

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 979-1900

JAMES P. MASSENBURG, JR.

Appellant

v.

C-20-099

MassDOT,

Respondent

Appearance for Appellant:

Pro Se

James P. Massenburg, Jr.

Appearance for Respondent:

Matthias P. Kriegel, Esq.¹

MassDOT

10 Park Plaza

Boston, MA 02116

Commissioner:

Christopher C. Bowman

DECISION

On December 4, 2019, the Appellant, James P. Massenburg, Jr. (Appellant), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD), in which HRD affirmed MassDOT's denial of his request to be reclassified from General Construction Inspector II (GCI II) to Construction Coordinator I (CC I). On July 14, 2020, I held a remote pre-hearing

¹ Subsequent to the filing of proposed decisions, Attorney Kriegel notified the Commission that he had accepted another career opportunity and would no longer be counsel of record for MassDOT. Notice of this decision is being sent to Attorney James Norton and Erik Pike of MassDOT.

conference. I then held a remote full hearing on October 21, 2020.² The hearing was recorded via Webex, and both parties were provided with a link to the recording of the hearing.³ The Commission also retained a copy of the hearing recording. Both parties submitted proposed decisions. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT:

Eight (8) Appellant Exhibits (Exhibits A-H) and twenty-three (23) MassDOT Exhibits (Exhibits 1-23) were entered into evidence at the hearing. Based on these exhibits; the testimony of the following witnesses:

For the Appellant:

- James P. Massenburg, Appellant
- Suzanne Wilbur, Construction Claims Analyst, District 3
- Linda M. Terry, Assistant Construction Engineer, District 3,

For MassDOT:

- Paul Maloy, Construction Engineer, District 4
- Amy Lynch, Manager, Classification and Compensation Unit, MassDOT;

taking administrative notice of all matters filed in the case, and pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to use the recording to supply the court with a written transcript of the hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

1. The Appellant is employed with MassDOT in its Highway Division, Construction Department, and is classified as a General Construction Inspector II. (Testimony of Appellant; Exhibits 3,4)
2. The Appellant holds a High School Equivalency/GED diploma and has attended classes at Quinsigamond Community College. He holds certificates in Hot Mix Asphalt (HMA) Paving Inspector, Concrete Inspector, and ACI (American Concrete Institute) Concrete Field Testing. (Testimony of Appellant; Exhibit 4)
3. Prior to his work with MassDOT, the Appellant worked in construction in Virginia for approximately one year in the early 1980's, installing loop detectors at traffic intersections. His duties included installing wiring and laying pipes. (Testimony of Appellant)
4. The Appellant also previously worked in construction for the City of Boston for two years, from 1987 to 1989, repairing traffic signals. His duties in that position included repairing broken signal poles and trouble-shooting signal problems. (Testimony of Appellant)
5. The Appellant began work at the Massachusetts Turnpike Authority in March of 1993 and worked as a toll collector for twenty-three years. In 2009, the Massachusetts Turnpike Authority became part of MassDOT. On June 5, 2011, the Appellant, by then the senior toll collector at his interchange, was promoted to Toll Collector II (TC II). (Testimony of Appellant, Exhibit 5, Stipulation)
6. As a TC II, the Appellant's duties included ensuring the toll collectors were at their booths, that they had proper funds, and that they took their breaks. He also handled problems with the toll machines and addressed customer satisfaction issues that arose at his location. (Testimony of Appellant)

