

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

EVA PIZARRO,
Appellant

v.

D1-12-105

CITY OF SPRINGFIELD,
Respondent

Appearance for Appellant:

John D. Connor, Esq.
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73 State Street, Suite 310
Springfield, MA 01103

Appearance for Respondent:

Maite Parsi, Esq.
City of Springfield
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Commissioner:

Cynthia A. Ittleman

DECISION

On June 26, 2012, the Appellant, Eva Pizarro (Ms. Pizarro), pursuant to G.L. c. 31, §§ 39 & 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Springfield (City) to lay her off and to deny her request to “bump” other employees.

On July 25, 2012, I held a pre-hearing conference at the Springfield State Building in Springfield, MA and a full hearing was held at the same location on October 10, 2012. CDs were made of the digitally-recording hearing. A copy was retained by the

Commission and both parties were provided with copies as well.¹ The parties submitted post-hearing briefs on November 27, 2012 (Ms. Pizarro) and November 29, 2012 (City).

FINDINGS OF FACT:

Seventeen (17) exhibits were accepted into evidence during the hearing.²

Based upon the documents entered into evidence, the testimony of:

- Eva Pizarro, Appellant;
- Peter Krupczak, Assistant Director of Employee Relations for the City's Parks, Building and Recreation Management Department;
- Gail Walls, Assistant Director of Human Resources for the City;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

Pre-Control Board

1. On June 27, 1977, Ms. Pizarro was appointed as a provisional Senior Clerk Typist in the City's Facilities Management Department. (Testimony of Ms. Pizarro and Exhibit 6)
2. On April 28, 1980, Ms. Pizarro became a permanent Senior Clerk Typist in the City's Facilities Management Department. (Testimony of Ms. Pizarro and Exhibit 6)
3. On March 25, 1987, Ms. Pizarro received a promotional appointment to the position of permanent Principal Clerk Typist in the City's Facilities Management Department. (Exhibit 6)

¹ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

² Consistent with Massachusetts Statewide Retention Schedule 02-11, Sections B5 2(b) and/or B5 3(g), these exhibits, and the entire case record, will be retained, either at the offices of the Commission, or at an off-site location, for six (6) years after final case activity / case closure. After such time period expires, the

4. On October 1, 1993, Ms. Pizarro was provisionally promoted to the position of provisional Cost Control Clerk in the City's Facilities Management Department. She continued in this capacity until she was laid off on June 5, 2012. (Exhibit 6)
5. The City's classification plan contains the following series regarding clerks from lowest to highest: Clerk, Senior Clerk, Principal Clerk, Head Clerk, Head Administrative Clerk. (Exhibit 14)³
6. On August 8, 1994, a person by the name of Susan Gelinas was appointed as a permanent Principal Clerk in the City's Parks Department. (Exhibit 10)
7. On December 30, 1999, a person by the name of Kathy Calvanese was appointed as a permanent Senior Clerk in the City's Parks Department. (Exhibit 10)
8. On November 1, 2001, a person by the name of Erica Decker was provisionally appointed to the position of provisional Senior Clerk, Typist in the City's Parks Department. (Exhibit 10)

Post-Control Board

9. On November 14, 2004, the finances of the City were taken over by the "Springfield Finance Control Board" (Control Board) in accordance with Chapter 169 of the Acts of 2004 which stated in relevant part that the Control Board had the following powers: "to reorganize, consolidate, or abolish departments, offices or functions of the city, in whole or in part, and to establish such new departments, commissions, boards, offices or functions as it deems necessary, and to transfer the duties, powers,

entire case file will be destroyed. A copy of this decision, however, will be retained permanently by the Commission.

³ Although the position of "Cost Control Clerk" is not listed as part of the City's Classification Plan submitted as part of this hearing, it is not relevant as there is no dispute that Ms. Pizarro's civil service "permanency" falls under the "Principal Clerk" title.

functions and appropriations of 1 department, commission, board or other unit to another.” (Administrative Notice: Chapter 169 of the Acts of 2004)⁴

