

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 9/26/08  
Civil Service Commission  
CS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

ROSEMARY PROVENCHER,  
Appellant

v.

D-08-186

LYNN PUBLIC SCHOOLS,  
Respondent

Appellant's Representative:

*Pro Se*  
Rosemary Provencher

Respondent's Representative:

Patricia M. Libby  
Human Resources Manager  
Lynn Public Schools  
90 Commercial Street  
Lynn, MA 01906

Commissioner:

Christopher C. Bowman

DECISION

The Appellant, Rosemary Provencher, (hereinafter "Appellant") filed this appeal with the Civil Service Commission, (hereinafter "Commission") alleging that the Lynn Public Schools (hereinafter "School Department" or "Appointing Authority") did not provide her with the proper "bumping rights" pursuant to G.L. c. 31, § 39.

A pre-hearing conference was conducted on August 28, 2008. Subsequent to the pre-hearing conference, the Appellant, at the request of the Commission, submitted a "More Definite Statement" to the Commission and the Appointing Authority filed a response.

The following facts are not in dispute:

- The Appellant was permanently appointed to the civil service position of “clerk / typist” by the Lynn Public Schools on December 30, 1999 and was assigned a civil service seniority date of “12/30/99 – 4”;
- Lisa Coughlin was also permanently appointed to the civil service position of “clerk / typist” by the Lynn Public Schools on December 30, 1999, but was assigned a civil service seniority date of “12/30/99 – 9”;
- Although neither party could explain how the number “4” or “9” was assigned, both parties agreed that “12/30/99 – 4” is a higher seniority date than “12/30/99 – 9”;
- Lisa Coughlin was provisionally promoted to the civil service position of “clerk / stenographer” on January 28, 2004;
- The Appellant was also provisionally promoted to the civil service position of “clerk / stenographer”, but not until February 6, 2008;
- On or about July 24, 2008, in response to budget constraints, the Appointing Authority closed two schools and eliminated ten clerical positions (including the Washington Elementary School where the Appellant was employed);
- The Appointing Authority provided the Appellant, a provisional “clerk / stenographer” at the time, with the option of “bumping” other “clerk / stenographers” with less seniority or “clerk / typists” with less seniority;
- As a result of a clerical bid meeting, the Appellant “bumped” down to a position of “clerk / typist”.

G.L. c. 31, § 39 states in relevant part: “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 lack of positions, they shall ... be separated from employment” in reverse order of seniority.

An employee may elect to be demoted to a position in a lower title in lieu of discharge, provided that there is a less-senior employee in the lower title for the demoted employee to replace, a practice known as “bumping”. See Herlihy v. Civ. Serv. Comm’n, 44 Mass. App. Ct. 835, 835 (1998).

The Appellant argues that pursuant to G.L. c. 31, § 39, she had a right to “bump” Lisa Coughlin, the provisional “clerk / stenographer” referenced above. According to the Appellant, bumping rights should have been allocated based on the positions in which the employees were tenured, not those to which they were provisionally promoted.

In Andrews v. Civ. Serv. Comm’n et al., 446 Mass. 611 (2006), the SJC recently addressed the issue of whether a provisionally promoted employee is “in” a higher title for purposes of s. 39, stating:


“Provisional promotions pursuant to G.L. c. 31, § 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 § 39, and does not return to the lower title until the provisional promotion ceases to have effect.”

Andrews at 618 (2006)

In the instant appeal, the Appellant argues that because she had a higher seniority date in the lower, permanent title of “clerk / typist” than Lisa Coughlin, she should be able to “bump” Ms. Coughlin from her provisional position of “clerk / stenographer”.

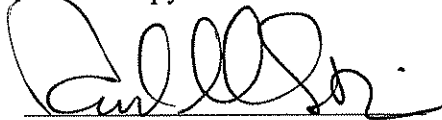
The Appellant’s argument is inconsistent with the SJC’s decision in Andrews. Both the Appellant and Ms. Coughlin were no longer “in” the lower position of “clerk / typist” for purposes of § 39. Thus the Appellant, based on her higher seniority date in that lower title, does not have the right to bump Ms. Coughlin from her provisional position of “clerk / stenographer”.

For all of the above reasons, the Appellant’s appeal under Docket No. D-08-186 is hereby *dismissed*.

  
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Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman, Henderson, Marquis, Stein and Taylor, Commissioners), on September 25, 2008.

A true Copy. Attest:

  
\_\_\_\_\_  
Commissioner  
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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:

Rosemary Provencher (Appellant)  
Patricia M. Libby (for Appointing Authority)  
John Marra, Esq. (HRD)