7. In 2016, all toll collector positions were eliminated in conjunction with the removal of toll plazas from the Mass Pike. At that time, MassDOT offered the Appellant a position as an Engineering Aide II (EA II). He began in that position on October 30, 2016. (Testimony of Appellant, Stipulation)
8. As an EA II the Appellant was assigned to work under General Construction Inspectors and a Civil Engineer on the demolition project to eliminate the toll booths on the Mass Pike at interchanges 9 and 10A, in Sturbridge and Worcester. He helped inspect the contractors' work and completed daily reports on their progress, filing paper copies and entering the reports into the MassDOT database. During this time, the Appellant studied the construction field and received his HMA paving inspector, concrete inspector, and ACI concrete testing certificates. After mastering use of the computer database, the Appellant also helped train his co-workers on data entry. (Testimony of Appellant; Exhibit 4)
9. On March 24, 2017, the Appellant was reclassified as a General Construction Inspector II after filing a Working Out of Title Grievance under his collective bargaining agreement. From approximately 2017 to 2018 he continued to work on the Mass. Pike toll demolition project at interchanges 9 and 10A, performing inspections of the contractors' work and filing reports. The Appellant testified that there were times when he was the only MassDOT inspector at these interchanges. After that job ended, he was assigned to a different field office, with the expectation that he would work on a sidewalk project. In late 2018, before the weather permitted commencement of that project, the Appellant was reassigned to District 3 headquarters in Worcester. (Testimony of Appellant; Exhibit C; Stipulation)
10. At the outset, the Appellant's duties in District 3 headquarters included field work. However, in the spring of 2019, a need arose for someone to fill the position of Office

Engineer for District 3. That position had been held for several years by Burt Christensen, a Civil Engineer II, who had retired. After Mr. Christensen's retirement, Edmilson Tavares, a Civil Engineer II,⁴ took over the Office Engineer functions while still performing field work. Shortly afterwards, Mr. Tavares was promoted to Civil Engineer III, then applied for and received the Civil Engineer IV position of Finals Engineer. (Testimony of Appellant, Terry, Lynch; Exhibit 22)

11. When it became apparent that Mr. Tavares did not have time to perform all the duties of Office Engineer while also acting as Finals Engineer, the Appellant was approached by the district's Construction Engineer and Assistant Construction Engineer and asked if he would be interested in helping in the office on a part-time basis. He agreed to the plan. By March 17, 2019, however, the Appellant was functioning as the full-time Office Engineer and was no longer performing field inspections. (Testimony of Appellant, Terry, Lynch; Exhibit 22)

12. As Office Engineer, the Appellant's primary duty is to review and process all requests by prime contractors working in District 3 for approval of their subcontractors. He receives and handles ten to fifteen subcontractor preapproval packages per week. Before the packages can be submitted to the Construction Engineer and the District Highway Director for their approval, the Appellant must review them against the contract to be sure that all required information and documentation is included. Nearly half the packages the Appellant receives are missing required documentation, and the Appellant promptly notifies the contractor and assists in locating documentation and certificates in order not to delay the project. Once the packets are complete, the Appellant forwards them to the Construction Engineer and District Highway Director. (Testimony of Appellant, Terry; Exhibits 4, 5, 6, 22)

⁴ The description in Exhibit 22 of Mr. Tavares as a Construction Coordinator II, rather than a Civil Engineer II, is evidently a scrivener's error. (See Testimony of Terry, Lynch)

13. The Appellant also attends the pre-construction meetings held between prime contractors and the District engineering staff. His role at the meetings is to explain to the contractors what documentation they must include in their subcontractor approval packages. (Testimony of Appellant, Terry; Exhibit 4)
14. Processing the subcontractor approval packages entails managing and filing both hard copy and electronic files. The Appellant creates a separate jacket for each subcontractor. He also receives and files voluminous construction project plans and notifies both the resident engineer and the area engineer when plans arrive so that they can review them. (Testimony of Appellant, Exhibits 4, 6)
15. The Appellant also enters information from the subcontractor approval packets into the SAM (Site Application Module) database and DCD (District Construction Database), so that the requests can be tracked and updated. He is the District 3 expert on the subcontractor approval process and trains engineers who may be handling a subcontractor approval along with their engineering duties. Additionally, the Appellant enters the Scope of Work into the database for every construction, maintenance, and bridge contract that comes into the District. (Testimony of Appellant, Terry, Wilbur; Exhibits 4, 5, 6)
16. The Appellant coordinates with civil rights staff at MassDOT to help ensure that contractors are following EEO (Equal Employment Opportunity) standards, and also helps track subcontractors identified as DBE's (Disadvantaged Business Enterprises). (Testimony of Appellant, Terry; Exhibit 22).
17. At the conclusion of projects, the Appellant assists the Finals Engineer with close-outs by performing data clean-up, making sure all needed documents are in the file, and packing files up for archiving. He also assists the Construction Claims Analyst by pulling relevant

documentation from the database to assist her in reviewing contractor claims, and runs occasional reports from the database for the Assistant Construction Engineer. (Testimony of Appellant, Wilbur, Terry)