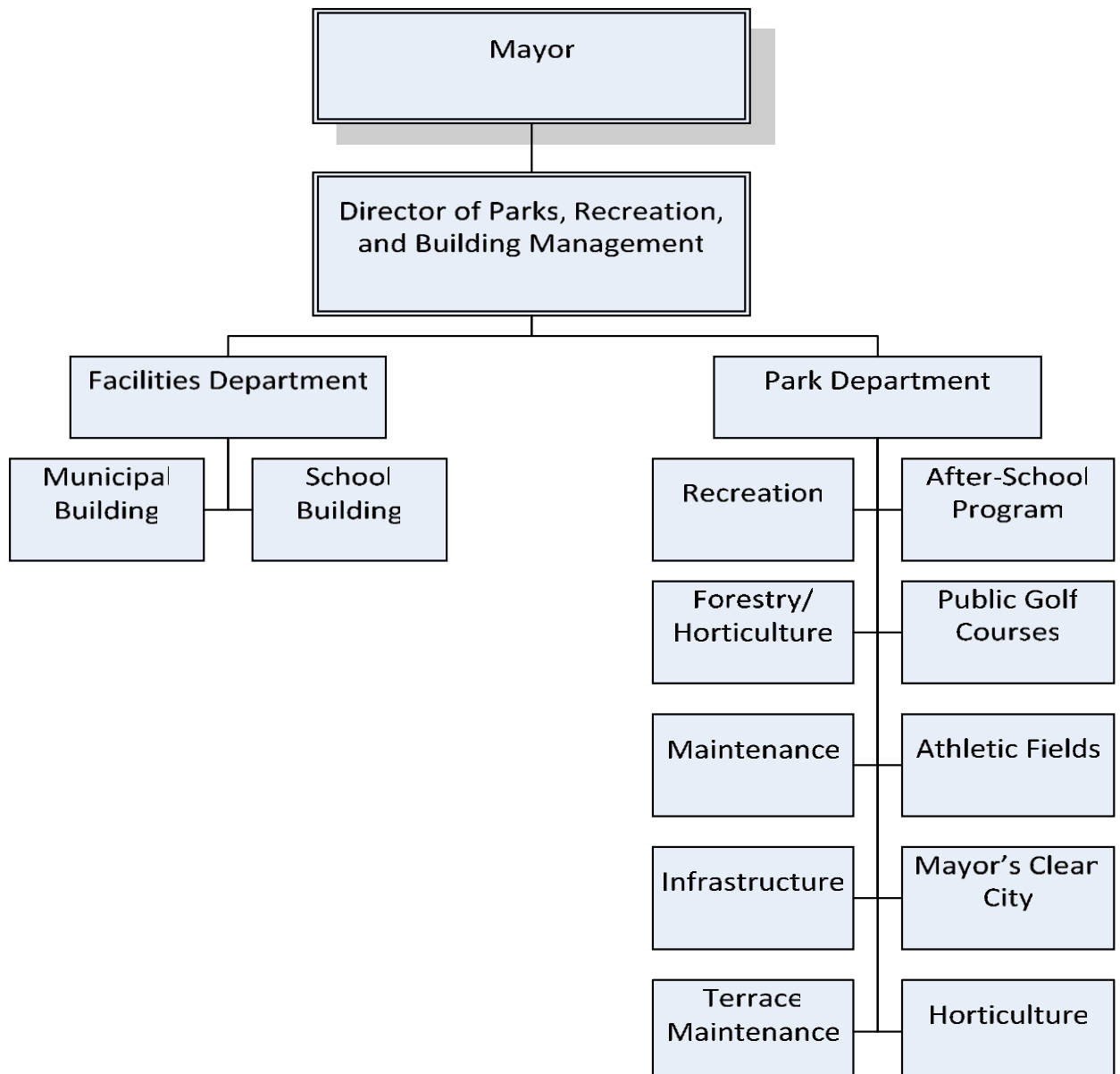
10. The Control Board consisted of five (5) members including: three (3) designees of the Secretary of Administration and Finance; the Mayor of the City; and the President of the City Council. (Administrative Notice: Chapter 169 of the Acts of 2004)
11. On or about December 6, 2004, the Control Board delegated certain powers, including the power “to reorganize, consolidate or abolish departments, offices or functions of the City, in whole or in part, and to establish such new departments, officers or functions as it deems necessary ...” to the Control Board’s Executive Director. (Exhibit 16)
12. Gail Wall is a long-time employee of the City who, at the time of the hearing before the Commission, served as the Assistant Director of Human Resources for the City. She has been responsible for all matters related to civil service for decades. The Control Board, while it was in place, regularly made decisions without notifying her or other City departments or employees. The only time Ms. Wall would become aware of a personnel-related action taken by the Control Board is after an employee or employees were terminated or laid off. (Testimony of Ms. Wall)
13. The Control Board operated as its own “fiefdom”. (Testimony of Mr. Krupczak)
14. On January 3, 2005, a person by the name of Patricia Cabey was provisionally appointed to a position titled “Data Entry Supervisor”. (Exhibit 9)
15. At the time of Ms. Pizarro’s layoff, Ms. Cabey was listed as a “Facilities” employee on the annual civil service seniority list. (Exhibit 9)⁵

