

**COMMONWEALTH OF MASSACHSETTS
CIVIL SERVICE COMMISSION**

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

**JOHN DONAHUE &
JAMES DAILEY**

Appellants

v.

TOWN OF WEYMOUTH,

Respondent

Case No.: G2-06-265 (DONAHUE)
D-06-266 (DONAHUE)
G2-06-267 (DAILEY)
D-06-268 (DAILEY)

INITIAL DECISION

Pursuant to the provisions of G.L. c. 31, §§ 2(b) and 43, and the Appellants appealed the decision of the Town of Weymouth to eliminate the position of General Foreman, which was held by the Appellants, and replace it with a newly-created title of Crew Chief, for which the Appellants both applied, but were not selected.

A pre-hearing was held before the Commission on December 13, 2006 and a status conference was held on January 19, 2007, at which time the Commission heard oral arguments on the Town's Motion to Dismiss by counsel for the Town and the Pro Se Appellants, whom were accompanied by their spouses. Counsel for the state's Human Resources Division also participated in the pre-hearing conference.

As a threshold matter, the Commission must determine whether it has jurisdiction to hear these appeals.

Appellant James Dailey has retired from the Town of Weymouth since the filing of these appeals and he does not wish to be re-hired by the Town. As such, even if Appellant Dailey were successful in this appeal, he has not stated any relief that could be granted by the Commission. Specifically, the relief being sought by Appellant Dailey, including an increased retirement benefit, falls far outside the purview of the Commission. For these reasons, the Commission has no jurisdiction to hear Appellant Dailey's appeals and his appeals under Docket Nos. G2-06-267 & D-06-268 are hereby *dismissed*.

That leaves the appeals filed by Appellant John Donahue, who continues to be employed by the Town of Weymouth, in a position one title lower than that of his previous position of General Foreman.

As part of the pre-hearing and status conference, the issue arose as to whether the Town of Weymouth had been exempt from civil service law as a result of a vote of Town Meeting and a Special Act of the legislature. Given this important jurisdictional issue, HRD was ordered, consistent with a prior delegation agreement between HRD and the City, to conduct an audit and determine whether Weymouth had ever opted out of civil service rules and laws, as Weymouth contends it had done.

HRD conducted that audit under the false assumption that the position of “General Foreman” falls within the “labor service” provisions of the civil service law, as opposed to the “official service” provisions of the civil service law. As such, HRD, concluding that Weymouth rescinded its labor service positions from civil service rules and laws in 1983, argued that the Appellants did not have standing to file an appeal with the Commission.

Upon further review, HRD subsequently determined that the position of General Foreman falls under the “official service” provisions of the civil service law, from which Weymouth has not exempted itself via a Town Meeting vote and/or a Special Act of the legislature. Notwithstanding this new information, HRD still argues that CSC does not have jurisdiction to hear this appeal. Specifically, HRD argues that Appellant Donahue was appointed to the position of General Foreman in 1986 on a *provisional* basis, as there was no examination or list available for this particular position in 1986. Thus, as a provisional employee, HRD argues that the Commission has no jurisdiction to hear the instant appeal from Appellant Donahue.

During Appellant Donahue’s tenure as General Foreman, the Town’s Director of Public Works annually sought and received approval for Mr. Donahue to be considered on a “leave of absence” from the position of “Motor Equipment Operator” in order to serve as a General Foreman. Compounding the confusion regarding this appeal, those annual notices, between the DPW Director and the Labor Service Director, identified the position of General Foreman as a “non-civil service position”. (emphasis added)

During the status conference regarding these appeals, counsel for the Town produced two documents, from 1975 and 1976 respectively, to support its contention that the position of General Foreman is not a civil service position – in the Town of Weymouth.

The 1976 correspondence, authored by the agency now known as the state’s Human Resources Division to the then-Chairman of the Weymouth Board of Selectmen, included a copy of the “Classification Plan for Weymouth”. The 1976 correspondence is a follow-up to the 1975 correspondence to the Town, also from HRD, asking the Town to review a draft plan of titles, which also did not include the title of General Foreman.

It is not known if: 1) the position of General Foreman existed in Weymouth in 1975 and 1976 and, if so, why the Town did not include the title when it was asked by HRD to review the draft titles; or, 2) the position of General Foreman was created by the Town of Weymouth sometime after 1976.

What *is* clear, however, is that the position of “General Foreman” is indeed a civil service title subject to the civil service law and rules in Massachusetts. (See “Municlass Manual”, a Municipal Classification Plan for Massachusetts, maintained by the state’s Human Resources Division.) Further, the “Municlass Manual” requires an Appointing Authority to receive approval from HRD if and when they create a new title.

In regard to the instant appeal, it is undisputed that in 2006, the Town of Weymouth abolished the position of General Foreman and created a new position of “Crew Chief”, both of which the Town argues are not subject to the civil service law and rules in Massachusetts. The Commission is not persuaded, based on the information received to date. Absent some evidence from the Town that it exempted itself, via the statutorily required process, including

a Town Meeting or City Council vote and a Special Act of the Legislature, from civil service law and rules regarding the position of General Foreman, the Commission concludes that the position of General Foreman in Weymouth is subject to civil service law and rules.

That leads us to HRD's final argument, in which they state that Appellant Donahue, even assuming he was working in a civil service title, does not have standing to file the instant appeal as his appointment in 1986 must be considered a provisional position since there was no civil service examination or list in 1986 to make permanent appointments from. As such, HRD argues that the Appellant is not in the position, under Chapter 31, to challenge his "removal" from the General Foreman position.

The Commission agrees with HRD regarding Appellant Donahue's provisional status and his inability to challenge his removal under G.L. c. 31, s. 43 in Docket No. D-06-266. Consequently, we hereby **dismiss** the appeal in Docket No. D-06-266. However, too many factual issues remain to dismiss Appellant Donahue's appeal under G.L. c. 31, s. 2(b) in Docket No. D-06-265. Therefore, Mr. Donahue's appeal under Docket No. D-06-265 will be scheduled for a full hearing before the Commission.

Moreover, given the possibility that the Town, based on the information presented thus far, may have circumvented the civil service law and rules in regard to the underlying re-organization, the Commission will concurrently conduct an investigation pursuant to G.L. c. 31, § 2(a) on its own initiative.

Civil Service Commission

Christopher C. Bowman
Commissioner

- G2-06-265 (DONAHUE): FULL HEARING TO BE SCHEDULED
- D-06-266 (DONAHUE): DISMISSED
- G2-06-267 (DAILEY): DISMISSED
- D-06-268 (DAILEY): DISMISSED
- Investigation: Docket No. to be assigned and investigation will occur concurrently with G2-06-265.

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis, Taylor, Commissioners) on July 12, 2007.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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:

George Lane, Jr., Esq. (for Appointing Authority)

John Donahue (Appellant)

James Dailey (Appellant)

Kerry A. Bonner, Esq. (HRD)-