

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

In the matter of Sandy Felder,)
Department of Social Services, and) G-2850
Human Resources Division)

ORDER

On or about June 21, 1994, Ms. Felder, then-President of the Service Employees International Union Local 509 (hereinafter “SEIU” or “Local 509”), sent a letter to the Civil Service Commission (hereinafter “Commission”) requesting an investigation pursuant to G.L. c. 31, s. 2(a).¹ In it, Felder alleged that the Department of Social Services, (hereinafter “DSS”) was improperly, and in violation of the basic merit principles of G.L. c. 31, failing to fill vacancies from active civil service lists, providing infrequent examinations from which lists for appointments could be generated, preventing a number of employees from being considered for promotion and making provisional appointments.

In the many subsequent years, the Commission scheduled numerous conferences for representatives of Ms. Felder, DSS and the Human Resources Division (hereinafter “HRD,” formally the Department of the Personnel Administrator) to attend and asked the

¹ The docket number assigned in this matter – G-2850 – would currently connote a bypass, according to the docketing system now employed by the Civil Service Commission. However, it is not clear at this point in time from the record the reason it was so designated. Thus, the matter is addressed by this Commission as an investigation. What is clear from the record is that, given the unusual and far-reaching parameters of the issues in this matter, the Commission continually provided a forum for discussion and concurred with the desires of those involved to pursue an agreed solution in the belief that it would yield the most satisfactory result. Although it appears that those involved have reached an agreed satisfactory end, the Commission notes here, as it has on so many occasions in this and other cases, that these issues be addressed in a more timely manner. The Commission regrets any contribution it may have made to the delay of the conclusion in this matter.

representatives to produce various status reports (representatives of Felder, DSS and HRD hereinafter referred to as “the representatives”). However, the representatives often requested continuances for the scheduled conferences and the status reports. In the midst of these conferences, the representatives agreed that the best solution would be one developed by agreement and negotiations ensued. The representatives’ on-going negotiations then became the basis of further requests for continuances. As the Commission endorsed the parties’ efforts to resolve the matter by agreement, it granted the requests for continuance in most instances.

More recently, the Commission scheduled a conference in this matter. On June 21, 2007, representatives of Felder and HRD appeared at the Commission. At this point in time, the Commission was informed that an agreement among all of the representatives was nearly complete. With the repeated urging of this Commission, the representatives filed with the Commission their Memorandum of Agreement on August 10, 2007, requesting that the Commission exercise its equitable powers under St. 1976, c. 534, as amended by St. 1993, c. 310, in a manner reflecting their agreement.² We do so below, to the extent possible.³

² The Commission sought to expedite consideration of the Agreement by requesting that the parties also submit the Agreement electronically. However, such efforts failed, further delaying this Order.

³ Part of the representatives’ agreement is that Felder agrees to withdraw her request for investigation by the Commission. Memorandum of Agreement, No. 14. However, under the circumstances in this matter, the Commission views the investigation as the basis for this Order. Further, we note that the representatives’ agreement references sections of the pertinent collective bargaining agreement relating to transfers. Memorandum of Agreement, Nos. 2B iii and iv. The Commission recognizes that it can not effect the collective bargaining agreement but cites to it herein for contextual purposes. This Order is otherwise intended to reflect the representatives’ Memorandum of Agreement.

310 RELIEF

The representatives submit, and the Commission accepts, the following:

1. In 1994, Felder requested an investigation of the personnel histories of employees in her bargaining unit at DSS.
2. Representatives of DSS and HRD have reviewed the personnel histories of employees employed by DSS in the titles of Social Worker (hereinafter "SW")I (A/B), SW III (C); SW IV (D); SW Technician (A/B); Community Resource Developer (A/B); Community Resource Developer (C); Case Reviewer (A/B); and Special Investigator.
3. It has been determined that, through no fault of their own, a number of these employees have not had the opportunity to achieve permanent civil service status either because appointments were not made from civil service lists or because civil service exams were not administered. Instead, during the life of certain eligibility lists, DSS made provisional promotions and appointments in the Social Worker and Social Worker Technician titles.
4. Felder, DSS and HRD agree to jointly recommend that this Commission exercise its power under St. 1976, Chapter 534, as amended by St. 1993, Chapter 310, to grant 310 relief to those employees of DSS who appear on the eligible lists for the last civil service examinations administered by HRD in 1991-1992 in certain DSS titles.