⁴ The parties did not include Chapter 169 of the Acts of 2004 as an exhibit. Given its relevancy to these proceedings, I have taken administrative notice of it.

16. Peter Krupczak is the Assistant Director of Employee Relations for the City's "Parks, Buildings & Recreation Management" Department. (Testimony of Mr. Krupczak)
17. Prior to holding his current position, Mr. Krupczak worked for "Facilities" for the City. (Testimony of Mr. Krupczak)
18. Prior to working for what he refers to as "Facilities", Mr. Krupczak worked at City Hall as an Assistant Director of Employee Relations for approximately fifteen (15) years. (Testimony of Mr. Krupczak)
19. Sometime in 2006, while the Control Board was in place, Mr. Krupczak "had an awareness" that an individual by the name of Patrick Sullivan was now the Director of "Parks, Building and Recreation Management". (Testimony of Mr. Krupczak)
20. Sometime in 2006, Mr. Sullivan asked Mr. Krupczak to work for him (Sullivan) at Parks, Building and Recreation Management (PBRM). (Testimony of Mr. Krupczak)
21. Since Mr. Krupczak began working at PBRM, PBRM has maintained separate budgets for "Parks" and "Facilities". (Testimony of Mr. Krupczak)
22. The City's Fiscal Year 2013 (FY13) budget (which covers the period July 1, 2012 to June 30, 2013) contains the following organization chart which identifies a separate "Facilities Department" and "Park Department" within "Parks, Recreation and Building Management"⁶:

⁵ Ms. Pizarro testified that, in or around 2006, Ms. Cabey transferred from "Parks" to "Facilities". The parties did not submit any documents related to the employment history of Ms. Cabey (or Ms. Gelinas, Ms. Calvanese and Ms. Decker) for me to confirm this. For this reason, I make no finding regarding whether Ms. Cabey was transferred from Parks to Facilities.

⁶ Given that this appeal involves what, if any, action that the Control Board took in 2006 regarding the organization structure, I did an online query of the prior "adopted budgets" for the City of Springfield and found documents for FY09 and FY12. Both of these prior adopted budgets contain generally the same language and organization charts related to Facilities, Parks and PBRM as the FY13 adopted budget. Specifically, Facilities and Parks were listed as separate departments. I take administrative notice thereof.



(Exhibits 12 and 13)⁷

23. The City's FY13 budget contains separate budget line items for a Facilities

Department and the Parks Department. The mission statement for the Parks

Department is stated as: "Maintain and improve the City's parks and open space, as

⁷ The organization charts from Exhibits 12 and 13 contained only information regarding the individual Facilities Department and the individual Park Department. I queried the City's website to obtain this additional (and most relevant) information and take administrative notice of it. (https://www.springfield-ma.gov/finance/fileadmin/budget/2013/Final_FY_2013_Adopted_Budget.pdf)

well as offer a diverse range of recreational programs.” The separate mission statement for the Facilities Department is stated as: “The Facilities Department is committed to maintaining our public buildings and city vehicles in a manner that will sustain a safe, healthy and productive learning and working environment for the occupants and visitors of all our schools, municipal building and grounds.” (Exhibits 12 and 13)

24. Prior to Mr. Sullivan becoming head of PBRM, Ms. Pizarro was responsible for:

“cost control” functions that included the data entry of work orders; and payroll-related duties that related solely to Facilities employees. (Testimony of Ms. Pizarro)

25. Sometime after Mr. Sullivan became head of PBRM, Ms. Cabey (listed as a Data Entry Supervisor in the Facilities Department in 2012) began performing the “cost control” duties previously performed by Ms. Pizarro. (Testimony of Ms. Pizarro)⁸

