d(k) and the Supreme Judicial Court's finding in S.E.I.U. v. Labor Relations Comm'n., *supra*, it appears that the principle of "fair and equal pay for similar work," embodied in G.L. c. 30 § 45, does not apply to Ms. DeRosa individually, since it is superseded by the terms of the collective bargaining agreement as negotiated by her bargaining unit.

G.L. c. 150E § 7(d)(k) applies to the instant matter. First, there was a collective bargaining agreement (hereinafter "CBA") reached between the Commonwealth and Local 509. At the time of her appeal, Ms. DeRosa held the title of Child Support Coordinator and was a member of bargaining Unit 8. Local 509 was the exclusive bargaining representative for employees in bargaining Unit 8. "The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization and membership." G.L. c. 150E § 5. The Commonwealth and Local 509 bargained over the terms and conditions of employment every three years, each time reaching a signed and agreed contract. (Testimony of Fahey, Joint Exhibits 5 and 6, the Agreements).

Each collective bargaining agreement reached between the Commonwealth and Local 509 contained a provision in conflict with G.L. c. 30 § 45 in a matter within the scope of negotiations. The matter in conflict pertained to wages and job classifications. Ms. DeRosa claims that her position of Child Support Coordinator, Job Grade 21, should be reclassified to the same class as the Special Investigator, DOR II position, Job Grade 24, or at least to the same class as that of a Special Investigator, DOR I position, Job Grade 22. Local 509 negotiated the terms and conditions of employment for employees in bargaining Unit 8 with the Commonwealth every three years. (Joint Exhibits 5 and 6, the Agreements). In regard to wages and job classifications, Local 509 and the Commonwealth agreed that the title of Child Support Coordinator shall be classified as a Job Grade 21 and the title of Special Investigator, DOR I shall be classified as a job grade 22.

Failing a reclassification test, Ms. DeRosa asserts that she should be reallocated. Under the express terms of Article 17A, the procedure for the reallocation of an employee is as follows:

> Class reallocations may be requested by the Chairman and Secretary of the Alliance [President of S.E.I.U., Local 509] whenever he/she believes a reallocation is justified by the existence of an inequitable relationship between the positions covered by the reallocation request and other state positions covered by this agreement. If the Employer agrees that such an inequity exists, the Employer and the Union agree to jointly petition the General Court for such class reallocation.
>
> (Joint Exhibits 5 and 6; the Agreements, Section 1.)
>
> The Employer and the Union agree that the procedure provided in Section 1 shall be the sole procedure for class reallocation for all classes covered by this Agreement.
>
> Id., Section 2.
>
> The parties *acknowledge that the classification plan covering titles in Units 8 and 10 addresses the issue of pay equity/comparable worth. The class reallocation process contained in this Article shall be the procedure for addressing any additional pay equity/comparable worth concerns* about titles within bargaining units covered by this Agreement. (*emphasis added*)

Id., Section 3.

The explicit language of the Agreement addresses the intent of Local 509 and the Commonwealth that said Agreement is to govern wages and job classifications, as well as issues relating to pay equity/comparable worth.

In comparison to the method of reclassification outlined in the Agreements above, c. 30 § 45(1) authorizes the state's Personnel Administrator to reclassify employment positions. In so doing, the Personnel Administrator is in an apparent conflict with the Agreements:

> (a) shall ascertain and record the duties, responsibilities, organizational relationships, qualifications for, and other significant characteristics of the office or position; (b) shall group into single classes all such offices and positions, regardless of agency or geographical location, which are substantially alike in the duties, responsibilities, organizational relationships, qualifications, and other significant characteristics; . . .

G.L. c. 30 § 45(1).

In addition, pursuant to G.L. c. 30 § 45(1), the Personnel Administrator shall allocate each position to the appropriate job group:

> [A]nd he may from time to time, in like manner, reallocate any such . . . position. *In so allocating or reallocating any such . . . position, the said administrator shall use standard, objective methods and procedures for evaluating the same so that the principle of fair and equal pay for similar work shall be followed*; and all . . . positions in the same class shall be allocated to the same job group.[2] (emphasis added)

G.L. c. 30 § 45(3).

