

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

DANIEL MANDRACCHIA,
Appellant

G2-08-212

v.

CITY OF EVERETT AND
HUMAN RESOURCES DIVISION,
Respondents

Appellant's Attorney:

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Human Resources Division's Attorney:

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Commissioner:

Christopher C. Bowman

**DECISION ON MOTIONS TO DISMISS FILED BY CITY OF EVERETT AND
HUMAN RESOURCES DIVISION**

Procedural Background

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Daniel Mandracchia (hereinafter “Mandrachia” or “Appellant”), filed an appeal with the Civil Service Commission (hereinafter “Commission”) generally contesting his non-selection for promotional appointment to the position of sergeant in the City of Everett (hereinafter “City”) and, more specifically, the decision of the state’s Human Resources Division

(hereinafter “HRD”) to approve the City’s request to reinstate another individual to the position of sergeant.

A pre-hearing conference was conducted at the offices of the Commission on November 3, 2008. Per agreement of the parties, the City and HRD filed separate Motions to Dismiss the Appellant’s appeal and the Appellant filed an opposition to the Motions to Dismiss. All parties agreed that the matter should be decided based on the briefs submitted.

Factual Background

1. The Appellant is a police officer with the City of Everett.
2. On or about October 22, 2005, the Appellant took and passed the civil service promotional examination for the position of permanent full time police sergeant.
3. As a result of a requisition by the City, on October 15, 2007, the Appellant’s name appeared on an eligible list of three (3) names issued by HRD for the position of full time police sergeant, Certification No. 271027.
4. By virtue of his score on the examination, the Appellant was tied for second place on Certification No. 271027.
5. On or about October 22, 2007, police officer Paul Hamilton, whose name appeared first on the Certification, was promoted to the position of permanent full-time police sergeant by the City.
6. On or about October 28, 2007, Everett Police Sergeant Michael Vetrano unexpectedly resigned from his position as sergeant.
7. According to the City, the vacancy created by Mr. Vetrano’s resignation was not filled due to budgetary issues and an assessment of the police department’s staffing

needs and requirements. (See City's Motion to Dismiss in Case No. G2-08-51, Mandracchia v. City of Everett, 21 MCSR 307, 308 (2008))

8. On or about March 1, 2008, the Appellant filed an appeal with the Commission claiming that the City failed to fill the sergeant vacancy created by Sergeant Vetrano's resignation.
9. By vote on July 10, 2008, the Commission voted to dismiss the Appellant's appeal under CSC Case No. G2-08-51. (See Mandracchia v. City of Everett, 21 MCSR 307, 308 (2008))
10. On or about March 29, 2008, the eligible list for the position of permanent full-time police sergeant on which the Appellant's name appeared by virtue of his October 22, 2005 examination score expired.
11. Prior to the expiration of Certification No. 271027, on October 20, 2007, a subsequent civil service promotional examination for the position of full-time police sergeant was held.
12. The eligible list for the October 20, 2007 examination was established on March 30, 2008.
13. The Appellant's name does not appear on the eligible list established on March 30, 2008 with respect to the position of full-time police sergeant.
14. In response to a request for reinstatement by Mr. Vetrano on or about late April / early May 2008, the City's Mayor met with Police Chief Mazzie concerning Vetrano's reinstatement to Vetrano's former position as sergeant.
15. Chief Mazzie informed the Mayor that he was opposed to Mr. Vetrano's reinstatement.

16. Notwithstanding Chief Mazzie's recommendation not to reinstate Vetrano, on or about August 25, 2008, the Mayor appeared before the Board of Aldermen and asked them to reinstate Mr. Vetrano. The Mayor told the Board that he wanted to reinstate Mr. Vetrano because he was a "good cop" who knew the streets of Everett, that he and Mr. Vetrano were boyhood friends, and that Vetrano deserved another chance since he made a mistake when he resigned. (See DVD of Board of Aldermen's Meeting)
17. The City argues that the Mayor misspoke at the Board of Aldermen meeting when he stated that the sergeant position had been funded for fiscal year 2009, when in fact it had not. The Board voted 6 to 1 in favor of Mr. Vetrano's reinstatement.
18. On or about September 9, 2008, the City filed Form 10, "Request for Reinstatement or Re-Employment", with HRD regarding Mr. Vetrano's reinstatement.
19. HRD approved the request for reinstatement on September 9, 2008.

HRD and the City's argument in support of Motion to Dismiss

Both HRD and the City argue that the Appellant's appeal should be dismissed because the Appellant is not a person aggrieved under G.L. c. 31, § 2(b). HRD argues that, because the Appellant's name does not appear on the most recent eligibility list established from the promotional examination for police sergeant administered on October 20, 2007, he can not argue that he was bypassed for promotion and/or that there was actual harm to his employment status.

The City argues that it was under no obligation to fill the vacancy created by the resignation of Mr. Vetrano prior to the expiration of the eligibility list on which the Appellant's name appeared. According to the City, the Appellant's only alternative was

to take the next promotional civil service examination, which he did. Unfortunately, his name does not appear on that current list.

Moreover, the City argues that the decision not to fill the vacancy created by Mr. Vetrano's resignation was based upon the City's budget constraints and the police department's staffing needs and requirements, and was not in violation of basic merit principles. In regard to Mr. Vetrano's reinstatement, the City argues that the reinstatement was completed in conformity with Section 46 of the civil service law as it pertains to reinstatement rights.

