

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

)	
NORMAN R. LUSIGNAN, JR., et al,)	
Appellants)	
)	
v.)	Docket Nos. G2-05-291 (Lusignan)
)	G2-05-292 (Tobiasz)
HOLYOKE GAS AND ELECTRIC,)	G2-05-294 (Rodriguez)
Respondent)	
)	

**DECISION ON APPELLANTS' MOTION FOR SUMMARY
DECISION¹**

A decision on the above referenced appeals was issued by the Civil Service Commission (hereafter "Commission") on July 3, 2007 providing for equitable relief for the Appellants from a decision by the Respondent, Holyoke Gas and Electric, as Appointing Authority (hereafter "Respondent") to bypass them for a provisional appointment in the Labor Service, which decision prejudiced their civil service rights pursuant to G.L. c. 31, § 2(b). In that decision, the Commission, pursuant to its powers inherent in Chapter 310 of the Acts of 1993, ordered the following:

1. The Holyoke Gas and Electric Department shall request that the City of Holyoke Labor Service Director establish and maintain a list for the position of Working Foreman Electrical Appliance Repairman / Working Foreman Gas Service Repairman;

¹ John J. Guerin, Jr., a Commissioner at the time of the hearing of this matter, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this revised decision and order.

Upon certification by the Labor Service Director of the names of three persons eligible for and willing to accept promotion to the above-reference position:

2. The prior provisional promotion shall be discontinued by the Appointing Authority;
3. The Appointing Authority shall fill the position permanently as quickly as possible, but not later than October 1, 2007, consistent with all applicable sections of G.L. c. 31; the Personnel Administration Rules; and the applicable delegation agreement between the state's Human Resources Division and the City of Holyoke.

It is not disputed that the Respondent did discontinue the provisional promotion and filled the position on a permanent basis on October 1, 2007 with Mr. Thomas Sears whose name appeared on the eligible Labor Service list. The Respondent maintains that the appointment was made in full accordance with c. 31, the Personnel Administration Rules (hereafter "PAR") and the applicable delegation agreement between the state's Human Resources Division (hereafter "HRD") and the City of Holyoke (hereafter "City").

On October 4, 2007, the Appellants filed the instant motion to find contempt by the Respondent, claiming that the Respondent failed to comply with the order of the Commission, and now seeks a Summary Decision in this matter ordering that the Appellants be appointed to the permanent position, that the Respondent pay attorneys fees and costs of the Appellants or, in the alternative, that the Commission order an accelerated hearing on the merits of the appeals. The Respondent filed an opposition motion and cross motion for Summary Decision on October 12, 2007 and a hearing on the motions was conducted at the offices of the Commission on December 3, 2007. Both parties appeared and one tape was made of the hearing.

As a result of that hearing, the Commission issued a January 22, 2008 Decision and Order in which the Commission found that:

“the only issue in this matter that is still in dispute is whether or not Appellant Lusignan met the minimum requirements or “possess[ed] the required qualifications” to be eligible to have his name remain on the certification list used by the Respondent to make the October 1, 2007 Labor Service promotional appointment. If he did not meet the requirements, then the Respondent acted in full compliance with the Commission’s July 3, 2007 order for equitable relief and the above referenced appeals will be dismissed. If he did meet the requirements, then the Commission will take whatever actions or impose any sanctions against the Respondent as may be necessary to insure such compliance.

As this remaining issue is very limited in scope and is entirely fact based, the Commission finds it unnecessary to conduct a hearing with testimony and exhibits in order to advance its knowledge and understanding of the matter. Therefore, the Commission hereby instructs the parties to submit briefs on whether Appellant Lusignan met the minimum requirements and possessed the required qualifications for the position of Working Foreman Electrical Appliance Repairman / Working Foreman Gas Service Repairman. These briefs are to be submitted no later than February 25, 2008, after which the Commission will issue either a revised decision on the appeals or a denial of the Appellants’ instant motion.”

Subsequent communications between the Parties and the Commission requesting clarification of the actual minimum requirements and required qualifications upon which Appellant Lusignan’s eligibility would be argued ensued. A minor controversy over which Position Description Form 30 was the correct document relative to this hiring process was discussed and then-Commissioner John J. Guerin, Jr. ruled, via e-mail of February 11, 2008, that:

“The Form 30 that [the Respondent] included appears to have resolved the question of what requirements and minimum qualifications are at issue. By this communication, I hereby revise my Order of January 22, 2008 by ordering the following:

The Commission determines that the applicable Form 30 which describes the minimum entrance qualifications and requirements for the position of

Working Foreman Electrical Appliance Repairman/Working Foreman Gas Service Repairman and which is pertinent to this order, is that document which is noted as Attachment II of the August 30, 2007 letter from James M. Lavelle, manager of Holyoke Gas and Electric, to David A. Lawrence, the Personnel Director of the City of Holyoke.

Based upon that Form 30 and, specifically, Section 7. QUALIFICATIONS AND ENTRANCE REQUIREMENTS, the parties are instructed to brief the Commission ‘on whether Appellant Lusignan met the minimum requirements and possessed the required qualifications for the position.’

Because of the need for this clarification and revision, the parties’ briefs are now due to the Commission no later than March 7, 2008.”