18. In his 2019 EPRS (Employee Performance Review System report), the Appellant was rated “exceeds expectations” as to every job duty. The District Construction Engineer wrote that “James continues to excel in his role as office engineer in D3 Construction. James takes on all work assigned, and more. He is a pleasure to work with and he is an essential part of the D3 construction staff.” (Exhibit 7)
19. On December 4, 2019, the Appellant filed a Classification Appeal with the MassDOT Human Resources Division, Classification and Compensation Unit, claiming that he was misclassified as a General Construction Inspector II and was performing the duties of a Construction Coordinator I. On the same date, the Appellant also filed his Employee Questionnaire and his Interview Guide. (Exhibits 1, 2, 3)
20. District 3 Assistant Construction Engineer Linda Terry filed a Manager’s Questionnaire on December 10, 2019. (Exhibit 5)
21. On March 10, 2020, an appeal audit was conducted by MassDOT. (Exhibit 17)
22. On April 1, 2020, MassDOT notified the Appellant that a preliminary recommendation had been made to deny his appeal. (Exhibit 17)
23. On April 21, 2020, MassDOT notified the Appellant that his appeal to be reclassified from GCI II to CC I had been denied. The Appellant was notified of his right to appeal to the Commonwealth’s Human Resources Division (HRD). (Exhibit 18)
24. On May 14, 2020, the Appellant filed his appeal with HRD. (Exhibit 19)

25. On June 2, 2020, an analyst in the HRD's Classification and Compensation Unit wrote to the Appellant to notify him that his appeal had been denied by HRD because his duties did not warrant reallocation of his position. The Appellant was provided with his appeal rights and instructions. (Exhibit 19)

26. On June 19, 2020, the Appellant appealed HRD's decision to the Civil Service Commission. (Exhibit 2)

27. The duties of a General Construction Inspector II are set out in the Classification Specification for the General Construction Inspector series. The Classification Specification states that the GC II position is the "first-level supervisory job in this series." (Exhibit 13)

28. The series Summary describes the function of a General Construction Inspector as follows:

Incumbents of positions in this series inspect the construction of highways, buildings, bridges, dams, water or sewage systems, tunnels and waterways for conformance with plans and specifications; conduct tests on construction materials; survey construction sites; maintain records of construction operations; and perform related work as required.

The basic purpose of this work is to oversee the construction practices used on various sites, and to enforce compliance with plans, specifications and all applicable laws, rules, regulations, policies and procedures.

(Exhibit 13)

29. The GCI Classification Specification lists the following under "Examples of duties common to all levels in series":

1. Inspects materials and construction operations for conformance to rules and regulations and contract plans and specifications.
2. Conducts field and/or laboratory tests on materials used in the construction of highways, buildings, bridges, dams, water/sewage systems, tunnels and waterways for conformance with specifications, standards and code compliance to ensure construction safety.
3. Performs minor survey work on construction sites by placing grade stakes and operating survey instruments such as transits, compasses, levels and rods to determine lines and grades in construction work and boundary lines for conformance with construction specifications.

4. Maintains records at construction operations by taking field notes and drawing sketches to chronicle the progress of construction.
5. Inspects contractors' safety procedures for conformance with state and federal regulations including the number and location of construction safety signs at work sites to insure the safety of construction personnel and the completed project.
6. Performs related duties such as attending safety meetings and construction seminars to keep abreast of changes and new developments in the field of construction; calculating quantities for pay estimates and payments and writing routine letters and memoranda.