TERMS OF THE ORDER

In light of the foregoing and the extraordinary agreement between Felder, DSS and HRD, the Commission orders the following relief:

1. Any remaining pertinent employees who have temporary certification status in their occupied title shall be converted to permanent status effective the date they were appointed temporary after certification of the date of and earlier permanent appointment in a lower title.
2. Existing provisional DSS employees who appear on the SW IV (D) Promotional Civil Service Eligibility List (Announcement #4058, list established 7/17/91) shall be permanently appointed as SW IV(D). Their civil service seniority date will remain the date of first permanent appointment. (See the list of such personnel contained in Attachment A).
3. The remaining current Bargaining Unit 8 DSS employees who appear on the Promotional SW IV(D) eligibility list (Announcement #4058, list established 7/17/91) shall receive a permanent SW IV(D) appointment. Their civil service seniority date will remain the date of first permanent appointment. The employees currently employed in the social worker series shall be non-supervisory case-carrying SW IV(D)s. DSS employees who are case reviewers shall retain their case reviewer duties. (See the list of such personnel contained in Attachment B.)
 - a. Non-supervisory case-carrying SW IV(D) employees must comply with the directives of supervisory of SW IV(D)s to the same extent as SW III(C) employees.
 - b. DSS shall not use the lack of a Master's Degree or License as the only reason for denying an individual a promotion to the supervisor SW IV(D) position if such person became a non-

supervisory case-carrying SW IV(D) or a case reviewer SW IV(D) pursuant to this Order.

- c. Case-carrying SW IV(D) employees, or case reviewer SW IV(D) employees, shall retain all rights under Article 14, s. 4.A (Transfers) of the collective bargaining agreement, and, pursuant to Article 14, section 4.A.4, transfer requests shall be considered and, where appropriate, implemented prior to the filling of any vacancy.
- d. Requests for transfer under Article 14, s. 4 of the collective bargaining agreement (hereinafter "CBA") shall be as a non-supervisory case-carrying SW IV(D) or case reviewer SW IV(D) and provisions of Article 14, s. 4.A.1.a. and/or b. of the CBA shall not be utilized to seek a position as a supervisory SW IV(D).

4. All existing DSS SW IV(D) employees who appear on the Open Competitive SW IV (D) eligibility list (Announcement #3198, list established 7/17/91) shall be permanently appointed as SW IV(D) employees. Their civil service seniority date shall be February 23, 1992, or the date of their first employment at DSS, whichever is later. (See the list of such personnel contained in Attachment C).

5. The remaining current Bargaining Unit 8 DSS employees who appear on the Open Competitive SW IV(D) list (Announcement #3198, list established 7/17/91) shall be permanently appointed as SW IV(D) employees. Their civil

- service seniority date shall be February 23, 1992, or the date first employed at DSS, whichever is later. These employees shall be non-supervisory, case-carrying SW IV(D)s and subject to the same provisions contained in items #2.a. through and including d. of the Terms of this Order, *supra*.
6. All existing DSS employees who appear on the SW III(C) Promotional Civil Service eligibility list (Announcement #4256, list established 3/20/92) shall be permanently appointed as SW III(C) employees. Their civil service seniority date shall remain the date of their first permanent appointment. (See the list of such personnel contained in Attachment E).
 7. The remaining current Bargaining Unit 8 DSS employees who appear on the Promotional SW III(C) list (Announcement #4256, list established 3/20/92) shall be permanently appointed as SW III(C) employees. Their civil service seniority date shall remain the date of their first permanent appointment. (See the list of such personnel contained in Attachment F).
 8. All existing DSS employees who appear on the SW III(C) Open Competitive Civil Service eligibility list (Announcement #4141, list established 3/20/92) shall be permanently appointed to the SW III(C) position. Their civil service seniority date shall be 3/20/92, or the date of their employment in the Department, whichever is later. (See the list of such personnel contained in Attachment G).
 9. The remaining current Bargaining Unit 8 DSS employees who appear on the Open Competitive SW III(C) list (Announcement #4141, list established 3/20/92) shall be permanently appointed to the SW III(C) position. Their civil service

seniority date shall be 3/20/92, or the date of their employment in the department, whichever is later. (See the list of such personnel contained in Attachment H).

