

Decision mailed: 10/23/09
Civil Service Commission *B*

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place
Boston, MA 02108

Michael Marciano,
Appellant

v.

Case No. D1-09-318

Woburn Public Schools,
Respondent

Decision

The appeal of Michael Marciano (Appellant) and the Woburn Public Schools (Respondent) had a Motion Hearing on September 17, 2009. The Appellant was pro-se and the Respondent was represented by Edward F. Lenox, Jr. Esq. The appeal was reviewed at the Motion Hearing. The Respondent filed a Motion to Dismiss. The Appellant was given until September 29, 2009 to file a response to the Motion to Dismiss. The Appellant did not file a response to the Respondents Motion to Dismiss.

The Motion states in part:

- 1) The Appellant's appeal states that the Appointing Authority has abolished his custodial position at the Woburn Public Schools.
- 2) The Affidavit of Joseph V. Elia asserts that the position held by the Appellant has not been abolished. Over a year ago, on September 3, 2008, the Appellant bid on an open custodial position on the 7:00 a.m. to 4:00 p.m. shift at the Shamrock Elementary School in Woburn and has been in that position ever since then.

- 3) Not only has the Appellant's position not been abolished but since he began to serve in the position at the Shamrock School, he has not been discharged, removed, suspended, laid off, transferred or lowered in rank or compensation. Thus, nothing has occurred which would trigger G.L. chapter 31 section 41, and nothing has occurred which would give the Civil Service Commission jurisdiction over this matter.
- 4) The Appellant stated, at the Pre Hearing Conference, that he was indeed employed as a school custodian for the Woburn Public Schools and has not been discharged, removed, suspended, laid off, transferred, lowered in rank or compensation.
- 5) The only adverse action taken in regard to the Appellant and the appeal which, judging by the comments he has placed on the lower portion of his appeal form, seeming caused him to file with the Commission, is that in July, 2009 he was not allowed to bid out of his position at the Shamrock School for another position that he preferred. He was not allowed to do because less than one year had passed since he bid into the Shamrock position and the language in the collective bargaining agreement between the Woburn School Committee and the Woburn School Custodians union requires that at least one year go by before a custodian can seek to bid out of a position which he bid into.
- 6) While the Appellant may feel aggrieved by the situation described in paragraph 4 above, and while he conceivably could have tried to file a grievance over same under his collective bargaining agreement, such events do not come under the jurisdiction of the Civil Service Commission.

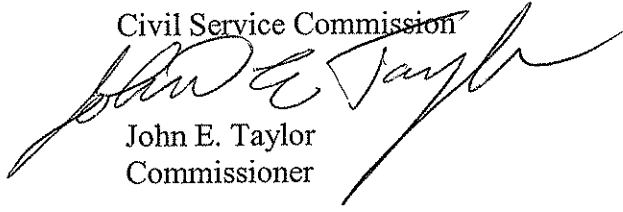
7) On the appeal form submitted by the Appellant, the Appellant has also asserted a claim under G.L. chapter 31, section 42, in that he has alleged that the Appointing Authority did not afford him the procedural protections set out in G.L. chapter 31, section 41. Specifically, he has asserted that the Appointing Authority did not hold a timely hearing, did not provide him a copy of the required sections of chapter 31 and did not provide him proper notice. These procedural requirements, however, are not triggered unless the tenured employee's position has been abolished, or if he has been discharged, removed, suspended, laid off, transferred, or lowered in rank or compensation. None of this has occurred, however, so none of the procedural requirements established by chapter 31, section 41 have been triggered.

The Commission lacks jurisdiction to grant Appellant's appeal and request for relief under MGL c. 31. 801 CMR 1. 01(7) (g) (3) states that "the Presiding Officer may at any time, on his own or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or..." (emphasis added). Additionally, MGL c. 31, § 2 (b) requires that for an individual to have standing before the Commission, an individual must be aggrieved of a decision, action or failure to act by the administrator. A person aggrieved is further defined as one whose "rights were abridged, denied or prejudiced in such a manner as to cause actual harm to the person's employment status."

Appellant is not an "aggrieved person" under MGL c. 31. His rights were not abridged, denied, or prejudiced and he suffered no actual harm. There, Appellant lacks the standing under the law to seek redress from the Commission

MGL C. 31, § 2 (b) requires dismissal of an appeal where the Appellant is not aggrieved. Based on the above, the Respondents Motion to Dismiss is *allowed* and therefore the appeal is *dismissed*.

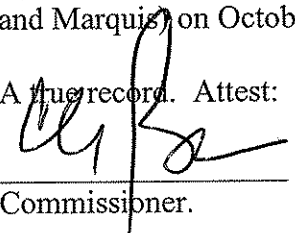
Civil Service Commission



John E. Taylor
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Taylor, Henderson, Stein and Marquis) on October 22, 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. A motion for reconsideration shall be deemed a motion for rehearing in accordance with MGL c. 30A S. 14(1) for the purpose of tolling the time for appeal.

Under the provisions of MGL c 31 S 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:
Edward F. Lenox, Jr., Esq.
Michael Marciano