

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

BERTA HERNANDEZ,
Appellant

v.

D1-09-454

BOSTON PUBLIC SCHOOLS,
Respondent

Appellant's Attorney:

Pro Se
Berta Hernandez

Respondent's Attorney:

Kristen J. Daley, Esq.
Boston Public Schools
Office of Labor Relations
26 Court Street: 3rd Floor
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON BOSTON PUBLIC SCHOOLS' MOTION TO DISMISS

The Appellant, Berta Hernandez (hereinafter "Appellant"), pursuant to G.L. c.31, § 43, filed an appeal with the Civil Service Commission (hereinafter "Commission") on December 30, 2009 contesting the Boston Public Schools' (hereinafter "BPS" or "Appointing Authority") decision to discharge her from the position of paraprofessional on January 3, 2006.

A pre-hearing conference was conducted on January 26, 2010 at which time the Appellant stated that she would be withdrawing her appeal. She completed and signed a withdrawal form that day. On January 27, 2010, the Appellant hand-delivered a letter to

the Commission rescinding her withdrawal which had not yet been acted on by the full Commission.

On February 19, 2010, BPS filed a Motion to Dismiss the Appellant's appeal arguing that she had no standing before the Commission. On March 19, 2010, the Appellant filed a written statement with the Commission with several hundred pages of attachments, including various news articles related to the wars in Iraq and Afghanistan, papal visits and several other events unrelated to her appeal.

On April 12, 2010, I conducted a digitally-recorded motion hearing and sought to provide the Appellant with a layperson's understanding of the Civil Service Commission and the types of appeals the Commission has jurisdiction to hear. The Appellant did not dispute that her former position of paraprofessional is not a civil service position covered under the civil service law. Rather, she stated that since her position was a "civilian" position, she believed her appeal could be heard by the Civil Service Commission.

On April 13, 2010, the Appellant submitted correspondence to the Commission under the heading "Withdrawal" which stated that she was "withdrawing [her] position as Teachers Assistant or Paraprofessional in The Boston Public Schools...". The Appellant further wrote that "this clarifies and conclude (sic) the antagonistic and injustices that I suffered in the Boston Public Education System that constitutes a violation of The Universal Declaration of Human Rights." She issued a written demand for "five hundred thousand million dollars as soon as April 27, 2010" along with her bi-weekly salary and other expenses.

The facts of this case are not disputed. On September 1, 1999, BPS hired the Appellant as a paraprofessional. Paraprofessional has never been a position covered

under the civil service law. On January 4, 2006, BPS discharged the Appellant from her employment. On December 30, 2009, the Appellant filed the instant appeal with the Commission.

As the Appellant was not a permanent or tenured civil service employee pursuant to G.L. c. 31 at the time of her termination, nor was the position of paraprofessional ever a civil service position, the Commission has no jurisdiction to hear this appeal. Even if it did, the appeal was filed several years beyond the statutory ten-day deadline.

For these reasons, the Appellant's appeal under Docket No. D1-09-454 is hereby *dismissed*.

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners), on April 22, 2010.

A true Copy. Attest:

Commissioner
Civil Service Commission

A motion for reconsideration may be filed by either Party within ten days of the receipt of this 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:
Berta Hernandez (Appellant)
Kristen Daley, Esq. (for Appointing Authority)