26. Ms. Pizarro’s payroll-related and other duties never included employees in “Parks”, but, rather, were always limited to employees in “Facilities”. (Testimony of Ms. Pizarro)

27. The Parks Department is responsible for maintaining its own buildings. (Testimony of Mr. Krupczak)

28. Approximately half of the athletic fields maintained by the Parks Department are on school grounds. (Testimony of Mr. Krupczak)

29. Since Mr. Krupczak has been working at PBRM, PBRM has been preparing separate annual civil service seniority lists for “Facilities” and “Parks”. (Testimony of Mr. Krupczak)

30. The civil service seniority lists refer to the PBRM as a “Department” and “Facilities” and “Parks” as “Divisions”. (Exhibits 9 and 10)
31. Since 2006, Mr. Sullivan has transferred personnel and some functions between “Parks” and “Facilities”. (Uncontested Fact; *see* Post-Hearing Briefs)
32. Wayman Lee has been the City Clerk since January 13, 2006. As the City Clerk, he is responsible for all operations of the office including the recording of vital statistics, legal records and official City Council records, as well as the issuance of various licenses and official documents. (Exhibit 15)
33. The official records under Mr. Lee’s supervision include ordinances issued by the Control Board and the City Council. (Exhibit 15)
34. Mr. Lee reviewed the pertinent records and found neither an ordinance nor any other official document showing the consolidation of the City’s Facilities and Parks Departments. (Exhibit 15)
35. On December 16, 2011, the City’s Finance Director issued a memo to all Department Heads providing guidance about developing their FY13 budget proposals that identified a potential \$17 million “gap” in FY13. (Exhibit 1)
36. On May 24, 2012, the City’s Mayor issued an Executive Order stating that, even after considering revenue proposals, requests for additional state aid and proposed reductions in departmental budgets already submitted, there would still be an estimated \$5.8 million to \$7.8 million budget deficit in FY13, which would begin July 1, 2012. Therefore, the Mayor directed Department heads to initiate reductions in personnel and other expenditures. (Exhibit 2)

⁸ As referenced in Footnote 5, the parties did not submit the employment records of Ms. Cabey, nor did the parties submit the civil service seniority lists from previous years that presumably would have listed Ms.

37. In a letter dated June 5, 2012, Mr. Sullivan notified Ms. Pizarro that he was contemplating laying her off, effective June 14, 2012, due to lack of funds. A hearing was scheduled for June 14, 2012. In the interim, Ms. Pizarro was placed on paid administrative leave. (Exhibit 3)
38. A hearing was held on June 14, 2012. (Testimony of Ms. Pizarro)
39. In a letter dated June 14, 2012, Mr. Sullivan notified Ms. Pizarro that she was being laid off due to lack of funds and included a paragraph that provided detailed reasons related to lack of funds. There is no reference in the letter to any “bumping rights” that Ms. Pizarro may or may not have. (Exhibit 4)
40. In a letter dated June 14, 2012 to Mr. Sullivan, counsel for Ms. Pizarro stated that Ms. Pizarro was asserting her “bumping rights under G.L. c. 31 Sec. 39.” The letter also stated in relevant part that Ms. Pizarro (and one other employee) “are the only permanent civil service employees in the department and other individuals who were recently employed and performing the same or similar duties were not laid off first in violation of their civil service rights.” The letter also stated that “It is the contention of these two individuals that the ‘department’ for purposes of ‘departmental seniority’ is not limited to Facilities but extends to the department of Park, Buildings and Recreation Management. Furthermore, there are other employees within that department who are less senior and occupy the same or similar positions who should have been laid off first or should be bumped in accordance with the civil service law.” (Exhibit 17)
41. On July 5, 2012, the City sent the state’s Human Resources Division (HRD) an “Absence and Termination Notice / Form 56” stating that Ms. Pizarro was laid off

due to lack of work or money. In the field titled “Department”, the form, which contained Mr. Sullivan’s stamped-signature, stated: “PBRM”. (Exhibit 7)

42. Also on July 5, 2012, the City sent HRD a “Re-Employment / Reinstatement List Notification Form (Form 39) requesting that Ms. Pizarro’s name be placed on a statewide re-employment list under her title “Permanent Clerk Typist”. The form also references placement on a “reinstatement” list that the City is required to maintain. In the field titled “Department / Division”, the form, which contained Mr. Sullivan’s stamped-signature, stated: “PBRM”. (Exhibit 8)

