COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place Room 503
Boston, MA 02108
(617) 727-2293

DORA LOCKE,
Appellant

D-17-079

v.

MARLBOROUGH PUBLIC SCHOOLS,
Respondent

Appearance for Appellant: *Pro Se*
Dora Locke

Appearance for Respondent: Peter Sumners, Esq.
Murphy, Lamere & Murphy, P.C.
50 Braintree Hill Office Park
Braintree, MA 02184-8807

Commissioners: Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

On Monday, April 24, 2017, the Appellant, Dora Locke (Ms. Locke), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Marlborough Public Schools (MPS) to terminate her employment as a Spanish Interpreter, effective at the end of the current academic year.

On June 5, 2017, the MPS filed a Motion to Dismiss Ms. Locke's appeal, arguing that the Commission had no jurisdiction to hear the instant appeal arguing that: a) the position of Interpreter is not a civil service position; and b) even if it was, Ms. Locke was not appointed (in 2015) from a Certification, as there has been no examination for such a position in recent history.

On June 13, 2017, I held a pre-hearing conference at the offices of the Commission which was attended by Ms. Locke and counsel for the MPS. As part of that pre-hearing, the parties agreed that the title of "Interpreter" is contained in the "Muni-Class Manual" which lists civil service titles included in the "official service" and the "labor service". The title of "Interpreter" is listed among the "official service" titles.

Via correspondence sent to the MPS, HRD has confirmed that Ms. Locke was not appointed from a certification. For that reason, and because the title of Interpreter falls under the official service, Ms. Locke, at best, was appointed via the provisional appointment process, under which employees do not become permanent, tenured civil service employees under the civil service law.

At the pre-hearing, Ms. Locke argued that she should not be penalized for the failure of the state's Human Resources Division (HRD) and/or the MPS to hold examinations, which would have allowed employees, such as herself, the opportunity to be appointed from a Certification. This is a familiar argument that falls under the broad umbrella known as the "plight of the provisionals."

The MPS filed an amended Motion to Dismiss to reflect the fact that the position of Interpreter is included in the MuniClass Manual and the Appellant filed a reply.

Analysis

Ms. Locke is not a permanent, tenured civil service employee. Rather, she is a provisional employee.

The third paragraph of G.L. c. 31, § 41 provides the following limited protections to provisional employees, such as Ms. Locke, who have been employed for at least nine

months in the provisional position and are discharged for reasons related to his personal character or performance:

> "If a person employed under a provisional appointment for not less than nine months is discharged as a result of allegations relative to his personal character or work performance and if the reason for such discharge is to become part of his employment record, he shall be entitled, upon his request in writing, to an informal hearing before his appointing authority. If the appointing authority, after hearing, finds that the discharge was justified, the discharge shall be affirmed, and the appointing authority may direct that the reasons for such discharge become part of such person's employment record. Otherwise, the appointing authority shall reverse such discharge, and the allegations against such person shall be stricken from such record. The decision of the appointing authority shall be final, and notification thereof shall be made in writing to such person and other parties concerned within ten days following such hearing."

Furthermore, provisional employees do not enjoy the same protections that tenured civil service employees enjoy, including the right to appeal a termination decision to the Commission (see Rose v. Executive Officer of Health and Human Services, 21 MCSR 23 (2008) (provisional employee had no right to appeal her termination to the Commission even though she had been treated as a tenured civil service employee throughout her almost 30 year career); see also Hampton v. Boston, Case No. D-05-430 (2006) (provisional employee had no right to appeal his 3-month suspension to the Commission)).

The limited protections afforded to provisional employees under the civil service law have also been confirmed by numerous court decisions. see Dallas v. Commissioner of Public Health & others. 1 Mass. App. Ct. 768, 771 (1974), referring to Sullivan v. Commissioner of Commerce and Dev. 351 Mass. 462, 465 (1966) (in the case of provisional employees, there is "no tenure, no right of hearing, no restriction of the power to discharge"). See also Raffery v. Comm'r of Pub. Welfare, 20 Mass.App.Ct. 718, 482

(1985) (provisional employee has right to an informal hearing by the Appointing Authority, but no further right to appeal to the Civil Service Commission).

Based on a plain reading of the statute and the above-referenced Commission and court decisions, the Commission does not have jurisdiction to hear this appeal. For this reason, Ms. Locke's appeal under Docket No. D1-17-079 is ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners]) on July 6, 2017.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:
Dora Locke (Appellant)
Peter Sumners, Esq. (for Respondent)