

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

INVESTIGATION RE:
CITY OF QUINCY LABOR SERVICE APPOINTMENTS

v.

Docket No.: I-12-241

Appearance for City of Quincy:

Deirdre Hall, Esq.
City of Quincy
1305 Hancock Street
Quincy, MA 02169

Appearance for Quincy School Department:

Kevin W. Mulvey, Esq.¹
Quincy School Department
159 Thomas Burgin Parkway
Quincy, MA 02170

Commissioner:

Christopher C. Bowman

**RESULTS OF COMMISSION INVESTIGATION AND
ORDERS PURSUANT TO CHAPTER 310 OF THE ACTS OF 1993**

On February 22nd and May 6th 2012, James McDonough and Patrick McNamara, who are currently employed as labor service employees for the City of Quincy (City), filed bypass appeals with the Civil Service Commission (Commission), contesting their non-selection to the labor service position of Park Maintenance Person, an entry level position.

Mr. McDonough's appeal (G2-12-56) was dismissed based on his failure to prosecute his appeal. Mr. McNamara's appeal (G2-12-84) was dismissed based on his lack of standing to contest an original appointment to a labor service position.

As part of these appeals, however, the City, at the Commission's request, produced records showing that the individual appointed to the labor service position was ranked 234th on the labor service register used to make this appointment.

¹ The Quincy School Department was not part of the initial investigation. Since the School Department also makes labor service appointments, they voluntarily appeared at the second status conference to ensure that their hiring practices, in regard to labor service appointments, would be consistent with any Commission orders related to the City of Quincy.

So called “labor service” positions are those jobs for which applicants do not have to take a competitive examination, and appointments are made on the basis of priority of registration. (See G.L. c. 31, §§ 1, 28-29)

G.L. c. 31, § 28, which pertains to labor service appointments, states in relevant part:

“ ... the names of persons who apply for employment in the labor service ... of the cities and towns shall be registered and placed, in the order of the dates on which they file their applications, on the registers for the titles for which they apply and qualify. The name of any such person shall remain on such register for not more than five years ... The names of veterans who apply for employment in the labor service shall be placed ... ahead of the names of all other persons.”

Section 19 of the Personnel Administration Rules (PAR.19), promulgated by HRD and approved by the Commission, contains the rules that apply to all labor service employees in cities and towns covered by the civil service law.

PAR.19(2), which pertains to labor service appointments, states in relevant part:

“When positions are to be filled on a permanent or temporary basis in the labor service, the appointing authority shall make requisition to the administrator² ... shall establish and maintain rosters for each departmental unit and by appropriate class containing the names, position titles and effective dates of employment of persons appointed to ... labor service positions ... in the service of a ... municipality after certification from labor service registers ...”

PAR.19(2) also states that “selection and original appointments shall be made as provided in PAR.09.” PAR.09 contains the so-called “2n + 1” formula which states that appointing authorities may appoint only from among the first 2n+1 persons named in the “certification” willing to accept appointment, where the number of appointments is “n”. Applied to appointments in the labor service, appointing authorities can only appoint from among the first 2n+1 [qualified] persons on the labor service register.

Notwithstanding the requirement that a labor service appointment must be made from among the first three qualified applicants on the labor service register, the City was unable to explain how an individual ranked 234th on the register was appointed. During the course of the review, the City stated that the practice followed in this instance had been followed for decades by personnel staff employed by the City.

² The City of Quincy, along with all other civil service cities and town in Massachusetts, with the exception of Boston, has been delegated to perform the duties and responsibilities of the Administrator (HRD) in regard to labor service appointment. PAR.20 requires each of these cities and towns to designate a Labor Service Director to perform these functions.

To ensure that the City was complying with the civil service law and rules regarding labor service appointments, the Commission, pursuant to G.L. c. 31, § 2(a), initiated an investigation regarding the City's hiring practices.

As part of this investigation, I met with City officials³ on two (2) occasions, on November 19, 2012 and January 14, 2013. In addition to providing responsive documents, the City, as part of these meetings, provided an overview of the City's hiring practices as they related to labor service appointments and promotions.

At the Commission's request, the City prepared a draft Executive Summary, outlining a modified process for labor service appointments and promotions. I reviewed the draft Executive Summary with City officials as part of the January 14, 2013 status conference and deemed it a good faith effort by City officials to ensure compliance with all applicable civil service law and rules. The City has now finalized the Executive Summary and provided a copy to the Commission.

The City is now asking that any incumbent labor service employees, appointed or promoted prior to the procedures outlined in the Executive Summary were adopted, be granted permanency. Since any defects in the appointment or promotion process prior to the newly adopted procedures were through no fault of the individuals appointed and promoted and because the City's new procedures are in compliance with civil service law and rules, that request is allowed.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the following:

1. All City of Quincy or Quincy School Department employees hired into non-temporary labor service positions who have completed six (6) months of employment with the City, shall be deemed permanent civil service employees in their current, non-temporary labor service position effective March 7, 2013.
2. The civil service seniority date of any individual referenced in Paragraph 1 shall be the individual's first day of service as a labor service employee with the City.
3. For those City employees hired into non-temporary labor service positions who have not completed six (6) months of employment with the City as of March 7, 2013, they shall be deemed permanent upon serving their six (6)-month probationary period.
4. Any individual referenced in Paragraph 1 who was subsequently promoted to an official service position shall be considered provisionally promoted into that official service position.

³ Deirdre Hall (Assistant City Solicitor), James Timmins (City Solicitor), Daniel Raymondi (Public Works Commissioner), Kristen Power (Executive Director, Parks and Forest Department), Stephen McGrath (HR Director)

5. The City shall not make any provisional appointments or promotions into labor service positions and shall comply with all civil service law and rules regarding labor service appointments and promotions contained in G.L. c. 31, §§ 1, 28 and 29 and Section 19 of the Personnel Administration Rules (PAR.19).

THE CITY OF QUINCY AND THE QUINCY SCHOOL DEPARTMENT SHALL PROVIDE A COPY OF THIS DECISION TO ALL LABOR SERVICE EMPLOYEES EMPLOYED BY THE CITY AND ALL OFFICIAL SERVICE EMPLOYEES WHO PREVIOUSLY SERVED IN A LABOR SERVICE POSITION

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman and McDowell, Commissioners [Marquis, Stein – Absent]) on March 7, 2013.

A True Record. Attest:

Commissioner

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)(1), 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 as stated below.

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 from the effective date specified in 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.

Notice to:
Deirdre Hall, Esq. (for City of Quincy)
Kevin W. Mulvey, Esq. (for Quincy School Department)
John Marra, Esq. (HRD)