10. All existing provisional DSS SW I(A/B) employees who appear on the SW I(A/B) Promotional Civil Service eligibility list (Announcement #4320, list established 11/25/91) shall be permanently appointed to the SW I(A/B) position. Their civil service seniority date shall remain their date of first permanent appointment . (See the list of such personnel contained in Attachment I).
11. The remaining current Bargaining Unit 8 DSS employees who appear on the Promotional SW I(A/B) list (Announcement #4320, list established 11/25/91) shall be permanently appointed to the position SW I(A/B). Their civil service seniority date shall remain the date of their first permanent appointment. (See the list of such personnel contained in Attachment J).
12. All existing provisional SW I (A/B) employees who appear on the SW I(A/B) Open Competitive Civil Service eligibility list (Announcement #4142, list established 11/25/91) shall be permanently appointed to the position SW I(A/B). Their civil service seniority date shall be 11/25/91, or the date of first date of their employment at DSS, whichever is later. (See the list of such personnel contained in Attachment K).
13. The remaining current Bargaining Unit 8 DSS employees who appear on the Open Competitive SW I(A/B) (Announcement #4142, list established 11/25/91) list shall be permanently appointed to the position SW I(A/B). Their civil service seniority date shall be 11/25/91, or the first date of their employment at DSS, whichever is later. (See the list of such personnel contained in Attachment L).

14. All existing provisional SW Technician (A/B) employees who appear on the Promotional SW Technician (A/B) Promotional Civil Service eligibility list (Announcement #4723, list established 6/12/92) shall be permanently appointed to the SW Technician (A/B) position. Their civil service seniority date shall remain the date of their first permanent appointment. (See the list of such personnel contained in Attachment M).
15. The remaining current Bargaining Unit 8 DSS employees who appear on the Promotional SW Technician (A/B) list (Announcement #4723, list established 6/12/92) shall be permanently appointed to the SW Technician (A/B) position. Their seniority date shall remain the date of their first permanent appointment. (See the list of such personnel contained in Attachment N).
16. All existing provisional SW Technician (A/B) employees who appear on the Open Competitive SW Technician (A/B) list (Announcement #4620, list established 6/12/92) shall be permanently appointed to the position of SW Technician (A/B). Their seniority date shall be 6/12/92, or the date of first employment in DSS, whichever is later. (See the list of such personnel contained in Attachment O).
17. The remaining current Bargaining Unit 8 DSS employees who appear on the Open Competitive SW Technician (A/B) list (Announcement #4620, list established 6/12/92) shall be permanently appointed to the position of SW Technician (A/B). Their seniority date shall be 6/12/92, or the date of first employment in DSS, whichever is later. (See the list of such personnel contained in Attachment P).

18. Any employee promoted as a result of this order shall be placed at the step consistent with the seniority date established herein.
19. No back pay shall be paid to any employee as a result of this Order.
20. Any employee receiving a permanent civil service appointment pursuant to this Order who is in a lower grade or title than her or his current provisional grade or title shall retain her or his current grade and title.
21. Felder, DSS and HRD shall cooperate to compile accurate information, including eligible lists, if necessary, to implement this Order.
22. DSS shall implement the terms of this order within sixty (60) working days from the date of the Commission's vote adopting this Order, *infra*.
23. Salary increases resulting from this order shall be effective May 26, 2007.
24. Notice of the terms of this Order, including Attachments A through and including P, shall be provided by Felder's representative to all current DSS Local 509 members. Employees who can provide documentation that the information pertaining to them is inaccurate (including any omission from the order) shall inform Felder's representative within thirty (30) days of notice. Felder's representative shall present DSS with supporting documentation from the employee that the employee took and passed the civil service exams identified herein. This documentation shall be presented to DSS within thirty (30) days of receipt of the information by Felder's representative from the affected employee. DSS shall conduct a review within thirty (30) days of notice by Felder's representative. If DSS agrees with any proposed corrections or revisions, these corrections or revisions to Attachments A through and including P shall be

implemented consistent with the terms of this order. Employees who disagree with DSS's final decision may appeal to this Commission in accordance with Civil Service law.

25. Nothing in this Order shall preclude individual employees from asserting claims or arguments pertaining to the obligation under G.L. c. 31 to administer examinations.

So Ordered.

Civil Service Commission

Christopher C. Bowman, Commissioner

By a 4 -1 vote of the Civil Service Commission (Bowman, Chairman-YES; Guerin, Commissioner – YES; Henderson, Commissioner – YES; Taylor, Commissioner –YES; Marquis – NO) on February 7, 2008.

A true Record. Attest:

Commissioner

Notice to:

Michelle Heffernan, Deputy General Counsel, HRD (for HRD and DSS here)
Katherine D. Shea, Counsel for SEIU Local 509

Attachments A through P