

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

JOHN DONAHUE,
Appellant

v.

TOWN OF WEYMOUTH,
Respondent

Case Nos.: G2-06-265
I-07-239

DECISION

Summary of Events Prior to Full Hearing

Pursuant to the provisions of G.L. c. 31, §§ 2(b) and 43, the Appellant appealed the decision of the Town of Weymouth to eliminate the position of General Foreman, which was held by the Appellant, and replace it with a newly-created title of Crew Chief, for which the Appellant applied, but was not selected.¹

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 Appellant, who was accompanied by his spouse. Counsel for the state's Human Resources Division also participated in the pre-hearing conference.

As a threshold matter, the Commission needed to determine whether it had jurisdiction to hear this appeal.

Appellant John Donahue 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

¹ Another Appellant, James Dailey, was also a General Foreman and was not selected for the Crew Chief position. He filed an appeal with the Commission which was dismissed as he retired subsequent to filing the appeal and there was no relief that could be granted to Mr. Dailey, even if his appeal to the Commission was successful. See "Initial Decision" dated July 12, 2007 (Case Nos. G2-06-265; D-06-266; G2-6-267 & D-06-268)

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 As such, HRD, concluding that Weymouth rescinded its labor service positions from civil service rules and laws in 1983, argued that the Appellant did not have standing to file an appeal with the Commission.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 argued that CSC does not have jurisdiction to hear this appeal. Specifically, HRD argued 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 argued 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.

In regard to the instant appeal, it was 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 argued are not subject to the civil service law and rules in Massachusetts. The Commission was not persuaded, based on the information received at the pre-hearing level and ordered the case to a full hearing regarding the Appellant’s bypass appeal (G2-06-265)

As referenced above, HRD argued that Appellant Donahue, even assuming he was working in a civil service title, did 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 argued that the Appellant is not in the position, under Chapter 31, to challenge his “removal” from the General Foreman position.

The Commission agreed 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, the Commission dismissed the appeal in Docket No. D-06-266.

However, too many factual issues remained to dismiss Appellant Donahue's appeal under G.L. c. 31, s. 2(b) in Docket No. G2-06-265. Therefore, Mr. Donahue's appeal under Docket No. D-06-265 was scheduled for a full hearing before the Commission.

Moreover, given the possibility that the Town, based on the information presented at the pre-hearing level, may have circumvented the civil service law and rules in regard to the underlying re-organization, the Commission concurrently conducted an investigation pursuant to G.L. c. 31, § 2(a) on its own initiative (I-07-239).

Summary of Events During and After Full Hearing

A full hearing was conducted on Case Nos. G2-06-265 and I-07-239 on August 22, 2007 at the Offices of the Civil Service Commission. Counsel for the Appointing Authority argued on behalf of the Town and the Appellant represented himself with the assistance of his wife.

The Town produced additional evidence at the full hearing in support of its argument that the position of General Foreman was not a civil service position in the Town of Weymouth, including, but not limited to: a copy of the Town Election of March 8, 1948 in which the Town opted into civil service for "labor service" positions only; a copy of G.L. c. 31, § 47 (Ter. Ed), the operative civil service law in effect in 1948; a copy of the Town Election of May 16, 1983, in which the town opted out of civil service; as well as correspondence between the Town and HRD regarding the municipal classification plan in 1975 and 1976. (See Exhibits 1 – 9)

At the conclusion of the full hearing, the Commission sought an advisory opinion from the state's Human Resources Division regarding whether or not the position of General Foreman in Weymouth was subject to the civil service law.

