

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

JOHN HO,  
JOSEPH PEPICELLI &  
DAVID O’CONNOR,  
*Appellants*

Ho: G1-05-227  
Pepicelli: G1-05-228  
O’Connor: G1-05-229

v.

CITY OF CAMBRIDGE &  
HUMAN RESOURCES DIVISION,  
*Respondents*

Appellants’ Attorney:

Joseph L DeLorey, Esq.  
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Boston, MA 02108  
(617) 367-6044

City of Cambridge’s Attorney:

Daniel C. Brown, Esq.  
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320 Norwood Park South  
Norwood, MA 02062  
(781) 762-2229

HRD’s Attorney:

Patrick J. Mulroney, Esq.  
Human Resources Division  
One Ashburton Place  
Boston, MA 02108

Commissioner:

Donald R. Marquis

**DECISION ON RESPONDENTS’ MOTION TO DISMISS**

The Appellants, John Ho, Joseph Pepicelli, and David O’Connor, (hereafter “Ho”,  
“Pepicelli” and “O’Connor” or “Appellants”) each filed an appeal with the Civil Service

Commission on June 30, 2005. The Appellants are seeking to: 1) appeal the decision of the City of Cambridge (hereafter “City” or “Appointing Authority”) for failing to consider them for lateral transfer *from* the Boston Municipal Police Department (hereafter “BMPD”) *to* the Cambridge Police Department; and 2) the refusal of the Human Resources Division (hereafter “HRD”) to reverse the City’s decision not to transfer the three Appellants. The appeals were timely filed. On September 29, 2005, the City and HRD submitted a Joint Motion to Dismiss the aforementioned appeals. The Appellants submitted a “Verified Responsive Memorandum” on November 15, 2005.

The Appellants, all members of the now-former Boston Municipal Police Department at the time their appeals were filed, sought appointment to the Cambridge Police Department by way of lateral transfer pursuant to M.G.L. c. 31, §35. §35 states, in relevant part:

Any permanent employee in a departmental unit may apply in writing to his appointing authority for transfer to a similar position within such unit, or may apply in writing to the appointing authorities for such unit and for any other departmental unit for transfer to a similar position in such other departmental unit. **With the written consent of such appointing authority or authorities**, as the case may be, and with the written consent of the administrator, such person may be so transferred. (emphasis added)

Although G.L. c. 31, §35 grants permanent employees the right to seek a transfer from one civil service position to another, it does not oblige appointing authorities and the administrator to make such a transfer. See Cooper v. Civil Service Commission, 314 Mass. 76, 79 (1943) (“The statutes do not confer upon a person within the classified civil service the right to be transferred from one office or employment to another.”) It is clear from the holding in Cooper that voluntary transfers under §35 are made at the discretion of the *Appointing Authority*, pending the approval of HRD.

The statutory scheme does protect an employee in certain case when he or she is involuntarily transferred by an Appointing Authority without his or her consent. In the instant case, however, the employees themselves are seeking a voluntary transfer from one department to another. In such cases involving a voluntary transfer request from one department to another, civil service law does not provide appeal rights to the employee requesting the transfer when the Appointing Authority does not consent to the employee's request. There is simply no affirmative obligation on the City to consent to a voluntary transfer request submitted by an employee.

The Appellants in this matter have failed to state a claim upon which the Commission could grant relief. There has been no act, or failure to act, on the part of HRD. The relevant statute, c. 31, § 35, does not grant any type of "transfer right" to a civil service employee.

Therefore, the Motion to Dismiss is allowed and the appeals under Docket Nos. G1-05-227, G1-05-228 and G1-05-229 are hereby *dismissed*.

Civil Service Commission

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Donald R. Marquis  
Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairperson; Bowman, Guerin, Marquis, Commissioners [Taylor – Absent]) on February 8, 2007.

A true record. Attest:

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Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Pursuant to M.G.L. c. 31 sec. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice sent to:

Joseph L. DeLorey, Esq.  
Patrick J. Mulroney, Esq.  
Daniel C. Brown, Esq.