

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

DONALD KEHOE,
Appellant

v.

G2-08-48

CITY OF BOSTON,
Respondent

Appellant's Attorney:

Pro Se
Donald Kehoe
79 Hallron Street
Hyde Park, MA 02136

Respondent's Attorney:

Susannah Hegarty, Esq.
City of Boston
Office of Labor Relations
Boston City Hall
Boston, MA 02201

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

The Appellant, Donald Kehoe (hereafter "Appellant" or "Kehoe") is appealing his non-selection by the City of Boston (hereafter "City" or "Appointing Authority") for promotion to the position of Supervisor of Parking Meter Operations, Posting Number BK-2992, a position for which no eligible civil service list exists.

After a pre-hearing conference held at the offices of the Commission on March 20, 2008, the City submitted a Motion to Dismiss the Appellant's appeal on April 7, 2008. The Appellant filed an Opposition to the City's Motion to Dismiss on April 15, 2008.

Factual Background

On February 20, 2008, the City of Boston selected Timothy Hallahan for provisional promotion to the position of Supervisor of Parking Meter Operations, a position for which no civil service list exists. Mr. Hallahan held the position of Parking Meter Operations Foreman, the position directly below that of Parking Meter Operations Supervisor.

Conclusion

The Commission has carefully reviewed the arguments proffered by the City in its Motion to Dismiss and the Appellant in his Opposition to the Motion to Dismiss.

The first paragraph of G.L. c. 31, § 15, states in relevant part, “An appointing authority may...make a provisional promotion of a civil service employee in one title to the next higher title in the same departmental unit. Such provisional promotion may be made only if there is no suitable eligible list...”.

In this particular case, it appears that the City has made a provisional promotion of a civil service employee in one title to the next higher title in the same departmental unit for a position in which there is no current civil service list. As such, there is no basis for the Appellant’s instant appeal.

The Commission does, however, have jurisdiction to hear appeals regarding provisional promotions under certain conditions. Specifically, paragraph 2 of Section 15 addresses those situations when an Appointing Authority makes a provisional promotional without regard to an applicant’s current civil service title *when there is no such employee in the next lower title who is qualified for and willing to accept such a provisional promotion*. In those cases, the Appointing Authority must demonstrate

“sound and sufficient reasons” for said promotion, not to mention being able to demonstrate that there is indeed no such employee in the next lower title who is qualified for and willing to accept the provisional promotion. Based on the information provided by the City, however, it does not appear that paragraph 2 is applicable in this case.

Although the Commission lacks jurisdiction to hear the instant appeal, we reiterate our longstanding admonishment to all appointing authorities and the state’s Human Resource Division to end the ongoing and improper reliance on provisional appointments and promotions. (See Holt v. Department of Revenue and DPA, CSC Case No. G-2463 (1994) & Porio, Shea and Trachtenberg, CSC Case Nos. D-02-759, D-02-763 and D-02-715 (2006)).

For the above reasons, the Appellant’s appeal filed under Docket No. G2-08-48 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis
Commissioner

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Marquis, Stein and Taylor, Commissioners [Henderson, Commissioner – No]) on June 12, 2008.

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:

Donald Kehoe (Appellant)

Susannah Hegarty, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)