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COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

THOMAS KOLOGY,
Appellant

v.

DEPARTMENT OF CONSERVATION
AND RECREATION,
Respondent

Case No. C-07-326

Appellant's Attorney:

Karen E. Clemens Atty.
Associate General Counsel
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Respondent's Attorney

Francis Hartig, Atty.
Assistant General Counsel
251 Causeway Street
Boston, MA 02114

Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, Thomas Kology (hereinafter "Appellant" or "Kology"), is appealing the August 8, 2007 decision of the Human Resources Division (hereinafter "HRD") denying his request for reclassification from the position of Forest and Park Supervisor II to the position of Forest and Park Supervisor III within the Massachusetts

Department of Conservation and Recreation (hereinafter "DCR"). The appeal was timely filed and a hearing was held on December 4, 2007 at the Civil Service Commission (hereinafter "Commission"). One (1) tape was made of the hearing and is held at the Commission office.

FINDINGS OF FACT:

Based on the seven (7) exhibits submitted into evidence and the testimony of Cheryl Ferrando, Personnel Analyst II, DCR; and the Appellant, Thomas Kology, I make the following findings of fact:

1. The Appellant has been employed with DCR for approximately twenty-one (21) years.
(Stipulated Fact)
2. The Appellant has held his current position for approximately three (3) years as a Forest and Park Supervisor II, at a pay grade of 16, with the DCR Division of Water Supply Protection.
(Exhibit 6)
3. On or about August 6, 2006, the Appellant filed a written request with DCR to be reclassified from his position as a Forest and Park Supervisor II to a Forest and Park Supervisor III.
(Stipulated Fact)
4. The Classification Specification for the Forest and Park Supervisor series provides a summary of the series, stating: "incumbents of positions in this series supervise the maintenance of assigned recreational areas; inspect the condition of state-operated forest and park recreational areas and facilities; patrol recreational areas and facilities; permit the use of recreational facilities, park areas, etc.; organize and implement recreational and cultural programs; and perform related work as required." (Exhibit 1, Page 1)

5. The differences between the responsibilities of a Forest and Park Supervisor II and a Forest and Park Supervisor III, may be distinguished by reading the descriptions as stated in the Classification Specification for the series, as follows:

The *mandated level distinguishing duties* for a Forest and Park Supervisor II are:

- a. "Monitor the activities of recreational area personnel to ensure the maintenance of state forest and park areas for recreational purposes."
- b. "Confer with agency personnel concerning assigned unit activities to resolve problems, provide information, and make recommendations."
- c. "Review reports and make recommendations concerning actions to be taken to resolve problems, and/or to recommend changes in policies, procedures, etc."
- d. "Based on assignment, incumbents of positions at this level may also prepare budgets for the assigned area by projecting resource needs and preparing required documentation for agency's budget request."

The *mandated level distinguishing duties* for a Forest and Park Supervisor III are:

- a. "Monitor the operation, administration, and maintenance of a major recreation area with one or more satellite areas or a heritage park, consisting of a visitor center, extensive grounds, and multiple recreational facilities including performance stages, boathouses, etc."
- b. "Represent the agency at meetings and conferences with representatives of federal, state and municipal agencies and community and other groups to provide information concerning agency objectives and to obtain their cooperation in achieving those goals and/or to resolve problems."

- c. "Prepare budgets for assigned areas by projecting resources needs and preparing required documentation for agency budget request."
- d. "Initiate requests for capital outlay funds and monitor capital outlay expenditures."

(Exhibit 1, Page 2)

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- 6. The Appellant does not perform any of the above mandated level distinguishing duties (a-d above) for a Forest and Park Supervisor III. (Testimony and Exhibits, Exhibit 1)
 - 7. The Appellant makes recommendations to his superior, the Regional Assistant Director, on equipment purchases and obtains price quotes for same. He does represent the Quabbin Park and Quabbin Cemetery in providing routine information to the State Police, municipalities and other groups. However, he does not have the authority to provide representation as to his agency's objectives. He does have input into the preparation of the budget for his assigned area but in the form of a recommendation, without the final responsibility for the actual submission and documentation of the budget. (Testimony and Exhibits, Exhibits 1 & 2)
 - 8. The Appellant is currently responsible for monitoring the activities of the recreational area personnel to ensure the maintenance and operation of Quabbin Park, a 3200 acre recreational park. The Appellant is also responsible for the monitoring of the personnel for the maintenance and operation of Quabbin Cemetery, an 82-acre satellite area approximately four (4) miles away from Quabbin Park. (Testimony of the Appellant; Exhibit 5, Page 1)
 - 9. In his reclassification request, the Appellant stated he represents the agency at meetings and conferences with representatives from the State Police, the State Police Dive Team, Mass Fish and Wild Life, Veteran's Agents, Funeral Homes, Cemetery Memorial and Vault Companies and Local DPW from other towns. However the Appellant did not claim in his reclassification request that he held the authority to represent the agency's objectives at any

of these meetings and conferences. His function was more in the nature of providing and receiving general information. (Testimony of Appellant and Exhibit 6)

