

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

PHILLIP DUSSAULT,  
Appellant

v.

E-12-127

WORCESTER PUBLIC SCHOOLS,  
Respondent

Appellant's Attorney:

Diane S. Byrnes, Esq.  
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Quincy, MA 02169

Respondent's Attorney:

Sean P. Sweeney, Esq.  
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Commissioner:

Christopher C. Bowman

**DECISION ON APPELLANT'S ASSENTED TO REQUEST FOR RELIEF**

On March 29, 2012, the Appellant, Phillip Dussault, filed an appeal with the Civil Service Commission (Commission), seeking civil service permanency in his current title of Electrician with the Respondent, the Worcester Public Schools (School Department). A pre-hearing conference and status conference were held and the School Department submitted responsive documents to the Commission. Based on a review of those documents, the statements of the parties and the applicable civil service law and rules, the Appellant's request for civil service permanency, assented to by the School Department, is allowed.

*Background*

The Appellant has been employed by the School Department as an Electrician, an official service title, since March 27, 2006. The Appellant, upon hire, was told by the School Department, that he would be deemed a permanent civil service employee in the title six months after his hire date. At some point, according to the Appellant, he was informed that he was a provisional, as opposed to a permanent, civil service employee.

The issue here involves a now-defunct Continuous Testing Program (ConTest) that once allowed individuals selected for official service positions to be appointed as permanent civil service employees, without the need to take a traditional written examination.

So called “official service” positions are those jobs for which applicants must take a competitive examination, and appointments are made on the basis of individuals’ ranking on a certification created from an eligible list. (See G.L. c. 31, §§ 1, 25-27)

G.L. c. 31, § 25 states in relevant part:

“The administrator shall establish, maintain and revise eligible lists of persons who have passed each examination for appointment to a position in the official service. The names of such persons shall be arranged on each such list, subject to the provisions of section twenty-six, where applicable, in the order of their marks on the examination based upon which the list is established.

Following the certification of names to an appointing authority, such appointing authority shall submit a written report to the administrator indicating (a) with respect to each person whose name was certified, whether such person appeared to sign the certification, (b) whether each person who so appeared declined or expressed willingness to accept employment, and (c) each person selected for appointment.”

For many years, however, most non-public safety positions in the official service have not been filled via permanent appointments, since HRD has not had funding to conduct examinations for these positions. Thus, the vast majority of employees working in non-public safety, official service positions in state and municipal government, have been appointed as “provisional” employees, with limited or no civil service protections.

On August 19, 1998, HRD, in response a special legislative commission that addressed, in part, the large number of provisional employees, developed the “Continuous Testing (ConTest) Program.” ConTest provided a method for individuals to become qualified on a daily basis for entry level, non-public safety, official service positions in state and municipal government.

Applicants who wished to participate in the ConTest program visited the ConTest site in Boston to qualify for one or more civil service job titles across state agencies and municipalities. The individual would receive confirmation from HRD, on the same day or soon thereafter, indicating the civil service titles for which he/she was qualified to apply; and then remain on a statewide eligible list for two years.

The limited number of titles covered by the ConTest program on August 19, 1998, included: Electrician I and II; Emergency Medical Technician; Nurse; Pumping Station Operator, First, Second and Third Class Stationary Engineers; First and Second Class Steam Firemen; Treatment Plant Operator; and Wire Inspector.

When the Appellant was hired as an Electrician by the School Department, he had all of the necessary qualifications and licenses for the position of Electrician. Despite the existence of the ConTest program, which was meant to eliminate the use of provisional appointments, the School

Department appointed the Appellant as a provisional employee. The Appellant was not informed of the ConTest program at that time.

In an undated letter sometime in 2008, HRD notified all Appointing Authorities that, effective October 16, 2008, the ConTest program was discontinued due to budget cuts. In this letter, HRD stated that it was “no longer accepting original applications or renewal requests for placement on eligible lists in ConTest titles, nor will lists be certified to municipalities seeking to fill vacancies in said titles. Provisional appointments will be accepted in these titles ...”.<sup>1</sup>

The Appellant was a qualified Electrician at the time of hire and would have been appointed permanently but for the School Department’s failure to have him register for the ConTest program. For this reason, the Appellant’s request for civil service permanency is hereby *allowed*.

*Conclusion / Orders*

Pursuant to Chapter 310 of the Acts of 1993, the state’s Human Resources Division or the Worcester Public Schools in its delegated capacity, shall adjust its records to show that Phillip Dussault is a permanent Electrician with a civil service seniority date of March 27, 2006.

Civil Service Commission

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Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners [Marquis – Absent]) on July 26, 2012.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

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<sup>1</sup> While HRD’s financial constraints justified their decision to stop administering the ConTest program, the program should be revived, via delegation agreements, in those civil service communities who so desire.

Notice:

Diane S. Byrnes, Esq. (for Appellant)  
Sean P. Sweeney, Esq. (for Respondent)  
John Marra, Esq. (HRD)