Legal Standard

G. L. c. 31, § 39. Section 39, ¶ 1 states:

“If permanent employees in positions having the same title in a departmental unit are to be separated from such positions because of lack of work or lack of money or abolition of positions, they shall, except as hereinafter provided, be separated from employment according to their seniority in such unit and shall be reinstated in the same unit and in the same positions or positions similar to those formerly held by them according to such seniority, so that employees senior in length of service, computed in accordance with section thirty-three, shall be retained the longest and reinstated first. Employees separated from positions under this section shall be reinstated prior to the appointment of any other applicants to fill such positions or similar positions, provided that the right to such reinstatement shall lapse at the end of the ten-year period following the date of such separation.”
(emphasis added)

Seniority-based retention rights, as of the effective date of layoff, are restricted to the *departmental unit* in which the Appellant worked at the time. (See Herlihy v. Civ. Serv. Comm’n, 44 Mass.App.Ct. 835 (1998)).

“Departmental Unit” is defined under civil service law as “a board, commission, department, or any division, institutional component, or other component of a department established by law, ordinance, or by-law.” (G.L. c. 31, § 1).

Analysis

Ms. Pizarro is not contesting whether there was a lack of funds to justify the City's decision to lay off City employees in 2012. Rather, based on two (2) alternative arguments, Ms. Pizarro argues that the City did not provide her with all of her retention and/or bumping rights under Section 39 of the civil service law.

First, Ms. Pizarro argues that, at the time of her layoff, she was a permanent Principal Clerk in the Parks, Buildings and Recreation Management Department. If properly considered as a Principal Clerk in PBRM, Ms. Pizarro argues that another Principal Clerk in PBRM, who had less civil service seniority than her, should have been laid off before her. Further, under this same argument, Ms. Pizarro argues that she should have been able to "bump" two Senior Clerks in PBRM, one of whom who had less civil service seniority than her and another who was a provisional employee.

Second, Ms. Pizarro argues that even if the above-reference employees were employed in a separate "Parks" Department (as opposed to "Facilities"), there is one (1) provisional "Facilities" employee, Ms. Cabey, who should have been laid off before her. Ms. Pizarro claims that Ms. Cabey, when she was appointed several years prior, was "misclassified" as a data entry supervisor. Ms. Pizarro argues that, based on Ms. Cabey's duties and responsibilities, she should have been classified in a position in the Clerk series. If that had occurred, Ms. Pizarro argues that she would have been able to be retained in favor of or exercising bumping right vis-à-vis Ms. Cabey.

Ms. Pizarro's first argument requires a ruling from the Commission as to whether "Parks, Building and Recreation Management" is a "departmental unit" under civil service law.

As referenced above, Section 1 of the civil service law defines a “departmental unit” as a “board, commission, department, or any division, institutional component, or other component of a department *established by law, ordinance, or by-law.*” (*emphasis added*). Absent a law, ordinance or by-law showing the creation of a new Parks, Building and Recreation Management Department, the City argues that PBRM cannot be considered a “departmental unit” under the civil service law.

Ms. Pizarro asks the Commission to infer that the Control Board, which was vested with the authority to “establish ... new departments” did indeed: a) create a new department known as the Parks, Building and Recreation Management Department; and b) that this new department effectively consolidated the “Parks” and “Facilities” Departments – and that such new department should be considered a departmental unit under the civil service law.

It is a safe assumption that the Legislature, when it adopted the civil service definition of “departmental unit” never considered the possibility that a city or town would be under the control of a state-appointed board vested with broad and sweeping powers regarding the city or town’s organizational structure. When read in its entirety, it is clear, to me, that Chapter 169 of the Acts of 2004, coupled with the Control Board’s Executive Order, allowed the *Control Board’s Executive Director* to *unilaterally* create new departments and abolish existing departments, effectively superseding the civil service law requiring that a departmental unit can only be “established by law, ordinance or by-law.”

That leads to the question of whether the Control Board, or its Executive Director, did indeed create a new “Parks, Building and Recreation Management *Department*” that

consolidated the “Parks” Department and the “Facilities” Department.⁹ The City argues that it did not; Ms. Pizarro argues that it did. As referenced in the findings, both parties present compelling evidence to support their respective positions.

