

The Commonwealth of Massachusetts

Decision mailed: 9/18/09
Civil Service Commission

CS

SUFFOLK, ss.

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

JAMES FLAHERTY,
Appellant

v.

CITY OF QUINCY,
Respondent

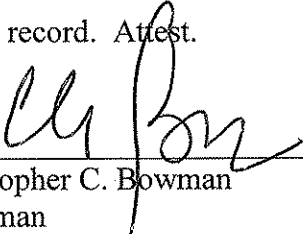
Case No.: G1-08-284

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on September 17, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated July 27, 2009. Neither party submitted comments to the Commission. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on September 17, 2009.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), 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:

Salvatore R. Romano (for Appellant)
Kevin J. Madden, Esq. (for Appointing Authority)
Richard Heidlage, Esq. (DALA)

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
BOSTON, MA 02114

SHELLY L. TAYLOR
Chief Administrative Magistrate

Tel: 617-727-7060
Fax: 617-727-7248

July 27, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

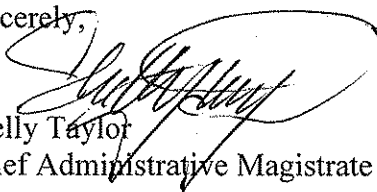
Re: James Flaherty v. City of Quincy
DALA Docket No. CS-09-124

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CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Shelly Taylor
Chief Administrative Magistrate

SLT/das

Enclosure

cc: Salvatore R. Romano
Kevin J. Madden, Esq.

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

James Flaherty,
Appellant

v.

Civil Service Docket No. G-08-284
DALA No. CS-09-124

City of Quincy,
Appointing Authority

Appearance for Appellant:

Salvatore R. Romano
Regional Coordinator
MA Laborers' District Council
7 Laborers' Way
Hopkinton, MA 01748

Appearance for Appointing Authority:

Kevin J. Madden, Esquire
Office of the City Solicitor
Quincy City Hall
1305 Hancock Street
Quincy, MA 02169

Administrative Magistrate:

Judithann Burke

SUMMARY OF DECISION

The decision of the Appointing Authority to bypass the Appellant for appointment to the position of Heavy Motor Equipment Operator in favor of an applicant with a later seniority date was not arbitrary or capricious, nor was it in violation of the Collective Bargaining Agreement.

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RECOMMENDED DECISION

Pursuant to M.G.L.c. 31 s. 2(b), the Petitioner, James Flaherty, is appealing from the September 30, 2008 decision of the City of Quincy bypassing him from appointment to the position of Full Time Special Heavy Motor Equipment Operator (HMEO) in 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 of Massachusetts 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.

A hearing was held on March 30, 2009 at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, Boston, MA.

At the hearing, six (6) exhibits were marked. The Appointing Authority presented the testimony of Lawrence Prendeville, Commissioner of Public Works in the City of Quincy. The Appellant testified in his own behalf. Both parties stated their arguments for the record.

FINDINGS OF FACT

Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Appellant, James Flaherty, is currently employed as a laborer and truck driver in the City of Quincy Highway Department. His seniority date is December 14, 1998. (Exhibit 3 and Testimony).
2. The Appellant has reading and writing deficits. He is often assigned to a job with a guide who can lead him to the location of a job due to his inability to decipher

signs and/or read directions. The guide is assigned with the Appellant for safety reasons. (Testimony).

On September 30, 2008, the City of Quincy bypassed the Appellant and appointed another man to the position of HMEO. The seniority date of the appointee, Sean Brennion, is August 11, 2003. (Exhibits 1-5).

4. Sean Brennion had worked out of grade and performed the work of a HMEO off and on for an extended period of time prior to the appointment. (Testimony).

5. Sean Brennion has no issues with reading or writing. (*Id.*).

6. The Appellant filed an appeal with the Civil Service Commission on November 20, 2008.

7. Article XXV of the Collective Bargaining Agreement between the City of Quincy and Laborer's Local 1139, of which both the Appellant and Sean Brennion are members, provides, in pertinent part:

...Where as any vacancy is to be filled by management and the **qualifications of the applicants are** equal, seniority shall prevail. **Qualifications shall include**, but not be limited to, experience, **skills and ability, job performance, work habits**, attendance and **recommendations**. (Emphasis added).

(Exhibit 6).

CONCLUSION AND RECOMMENDATION

After a careful review of all of the testimony and documents in this case, I have concluded that the Appointing Authority has established a reasonable justification for the late 2008 bypass of the Appellant.

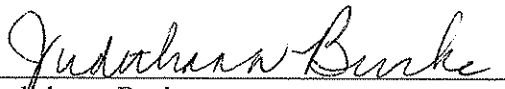
The law grants wide latitude for the discretion of the Appointing Authority in selecting candidates of skill and integrity for hire or promotion in the civil service system *Callanan v. Personnel Administrator for the Commonwealth*, 400 Mass. 597, 601 (1987). When an applicant for a civil service position challenges the decision of an appointing authority to bypass him for the position, the appointing authority has the burden of showing by a preponderance of the evidence a “reasonable justification” for the bypass. *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 682 N.E.2d 923, 925 (1997). In this context, justification means “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” 682 N.E.2d at 926, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of Eastern Middlesex*, 262 Mass. 477, 482, 160 N.E. 427 (1928); *Commissioners of Civil Service v. Municipal Ct. of the City of Boston*, 359 Mass. 214 (1971). A “preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991).

The Appellant’s difficulties with reading and writing, the need for the HMEO to work independently at various job sites, and the city’s safety concerns all support the conclusion that Appellant’s appointment would not only present a risk to the City of Quincy and himself, but would also be in violation of Article XXV of the Collective Bargaining Agreement which implies that a job applicant must be qualified, i.e. skilled

and able to perform all of the job duties of the HMEO. The reasons of the Appointing Authority were neither arbitrary nor capricious.

In conclusion, I recommend that the 2008 bypass of the Appellant by the Appointing Authority be affirmed.

Division of Administrative Law Appeals,
BY:


Judithann Burke
Administrative Magistrate

DATED: **JUL 27 2009**