10. The Appellant also stated that he projects resources needed for upcoming budgets cycles, obtains estimates on the costs to repair or replace items and requests money for projected needs. (Testimony of Appellant; Exhibit 6)
11. On July 16, 2007, the DCR issued a decision determining that the Appellant was properly classified as a Forest & Park Supervisor II. (Exhibit 4)
12. The reasoning provided by DCR for denying the Appellants request was that "... the Appellant does not prepare budgets, but rather he would make procurement and budget recommendations ... Additionally, a reallocation would be organizationally disruptive to the Division and other Quabbin Section employees who perform the same or similar role as the appellant." (Exhibit 5, Page 2)
13. On July 24, 2007, the Appellant appealed the DCR's decision to HRD. His appeal was denied, and a written notification was sent to the Appellant on August 8, 2007. (Exhibit 3)
14. On September 14, 2007, the Appellant timely filed an appeal of the HRD's decision with the Commission. (Stipulated Fact)
15. At the hearing, the Appellant testified he makes budget outlay recommendations for equipment and receives the costs. He also testified he gets quotes and advises the Assistant Regional Director of machinery and supplies that are needed to maintain the park, buildings, and cemetery. (Testimony of Appellant)
16. The Appellant also testified that he initiates requests for capital outlay expenditures such as mowers and wild life management equipment. However, this request is made in the form of a recommendation through the Assistant Regional Director. (Testimony of Appellant)

17. The Appellant testified further that since the promotion of his supervisor, David Small, he receives less supervision. The Appellant stated he now only sees his supervisor approximately once or twice a week and has had increased responsibility such as preparing budget requests. However, preparing budgets for the assigned area by projecting resource needs and preparing required documentation for agency's budget request is also an incumbent duty of the title Forest and Park Supervisor II (Testimony of the Appellant, Exhibit 1)
18. There are two (2) other supervisor titles between the Appellant and his immediate supervisor David Small, who has the title of Assistant Regional Director. Those two titles are Forest and Park Supervisor III and Forest and Park Regional Coordinator. However, the Quabbin Section did not have a Forest and Park Supervisor III position and the Forest and Park Regional Coordinator position was vacant at that time (Testimony, Exhibits 1 and 2)
19. Cheryl Ferrando, the Classification Coordinator for DCR testified that the position of Forest and Park Supervisor III has never been filled in the Quabbin Section, but it has been available in other sections of DCR. (Testimony of Cheryl Ferrando)

CONCLUSION

As a requirement under G.L. c. 30, § 49, an appeal must be made first to HRD following a denial of a request for reclassification by the employee's Appointing Authority. In pertinent part, §49 reads: "Any...employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator [HRD] and shall be entitled to a hearing upon such appeal. If the administrator finds that the office or position of the person appealing shall warrant a different position allocation...he shall

report such recommendation to the budget director and the house and senate committees on ways and means ... Any ... employee ... further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it.”

In the present case, the Appellant’s appeal was denied at HRD after DCR had also denied his request for reclassification to the position of Forest and Park Supervisor III. After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the decision of HRD should be upheld, and the Appellant is properly classified in his present position as a Forest and Park Supervisor II. The Appellant failed to meet the burden of proof necessary to demonstrate that he was improperly classified as a Forest and Park Supervisor II: he has not shown he has performed the duties of a Forest and Park Supervisor III more than fifty (50) percent of the time.

The Appellant argues in part that he should be reclassified to Forest and Park Supervisor III because his work load has increased due to a recent reduction in the work force at the Quabbin section. The Appellant testified that he maintains the Quabbin Park and the Quabbin Cemetery with only one crew and one on-site foreman, while supervising three to four other Laborers and Equipment Operators in addition to a Forest and Park Supervisor I. However this level of supervision is precisely within the scope of the title of Forest and Park Supervisor II.

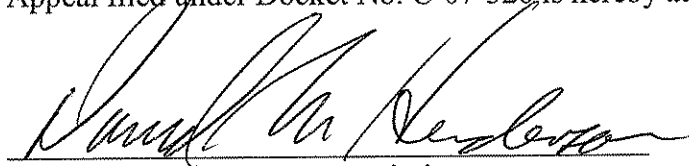
The Appellant further testified that Quabbin is differentiated from the other parks due to the large bodies of water within the park. The Appellant testified that his four years of U.S. Coast Guard experience have been an asset in his work, especially when an emergency arises with regard to water spills. The Appellant’s specialized skill and experience in this area makes him a

valued and capable employee but does not substitute for the required incumbents of the title of Forest and Park Supervisor III

Although the Appellant may have the competence and experience to fill the title of a Forest and Park Supervisor III, the duties actually performed by the Appellant in the Quabbin section of DCR satisfy the specifications of a Forest and Park Supervisor II, not those of a Forest and Park Supervisor III.

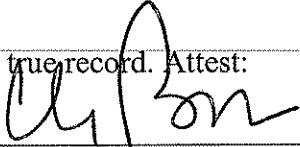
The Appellant with his 21 years of seniority was aware of the organizational history of the Quabbin Section. He knew that there was not a position of Forest and Park Supervisor III in that Section. Although the position of Forest and Park Supervisor III has never been available in the Quabbin Section, it was available in other Sections of the DCR. The Appellant might have pursued a transfer or a promotion to one of those positions, if it became available and he so qualified. The Appellant had no justifiable expectation that the DCR would create a position in the Quabbin Section just to satisfy the Appellant's wishes, despite the organizational disruption it would cause in the DCR's Quabbin Section.

The Appellant has provided examples of duties he has performed which are similar to those required of a Forest & Park Supervisor III but at a lower level of scope, authority, responsibility and accountability. The duties and responsibilities that he has performed did not fulfill the requirements of performing the duties of Forest & Park Supervisor III over fifty (50) percent of the time. The Appellant does not perform any of the four mandated level distinguishing duties for a Forest and Park Supervisor III. For these reasons, the Appellant's Appeal filed under Docket No. C-07-326, is hereby *dismissed*.


Daniel M. Henderson, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on August 21, 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:

Karen E. Clemens, Atty.
Associate General Counsel
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Francis Hartig, Atty.
Assistant General Counsel
251 Causeway Street
Boston, MA 02114