Appellant's Argument in Opposition to the City and HRD's Motions to Dismiss

The Appellant argues that, under normal circumstances, a candidate whose name is not reached for promotion or appointment has no recourse but to take the next examination. However, the Appellant argues that since the City made a purposeful decision not to fill the vacancy created by Mr. Vetrano's resignation, no one on the now-expired certification list was selected and he was denied consideration for a promotional opportunity. Citing the City's contradictory statements regarding budgetary constraints, the Appellant argues that the City's actions in this case were indicative of "a deliberate manipulation of the civil service system" and a violation of basic merit principles. The Mayor's statement that his "boyhood friendship" with Mr. Vetrano was one reason for recommending his reinstatement is further evidence, according to the Appellant, that the City's actions were not consistent with basic merit principles.

The Appellant argues that his employment status has been harmed through no fault of his own and asks the Commission to order HRD to revive the eligibility list which

expired on or about March 29, 2008 so that it may be used to fill one vacancy for the position of police sergeant.

Conclusion

The Appellant's argument regarding the instant appeal is two-fold. First, he argues that the City should have immediately filled the vacancy created by the resignation of Mr. Vetrano and that, in filling that vacancy, the City should have used the civil service eligibility list in place at the time, on which the Appellant's name was tied for first. Second, the Appellant argues that the City's reinstatement of Mr. Vetrano to the position of sergeant was not consistent with basic merit principles or the civil service law and that the actions and public statements of the Mayor during this reinstatement cast a further shadow on whether the decision not to fill the vacancy immediately was consistent with basic merit principles.

In regard to the Appellant's first argument, the Commission has already ruled on this issue as part of the Appellant's first appeal to the Commission, Mandracchia v. City of Everett, 21 MCSR 307, 308 (2008). In that decision, the Commission concluded that a candidate whose name is not reached for promotion or appointment has no recourse but to take the next examination. See Callanan v. Personnel Adm'r 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.")

Also as part of the prior decision, the Commission ruled that the Appellant's appeal was premature because the Appellant's argument at the time that he would be harmed *if and when* the City reinstated the sergeant whose resignation led to the vacancy, was speculative at best. As expected, the City has subsequently reinstated Mr. Vetrano to the position of full-time sergeant, thus triggering the Appellant's latest appeal to the Commission, arguing that he (the Appellant) has now been aggrieved as a result of Mr. Vetrano's reinstatement.

Even if the Commission were to adopt the facts as proposed by the Appellant in the light most favorable to him, the Appellant can still not show that the City violated the civil service law in regard to the reinstatement of Mr. Vetrano as a full-time sergeant or that he (the Appellant) is an aggrieved person under G.L. c. 31, § 2(b).

G.L. c. 31, § 46 states in relevant part:

A permanent employee who becomes separated from his position may, with the approval of the administrator, be reinstated in the same or in another departmental unit in a position having the same title or a lower title in the same series, provided that the appointing authority submits to the administrator a written request for such approval which shall contain the reasons why such reinstatement would be in the public interest. No such request shall be approved if the person whose reinstatement is sought has been separated from such position for over five years and there is a suitable eligible list containing the names of two or more persons available for appointment or promotion to such position; provided, however, that no such limitation shall apply to the reinstatement of persons whose qualifications for reinstatement to a former position have been determined pursuant to section eight of chapter thirty-two. If the administrator fails to approve the reinstatement of such person within thirty days after such request, the appointing authority or such person may make a written request for a hearing before the administrator, who shall hold such hearing forthwith and render his decision. Nothing herein shall affect the rights of persons to reinstatement under section thirty-nine.

It is undisputed that: 1) Mr. Vetrano's request for reinstatement was within five years of his separation; 2) the Appointing Authority approved of his reinstatement; 3) the Appointing Authority sought approval from HRD for his reinstatement (See Attachment

C of City's Motion to Dismiss); and 4) HRD approved the request for reinstatement. As such, the City in this case has met all of the requirements of Section 46 regarding the reinstatement of Mr. Vetrano.

The Mayor's statement that Mr. Vetrano was a "boyhood friend" raised the eyebrow of this Commissioner, but it does not rise to the level of violating basic merit principles and/or showing that the Appellant was aggrieved by the decision to reinstate Mr. Vetrano. In fact, after a careful review of the DVD recording of the Board of Aldermen meeting in question, it appears that the Mayor was seeking to be forthright and transparent to the Board and the public about his boyhood friendship with Mr. Vetrano, as a means of full disclosure. He described Mr. Vetrano as a "good cop" familiar with the streets of Everett. The Board carefully deliberated the matter in public and subsequently authorized the Mayor to request reinstatement of Mr. Vetrano from HRD.

Finally, I concur with the City that, even, assuming *arguendo*, that the Appellant's claim that persons whose names appear on a civil service certification list must be considered prior to the reinstatement of a former employee, the Appellant's claim must still fail since his name does not appear on the current certification list for the position of full-time police sergeant.

For all of the above reasons, the Appellant's appeal under Docket No. G2-08-212 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on February 5, 2009.

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. 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:

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