(Exhibit 13)

7. Under "Differences Between Levels in Series" the GCI Classification Specification states that those in level GCI II (the higher of the two levels in this series) perform the following duties:

1. Inspect construction operations such as concrete and steel placement, excavation and drainage, traffic lines, signs, controls, pavement and lighting; check credentials of on-site inspectors and ensuring that contractors have acquired all necessary permits; monitor contractors' compliance with Equal Employment Opportunity guidelines and ensure that rules, regulations and laws concerning construction are observed.
2. Recommend changes to specifications or construction plans due to unusual field conditions, lack of funds or unavailability of materials.
3. Recommend the acceptance of completed construction projects, upon inspecting the workmanship, to ensure that procedures and materials comply with plans and specifications.
4. Respond to inquiries from abutters, contractors, other agencies and the general public concerning such issues as boundary lines, state building and safety codes.
5. Report and record investigative and inspection activities by writing letters, reports and memoranda regarding such matters as investigations, inspections, recommendations for corrective action and justifications for contract proposals; and edit reports prepared by subordinates on the status of construction.
6. Perform related duties such as attending pre-bid conferences for potential acquisition and construction projects and preparing or reviewing quantities and estimates.

(Exhibit 13)

8. Under “Minimum Entrance Requirements,” the GCI Classification Specification provides at the GCI II level:

Applicants must have at least (A) five years of full-time, or equivalent part-time, technical experience in the construction, Inspection and/or alteration of construction projects such as highways, buildings, bridges, tunnels, sewers, waterways, dams and parks, or (B) any equivalent combination of the required experience and the substitutions below.

Substitutions:

- I. An Associate’s degree with a major in civil engineering, civil engineering technology or construction technology may be substituted for a maximum of two years of the required experience.*
- II. A Bachelor's or higher degree with a major in civil engineering, civil engineering technology, architecture or structural, architectural or sanitary engineering may be substituted for a maximum of four years of the required experience.*

NOTE: No substitutions will be allowed for the remaining year of experience.

*Education toward such a degree will be prorated on the basis of the proportion of the requirements actually completed.

(Exhibit 13)

30. The Construction Coordination series was developed during the past decade to improve MassDOT’s control over construction projects, to improve on-time and on-budget performance, and to improve oversight relating to contract specifications and MassDOT policies and procedures. The series was also created to provide opportunities for career advancement for employees without civil engineering degrees. The series went live in 2018.

(Testimony of Maloy)

31. The duties of a Construction Coordinator I are set out in the Classification Specification for the Construction Coordinator series. The series summary states:

There are three levels in the MassDOT Construction Coordinator series. Incumbents of this classification series represent MassDOT Highway Division in a number of areas involved in the Department's Statewide Road and Bridge program. Responsibilities include, but are not limited to, the oversight, coordination and scheduling of construction and maintenance projects. The

three levels in this series will report to the Construction Section within a District Office or Headquarters. The purpose of these primary positions is to ensure projects are completed according to the contract documents and relevant MassDOT Policies and Procedures. Responsibilities include but are not limited to work and data management/review associated with construction claims, utility coordination, financial tracking and payments, construction schedules, records and procedures and the finals process.

(Exhibit 14)

32. The Classification Specification describes the distinguishing characteristics of the CC I position as follows:

This is the entry level position in this series. The roles and responsibilities of this position: involve analyzing and managing data, project records, and work schedules; and coordinating utility work/payments on construction projects. Incumbents have strong working knowledge of construction standards and practices and perform work within a defined framework of procedures and standards. Although incumbents perform their duties independently on a day-to-day basis, they maintain frequent contact with supervisors and seek guidance for more complex issues.