After carefully reviewing the entire record, and taking administrative notice of those documents referenced in the applicable footnotes, I do not believe that the Control Board actually created a new, separate department that consolidated the Parks Department and the Facilities Department “by law, ordinance or by-law”. While certain documents, viewed individually, lend support to both arguments, I gave the most weight to the City’s “adopted budget” for three (3) fiscal years *after* Mr. Sullivan assumed the role of Parks, Management and Recreation Management Executive Director as objective and repeated information in this regard. In each of those adopted budgets, “Parks” and “Facilities” are listed as separate departments with separate staffs, separate budgets and separate mission statements. Even Ms. Pizarro, in her testimony before the Commission, acknowledges that all of her job duties and responsibilities, even after Mr. Sullivan’s appointment, were, at all times during Ms. Pizarro’s tenure, limited to “Facilities”, which further supports the conclusion that the Facilities and Parks Departments were not abolished by the Control Board.

Rather, it appears that the Control Board decided that one person should serve as the *appointing authority* for both the Parks Department and Facilities Department. Given the somewhat related functions of the two (2) departments, having one appointing authority would ensure better coordination between them and add to the Control Board’s ability to address Springfield’s financial difficulties at the time. An appointing authority is defined

⁹ Neither party questioned that, prior to these matters, there was a separate Facilities Department and a separate Parks Department.

as “any person, board or commission with power to appoint or employ personnel in civil service positions.” (G.L. c. 31, § 1). There is nothing in the civil service law or rules that prevent separate departments from having the same Appointing Authority.

Since Ms. Pizarro was employed *in the Facilities Department* at the time of her layoff, and because she had permanency as a Principal Clerk, she had the right to be retained in favor of and/or bump any provisional Principal Clerk, Senior Clerk or Clerk or any permanent Principal Clerk, Senior Clerk or Clerk at the Facilities Department with less civil service seniority than her. As no other employee of the Facilities Department met these criteria at the time of Ms. Pizarro’s layoff, she was not deprived of any retention or bumping rights when she was laid off.¹⁰

That leads to the alternative argument put forth by Ms. Pizarro, in which she argues that, even if Facilities is considered a separate department, she should have been retained in employment over Patricia Cabey, who held the title of “Data Entry Supervisor.” According to Ms. Pizarro, Ms. Cabey, while employed in the Facilities Department, performed duties and responsibilities consistent with a “Cost Control Clerk”. As referenced in the findings, the section of the classification plan for the City submitted as a joint exhibit in this matter does not contain the title “Cost Control Clerk” in the Clerk series. However, Ms. Pizarro stated during her testimony that she was “provisionally promoted” to the position of “Cost Control Clerk” and she served in that position at the time of her layoff. If I were to accept Ms. Pizarro’s argument that Ms. Cabey was actually serving as a provisional “Cost Control Clerk”, a position presumably higher than Principal Clerk, then Ms. Pizarro would have no retention or bumping rights vis-à-vis

Ms. Cabey for the reasons that follow.

Section 15 of the Personnel Administration Rules states:

- (1) All civil service rights of an employee rest in the position in which he holds tenure.
- (2) When one or more employees must be separated from positions in the same title and departmental unit due to lack of work, lack of money or abolition of position, all persons filling positions provisionally in the designated title must be separated first, followed by all persons filling positions in temporary status in the designated title, before any civil service employees holding the designated positions in permanent status shall be separated from such positions.
- (3) When one or more civil service employees holding permanent positions in the same title and departmental unit must be separated from their positions due to lack of work, lack of money, or abolition of position, the employee with the least civil service seniority computed pursuant to M.G.L. c. 31, §33 shall be separated first; provided that all disabled veterans are accorded the preference provided by M.G.L. c. 31, §26.
- (4) When one or more persons among a larger group of civil service employees holding permanent positions in the same title and departmental unit are to be separated from their positions due to lack of work, lack of money or abolition of position, and the entire group has the same civil service seniority date, the appointing authority has the discretion to select for separation among those with equal retention rights, applying basic merit principles.
(PAR.15)

In Andrews v. Civil Service Comm'n, 446 Mass. 611 (2006), the SJC concluded that:

