

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

ERIC LOTT, SR.,
Appellant

v.

G1-15-90

CITY OF BOSTON,
Respondent

Appearance for Appellant:

Pro Se
Eric Lott

Appearance for Respondent:

Robert J. Boyle, Jr., Esq.
City of Boston
City Hall
Boston, MA 02201

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On May 19, 2015, the Appellant, Eric Lott, Sr. (Mr. Lott), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection to the labor service position of Laborer by the City of Boston (City).

A pre-hearing conference was held on June 9, 2015 at the offices of the Commission, which was attended by Mr. Lott, counsel for the City, a representative of the City's Human Resources Department and counsel for the state's Human Resources Division (HRD).

So called "labor service" positions are those jobs for which applicants do not have to take a competitive examination, and appointments are made on the basis of priority of registration. (See G.L. c. 31, §§ 1, 28-29)

G.L. c. 31, § 28, which pertains to labor service appointments, states in relevant part:

"... the names of persons who apply for employment in the labor service ... of the cities and towns shall be registered and placed, in the order of the dates on which they file their applications, on the registers for the titles for which they apply and qualify. The name of any such person shall remain on such register for not more than five years ... The names

of veterans who apply for employment in the labor service shall be placed ... ahead of the names of all other persons.”

Section 19 of the Personnel Administration Rules (PAR.19), promulgated by HRD and approved by the Commission, contains the rules that apply to all labor service employees in cities and towns covered by the civil service law.

PAR.19(2), which pertains to labor service appointments, states in relevant part:

“When positions are to be filled on a permanent or temporary basis in the labor service, the appointing authority shall make requisition to the administrator¹ ... shall establish and maintain rosters for each departmental unit and by appropriate class containing the names, position titles and effective dates of employment of persons appointed to ... labor service positions ... in the service of a ... municipality after certification from labor service registers ...”

PAR.19(2) also states that “selection and original appointments shall be made as provided in PAR.09.” PAR.09 contains the so-called “ $2n + 1$ ” formula which states that appointing authorities may appoint only from among the first $2n+1$ persons named in the “certification” willing to accept appointment, where the number of appointments is “ n ”. Applied to appointments in the labor service, appointing authorities can only appoint from among the first $2n+1$ [qualified] persons on the labor service register.

Non-selected candidates for labor service position may file a bypass appeal with the Commission if the Appointing Authority appoints a candidate ranked lower than him/her on the labor service roster certification for the posting in question.

Here, it is undisputed that the City appointed two (2) candidates to the position of Laborer, at least one of whom was ranked below Mr. Lott, thus triggering a bypass and the obligation for the City to provide the bypassed candidate with sound and sufficient reasons for said bypass.

At the pre-hearing conference, counsel for the City stated that, due to mistaken identity, the reason listed for bypassing Mr. Lott for the position of Laborer was incorrect and did not disqualify him for appointment.²

However, as part of the pre-hearing conference, it was discovered that Mr. Lott was incorrectly listed as a veteran on the labor service roster maintained by HRD. Had he not been listed a veteran, he would not have fallen with the statutory “ $2N + 1$ ” formula and would not have been considered for appointment to the position of Laborer. (HRD has now corrected their records³.)

² The City, subsequent to the pre-hearing, forwarded correspondence to Mr. Lott confirming this.

³ It might behoove HRD to review the manner in which veteran preference is claimed by labor service candidates to ensure that individuals are appropriately classified.

As Mr. Lott was not eligible for consideration to this position⁴, there is no bypass. For this reason, Mr. Lott's appeal is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on June 25, 2015.

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 to:

Eric Lott, Sr. (Appellant)

Robert J. Boyle, Jr., Esq. (for Respondent)

Melissa Thomson, Esq. (for HRD)

⁴ Mr. Lott is currently applying for the position of Motor Equipment Operator. He is correctly listed as a non-veteran on that labor service roster and, according to the City, falls within the 2N+1 formula and is being considered for appointment. This decision has no bearing on that hiring process.