G.L. c. 30 § 45 presents a conflict with the Agreements negotiated by the Commonwealth and Local 509. G.L. c. 30 § 45 expressly authorizes the Personnel Administrator to make allocation and reallocation decisions based on the principle of "fair and equal pay for similar work." In contrast, when addressing the issue of pay equity/comparable worth, the Agreements

[2] A "job group" is a unit of salary schedule which includes all classes in the States' "position classification plan which are sufficiently comparable in value as regards duties and responsibilities, irrespective of the field of work of which they form a part, so that the same salary range may be made to apply to all classes in the same . . . general salary schedule." G.L. c. 30, § 45(9).

indicate that the agreed classification plan provides the "procedure for addressing any additional pay equity/comparable worth concerns ..." (Joint Exhibits 5 and 6, the Agreements, Section 3; *supra*.) Therefore, G.L. c. 150E § 7(d)(k), and G.L. c. 30 § 45, from which the "fair and equal pay for similar work" principle is derived, do not apply to Ms. DeRosa the individual, because they are superseded by the terms of the Agreements reached between the Commonwealth and Local 509.

Further evidence that G.L. c. 30 § 45 does not apply to Ms. DeRosa pursuant to G.L. c. 150E is found in Article 17 of each Agreement. Article 17 addresses "Classification and Re-Classification" issues. Under G.L. c. 150E § 7(d)(k), if the terms of a collective bargaining agreement conflict with G.L. c. 30, §§ 45-50, the provisions of the collective bargaining agreement will prevail. In this case, Ms. DeRosa argues that the principle of "fair and equal pay for similar work," found in G.L. c. 30 § 45(3), requires the Commission to reallocate her position based on a comparable worth analysis. Article 17 provides otherwise. According to Article 17, HRD, in consultation with the *Office of Employee Relations and Local 509, shall determine job titles, the relationship of one classification to the others, and job specifications*. (Joint Exhibits 5 and 6, the Agreements). It is further noted in Article 17, Section 3, entitled "Individual Appeal of Classification," that an individual employee has the "right to appeal the propriety of the classification of his/her position through the Personnel Administrator or the Civil Service System." (Joint Exhibits 5 and 6, the Agreements, Section 3, cf. Section 17A). On remand to the Commission, Ms. DeRosa expressly concedes as much. (*See* Appellant's Memorandum of Law, p. 9)

However, the "fair and equal pay for similar work" principle does not apply to Ms. DeRosa's case for reasons cited above. The Commission's past decisions establish a clear standard for

reclassification. The Appellant must spend 51% or more of his or her time performing the duties in the position where the Appellant seeks to be reclassified.[3]

Through the collective bargaining process, Local 509 and the Commonwealth negotiated the terms and conditions of employment governing employees, including Ms. DeRosa, within bargaining Unit 8. In regard to wages and job classifications, Local 509 and the Commonwealth agreed that the title of Child Support Coordinator should be classified as a job grade 21, while title of Special Investigator, DOR I be classified as a job grade 22 and Special Investigator, DOR II as a job grade 24. (Exhibit 6: the Agreement, July 1, 2001 to June 30, 2004). Local 509 and the Commonwealth established clear and identifiable procedures for *class reallocations* and *individual employee classification* appeals in Articles 17A and 17 respectively. (Joint Exhibits 5 and 6; the Agreements, Article 17A, sections 1 and 2). The former provides a procedure for class reallocations that may only be requested by Local 509 on behalf of the entire class of employees. This serves to enforce the parties' obligations under the collective bargaining agreement and, as a practical matter; it precludes the chaotic prospect of having each individual member of the class negotiating his or her class allocation. This is not at the expense of pay equity. To the contrary, Article 17A, section 3 of each Agreement, states that the *reallocation*

[3] For example, Rudd v. DOR, 18 MCSR 39 (2005) ("In order to prevail in this classification appeal, the Appellant must show by a preponderance of the evidence that she is currently performing the duties of a Tax Examiner III more than fifty percent of the time."); Tynan v. DOR, 17 MCSR 150 (2004) ("Ms. Tynan has not met her burden of proof to demonstrate she has been performing as a Tax Examiner III more than 50% of her time so that she should gain that classification."); Ross-Kut v. DOR, 16 MCSR 32 (2003) ("In order to prevail in this classification appeal, Ms. Susan Ross-Kut must show by a preponderance of the evidence that she is currently performing the duties of a Tax Auditor II [] more than fifty one percent of the time."); Nigro v. Dep't of Revenue, 15 MCSR 37 (2002) ("The Appellant must demonstrate that he performs the majority of the duties in the category he seeks to be reclassified 51 % of the time."); Morawski v. DOR, 14 MCSR 188 (2001) ("In order to prevail in this classification appeal, Mr. J. Morawski must show by a preponderance of the evidence that he is currently performing the duties of a Tax Examiner II [] more than fifty percent of the time."); O'Brien v. DOR, 13 MCSR 190 (2000) ("A DOR Child Support Enforcement worker did not win reclassification to Special Investigator I status where she could not establish she performed these duties more than 50% of the time."); Chace v. DOR, 13 MCSR 127 (2000) ("The Appellant must demonstrate that he currently performs the duties in which he seeks reclassification 51% of the time. The Appellant has failed to meet this standard."); Ryan v. DOR, 13 MCSR 93 (2000) ("The appellant must perform the essential duties and functions of a Special Investigator at least 51% of the time on a daily basis.")

