

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108

JAMES JOHNSTON,
Appellant

v.

D1-13-122

WORCESTER PUBLIC SCHOOLS,
Respondent

Appearance for Appellant:

S.L. Romano
Mass. Laborers District Council
7 Laborers Way
Hopkinton, MA 01748

Appearance for Respondent:

Sean P. Sweeney, Esq.
311 Village Green North, Suite A4
Plymouth, MA 02360

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On May 9, 2013, the Appellant, James Johnston (Mr. Johnston), filed an appeal with the Civil Service Commission (Commission) contesting his “demotion” (under G.L. c. 31, § 43) and/or his “transfer” (under G.L. c. 31, § 35) by the Worcester Public Schools (WPS).

On June 11, 2013, a pre-hearing conference was held which was attended by Mr. Johnston, his representative and counsel for WPS. I heard oral argument from both parties related to whether the Commission had jurisdiction to hear this appeal under

either Section 43 or Section 35. Both parties submitted briefs related to the issue of jurisdiction.

Mr. Johnston is a permanent, tenured civil service employee in the civil service position of junior building custodian. He was appointed to this civil service position on August 3, 1987. On or around 1996, Mr. Johnston began performing the functions of a groundskeeper in the so-called utility crew. His civil service status as a permanent junior building custodian did not change. Rather, the so-called utility crew duties, and the differential in pay for performing such duties, was governed by the parties' collective bargaining agreement. The new assignment was not a civil service position. On May 2, 2013, after being involved in an automobile accident (which the WPS claims was his ninth accident), the WPS rescinded his assignment to the so-called utility crew. His civil service status as a permanent junior building custodian did not change. Any loss in pay, if any, relates to the removal of a designation governed by the CBA, not civil service law or rules. As such, the Commission has no jurisdiction to hear his appeal under Section 43. See Greenwood v. Dedham Police Dep't, CSC Case No. D-02-871 (2005).

Alternatively, Mr. Johnston seeks to characterize this action as an appeal of an involuntary transfer under Section 35. As it is undisputed that Mr. Johnston's work schedule (11:00 A.M. to 7:00 P.M.) has not changed, his commute remains within the geographical confines of the City and, there has been no change to his civil service title, this is not a transfer, but, rather, a reassignment. Further, as referenced above, any reduction in pay, if any, is governed by the CBA and not civil service law and rules.

For these reasons, Mr. Johnston's appeal under D1-13-122 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on November 14, 2013.

A true Copy. Attest:

Commissioner
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:
SL Romano (for Appellant)
Sean Sweeney, Esq. (for Repondent)