Thereafter, both parties submitted briefs as instructed, as well as submitting one, unsolicited reply brief each.

The Position Description Form 30 that is pertinent to this matter was prepared on April 28, 2005. Under Section 7. QUALIFICATIONS AND ENTRANCE REQUIREMENTS, the “Entrance Requirements” are listed as “Demonstrated ability to manage personnel; Ability to develop employee skills to meet customer demands and maintain efficiency; Excellent verbal and written communication skills; 5-10 years experience in service related industry; Associates degree, or equivalent, in HVAC, appliance service, or related program; and Proficiency in Microsoft Office, or equivalent, office software applications, incl Word and XL.”

The Respondent included in its brief a memorandum regarding the interviews of the four (4) candidates for the position in question. The interviews were conducted on September 26, 2007 by Roger Fortin, the Respondent’s Human Resources Coordinator and Daniel J. Smith, Acting Gas Division Superintendent. The memorandum was summarization of the interviews sent to James M. Lavelle (hereafter “Mr. Lavelle”), manager of the Holyoke Gas and Electric Department.

The memorandum stated in pertinent part:

“It was determined that Mr. Lusignan did not meet several of the entrance requirements including: demonstrated ability to manage personnel; ability to develop employee skills to meet customer demands and maintain efficiency; proficiency with Microsoft Office; and excellent verbal and written communications skills. During the interview, Mr. Lusignan acknowledged that he had no supervisory experience. In answering the supervisory situational questions his responses indicated that he would tend to delegate responsibility for disciplinary matters to upper management and the Human Resources Department, and he did not demonstrate an understanding of the requirement of a foreman to be familiar with, and to enforce certain elements of applicable policies and procedures, or for the need to document pertinent information. Also, he was unable to adequately describe how to develop and implement an effective training program for service technicians, other than to offer general suggestions such as purchasing more training videos and getting more manufacturer’s training. He felt strongly that the Foremen should conduct all training and was inflexible about considering peer training. Mr. Lusignan was also unable to suggest any specific plans on improving operational efficiencies. Mr. Lusignan’s application noted that he had Internet and computer skills, however he was not able to assemble a simple spread sheet during the interview, and stated that he would need training to do so. Finally, Mr. Lusignan’s communication skills are a concern as his commentary during the interview was often blunt, negative, and gave a clear indication that his approach would not foster positive team development. Mr. Lusignan is a capable technician but does not meet the qualifications for this position.”

The last paragraph of the memorandum stated, “Of the three candidates *that meet the minimum entrance requirements*, Mr. Sears is the only candidate that meets all minimum entrance requirements and preferred requirements. (Emphasis added.) Mr. Lavelle then sent an October 1, 2007 letter to City Labor Service Director Jeanette Berrios informing her that one candidate within the 2n + 1 formula on the eligibility list (Appellant Lusignan) was found to have failed to meet the minimum entrance requirements for the position.

The Appellants maintained their assertion that the designated Labor Service Director determined that all four (4) of the applicants were qualified for the position. They

contend that the Appointing Authority cannot then change the list by removing a candidate's name. The Appellants further argue that, because the minimum entrance requirements are based on subjective standards, the Appellants should have the opportunity to be heard on the determinations that were made by the Respondent.

The ability of the Respondent to remove a candidate's name per PAR .09(3) has been decided. The Respondent has the right to do so, and it is determined by the Commission that the removal of Appellant Lusignan's name from the list was done in compliance with that rule because "the *appointing authority* . . . made a finding that a person within the 2n + 1 certification and appointment formula fails to meet entrance requirements . . ." The Respondent was responsive in spelling out the specific reasons why the removal occurred. It is now clear from the record that Appellant Lusignan failed to meet the minimum entrance requirements and qualifications for the position. The Respondent properly notified the Administrator (Labor Service Director). PAR .19(5)(a) requires that the candidates for the instant promotional appointment "possess *the required qualifications* . . . as determined by the administrator." (Emphasis added.) Similar to medical standards, age requirements, etc., the *qualifications* are determined by the Administrator. However, the Appointing Authority, the entity to which the candidates' specific information regarding qualifications is provided, has the discretion to determine whether the candidates actually *possess* these requirements.

For all the reasons as discussed herein, I recommend that the Appellants' Motion for Summary Decision be denied; the Respondent's Motion for Summary Decision be allowed and the Appellant's appeals *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By a 3 – 2 vote, the Commission voted against the recommended decision of the hearing officer. Instead, the Commission, by a 3-2 vote, voted to *deny* the Appointing Authority's Motion for Summary Decision and schedule a full hearing in regard to whether or not Appellant Norman Lusignan is qualified for the promotional position in question.

In favor of hearing officer's recommendation to allow Appointing Authority's Motion for Summary Decision:

Bowman, Chairman
Marquis, Commissioner

Opposed to hearing officer's recommendation. In favor of denying Appointing Authority's Motion for Summary Decision and scheduling a full hearing regarding whether Appellant Norman Lusignan is qualified.

Henderson, Commissioner
Taylor, Commissioner
Stein, Commissioner

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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 to:
Jeffrey S. Morneau, Esq.
John J. Ferriter, Esq.
John Marra, Esq. (HRD)