(Exhibit 14)

33. Under “Functions Performed,” the classification specification for the CC I position lists the following:

- Review and gain an understanding of all project documents including Plans, Special Provisions, MassDOT's Standard Specifications for Highways and Bridges and Construction Standard Details and submittals to be familiar and current with all aspects of assigned projects.
- Participate in pre-construction meetings with designers, contractors, and Project Managers to contribute to quality designs that meet the Department's needs.
- Assist in the review of extra work order requests (e.g. process, scope, time and materials) to assist in determining whether the request has merit and conforms to contract specifications and to determine if the schedule should be adjusted.
- Assist in the review of construction claims submitted by the contractor.
- Coordinate utility work and reimbursements associated with construction projects with the Resident Engineer and the respective utility companies.
- Assist with the review and approval of contractor project schedules.

- Assist with the project closeout and finals process.
- Conducts reviews of all project records and procedures and provides guidance and recommendations.
- Update and analyze various databases used to monitor and support the Statewide Road and Bridge Program.
- Review and coordinate planned work activities affecting state highways district wide to avoid conflicts and minimize impacts to the public.
- Review and coordinate weekly road closure schedules for the district.
- Develop and maintain directory of Emergency Contact information for the District's construction and maintenance projects and other large projects as necessary.
- Act as liaison between the District and the Highway Operations Center (HOC).
- Perform related duties as required.

(Exhibit 14)

9. Under “Minimum Entrance Requirements,” the Construction Coordinator Classification Specification provides at the CC I level:⁵

Applicants must have (A) at least (4) four years of full-time or equivalent part-time technical experience in the construction, construction management and inspection of bridges, highways, roads, tunnels and ancillary buildings and structures; or (B) any equivalent combination of the required experience and the substitutions below.

...

Substitutions:

- I. An Associate's degree with a major in civil engineering, civil engineering technology or construction technology may be substituted for a maximum of one year of the required experience.
- II. A Bachelor's or higher degree in construction management, civil engineering, or civil engineering technology may be substituted for a maximum of two years of the required experience.
- III. Education toward such a degree will be prorated on the basis of the proportion of the requirements actually completed.

⁵ In the published Classification Specification for the Construction Coordinator Series, Exhibit 14, under Construction Coordinator I, Minimum Entrance Requirements, after the first paragraph the following words appear: “Bachelor of Science in Construction Management or a related Civil Engineering discipline.” Regrettably, these words appear to be a scrivener’s error. See Finding no. 30, *supra*. The omission of these words in the quotation above is noted with an ellipsis.

Incumbents are required to possess a current and valid Motor Vehicle Driver's License at a Class level specific to assignment.

(Exhibit 14)

34. The duties of a Program Coordinator I are set out in the Classification Specification for the Program Coordinator series. The series summary states:

Incumbents of positions in this series coordinate and monitor assigned program activities; review and analyze data concerning agency programs; provide technical assistance and advice to agency personnel and others; respond to inquiries; maintain liaison with various agencies; and perform related work as required.

The basic purpose of this work is to coordinate, monitor, develop and implement programs for an assigned agency.

(Exhibit 15)

35. The PC Classification Specification lists the following examples of duties common to all levels in the series:

1. Coordinates and monitors assigned program activities to ensure effective operations and compliance with established standards.
2. Reviews and analyzes data concerning assigned agency programs to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc. and to devise methods of accomplishing program objectives.
3. Provides technical assistance and advice to agency personnel and others concerning assigned programs to exchange information, resolve problems and to ensure compliance with established policies, procedures and standards.
4. Responds to inquiries from agency staff and others to provide information concerning assigned agency programs.
5. Maintains liaison with various private, local, state and federal agencies and others to exchange information and/or to resolve problems.
6. Performs related duties such as attending meetings and conferences; maintaining records; and preparing reports.

(Exhibit 15)

36. Under "Minimum Entrance Requirements," the PC Classification Specification provides at the PC I level:

Applicants must have at least (A) two years of full-time, or equivalent part-time, professional, administrative or managerial experience in business administration, business management or public administration the major duties of which involved program management, program administration, program coordination, program planning and/or program analysis, or (B) any equivalent combination of the required experience and the substitutions below.

