

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

**HECTOR MEJIAS &
ALEXANDER ALLEN,**

Appellants

v.

CITY OF BOSTON,

Respondent

Case Nos.: I-11-328 (MEJIAS)
I-11-329 (ALLEN)

RESPONSE TO REQUEST FOR INVESTIGATION

On February 28, 2011, Hector Mejias and Alexander Allen (Appellants), both of whom are employees of the City of Boston (City), asked the Civil Service Commission (Commission) to investigate alleged “retaliatory actions” that were taken against them after filing prior appeals with the Commission in Mejias et al v. City of Boston, 24 MCSR 476 (2011).

The prior appeals, filed with the Commission on September 15, 2010, challenged whether the City had violated civil service law and rules by promoting individuals who the Appellants claim were not permanent civil service employees. The Commission entered an interim order regarding those prior appeals, opening an investigation regarding the City’s hiring practices as they relate to labor service appointments and promotions. Although a resolution appears at hand, that matter is still pending with the Commission.

Here, the Appellants argue that the City retaliated against them due to their involvement with the above-referenced appeals. Mr. Mejias claims that his working hours were changed and that he was reassigned to a location further from his house, making it a logistical nightmare to get to work. Mr. Allen claims that he was “abruptly” transferred to another work location and required to perform duties usually performed by individuals in lower titles.

A pre-hearing conference was held on November 29, 2011 and a status conference was held on January 9, 2012 to determine whether the Commission would initiate an investigation.

G.L. c. 31, § 2 states:

“In addition to its other powers and duties, the commission shall have the following powers and duties:

- (a) To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the

administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.”

This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court (2007).

I heard from the Appellants, counsel for the Appellants, counsel for the City and Maurice Smith, the City’s Superintendent of Highways.

Mr. Allen failed to present sufficient evidence to justify any further investigation by the Commission. Based on the statements of Mr. Allen and Mr. Smith, I am sufficiently convinced that the reassignment of Mr. Allen was directly related to the operational needs of the City and the need to match Mr. Allen’s work assignments with his skill set.

The appeal of Mr. Mejias is a closer call. While the City presented a plausible explanation for changing his hours and work location on a temporary basis (i.e. – they were down a person in South Boston), they were unable to explain why Mr. Mejias was not reassigned back to his prior work location when the worker out on leave returned. Mr. Mejias also presented a sworn affidavit from union Vice President Kevin Turner. In that affidavit, Mr. Turner claims that when he asked about the transfer of Mr. Mejias, he was told by Mr. Smith, “when people file things, sometimes it comes back to bite you in the ass.” Mr. Smith, who appeared at the status conference, adamantly denies saying this.

While these circumstances may usually be sufficient to trigger an investigation by the Commission, the exact same claim of retaliation is currently pending before the Massachusetts Commission Against Discrimination (MCAD), which issued a finding of probable cause on November 27, 2011 and scheduled a conciliation conference for March 12, 2012. (See Mejias v. City of Boston, MCAD Docket No. 10BEM03283).

Further, it appears, in this case, that MCAD, should there be any decision in favor of Mr. Mejias, would have broader authority regarding any remedial orders than the Commission, as it appears that Mr. Mejias’s civil service permanency has not been impacted, he has not faced a reduction in compensation and appears to have been reassigned, as opposed to transferred.

For these reasons, the Commission opts not to initiate an investigation regarding Mr. Mejias’s appeal under CSC Docket No. I-11-328.

The Appellants’ request for investigation is denied.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on May 31, 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)(1), 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:

Karen E. Clemens, Esq. (for Appellants)

Paul Curran, Esq. (for Respondent)