

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503

Boston, MA 02108

(617) 979-1900

James Flaherty,
Appellant

V.

Docket Number G1-08-284

City of Quincy,
Respondent

DECISION

The Appellant, James Flaherty, filed this appeal with the Civil Service Commission on November 20, 2008, pursuant to M.G.L. c. 31, § 2(b). The Appellant seeks review of the of the Respondent City of Quincy's reasons for bypassing him for original/promotional appointment to the position of Full Time Special Heavy Motor Equipment Operator for the City of Quincy. The determination of labor service positions, titles and functions has been delegated by the Human Resources Division (HRD) of the Commonwealth to the City of Quincy. The City of Quincy is on HRD's list of delegated communities for the purpose of the administration of their labor service.

The Commission held a pre-hearing conference on this appeal on January 8, 2009. The matter was subsequently scheduled for a full hearing on February 12, 2009. The Appellant with his representative and a witness appeared at that full hearing. However,

the Respondent City of Quincy failed to appear at that hearing. The Respondent was sent a Notice to Show Cause, on February 12, 2009, for its failure to appear that day for the full hearing. The Respondent was ordered to respond by showing good cause in writing for its failure to appear, by February 23, 2009. The Respondent filed its response to the order, on February 17, 2009 and the Appellant filed his objection to the Respondent's response, on February 19, 2009. After consideration of the Respondent's response, the Appellant's objection and the case file documents, it is determined that the Respondent failed to show good or sufficient cause for its failure to appear at the full hearing.

The Appellant has claimed and demonstrated that his rights were prejudiced through no fault of his own and, therefore the Commission, pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, orders the Human Resources Division and Respondent to take the following action:

Place the name of James Flaherty, forthwith, at the top of the existing and/or next labor service eligibility list of individuals eligible for promotion/or appointment to the position of Special Heavy Motor Equipment Operator (SHMEO), and from which the next promotional/or original appointment to the position of Special Heavy Motor Equipment Operator (SHMEO) in the City of Quincy shall be made by the Appointing Authority, so that he shall receive at least one opportunity for consideration.

Civil Service Commission,

Daniel M. Henderson
Commissioner

CONCLUSION OF THE MAJORITY (Bowman, Marquis and Stein)

After a review of the record, including the City's response to the Order to Show Cause, the majority concludes that allowing the Appellant's appeal absent a full hearing is not warranted. Rather, the majority concludes that a full hearing should be re-scheduled forthwith after which a decision will issue on the merits of the appeal.

The majority, however, shares the frustration of the hearing officer regarding the City's failure to appear at the scheduled full hearing and encourages the City to take all appropriate measures to ensure that such an oversight does not occur in the future.

The Appellant's appeal under Docket No. G1-08-284 remains open and a full hearing will be re-scheduled forthwith.

For the majority:

Christopher C. Bowman
Chairman

By a 3-2 vote of the Civil Service Commission (Bowman; Chairman –Yes; Marquis, Commissioner – Yes; Stein, Commissioner – Yes; Henderson, Commissioner – No; Taylor, Commissioner – No) on February 26, 2009.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

S.L. Romano and Joseph McArdle Mass. Laborers #1139

Kevin J. Madden, Atty. City of Quincy.

John Marra, Atty. HRD