Both the Town and the Appellant submitted additional information to HRD prior to their response to the Commission on September 21, 2007. The September 21, 2007 correspondence, which is incorporated as part of this decision, states, in its entirety:

The following is in response to your September 4, 2007 letter requesting the Human Resources Division (HRD) to provide written comments addressing the Town of Weymouth's position that "since they did not include the title of "General Foreman" in this approved plan [Municipal Classification Plan], it is not a civil service position." Please be advised that HRD also received additional documents from the Town of Weymouth supporting its position that the Town opted into civil service for labor service only and that the Town never opted into civil service for the position of General Foreman. All documents are attached for your convenience

Massachusetts G.L. c. 31, § 1 defines "official service" as "the composite of all civil service positions not in the labor service." General Foreman is an official service position. Chapter 31 provides that certain enumerated offices and positions are subject to civil service law by statute. See M.G.L. c. 31, §§ 48 – 53. In a town, official service positions not specifically listed as subject to civil service law and rules, such as General Foreman, may become subject to civil service law by town acceptance as provided by law. See M.G.L. c. 31, §§ 48 and 52(3).

A review of HRD records reveals the following:

Cities and towns submit municipal classification plans to HRD for approval. See M.G.L. c. 31, § 5. A town's municipal classification plan contains a list and description of titles subject to civil service in that city or town. In 1976, the Town submitted a list of official and labor service titles to HRD for approval in its municipal classification plan. Although utilized, the title of General Foreman was not included in the Town's classification plan. The following three non-public safety official service positions were provided in the Town's classification plan: Town Accountant, Sealer of Weights and Measures, and Plumbing Inspector. Previously, in 1944, the Town voted to accept the applicability of civil service laws and rules specifically to the position of Town Accountant. Although Sealer of Weights and Measures and Plumbing Inspector are official service titles, these titles would not require town acceptance because they are specifically listed by statute as subject to civil service law. See M.G.L. c. 31, § 52. In 1989, the Town had special legislation passed to exempt the position of Town Accountant in the Town of Weymouth from the provisions of civil service law. See Chapter 629 of the Acts of 1989.

HRD has not located evidence of a town vote accepting the applicability of civil service laws and rules to *all* official service titles in the Town, or specifically to the position of General Foreman.² Nor has HRD found record of the Town exempting the title of General Foreman from civil service in the Town of Weymouth through a special act of the legislature, as it had done for the position of Town Accountant and labor service positions. Further, HRD has not found record of the Town ever participating in an examination for the position of General Foreman, requesting a certification for appointment to the position of General Foreman, or notifying HRD that it provisionally appointed a General Foreman.

Conclusion

Based on a review of all of the testimony, exhibits and the above-referenced correspondence from the state's Human Resources Division, the Commission concludes that the position of General Foreman in the Town of Weymouth is not subject to the civil service law and rules in Massachusetts. Therefore, the Commission has no jurisdiction to hear the Appellant's appeal under Docket No. G2-06-265.

Further, for the same reason, the Commission closes its investigation under Docket No. I-07-239 as the decision to abolish the position of General Foreman in the Town of Weymouth and replace it with the position of Crew Chief is beyond the scope of Commission's jurisdiction.

Notwithstanding the above-referenced conclusion, this Commissioner, after hearing all of the testimony and reviewing all of the evidence, was left with the conclusion that the Town's treatment of the Appellant was not consistent with equity and good conscience.

Mr. Donahue has served the Town of Weymouth in the position of General Foreman for 20 years and his total years of service with Weymouth total over three decades. It appears that

² In 1948, the Town voted to accept the applicability of civil service law and rules to labor service titles. In 2002, via Chapter 63 of the Acts of 2002, Weymouth rescinded labor service from civil service laws and rules.

Mr. Donahue has been a dedicated, hard working employee who has received several commendations and favorable evaluations during his tenure. While the Town's actions in this matter are beyond the scope of the Commission's jurisdiction, they should be carefully scrutinized by the legislative body in Weymouth, to which a copy of this decision is being forwarded.

The Appellant's appeal under Docket No. G2-06-265 is hereby *dismissed* and the Commission's Investigation under Docket No. I-07-239 is hereby *closed*.

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis, Taylor, Commissioners) on September 27, 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)
Martha O'Connor, Esq. (HRD)
Weymouth Town Council