

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

CHRISTOPHER NIZIOLEK,
Appellant

v.

WORCESTER PUBLIC SCHOOLS,
Respondent

Docket Number: D1-24-172

Appearance for Appellant: S.L. Romano
Dispute Resolutionist
Mass. Laborers' District Council
410 South Main Street, 2nd Floor

Appearance for Respondent: Jonathan R. Atwater, Esq.
Law Offices of Sean P. Sweeney, Esq.
311 Village Green North, Suite A4
Plymouth, MA 02360

Commissioner: Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the appeal of a senior custodian who was demoted to junior custodian as he never attained civil service permanency in the title of senior custodian, thus divesting the Commission of jurisdiction regarding this demotion.

DECISION ON RESPONDENT'S MOTION TO DISMISS

On November 9, 2024, the Appellant, Christopher Niziolek (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Worcester Public Schools (WPS) to demote him from senior custodian to junior custodian. On December 2, 2024, the WPS filed a motion to dismiss based in part on lack of jurisdiction. On December 4,

2024, I held a remote pre-hearing conference which was attended by the Appellant, his representative and counsel for the WPS. Shortly thereafter, the Appellant filed an opposition to the motion to dismiss.

UNDISPUTED FACTS

Based on the information submitted and the statements made at the pre-hearing, the following is not disputed, unless otherwise noted:

1. In 1985, the Appellant took and passed a civil service examination for junior custodian.
2. On September 14, 1998, the Appellant was appointed by the WPS as a permanent junior custodian from a civil service eligible list.
3. The Appellant, after completing a six-month probationary period, became a permanent, tenured civil service employee in the position of junior custodian, giving him certain due process rights under the civil service law, including the right to appeal any termination, suspension, or layoff as a junior custodian.
4. The state's Human Resources Division (HRD) has no record of the Appellant taking any civil service examinations after 1985.
5. HRD last offered the custodian exams (junior and senior) in 2003 and the eligible lists created from those 2003 examinations were revoked in or around 2007.
6. WPS records show that the Appellant was promoted¹ from junior custodian to senior custodian on January 31, 2011.

¹ WPS records actually reflect a "transfer" which is clearly erroneous as senior custodian is a higher title than junior custodian.

7. Since there was no eligible list in place for senior (or junior) custodian after 2007, the Appellant could not have been promoted to *permanent* senior custodian in 2011. Rather, any promotion to senior custodian in 2011 would have been limited to a *provisional* promotion.
8. On October 29, 2024, the WPS demoted the Appellant from senior custodian to junior custodian

RULE REGARDING DISMISSAL FOR LACK OF JURISDICTION

The Presiding Officer may at any time, on his or her own motion 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 because of the pendency of a prior, related action in any tribunal that should first be decided. 801 CMR 1.01 (7)(g)(3).

RELEVANT CIVIL SERVICE LAW

Section 41 of Chapter 31 states in relevant part:

Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off ... Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority ...

ANALYSIS

This is not a new issue for the Commission. In City of Springfield v. Civil Serv. Comm'n & Joseph McDowell, 469 Mass. 370 (2014), the SJC upheld a Commission decision in which the Commission determined that a provisionally promoted employee, who previously held permanency in a lower title, only retains appeal rights in regard to that lower, permanent position (i.e. – employee could appeal a termination from employment or a demotion to a position lower

than his permanent title.) Here, the Appellant has not presented any evidence to show that he ever obtained tenure in any position other than custodian, the position to which he has been demoted. Just as in Springfield, this demotion is not an adverse action that can be appealed under Chapter 31. Absent intervention by the legislature, in the form of funding to create and begin re-administering examinations for the custodian series, in addition to a global remedy regarding those custodians currently serving in a provisional capacity, the outcome here will continue to apply to all similarly situated individuals.

CONCLUSION

The WPS's motion to dismiss is allowed and the Appellant's appeal under Docket Number D1-24-172 is hereby *dismissed*.

CIVIL SERVICE COMMISSION

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein on January 9, 2025.

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. 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:
S.L. Romano (for Appellant)
Jonathan R. Atwater, Esq. (for Respondent)