Substitutions:

- I. A Bachelor's or higher degree with a major in business administration, business management or public administration may be substituted for the required experience.*
- II. A Bachelor's or higher degree with a major other than in business administration, business management or public administration may be substituted for a maximum of one year of the required experience.*

*Education toward such a degree will be prorated on the basis of the proportion of the requirements actually completed.

(Exhibit 15).

Legal Standard

Section 49 of G.L. c. 30 provides in relevant part as follows:

“Any manager or employee of the commonwealth objecting to any provision of the classification of his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it.”

The Appellant has the burden of proving that he is improperly classified. To do so, he must show that he performs the duties of the Construction Coordinator I title more than 50% of the time, on a regular basis. Gaffey v. Dep't of Revenue, 24 MCSR 380, 381 (2011); Bhandari v. Exec. Office of Admin. and Finance, 28 MCSR 9 (2015) (finding that “in order to justify a reclassification, an employee must establish that he is performing the duties encompassed within the higher level position a majority of the time”).

MassDOT's Argument

MassDOT agrees that the Appellant is a dedicated and respected public employee, who has mastered a range of roles and responsibilities as he has progressed through the ranks at MassDOT. Nevertheless, where it is undisputed that he spends more than 50% of his time on the intake, review, and processing of prime contractors' requests for the approval of subcontractors, MassDOT argues that the bulk of the Appellant's work is closest to the administrative position of Program Coordinator I and does not fall within the level-distinguishing duties of a Construction Coordinator I.

MassDOT argues that the Appellant does not perform most of the duties of a CC I. For example, he does not perform a substantive review of the submitted plans or coordinate and approve utility work, road closures, and contractor schedules and requests, in order to keep projects on time and within contract specifications. He also does not perform substantive review of contractor claims, provide substantive assistance with closeouts and the finals process, or provide general review and coordination of state highway work activities. He does not act as the liaison between the District and the Highway Operations Center, or keep a list of emergency contacts.

Appellant's argument

The Appellant argues that he is misclassified as a GCI II and should be reclassified as a CC I. He performs some duties of a CC I and notes that the history of the functional position of Office Engineer, handling subcontractor approvals within District 3, is that it was previously held by persons with the positions of Civil Engineer II (Burt Christensen) and Civil Engineer III (Edmilson Tavares). The Appellant points out that the Construction Coordinator series only went live sometime in 2018, so that a classification within that series would not have been

available to Mr. Christensen and possibly also would not have been available to Mr. Tavares. In District 1, the Appellant notes that the subcontractor approval duties are performed by a Construction Coordinator II, and in District 6, those duties are performed by a Civil Engineer III.

Additionally, the Appellant argues that the career trajectory of a General Construction Inspector stops at his current title of GCI II, so that options for advancement must be either within the Construction Coordinator series at the CC I level, or within the Civil Engineering series at the CE III level. The Construction Coordinator series is more closely aligned to the Appellant's background, since it was adopted in part to provide career advancement options for those without civil engineering degrees. The Construction Coordinator series, moreover, falls within the same bargaining unit as the General Construction Inspector and Civil Engineer series, MOSES (Massachusetts Organization of State Engineers and Scientists).

The Appellant also addresses the testimony that his position most closely fits within Program Coordinator I and that, in District 4, subcontractor approvals are handled by a person within the Program Coordinator series. He argues that the Program Coordinator series is not an appropriate classification for his duties because for the past 25 years the District 3 office has had no employees within the PC series. Also, the Appellant believes that the PC series would not work well for advancement in a District construction office because it falls within NAGE (National Association of Government Employees), rather than MOSES, the bargaining unit associated with construction and engineering positions.

Analysis

The Appellant has not met his burden to show that he spends more than 50% of his time performing the level-distinguishing duties of a Construction Coordinator I. He testified that about 60% of his time is spent processing requests by prime contractors for approval of their

subcontractors. By all accounts, the Appellant does an exceptional job in this highly-detailed office function, not only acting as the intake person for as many as ten to fifteen subcontractor packages per week, but also going out of his way to assist the prime contractors in ensuring that the packages contain all the required information and documentation. The Appellant assists in locating missing certificates and checks each package against a checklist before completing it and forwarding it to the construction engineer and District Highway Director. He also maintains the construction files for the District, creating a jacket for each subcontractor, receiving and passing on the project plans to the resident engineer and the area engineer, and entering the progress of the subcontractor approval process into the MassDOT databases.

