

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

GREGORY NOTENBOOM,  
Appellant

D-19-265

v.

METHUEN PUBLIC SCHOOLS,  
Respondent

Appearance for Appellant:

Christopher S. Brown, Esq.  
DiFruscia Law Offices  
302 Broadway  
Methuen, MA 01844

Appearance for Respondent:

Michael J. Maccaro, Esq.  
Murphy, Hesse, Toomey & Lehane LLP  
Crown Colony Plaza  
300 Crown Colony Drive  
Quincy, MA 02169

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

1. On December 13, 2019, the Appellant, Gregory Notenboom (Appellant), filed an appeal with the Civil Service Commission (Commission) to contest the decision of the Methuen Public Schools (Respondent) to demote him from Senior Custodian to Custodian.
2. On January 13, 2020, a pre-hearing conference was held at the Mercier Community Center in Lowell, MA which was attended by the Appellant, his counsel and counsel for the Respondent.
3. As part of the pre-hearing conference, the parties stipulated to the fact that, at the time of his demotion, the Appellant was a permanent, tenured Senior Custodian

4. A full hearing was scheduled to be held on March 9, 2020 which was continued until April 27, 2020.
5. In preparation for the full hearing, I asked the parties to provide me with verification that the Appellant, at the time of his demotion, was a permanent, tenured Senior Custodian.
6. The Respondent, upon further review, determined that the Appellant was *not* a permanent, tenured Senior Custodian at the time of his demotion. Rather, when the Appellant was promoted to Senior Building Custodian on November 27, 2018, there was no eligible list in place, as there had been no examination for the custodian series for approximately fifteen (15) years. Thus, at the time of his demotion, the Appellant was serving as a *provisional* Senior Custodian. He had been promoted to that position from his permanent, tenured position of custodian, which he was initially appointed to on September 26, 2000, when examinations for the custodian series were still being administered.
7. Based on this information, the Respondent filed a Motion to Dismiss the Appellant's appeal, arguing that the Commission has no jurisdiction to hear an appeal from a provisionally appointed employee who was demoted to his permanent civil service position. The Appellant filed an opposition and I held a remote motion hearing via videoconference on April 27, 2020.

### *Analysis & Conclusion*

This is not a new issue for the Commission. In City of Springfield v. Civ. 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, we conclude that this demotion is not an adverse action that can be appealed under G.L. c. 31.

For this reason, the Respondent's motion to dismiss is allowed and the Appellant's appeal under Docket No. D-19-265 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 18, 2020.

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:

Christopher S. Brown, Esq. (for Appellant)  
Anthony R. DiFruscia, Esq. (for Appellant)  
Michael J. Maccaro, Esq. (for Respondent)  
Paul King, Esq. (for Respondent)