“Provisional promotion pursuant to G. L. c. 31, s. 15, effects a real change from ‘one title to the next higher title.’ A provisionally promoted employee ceases to be “in” the original title for purposes of s. 39, and does not return to the lower title until the provisional promotion ceases to have effect. G.L. c. 31, s. 15 provides only one exception to this rule, relating to calculation of eligibility for a promotional examination. ‘[T]he fact that the Legislature specified one exception . . . strengthens the inference that no other

¹⁰ The Commission also addressed issues involving the Control Board in In the Matter of the Civil Service Status of Service Employees of the City of Springfield, Docket No. E-12-153, although not regarding whether the Control Board had created a new “Parks, Building and Recreation Management Department”.

exception was intended.’ Protective Life Ins. Co. v. Sullivan, 425 Mass. 615, 620 (1997), quoting LaBranche v. A.J. Lane & Co., 404 Mass. 725, 729 (1989). Regardless whether the five employees provisionally promoted to the [Department of Revenue Special Investigator (“SI”)]-C position possessed or lacked rights in the SI-C position pursuant to rule 15, that was the position in which they were employed for purposes of s. 39.”

Andrews at 618-19. Applied here, if Ms. Cabey was actually serving provisionally in a higher, “Cost Control Clerk” position in the Facilities Department, Ms. Pizarro would still have no ability to bump Ms. Cabey or be retained in favor of Ms. Cabey. In Andrews, the SJC also concluded in relevant part that, “[a] provisionally promoted employee ceases to be ‘in’ the original title for purposes of s. 39, and does not return to the lower title until the provisional promotion ceases to have effect ...” Id. at 618 (emphasis added).

We view the above-referenced language from Andrews to be consistent with how HRD, state agencies and cities and towns appear to have interpreted Section 39 for many years. When layoffs occur in a title under Section 39, provisional employees in that title retain certain bumping rights if they formerly held a permanent civil service title in the department prior to their promotion. Specifically, the provisionally promoted employee, who held civil service permanency in a former position within the department, may, as an alternative to being laid off, “bump” other provisional or less senior permanent employees in the title or next lower titles for which they had permanency. Applied here, Ms. Pizarro, a permanent Principal Clerk, who argues that she was serving in a higher title of provisional Cost Control Clerk at the time of her layoff, had the right to “bump” individuals serving as provisional or less senior Principal Clerks or those provisional or

less senior employees holding the title of Senior Clerk or Clerk in the Facilities Department. Under this scenario, the City would not have been required to lay off a provisional “Cost Control Clerk” in the department before Ms. Pizarro. However, in Leondike v. Randolph Public Schools, 13 MCSR 16 (2000), the Appellant in that case argued that she should be able to bump a less senior employee in a non-civil service position with a higher pay rate. The Commission found that there was no legal basis under Section 39 to permit the Appellant to bump into a non-civil service position. Similarly, in Provencher v. Lynn Public Schools, 21 MCSR 533 (2008), the Commission held that that the Appellant, a permanent a permanent clerk / typist who was provisionally promoted to clerk / stenographer, did not have the right to bump another provisional clerk / stenographer, merely because she had more civil service seniority than the person sitting provisionally in the clerk / stenographer position. In other words, bumping is permitted only in the employee’s permanent civil service title. Since Ms. Pizarro seeks to be bumped to a title other than her permanent civil service title, her appeal fails.

There is an equally compelling reason to reject Ms. Pizarro’s alternative argument. Her alternative argument assumes that any permanent civil service employee, at the time of his/her layoff, can: 1) challenge the classification of any other employee in the Department; and 2) if such a challenge was permitted, that challenge could occur regardless of how long that other employee has been classified in that title. Here, Ms. Pizarro seeks to challenge an appointment and classification that occurred *seven years* prior to her layoff. I am not aware of any civil service law, rule or Commission decision that stands for the proposition that a permanent civil service employee who is laid off is

vested with such rights at the time of his / her layoff. To conclude otherwise would wreak havoc upon an already nuanced civil service process at the time of layoffs.

Conclusion

For these reasons, Ms. Pizarro's appeal under Docket No. D1-12-105 is hereby ***denied***.

Civil Service Commission

Cynthia A. Ittleman

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on October 1, 2015.

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:

John D. Connor, Esq. (for Appellant)
Maite Parsi, Esq. (for Respondent)