It is evident, however, that the Appellant is not functioning as a Construction Coordinator I. His duties are primarily administrative in nature; whereas the duties of an employee within the CC series require the exercise of substantive oversight over construction projects and coordination of schedules, with the goal of keeping projects on track for completion and within contract specifications and MassDOT requirements. The Appellant testified candidly and straightforwardly that he does not perform most of the duties listed in the classification specification for a CC I and no longer works in the field. In particular, he does not read the full project plans (ranging from 50 to 100 pages) in order to understand all project details. He does not assist with the review and approval of contractor project schedules or help assess whether contractor work order requests have merit and are worthy of a schedule adjustment. He does not coordinate road closures or utility work and reimbursements. He does not coordinate highway work across the District to avoid conflicts and minimize impacts on the public. Nor does he act as the liaison between the District and the Highway Operations Center. These are level-distinguishing duties of a Construction Coordinator I.

Some of the Appellant's duties do relate to those of a CC I. The Appellant attends pre-construction meetings and explains to the prime contractor what documents and forms the contractor must include in his requests for approval for subcontractors. The Appellant assists the District Claims Analyst by pulling information from the database relating to claims. He enters Scope of Work into the database from contracts within the construction, maintenance, and bridge sections. And the Appellant helps the District Finals Engineer by inputting data during project closeout and collecting and packaging materials in preparation for archiving. These functions, however, do not occupy a majority of the Appellant's time and are mostly administrative. They do not entail the substantive review, oversight, and coordination of construction projects and schedules that is the core purpose of the Construction Coordinator series.

The Appellant's duties as Office Engineer – processing subcontractor approvals, performing database input, and managing the District 3 construction files – fall most closely within the duties of a Program Coordinator I. The Appellant helps implement, coordinate, and monitor the highway district's construction programs by ensuring that subcontractor packets are complete before being sent for approval. The Appellant's other duties also fulfill the purposes of a Project Manager. He provides technical assistance with data entry and responds to requests for assistance by running reports. In addition to preparing reports, the Appellant's attendance at meetings and maintenance of records fall within the "related duties" described in the specifications for the PC I position.

Nevertheless, I note that the Appellant has been permitted to retain his current title of GCI II, despite no longer performing construction inspections or doing any work in the field. PC I is a lower grade position than GCI II, so requiring reclassification would cause the Appellant financial harm. MassDOT's policy is to avoid a financial penalty in such a case.

Instead, the Appellant's position has been given a classification flag, so that when it is next filled it will be classified as a PC I.

Because the Appellant has not shown that he is performing the duties of a Construction Coordinator I more than 50% of the time, he is not entitled to reclassification into that position. That other employees may be misclassified, or performing Office Engineer duties in conjunction with field duties, does not entitle the Appellant to reclassification. See Gaffey v. Dept. of Revenue, supra. Also, in terms of career advancement, reclassification is different from promotion. Reclassification requires a showing that most of the employee's current, permanently assigned work falls within the requested position. Promotion, on the other hand, anticipates a prospective change in duties. See Lee v. MassDOT, 34 MCSR 329, 334 (2021). As to bargaining units, there is no requirement that all employees in a District office be represented by the same union – employees may change bargaining units along with a change in position.

For all of the above reasons, the Appellant's appeal for a reclassification under Docket C-20-099 is hereby *denied*.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein, and Tivnan, Commissioners) on May 20, 2022.

Either party may file a motion for reconsideration within ten days of the receipt of this 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 does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court,

operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his/her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

James P. Massenburg, Jr. (Appellant)

Erik Pike (for Respondent)

James Norton, Esq. (for Respondent)