

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

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

PAUL MALOOF,  
Appellant

v.

D1-07-399

TOWN OF RANDOLPH,  
Respondent

Appellant's Attorney:

Jonathan Braverman, Esq.  
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(781) 848-9610

Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT'S MOTION TO DISMISS**

*Procedural Background*

The Appellant, Paul Maloof, (hereafter "Maloof" or "Appellant") appealed his termination from the Town of Randolph (hereafter "Town" or "Appointing Authority") to the Civil Service Commission on November 19, 2007, pursuant to G.L. c. 31, §§ 42 and 43. A pre-hearing conference was conducted at the Commission on January 3, 2008, at which time the Town, contending that the Appellant did not have permanent civil service status and, therefore, was not entitled to a hearing under G.L. c. 31, § 42, filed a Motion

to Dismiss the Appellant's appeal. The Appellant filed a response to the Motion to Dismiss on February 5, 2008 and a motion hearing was conducted at the Commission on March 11, 2008, at which time the parties presented oral argument on the issue of the Appellant's civil service status. One audiotape was made of the hearing.

### *Factual Background*

On November 26, 1974, the Town's Board of Selectmen voted to appoint the Appellant to the position of Youth Coordinator, effective January 1, 1975. The Appellant's appointment letter at the time from the Town stated in part, "This appointment is made subject to your passing the required Civil Service examination and the Civil Service certification." It is undisputed that a civil service examination for the position of Youth Coordinator has not been conducted since 1974.

The Town listed the position of Youth Coordinator as a civil service position in their Annual Town Report for over three decades. However, the state's Human Resources Division (hereafter "HRD") indicates that the Town's classification plan, effective August 10, 1978, while containing the title of Youth Services Coordinator, has a notation that this title was not being included in the "Municlass Manual" because further study was required. Neither HRD, the Town or the Appellant have any record of further studies being conducted in regard to this title.

### *Town's Argument in Favor of Motion to Dismiss*

The Town's argument in favor of dismissing the instant appeal is two-fold. First, the Town argues that the Commission does not have jurisdiction to hear an appeal filed by an employee when the employee's position is not covered by the civil service law. Second, the Town argues that the Commission does not have jurisdiction to hear an appeal filed

by an employee when the employee was never a permanent or tenured employee pursuant to G.L. c. 31.

*Appellant's Argument in Opposition to Motion to Dismiss*

The Appellant argues that it would be unfair not to consider the position of Youth Coordinator as a civil service position in the Town of Randolph simply because the Town failed to follow-up on the notation in the 1978 classification plan that further study was required before the position could be included in the classification plan.

Further, the Appellant argues that the Town has treated the Appellant, the incumbent of the position in question, as a civil service employee for more than thirty-three years and that it would be manifestly unfair not to now provide him with a right of appeal before the Commission to determine if there was just cause for his recent termination.

*Conclusion*

It is undisputed that the Appellant never took and passed a civil service examination for the position of Youth Services Coordinator. Hence, his name never appeared on a certification list issued by the state's Human Resources Division and/or any certification issued by HRD. Further, the Appellant was not able to provide any evidence that he gained permanency in his position as a result of a Special Act of the state legislature.

Therefore, even assuming *arguendo* that the title of Youth Coordinator is a civil service position in the Town of Randolph, an issue for which the Commission makes no ruling, the Appellant would still be a provisional employee.

G.L. c. 31, § 43 states in relevant part:

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 or a designee thereof within ten days of such request. 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.” (emphasis added)

It is well established that the Commission does not have jurisdiction to hear an appeal filed by an employee pursuant to G.L. c. 31, §§ 42 or 43 when the employee was never a permanent or tenured employee pursuant to G.L. c. 31. See Rose v. Executive Office of Health and Human Services, 20 MCSR 266, 267 (2007). (The Commission granted the Appointing Authority's Motion to Dismiss based on lack of jurisdiction because the Appellant's status in her position was provisional, despite her 28 years of service.)

While the Town may have considered the position of Youth Coordinator to be a “civil service” position and the Appellant to be a “civil service employee”, the evidence shows that, even if the position in question is indeed a civil service position in Randolph, the Appellant was a provisional civil service employee at all times.

For all of the above reasons, the Town's Motion to Dismiss the Appellant's appeal is allowed and the Appellant's appeal under Docket No. D1-07-399 is hereby ***dismissed***.

Civil Service Commission

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Christopher C. Bowman  
Chairman

Appellant's appeal failed and was dismissed by a 2-2 vote of the Civil Service Commission (Bowman, Chairman – Yes; Henderson, Commissioner – No; Marquis, Commissioner - Yes and Taylor, Commissioner - No) on May 8, 2008.

A True copy. Attest:

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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)(l), 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:

Michael P. Murphy, Esq. (for Appellant)

Brian Magner, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)