procedure described in section 1 "*shall be the procedure for addressing any additional pay equity/comparable worth concerns about titles* within" Unit 8 (*emphasis added*). Local 509 and the Commonwealth bargained over the terms and conditions of employment every three years, each time reaching an agreement accepted by both parties. The July 1, 1990 – June 30, 1993 Agreement assigned all Child Support Coordinator's job grade 21. (Joint Exhibit 5, Appendix B). Meanwhile, Special Investigators, DOR I were assigned job grade 20 and Special Investigators, DOR II job grade 22. Id. In 2001, Local 509 and the Commonwealth agreed to change the titles of the positions currently in dispute. (Testimony of Fahey). The Child Support Coordinator position was given the new title of Child Support Enforcement Specialist (D), while the Special Investigator, DOR I was changed to Special Investigator, DOR (A/B) and the Special Investigator, DOR II became Special Investigator, DOR (C). (Joint Exhibit 6, The Agreement, July 1, 2001 to June 30, 2004, Appendix C-2). Ms. DeRosa's bargaining agent, Local 509, had the opportunity to protest the new titles and lack of change in the job grade applicable to its members, but did not negotiate them. (Testimony of Fahey). Accordingly, Ms. DeRosa assented to her title and job grade through her bargaining representative for each bargaining period.

In a memorandum filed with the Commission on June 20, 2005, Ms. DeRosa acknowledged that if the pertinent collective bargaining agreement contained a conflict between the agreement's terms regarding allocation appeals and the General Laws, the terms of the agreement would prevail. (*See* Memorandum of Law of Appellant, pp. 5 and 9). Ms. DeRosa's memorandum further concedes that: "Articles 17 and 17A of the Collective Bargaining Agreement ("CBA") address classification and reallocation for positions in Bargaining Unit 8." Id. However, it is her contention that, "although the Child Support Coordinator position is included in Bargaining Unit 8, neither DOR nor Local 509 treated it as a position subject to the

CBA from 1988 through 1995." Id. Instead, those employed as Child Support Coordinators were considered to be confidential employees during that time period, and as such, were exempt from coverage of the collective bargaining agreements. Id. at 5-6. There was insufficient evidence to substantiate that claim or justifying Ms. DeRosa's confidential employee status.

G.L. c. 150E § 1, defines "employee" or "public employee" as "any person in the executive or judicial branch of a government unit employed by a public employer except elected officials, appointed officials, . . . and other managerial employees or confidential employees . . ." Employees are then classified as managerial employees only if they:

> (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.
>
> Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter.
>
> (G.L. c. 150E § 1)

In School Committee of Wellesley v. Labor Relations Comm'n., 376 Mass. 112 (1978), the School Committee sought a determination by the Labor Relations Commission that all principals, assistant principal, directors, coordinators, and department heads were excluded under G.L. c. 150E from collective bargaining because such employees were "managerial" or "confidential" employees, and consequently, not privileged to the collective bargaining rights afforded other public employees. The Labor Commission found otherwise and held that none of the employees were "managerial" or "confidential" employees. Id. The Supreme Judicial Court held that the employees were not managerial or confidential employees because they did not

participate to a substantial degree in formulating policy and did not assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of the school system. Id.[4]

In the present case, Ms. DeRosa's duties and responsibilities are not such that she should be exempt from the collective bargaining agreement as a confidential employee either. As a Child Support Coordinator, Ms. DeRosa's duties were listed as such: "Supervises activities of the Child Support Enforcement Unit within an assigned region; advises welfare offices of laws concerning child support; participates in implementing new procedures to increase support receipts; maintains liaison with courts on child support matters; performs related work as required." (Administrative Record, p. 47). None of the aforementioned duties relate to "formulating or determining policy," "assist[ing] in the preparation of collective bargaining," or exercising independent judgment in the process of satisfying a substantial management responsibility.

