

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DANIEL MANDRACCHIA,
Appellant

v.

G2-08-51

CITY OF EVERETT,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

Pursuant to G.L. c. 31, § 2(b), the Appellant, Daniel P. Mandracchia, (hereinafter "Appellant" or "Mandracchia") filed an appeal with the Civil Service Commission claiming that he was aggrieved by the failure of the City of Everett (hereinafter "the City" or "Appointing Authority") and the state's Human Resources Division (hereinafter "HRD") to fill a promotional position of sergeant in the Everett Police Department.

A pre-hearing conference was held at the offices of the Civil Service Commission on April 9, 2008. The City subsequently filed a Motion to Dismiss the Appellant's appeal on April 17, 2008. The Appellant filed an Opposition to the Motion to Dismiss on May 15, 2008.

Factual Background

The Appellant is a police officer in the Everett Police Department (hereinafter "Department"). On or about October 3, 2007, the City submitted a requisition to HRD seeking to fill one (1) permanent full-time sergeant position. On or about October 15, 2007, the City received a certification list with three names of officers eligible for promotional appointment to the position of full-time Police Sergeant. The Appellant's name appeared second on the certified eligible list, tied with one other candidate. The City subsequently promoted the candidate whose name appeared first on the certification list.

On or about October 25, 2007, another sergeant vacancy developed as the result of an unexpected resignation. The City did not submit a request to HRD for an additional certification nor did it fill this additional vacancy prior to the expiration of the certification list in effect at the time. The certification list in question expired on March 29, 2008.

City's Argument for Dismissal

HRD Personnel Administration Rules ("PAR"), issued pursuant to G.L. c. 31, §§ 3(d) and 5, define a bypass as "the selection of a person or persons whose name or names ... appear lower on a certification than a person or persons who are not appointed and whose names appear higher on said certification." PAR.02. The City argues that the

Commission must dismiss the Appellant's appeal as the case does not concern a bypass situation since the City chose the candidate whose name appeared first on the certification list.

Further, the City argues that it chose not to fill the additional sergeant vacancy as a result of budget constraints and the police department's staffing requirements and needs.

Appellant's Opposition to Motion to Dismiss

The Appellant argues that the City violated basic merit principles by refusing to fill a vacancy for the position of sergeant at the time it arose. Since the Appellant's name would have appeared first on any certification list issued prior to its expiration on March 29, 2008, the Appellant argues that he was denied consideration for a promotional opportunity. Further, the Appellant argues that, "on information and belief" the City plans to re-hire the sergeant whose resignation created the additional vacancy "further aggrieve[ing]" the Appellant.

Conclusion

A candidate whose name is not reached for promotion or appointment has no recourse but to take the next examination. See Callanan v. Personnel Administrator for the Commonwealth, 400 Mass 597, 601 (1987). ("The system the Legislature created, in which eligibility lists expire and are replaced by new lists, involves the risk that positions might become available immediately after the expiration of an old list or immediately before the establishment of a new list. The overall pattern of the statute does not justify expectations that certain positions will become available during the period of a single list.")

In the instant case, the Appellant argues that the City's decision to fill the additional sergeant vacancy was "indicative of a deliberate manipulation of the Civil Service system" that warrants intervention from the Commission. In support of his argument, the Appellant cites Greeley v. Town of Belmont, 19 MCSR 32, 34 (2006). However, Greeley is distinguishable from the instant case. In Greeley, the Commission concluded that the Town of Belmont violated the provisions of G.L. c. 31 §15 by filling a promotional position provisionally although there was an active civil service eligibility list. That is not the case here.

The City of Everett was not required to fill the subsequent vacancy and there is no evidence that the City or HRD violated the civil service law when it chose not to do so.

The Appellant's argument that he will be harmed if and when the Department reinstates the sergeant whose resignation led to the vacancy, is speculative at best. G.L. c. 31, § 2(b) requires that petitioners show that they are persons "aggrieved" by a "decision, action, or failure to act by the administrator ..." and requires that they show that their rights "... were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status." The statute further states:

"No person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights *were abridged, denied, or prejudiced* in such a manner as to cause *actual harm* to the person's employment status Any person appealing a decision, action or failure to act of the administrator shall file a copy of the allegations ... with the administrator Said allegations shall clearly state the basis of the aggrieved person's appeal, and make specific references to the provisions of this chapter or the rules of the department or basic merit principles promulgated thereunder *which are alleged to have been violated, together with an explanation of how the person has been harmed.*" (*emphasis added*)

The Appellant has no standing as an “aggrieved” person due an act that may take place in the future, i.e. the potential reinstatement of the sergeant. In order to qualify as an aggrieved person under the statute, that person must have already suffered harm and his or her rights “abridged, denied, or prejudiced in such a manner as to cause actual harm.” The harm must be definite and already have taken place: not potential and speculative.

For all of the above reasons, the Appellant’s appeal filed under Docket No. G2-08-51 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Henderson, Marquis, Stein and Taylor, Commissioners) on July 10, 2008.

A True copy. 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)(I), 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:
Brian E. Simoneau, Esq. (for Appellant)
Marc J. Miller, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)