

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

PETER FORGUES,
Appellant

v.

G2-08-263

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Representative:

Pro Se
Peter Forgues

[REDACTED]

Respondent's Representative:

Alexandra McInnis
Department of Correction
Industries Drive: P.O. Box 946
Norfolk, MA 02056

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant Peter Forgues (hereinafter "Forgues" or "Appellant"), filed an appeal against the Department of Correction¹ (hereinafter "DOC" or "Appointing Authority") regarding a DOC decision related to shift selection and "days-off" selection.

On November 7, 2008, DOC filed a Motion to Dismiss the Appellant's appeal. At the pre-hearing conference conducted at the offices of the Civil Service Commission (hereinafter

¹ The state's Human Resources Division (HRD) has delegated civil service functions to the Department of Correction.

“Commission”) on November 12, 2008, the Appellant filed a response to DOC’s Motion to Dismiss. Both parties presented oral argument.

It is undisputed that the Appellant was promoted to the position of permanent Correction Officer / Chef on April 13, 2008 from Certification No. 4080002, with no prior time in that title / grade. Other individuals were appointed on the same day from the same certification. As a result, all individuals appointed on that day have a civil service seniority date of April 13, 2008. However, other individuals as a result of prior time in that grade / title, will have a different seniority date as outlined in the applicable collective bargaining agreement, for the purposes of job picks, transfers, shift selection and days-off selection.

According to the Appellant, he ranked higher on that Certification than at least one other individual (McNeaney). The Appellant argues that as a result of being ranked higher than McNeaney on this Certification, he should be granted preference regarding shift selection and days-off selection.

The Appellant’s argument is in error. Neither the Appellant’s civil service seniority date nor his ranking on the Certification in question pertain to job picks, transfers, shift selection or days-off selection. Each of these areas is governed by the collective bargaining agreement between the parties.

Nothing in the civil service law connects civil service seniority (or an individual’s ranking on a Certification) to the allocation of shift selection or days-off selection. Instead the most common application of a civil service seniority date relates to layoffs as a result from budgetary cut-backs or reorganizations, “bumping rights” and rights of reemployment to vacant positions. (Dedham v. Dedham Police Assoc. 46 Mass. App. Ct. 418 (1999)).

For this reason, the Appellant's appeal filed under Docket No. G1-08-263 is hereby
dismissed.

Civil Service Commission

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on December 11, 2008.

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:
Alexandra McInnis (for Appointing Authority)
Peter Forgues (Appellant)