Furthermore, the Special Investigator, DOR series, to which Ms. DeRosa would have the Commission appoint her - because she performs so many of the applicable duties incumbent upon that series - also does not satisfy the requirements of G.L. c. 150E § 1. The summary of the Special Investigator series reinforces this finding:

> Incumbents of positions in this series conduct investigations of delinquent child support cases; prepare supporting data for the issuance of criminal or civil warrants; collect delinquent child support monies; direct and coordinate child support enforcement efforts among the Department of Revenue, the Social State Police

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[4] *See also*: Matter of Town of Tisbury and AFSCME, 30 MLC 77 (2003): "Health agent was not managerial employee under [G.L. c. 150E, § 1] where he/she did not perform regular, significant role in policy formulation that was of major importance to mission and objections to town and its Board of Health."; Town of Bolton (1998) 25 MLC 62: "Police sergeant was not managerial employee within meaning of [G.L. c. 150E, § 1] where she did not participate to substantial degree in formulating or determining police department policy, she only assisted chief in developing deadlines and methods to achieve department objectives, and she had not substantial responsibility involving exercise of independent judgment of appellate responsibility not initially in effect in administration of collective bargaining agreement or in personnel administration."

Project, District Attorneys, Sheriffs and court personnel to ensure that absent parents support their children; and perform related duties as required.

The basic purpose of this work is to ensure payment of child support by absent parents.

(Appellant's Exhibit D at CSC Remand; same as Administrative Record, p. 43)

Ms. DeRosa may contend that her broad supervisory authority satisfies G.L. c. 150E § 1(c), however, the Commission respectfully disagrees. In Matter of Brookline Sch. Comm. and Serv. Employees Int'l Union, Local 285, AFL-CIO, 30 MLC 71 (2003), the Labor Relations Commission found that an administrative assistant who worked in the local Administration and Finance office was a confidential employee and accordingly, should not be considered part of the union's bargaining unit. In that matter, the appellant administrative assistant reported directly to a "managerial employee," prepared memoranda containing costing-out information, handled correspondence relating to grievances and had authorized access to her supervisor's files relating to collective bargaining. Id. In this case, Ms. DeRosa reported to a Regional Manager. There is no suggestion that she participated in any aspect of the collective bargaining process for her employer. In light of the statutory requirements delineated in G.L. c. 150E § 1 and the relevant case law, the Commission finds that Ms. DeRosa was not a confidential employee.

The Commission's past decisions establish a clear standard for reclassification. The Appellant must spend 51 percent or more of his or her time performing the duties in the position where the Appellant seeks to be reclassified. *See* Harand v. Soldier's Home in Holyoke, Docket No. C-07-428, April 10, 2008; Vaulding v. Dep't. of Mental Health, Docket No. C-07-192, June 19, 2008; Cole v. Dep't. of Mental Health, Docket No. C-08-129, July 24, 2008; Costa v. Dep't of Revenue, Docket No. C-07-285, January 8, 2008; Formichella v. Mass. Highway Dep't., Docket No. C-07-177, June 26, 2008.

This case was remanded to the Commission for a determination as to whether Ms. DeRosa's work as a Child Support Coordinator constituted "similar work" to at least the work performed by a Special Investigator, DOR I such that, under "the principle of fair and equal pay for similar work," she is entitled to the same job grade. G.L. c. 30 § 45(3) establishes the "fair and equal pay for similar work" principle and is the statute under which Ms. DeRosa pursues her appeal. However, G.L. c. 30 § 45 is in conflict with the provisions of the collective bargaining agreements negotiated by Ms. DeRosa's union. To this end, G.L. c. 150E § 7(d)(k) provides that G.L. c. 30 §§ 45-50 are superseded by the conflicting terms of a collective bargaining agreement with regard to matters within the scope of negotiations pursuant to G.L. c. 150E. In addition, the Commission has adjudicated Ms. DeRosa's individual reclassification appeal according to the standard for deciding such matters and denied her appeal.

For all the foregoing reasons, the Commission hereby rules that this appeal is *dismissed.*

Civil Service Commission

Daniel M. Henderson
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, and Stein [McDowell - not participating], Commissioners) on November 4, 2010.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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:
Louis B. Birenbaum, Esq.
Michael C. Rutherford, Esq.
John Marra, Esq.