

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 727-2293

ALEXANDER MEJIAS,

Appellant

v.

G2-12-172

CITY OF BOSTON,

Respondent

Appellant's Attorney:

Pro Se

Alexander Mejias

Respondent's Attorney:

Samantha Doeppen, Esq.

City of Boston

Office of Labor Relations

City Hall: Room 624

Boston, MA 02201

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On May 14, 2012, the Appellant, Alexander Mejias, filed an appeal with the Civil Service Commission (Commission), contesting his non-selection by the City of Boston (City) to the position of Senior Radio Communication Technician. A pre-hearing conference was held on June 19, 2012. Since the Appellant has no standing to file this appeal and since the City complied with the applicable civil service law and rules, the appeal is dismissed.

Background

The Appellant has been employed by the City since 2004 as a Heavy Motor Equipment Operator, a labor service position. For reasons related to an ongoing investigation pending at the Commission (Investigation Re: City of Boston Labor Service Appointments, CSC Case No. I-12-68), he is not currently a permanent civil service employee.

Since no civil service examinations have been given for many years for most non-public safety official civil service positions in Massachusetts, cities and towns fill such vacancies through provisional appointments or promotions. Here, the City made a provisional appointment to the position of Senior Radio Communication Technician, an official service position and selected an external candidate. The Appellant was not appointed and this appeal followed.

Discussion

In a series of decisions, the Commission has addressed the statutory requirements when making such provisional appointments or promotions. See Kasprzak v. Department of Revenue, 18 MCSR 68 (2005), on reconsideration, 19 MCSR 34 (2006), on further reconsideration, 20 MCSR 628 (2007); Glazer v. Department of Revenue, 21 MCSR 51 (2007); Asiaf v. Department of Conservation and Recreation, 21 MCSR 23 (2008); Pollock and Medeiros v. Department of Mental Retardation, 22 MCSR 276 (2009); Pease v. Department of Revenue, 22 MCSR 284 (2009) & 22 MCSR 754 (2009); Poe v. Department of Revenue, 22 MCSR 287 (2009); Garfunkel v. Department of Revenue, 22 MCSR 291 (2009); Foster v. Department of Transitional Assistance, 23 MCSR 528; Heath v. Department of Transitional Assistance, 23 MCSR 548.

In summary, these recent decisions provide the following framework when making provisional appointments and promotions:

- G.L.c.31, §15, concerning provisional *promotions*, permits a provisional promotion of a permanent civil service employee from the next lower title within the departmental unit of an agency, with the approval of the Personnel Administrator (HRD) if (a) there is no suitable eligible list; or (b) the list contains less than three names (a short list); or (c) the list consists of persons seeking an original appointment and the appointing authority requests that the position be filled by a departmental promotion (or by conducting a departmental promotional examination). In addition, the agency may make a provisional promotion skipping one or more grades in the departmental unit, provided that there is no qualified candidate in the next lower title and “sound and sufficient” reasons are submitted and approved by the administrator for making such an appointment.
- Under Section 15 of Chapter 31, only a “civil service employee” with permanency may be provisionally promoted, and once such employee is so promoted, she may be further provisionally promoted for “sound and sufficient reasons” to another higher title for which she may subsequently be qualified, provided there are no qualified permanent civil service employees in the next lower title.
- Absent a clear judicial directive to the contrary, the Commission will not abrogate its recent decisions that allow appointing authorities sound discretion to post a vacancy as a provisional appointment (as opposed to a provisional promotion), unless the evidence suggests that an appointing authority is using the Section 12 provisional “appointment” process as a subterfuge for selection of provisional employee candidates who would not be eligible for provisional “promotion” over other equally qualified permanent employee candidates.
- When making provisional appointments to a title which is not the lowest title in the series, the Appointing Authority, under Section 12, is free to consider candidates other than permanent civil service employees, including external candidates and/or internal candidates in the next lower title who, through no fault of their own, have been unable to obtain permanency since there have been no examinations since they were hired.

Applied to the instant appeal, the Appellant has no standing to file this appeal because, at this time, he is not a permanent civil service employee. Even if he were a permanent civil service employee, it can not be shown that the City violated any civil service law or rule. The City made a provisional appointment to an official service position and was not obligated to select a permanent civil service employee.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. G2-12-172 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners [Marquis – Absent]) on July 26, 2012.

A true record. Attest:

Commissioner

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 this order or 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.

Notice to:

Alexander Mejias (Appellant)

Samantha Doepken, Esq. (for Respondent)

John Marra, Esq. (HRD)